Precedents of the Texas House of Representatives

Volume II

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Volume II

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Introduction

Buried in the Texas House Rules is a short summary of a congressional precedent that informs my entire view of parliamentary law:

> *Preserving the authority and binding force of parliamentary law is as much the duty of each member of the House as it is the duty of the Chair*.

That single sentence conveys the importance of parliamentary law to a legislative chamber. It also conveys a second central point by describing the role of all members, including the Chair, in preserving the authority of that law in the House. Finally, it properly describes the importance of a staff parliamentarian in that process (about which the sentence is appropriately silent).

Under this interpretation, it is the responsibility of each member to thoughtfully consider the development of a chamber's rules, and the operation of those rules, and to review their subsequent interpretation. Members also agree to be bound by those rules, even when it fails to advance their own legislative purpose. Preserving the integrity of the body and the understanding of nearly a millennium of Anglo-American parliamentary law includes recognizing that members are bound by rules that their chamber adopts regardless of whether they seek to brandish them as a sword or use them as a shield. Further, although the rules allow questions of order to be initially decided by presiding officers, the final determination—by an immediate appeal of the chair, by a rules change in a future legislative session, by a vote on the measure, or by another appropriate method—lies with the membership. It is the members of the legislative body, and the members alone, who determine the manner in which to adhere to their own rules of procedure. And Lord help the parliamentarian who fails to recognize or accept that his or her advisory role to a presiding officer or members is not outlined in this process for good reason.

This is not to say that a House Parliamentarian is not a valuable thing. In part, parliamentarians exist for the same reasons sports referees exist—imagine a championship on the line in a game between Dallas Carter and Odessa Permian and letting the coaches of those teams or the players on the field make the call. Parliamentarians are called to handle their job in the exact same way as those referees—know the rules, explain the likely outcomes to players and coaches before the game or before a play goes off, interpret the rules in an evenhanded and neutral way when an event arises, generally facilitate and stay out of the participants' way if things are running smoothly, disappoint at least 50 percent of the interested parties in any call, and get told that you don't know what you are doing. Like a good referee, parliamentarians doing their job should not only have "no dog in the hunt," they should also really not want to be at "the hunt" at all.

Like all House officers and staff, parliamentarians also exist as record keepers and as institutional memory for members. Our value should be in placing information into the hands of House members or their staff rather than

into hidden informational silos. That includes reminding all members of how the House handled issues in the past and how a current course of proposed conduct measures up to the duty to conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. This is why outreach and counseling efforts by our office, as well as the development of tools related to House Rules that members can use in their offices, are among our attempts to ensure that this knowledge is shared. Understanding parliamentary procedure in legislative bodies does not require expertise in rocket science, but it does require a faithful study of the rules and their interpretation and mindful reflection on the situations where their application might arise. This book is an attempt to make it easier to complete those tasks.

You may have noticed that this is Volume II of the written House decisions of presiding officers on points of order, and you may be wondering where Volume I is. This book encompasses the written rulings from what our office thinks of as the Modern Era of the House Rules. With few changes, the current House Rules have not migrated far from the rules adopted in 1993. The modern rules when initially adopted were considered tectonic changes in the conduct of the Texas House. Deadlines were established for legislative consideration, and transparency, both to members of the House and the public, was outlined. In adopting these rules, the House members agreed to make a commitment to each other to change the conduct of their business. Members chose to use their authority and the binding force of the enforcement of their rules to ensure this rules mandate was carried out.

The earlier volume of this work (Volume I) will come later. It will complete the collection of written House decisions of presiding officers on points of order to the beginning of statehood and the Republic. Like most members of Anglo-American parliaments, Texas legislators will find that they owe the methods of operating their chamber to an English king who was a very poor general and rebel barons who were very practical politicians. From guarantees the barons received in the Magna Carta in 1215 of having the voice of the people heard in government, the fundamental building blocks of the operation of the Model Parliament and later the House of Commons began to take shape. Among the host of legislative rules that arose in England in Parliament was the ability of the House chamber to originate a tax bill and the designation of "speaker" as the presiding officer of the House. It has been 400 years since those English legislative rules were transplanted into the colonial legislative bodies beginning with the Virginia House of Burgesses. Those colonial rules traveled the length and breadth of the Eastern Seaboard and were incorporated into the rules of the newly established (and westward expanding) United States House of Representatives. In the early days of the American republic, the English parliamentary precedents were collected and analyzed by the greatest American parliamentarian, Thomas Jefferson, and in 1836, those scattered seeds of representative democracy took root here.

On October 4, 1836, the Texas House of Representatives adopted "for its government, the rules and regulations of the House of Representatives of the United States" as its temporary rules. This leads to a mystery. In 1836, Texas was not awash either in bookstores or roving bands of political scientists. In fact, as late as 1860, an observer wrote about the state's capital city: "There is a very remarkable number of drinking and gambling shops, but not one bookstore." How would a set of rules (or perhaps only intimate knowledge) of the United States House of Representatives find its way to the Texas frontiers? The most likely answer is that it was brought to Texas by someone who had served in that chamber, and in 1836 Texas, that was a pretty small list. It is possible that former Congressman Davy Crockett carried it with him, but most of his personal possessions brought to Texas were lost at the Alamo. An 1827 and 1829 session mate of Crockett, Congressman Samuel Carson, was a signer of the Texas Declaration of Independence, but by the summer of 1836, he had already feuded with the provisional Texas government and removed himself to Arkansas.

Robert Potter is a more likely suspect. Potter, in addition to being a United States Congressman from North Carolina, had also been expelled from the North Carolina House of Commons for "cheating at cards," although most likely he was expelled for castrating two men who he believed had designs upon his wife. In Texas, he became the secretary of the Texas Navy and the commander of the port of Galveston. Although he was actively involved in a segment of Texas politics at the time the first Texas House sat, he had recently remarried and was likely away from the Capitol at the time the House took up its rules.

The most likely suspect is also the most famous: Sam Houston. Houston had read the law in 1818, completing an 18-month course of study in just 6 months, and had been a practicing attorney since that time. He is known to have brought a sizable collection of books into Texas, including the Federalist Papers, Louisiana law books, and Vattel's *The Law of Nations* (a book that another famous first President of a Republic, George Washington, had also read). He was known to carry portions of his library in his saddlebag as he traveled (even at San Jacinto). It is not hard to imagine that as the soon-to-be president of the Republic, he would have been in the thick of both the membership and organization of the Texas House. He would later serve as a member of the House, and today his portrait watches over the membership on the floor. Although this is not definitive proof, the House Parliamentarian's office feels comfortable relying on the *Man Who Shot Liberty Valance* Rule:

When the legend becomes fact, print the legend.

It also seems appropriate that in the House Sam served in and still surveys, these are Sam's rules.

As Texans (and House members) tend to do, the first Texas House set out to draft its own unique rules of order and decorum. Representatives William Holman, John Bunton, Moseley Baker, Thomas Jefferson Green, and John Allen

were appointed to that task. It was an interesting mixture of men. Two were lawyers. Green had already been a member of the North Carolina and Florida Houses (and would later serve in the first state Senate in California). Baker had been a member of the Alabama House and claimed to have served as speaker, although there is no record of that on the Alabama House website today. There is, however, a record of him being forced to flee Alabama for forging a $5,000 check and a record of him requesting the impeachment of President Houston. John Allen is perhaps the most infamous member—he founded the city of Houston.

Together they returned a set of 78 House Rules and 17 joint rules that were adopted by the House. Much of this original work is still the basis for our modern rules. Rules 1 and 2 of the 1836 rules, touching on the duties of the speaker, are remarkably similar to Rule 1, Sections 1 and 2, of the House's most recent rules. Rule 75 of the 1836 rules provided that "questions of order" and "the decision" be noted in the journal, a simpler version of Rule 1, Section 9, and Rule 14, Section 8, of the most recent rules (and the grist for this book).

When the House first sat as a state legislative body in 1846, the standing rules of the House of Representatives for the Republic of Texas were adopted as the temporary rules. Since that time, the House rules changes have keyed off several major factors. The first is size. In 1836, there were 31 members of the Texas House. The fivefold expansion over time brought with it several problems. For instance, how do you manage the increase in legislation filed by members? Can you conduct a debate in a chamber with 150 participants in the same manner as in a chamber with only 31? Each of these problems was incrementally structurally addressed within the rules on the basis of members' observations on the effectiveness of the chamber.

The second major driver of rules changes, technology, is less important to the substance of the legislative process but more important in the transparency to the membership and the public. Over time, more than one copy of a bill was produced, then bills were no longer produced in longhand, and then those bills went through various distribution methods until now every House member's office receives every bill the moment it is electronically printed. Constituents no longer have to subscribe to a single newspaper or come to the Capitol to read a House Journal to find out what transpired in a legislative session. Under today's House rules, that information is now on a website, floor activities are livestreamed on the internet, and, of course, members of the public can still watch the Texas House work the old-fashioned way, by taking a seat in the gallery and observing the process.

One final word: the person most responsible for this book and project is the Deputy Parliamentarian, Shalla Sluyter. Just as the rules were pulled out of their slumber by selected members over the years and modernized, the Deputy Parliamentarian's initiatives over her time in our office include spearheading efforts of the Parliamentarian's office to increase access to parliamentary

decisions of the Texas House to all members, staff, and the public. In addition to being the principal author and overseeing the publication of this book, she has overseen the printing of annual collections of parliamentary decisions. On her own dime and her own time, she created a searchable database that compiles and allows the easy keyword search of the precedents contained in this book. She is an able and trusted counselor both on these rules and on the law in general. And she is hard at work on Volume I.

My principal contribution to her work on this project has been to stay out of her way. In recognizing Ms. Sluyter's work, I would like to think that she exemplifies what every good parliamentarian and House officer attempts to do. Our job is to look for new ideas to assist members in moving forward that member's agenda and to clear a path for all 150 of our bosses (or 151, if you count the institution, which I do). This task obligates us to challenge bad service and lazy thinking and to work across the state with other public servants to find real solutions rather than simply admire the status quo or identify problems and obstacles that others can admire. It is not incompatible to operate a modern legislative chamber with a devotion to both the 1836 pride our founders had in this chamber and to the precision of the 21st century.

Christopher A. Griesel
House Parliamentarian

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Binding Authority for House Procedures (Statement of Authorization & Precedence; Article III, Section 11)

No Right to Bind Subsequent Legislatures by Statute; Substantive Constitutional Requirement—Sunset Law

79 H.J. Reg. 4041 (Geren 5/23/05)

CSSB 422 - POINT OF ORDER

Representative Geren raised a point of order against further consideration of CSSB 422 under Chapter 325.016 of the Government Code.

The speaker overruled the point of order, and had read the following statement:

Representative Geren raised a point of order against further consideration of CSSB 422 on the grounds that the bill violates Section 325.016, Government Code. The chair overrules the point of order on the following grounds:

First, the bill does not consider the continuation, transfer, or modification of more than one state agency. The only agency that is subject sunset in this bill is TEA. Therefore, Section 325.016(a) does not apply.

Second, the bill transfers TEA functions of driver's education oversight to TDLR. Those functions are not consolidated under the bill. Therefore, Section 325.016(b) does not apply.

Third, there is no transfer of the core functions of TEA to TDLR. In the bill, TEA still maintains its function of regulating and overseeing education. Therefore, Section 325.016(c) does not apply.

Fourth, the point of order arguing that the TEA and regional service centers are in single bills and that they are separate agencies is incorrect. Regional service centers are created by Chapter 8 of the Education Code and the commissioner provides for the establishment and operation of the centers.

Without ruling on the substantive constitutionality of this provision, which the chair may not do, the chair notes that the only two authorities that bind this body on procedural matters are the Texas Constitution and the House Rules.

Therefore for the reasons stated above, the point of order is respectfully overruled.

No Right to Bind Subsequent Legislatures by Statute

78 H.J. Reg. 860 (Dunnam 3/26/03)

CSHB 4 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHB 4 under Rule 4, Section 32(b)(5) of the House Rules on the grounds that the committee report does not indicate whether the bill was forwarded to the appropriate authority for preparation of the applicable impact statement.

The speaker overruled the point of order, speaking as follows:

Mr. Dunnam raises a point of order against further consideration of CSHB 4 in that Chapter 319 of the Government Code requires a Judicial System Impact Statement. The chair finds that impact statements are required only as found in Rule 4, Section 34, which does not include the required statement. The law cited was enacted in 1991, and has not been enforced for several sessions in deference to the rules.

Accordingly, the point of order is respectfully overruled.

Laying Business Before the House (Rule 1, Section 3)

Timeliness of Amendment; Motions to Amend (Rule 11, Sections 1 & 7)—Floor Substitute

81 H.J. Reg. 3249-50 (Merritt 5/12/09)

AMENDMENT NO. 4 (HB 2154) - POINT OF ORDER

Representative Merritt raised a point of order against further consideration of Amendment No. 4 under Rule 1, Section 3 and Rule 11, Section 1 of the House Rules on the grounds that the amendment was not properly laid before the house.

The speaker overruled the point of order and submitted the following statement:

Mr. Merritt raises two points of order against further consideration of HB 2154 on the grounds that it is not properly before the house. There are two bases for Mr. Merritt's objection: (1) that Mr. Chisum's amendment should not be considered because it was not timely offered; and (2) that Mr. Chisum's amendment was precluded from consideration because a floor substitute had been filed and offered for consideration.

Timeliness of Amendment. It is correct that under the rules, the author of an original proposition has the right to open and close debate and, upon closing debate, to move for passage of the bill. However, the longstanding practice of the house has been to allow the movant to withdraw his motion in order to enable a member who makes every reasonable effort to timely file an amendment the opportunity to present that amendment for debate. This practice has been observed over the years out of respect and decorum for the institution, to promote an orderly process, and to allow members the opportunity to present their amendments for full consideration and debate.

Ultimately, the chair leaves it to the discretion of the movant whether to observe this courtesy. In this instance, Mr. Edwards observed house practice and, as a courtesy, allowed Mr. Chisum to lay out his amendment which the house then proceeded to consider. The chair also notes that the constitutionally official record of the proceedings of the house, the House Journal, accurately reflects the events that transpired on May 8, 2009, and that those events are consistent with house practice. According to the journal, Mr. Chisum offered an amendment that was ruled out of order and then subsequently offered another amendment, which was left pending after Mr. Edwards moved to postpone consideration of HB 2154. Of course, the chair will always entertain a request by any member to strictly enforce the rules when that member feels that it is in the best interest of the house to do so.

Floor Substitute. Mr. Merritt also objects to consideration of the amendment on the grounds that it was precluded from consideration because a floor substitute had been offered by Mr. Chisum. The purpose of Rule 11, Section 7(3) is to preclude further consideration of subsequent amendments after a floor substitute has been laid before the house and adopted. After a floor substitute is adopted,

members are then required to conform all subsequent amendments to the floor substitute in order to ensure that those amendments are not "cut off" by the substitute. In this instance, Mr. Chisum offered a floor substitute that was ruled out of order under Rule 11, Section 2 (germaneness). Therefore, the floor substitute was never before the house in a manner that would preclude further debate or consideration of amendments. More importantly, no member objected in a timely manner to the consideration of the subsequent amendments. Had they done so, the chair would have fully considered that objection.

Accordingly, the points of order are respectfully overruled.

Referral to Committee (Rule 1, Section 4)

Referral to an Appropriate Committee

84 H.J. Reg. 3090 (Tinderholt 5/11/15)

CSHB 22 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of CSHB 22 under Rule 1, Section 4 of the House Rules on the grounds that the bill was not properly referred.

The chair overruled the point of order and submitted the following statement:

Representative Tinderholt raised a point of order against further consideration of CSHB 22 under House Rule 1, Section 4 on the ground that the bill was incorrectly referred to the Committee on State Affairs and not to the Committee on General Investigating and Ethics. The point of order is overruled.

Rule 1, Section 4 notes that "proposed legislation" shall be "referred to an appropriate standing or select committee with jurisdiction, subject to the correction by a majority vote of the house." Committees of the house often have overlapping jurisdiction, *see* Rule 3, Section 4(3); Rule 3, Section 11(6) (giving both the Business and Industry and the Economic and Small Business Development committees jurisdiction over "hours, wages, collective bargaining, and the relationship between employers and employees"), and proposed legislation often fits in several classes of differing committee jurisdictions. In this case, the speaker, on March 18, 2015, referred CSHB 22, a bill relating to a matter of state policy (the powers and duties of the Texas Ethics Commission), the operation and powers of that state department, and the duties and conduct of officers and employees of the state government. Each of those matters is within the jurisdiction of the Committee on State Affairs. *See* Rule 3, Section 32. In a previous decision from this session, the chair has noted that the speaker has "broad discretion" over matters of referral. Those powers, however, are subject to "correction by a majority vote of the house." Unless corrected in a timely manner under Rule 1, Section 4, a speaker's referral of a bill to committee confers jurisdiction to the committee to which the bill is referred.

In this case, after reviewing the bill, precedent, and the House Rules, the chair determines that the referral of CSHB 22 to the Committee on State Affairs was proper and, further, that the referral had not been corrected by the house under Rule 1, Section 4. The point of order is overruled. *See* 84 H.J. Reg. 2782 (2015) (Tinderholt point of order on HB 3512); 84 H.J. Reg. 3041-42 (2015) (Tinderholt point of order on HB 2473).

Referral to an Appropriate Committee
84 H.J. Reg. 3040-41 (Tinderholt 5/11/15)

CSHB 2473 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of CSHB 2473 under Rule 1, Section 4 of the House Rules on the grounds that the bill was not properly referred.

The speaker overruled the point of order and submitted the following statement:

Representative Tinderholt raised a point of order against further consideration of CSHB 2473 under Rule 1, Section 4 of the House Rules on the grounds that the committee to which the bill was referred did not have jurisdiction over the bill's subject matter. The point of order is respectfully overruled.

Rule 1, Section 4 of the House Rules requires that "all proposed legislation shall be referred by the speaker to an appropriate standing or select committee with jurisdiction . . . ." Rule 1, Section 4. CSHB 2473 seeks to establish under the Texas Department of Housing and Community Affairs (the department) a program for the purpose of making residential mortgage loans to the residents of certain neighborhoods. CSHB 2473 was referred to the Committee on Investments and Financial Services, which has jurisdiction over the lending of money and savings and loan associations. Rule 3, Section 22(a). The Committee on Urban Affairs, however, has jurisdiction over matters pertaining to the department. *See* Rule 3, Section 37(a)(8). Representative Tinderholt asserts that because the Committee on Urban Affairs has jurisdiction over the department, CSHB 2473 should not have been referred to the Committee on Investments and Financial Services.

Although the Committee on Urban Affairs has jurisdiction over the department, such that the speaker could have properly referred the bill to that committee, Urban Affairs was not the only committee with proper jurisdiction over the bill. The chair notes that several committees have overlapping jurisdictions and that the chair has broad discretion to refer bills to any appropriate committee. *See* Rule 1, Section 4; Rule 3 (committee jurisdictions). This is further evidenced by the language of Rule 1, Section 4, which requires that legislation be referred to "an appropriate" committee, rather than *the* appropriate committee. Rule 1, Section 4. Indeed, the chair may refer bills to any committee subject to correction by a majority vote of the body. Rule 1, Section 4. The jurisdiction that the House Rules afford to the Committee on Investments and Financial Services, and specifically

its jurisdiction over the lending of money and savings and loan associations, is sufficient to confer jurisdiction over CSHB 2473, which deals with the grant of assistance to certain organizations providing residential mortgage loans. *See* Rule 3, Section 22(2). Having reviewed the bill and the jurisdiction of both the Committee on Investments and Financial Services and the Committee on Urban Affairs, the chair finds that the speaker properly exercised his broad discretion over this matter and the committee had jurisdiction over the subject matter of CSHB 2473. *See* 84 H.J. Reg. 2782 (2015) (Tinderholt point of order on HB 3512).

Referral to an Appropriate Committee
84 H.J. Reg. 2782 (Tinderholt 5/7/15)

HB 3512 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of HB 3512 under Rule 1, Section 4 and Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill was not properly referred and the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Tinderholt raised two points of order against further consideration of HB 3512 under Rule 4, Section 32(c)(3) and Rule 1, Section 4 of the House Rules on the grounds that the bill analysis fails to address the alleged rulemaking authority granted by the bill and that the committee to which the bill was referred did not have jurisdiction over the bill's subject matter. The points of order are respectfully overruled.

As to the first point of order raised by Representative Tinderholt, Rule 4, Section 32(c)(3) requires the bill analysis to include "a statement indicating whether or not any rulemaking authority is expressly delegated . . . and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." HB 3512's bill analysis states that "it is the committee's opinion that this bill does not expressly grant any additional rulemaking authority . . . ." Representative Tinderholt asserts that, contrary to the bill analysis, the bill in fact grants rulemaking authority to the Texas Ethics Commission (the Commission) in relation to lobbyist registration requirements; specifically, he argues that the bill grants the Commission the authority to determine what amount of time spent lobbying releases a lobbyist from the requirement to register and to define what constitutes "preparatory activity." Having reviewed the bill, the bill analysis, and the argument presented by Representative Tinderholt, the chair finds that neither of the two sections of the bill addressed by Representative Tinderholt contain new, independent, express delegations of rulemaking authority to the Texas Ethics Commission under Rule 4, Section 32(c)(3). *See* 83 H.J. Reg. 4053-54 (2013) (Schaefer point of order on SB 1079).

As to the second point of order raised by Representative Tinderholt, Rule 1, Section 4 of the House Rules requires that "all proposed legislation shall be referred by the speaker to an appropriate standing or select committee with jurisdiction . . . ." Rule 1, Section 4. Representative Tinderholt notes that the General Investigating and Ethics Committee has jurisdiction over all matters pertaining to the conduct of and ethical standards applicable to state and local government officers and employees, and that the bill governs requirements applicable to lobbyists. Rule 3, Section 14(d). Because lobbyists are not government officers or employees, he asserts that the committee should not have had jurisdiction over the bill. Having reviewed the bill and the jurisdiction of the General Investigating and Ethics Committee, the chair finds that the speaker properly exercised his broad discretion over this matter, and the committee had jurisdiction over the subject matter of HB 3512.

Decision on Question of Order (Rule 1, Section 9)

Waiver—Untimely Raised Point; Bill Analysis—Omits Statement That Bill Is Defining a Key Term
84 H.J. Reg. 4687-88 (Isaac 5/26/15)

SB 1135 - POINT OF ORDER

Representative Isaac raised a point of order against further consideration of SB 1135 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Isaac raised a point of order against further consideration of SB 1135 on third reading pursuant to Rule 4, Section 32(c), asserting that the bill analysis, which is prepared to help members study bills that have passed out of committee and will be brought before the full body, is flawed. As is typical in the course of considering bills, second reading of the bill occurred the day before third reading. On second reading, the bill was laid out, then discussed by the sponsor without any questions or objections, then passed unanimously by voice vote to third reading. Now, on third reading, Representative Isaac contends the bill analysis is inadequate because the analysis portion of the bill analysis fails to state that the bill defines "intimate parts" and "intimate visual material." In contrast to second reading, which presents the work of a committee to the body, bills on third reading have moved beyond the work of the committee and are instead the work of the entire house. In effect, bills passed to third reading have taken a cleansing bath, releasing all committee data, such that these bills are the responsibility of the entire body. Because the bill becomes the work of the body after the body passes it to third reading, most points of order, except those of a constitutional nature, are scrubbed. The bill analysis, having been sufficient to inform the members of the committee's work such that the bill passed to third

reading, is no longer material. The point of order as to this flaw in the committee report is untimely raised and is waived.

Furthermore, had the chair relied upon an examination of the bill analysis for this ruling, the chair would have found the bill analysis to be in compliance with Rule 4, Section 32(c).

Waiver—Untimely Raised Point; Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))
84 H.J. Reg. 1058-60 (Simpson 5/30/15)

SB 293 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of SB 293 under Rule 4, Section 32(c) and Rule 8, Section 1 of the House Rules and under Article III, Section 35 of the Texas Constitution on the grounds that the bill analysis is incorrect and the bill caption is inaccurate.

. . .

The chair overruled the point of order and submitted the following statement:

Representative Simpson raised a point of order against further consideration of SB 293 under Rule 4, Section 32(c) of the House Rules, under Rule 8, Section 1 of the House Rules, and under Article III, Section 35 of the Texas Constitution on the grounds that the bill's caption does not give the legislature and the public reasonable notice of the subject of the proposed measure. The point of order is respectfully overruled.

Under Rule 4, Section 32(c) of the House Rules, "Each committee report on a bill . . . must include in summary or section-by-section form a detailed analysis of the subject matter of the bill . . . ." Representative Simpson argues that SB 293's bill analysis "does not contain any explanation of Section 2 of the bill which would allow for a retroactive effective date" and that the bill analysis describes the bill as an expansion of the law, whereas the caption and bill itself state that the bill is a clarification of the law. Representative Simpson cites no precedent for his contention that an alleged defective bill analysis survives to third reading of a bill. Opponents of the point of order argue that Representative Simpson's point of order is untimely and that defects in the committee process, as opposed to his constitutional caption issue, must be raised on second reading. They also argue that any defects in the committee process were cleansed when the bill moved between second and third reading (or when it moves between being the bill product of the underlying committee process and the product of the entire chamber). They argue that the purpose of the various items reported in the committee process was fulfilled when the house debated and passed the bill to third reading.

As noted in note 1 of the House Precedents following Rule 1, Section 9 of the House Rules, a point of order must be timely. *See* 48 H.J. Reg. 1024 (1943). In this case, Mr. Simpson's allegation is too late because the time to raise the particular point of error he identified had been passed by the layout, discussion, amendment, and vote on passage to third reading of SB 293. In the last 25 years of house practice, none of the 36 points of order raising issues on third reading have ever attempted to raise defects in the committee process, similar to Rule 4, Section 32 of the House Rules.

Under Rule 8, Section 1(a)(1) of the House Rules, "[p]roposed laws or changes in laws must be incorporated in bills, which shall consist of . . . a brief statement that gives the legislature and the public reasonable notice of the subject of the proposed measure." *See* Rule 8, Section 1(a)(1). Article III, Section 35(b) of the Texas Constitution dictates that "The rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. The legislature is solely responsible for determining compliance with the rule." *See* Tex. Const. art. III, § 35. SB 293's caption reads as follows: "Relating to a clarification of the law governing eligibility of certain events for funding under the Major Events trust fund." Representative Simpson argues that the bill is not clarifying in nature, but rather adds another eligible site selection organization amounting to a substantive addition to or expansion of the law.

Having reviewed the three sections of the bill, the argument cited by Representative Simpson, and other precedents of the house as determined under Rule 4, Section 32(c) and Rule 8, Section 1 of the House Rules and Article III, Section 35 of the Texas Constitution, the chair concludes that the caption complies with the rule and the constitutional provision. A bill caption needs only to give reasonable notice of the subject of the bill and needs not to detail the elements of the bill. *See* 83 H.J. Reg. 4059 (2013) (Dutton point of order on SB 11); 81 H.J. Reg. 2624 (2009) (Burnam point of order on CSHB 4525); 78 H.J. Reg. 1676 (2003) (Burnam point of order on CSHB 1567).

Measure Returns to Stage Where Error Occurred
79 H.J. Reg. 3871-72 (Talton 5/22/05)

CSSB 408 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of CSSB 408 on the grounds that CSSB 408 should have been returned to the Committee on Calendars when a previous point of order was sustained against the bill.

The speaker overruled the point of order, speaking as follows:

Mr. Talton raised a point of order against further consideration of CSSB 408 on the grounds that the bill should have been returned to the Calendars Committee

rather than to the Regulated Industries Committee for further consideration. Mr. Talton bases his argument on a journal entry for May 18, 2005.

The chair overruled the point of order for two reasons.

First, the May 18 journal entry to which Mr. Talton refers today does not state on what grounds the point of order was sustained. The chair acknowledged on May 18th that several grounds for Mr. Talton's point of order were raised, but the chair ruled only on the sufficiency and accuracy of the bill analysis and not as to the germaneness of the committee substitute. Therefore, the chair believes that the correct procedures were followed in returning the bill to the Regulated Industries Committee to correct the misleading and incorrect information that was contained in the bill analysis.

Second, Mr. Talton admits that he raised several grounds for the point of order, including the insufficiency of the bill analysis. Those grounds were submitted to the chair in writing and the chair was persuaded by Mr. Talton's analysis in sustaining his point of order against CSSB 408. Mr. Talton also acknowledges that the journal is incorrect in listing only one of those grounds. The chair believes that Mr. Talton's written argument, along with acknowledgement that he raised his point of order on several grounds, are prima facie evidence that the journal entry was incorrect and incomplete.

Therefore, the point of order is respectfully overruled.

Consistent with house practice, the chair instructs the journal clerk to correct this entry and the house parliamentarian to provide a written ruling to the journal clerk detailing the basis for its ruling.

Ruling on Constitutionality of Bills (*See* Rule 1, Section 9)

Substantive Constitutional Challenge
85 H.J. Reg. 3313-14 (Stickland 5/11/17)

HB 3391 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of HB 3391 on the grounds that the bill impermissibly "creates a special class of persons" in violation of the Texas Constitution.

Representative Stickland did not identify the provision of the constitution that he believes will be violated by this bill, but he forthrightly conceded that this is precisely the type of substantive point of order that the chair has historically declined to rule on. *See* 84 H.J. Reg. 1040-42 (2015) (Simpson point of order on SB 293); 83 H.J. Reg. 1093 (2013) (Isaac point of order on CSHB 5); 82 H.J. Reg. 956 (2011) (Martinez Fischer point of order on CSSB 14); 82 H.J. Reg. 625 (2011) (Martinez Fischer on CSHB 15); 79 H.J. Reg. 4041 (2005) (Geren point of order on CSSB 422); 62 H.J. Reg. 2845 (1971) (Hale point of order on HB 556).

Representative Stickland asks the chair to deviate from longstanding house practice and "blaze a new trail" by ruling on this substantive constitutional point of order. The chair declines and instead chooses the carefully considered path

followed by past iterations of this house in refraining from ruling on substantive constitutional questions. The point of order is respectfully overruled.

Substantive Constitutional Challenge—Ex Post Facto/Retroactive Law
84 H.J. Reg. 1040-42 (Simpson 5/26/15)

SB 293 - POINT OF ORDER

Representative Simpson, pursuant to Rule 14, Section 1 of the House Rules, raised a point of order against further consideration of SB 293 under Section 741.2 of *Mason's Manual of Legislative Procedure* and under Article I, Section 16 of the Texas Constitution on the grounds that the bill unconstitutionally creates an ex post facto or a retroactive law.

. . .

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raised a point of order against further consideration of SB 293 under Rule 14, Section 1 of the House Rules, Section 741.2 of *Mason's Manual of Legislative Procedure* (*Mason's*), and Article I, Section 16 of the Texas Constitution on the grounds that the bill unconstitutionally creates an ex post facto or a retroactive law. The point of order is respectfully overruled.

Representative Simpson argues that under Rule 14, Section 1, "[i]f the rules are silent or inexplicit on any question of order or parliamentary practice, the Rules of the House of Representatives of the United States Congress, and its practice as reflected in published precedents, and *Mason's Manual of Legislative Procedure* shall be considered as authority." *See* Rule 14, Section 1. Representative Simpson argues that the House Rules are silent in resolving issues related to bills with a retroactive effect and that no published precedent cited "in the distributed copy of the Texas House Rules . . . speaks to the subject . . . ." Representative Simpson further argues that because no authority exists from the Rules of the House of Representatives of the United States Congress or related published precedent, *Mason's* governs with respect to retroactive legislation. Specifically, Representative Simpson argues *Mason's* indicates that "[d]ifferent parts of the same statute may go into effect at different times unless prohibited by constitutional provisions." *Mason's Manual of Legislative Procedure* § 741.2 (2000). Finally, Representative Simpson argues that Article I, Section 16 of the Texas Constitution states that "[n]o bill of . . . retroactive law . . . shall be made." Tex. Const. art. I, § 16. Representative Simpson asserts that Section 2 of SB 293—providing that the amendment at issue would apply to events dating back to legislation enacted during the 76th Legislative Session—creates an ex post facto or retroactive law and that the presiding officer should rule the provision in violation of the Texas Constitution.

The chair has reviewed the three sections of the bill, the authority cited by Representative Simpson, and other precedents of the House Rules. The House

Rules are not silent on the issues raised by Representative Simpson. House Rules and practice are set out in the first explanatory note to Rule 1, Section 9, which states: "Through many sessions, the speakers have followed the plan of refusing to rule on constitutional points not related to legislative procedure, of ruling on constitutional procedural points where no doubt exists, or, where doubt exists, either submitting the points to the house for determination or overruling the points directly then passing them on to the house for determination, in effect, on the vote involved." *See* Rule 1, Section 9; *e.g.*, 83 H.J. Reg. 1093 (2013) (Isaac point of order on CSHB 5) ("The point of order is overruled because this assertion constitutes a substantive constitutional challenge . . . rather than a challenge to the house's procedures allowed by the house rules or the constitution by which a bill . . . is being considered. The chair continues its longstanding practice of respectfully declining to rule on this point."); 62 H.J. Reg. 2845 (1971) (Hale point of order on HB 556). Because the point of order against further consideration of SB 293 raised a substantive constitutional challenge, it is outside the scope of the points of order upon which the speaker must rule. In conformity with the long tradition of the house, and pursuant to Rule 1, Section 9 of the House Rules and its related precedent, the point of order was respectfully overruled.

Substantive Constitutional Challenge—Equal Rights
83 H.J. Reg. 1093 (Isaac 3/26/13)

AMENDMENT NO. 110 (CSHB 5) - POINT OF ORDER

Representative Isaac raised a point of order against further consideration of Amendment No. 110, as amended, under Article I, Section 3a of the Texas Constitution.

The chair overruled the point of order and submitted the following statement:

Representative Isaac raised a point of order against further consideration of Amendment No. 110 to CSHB 5, asserting that Amendment No. 110 violates Article I, Section 3a of the Texas Constitution. Specifically, Representative Isaac asserts that the amendment violates the equal rights of students and is discriminatory. The point of order is overruled because this assertion constitutes a substantive constitutional challenge to the amendment requiring resolution of whether the pending measure violates the state or federal constitution, rather than a challenge to the house's procedures allowed by the house rules or the constitution by which a bill or amendment is being considered. The chair continues its long-standing practice of respectfully declining to rule on this point. *See* 82 H.J. Reg. 956 (2011), (explaining that a substantive point of order is precisely the type of constitutional point "traditionally not ruled on"); 62 H.J. Reg. 2845 (1971), (declining, based on house precedent, to entertain a point of order that raised a substantive constitutional challenge).

Substantive Constitutional Challenge—Texas Mobility Fund (Article III, Section 49-k)
82 H.J. Reg. 956 (Martinez Fischer 3/23/11)

CSSB 14 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSSB 14 under Article III, Section 49-k of the Texas Constitution on the grounds that the bill reduces, rescinds, or repeals the Texas Mobility Fund.

The speaker overruled the point of order, speaking as follows:

Mr. Martinez Fischer raises a point of order under Article III, Section 49-k of the Texas Constitution. Specifically, Mr. Martinez Fischer argues that the bill reduces, rescinds, or repeals authority to collect funds under the Texas Mobility Fund. The chair has reviewed the argument, the question raised by Mr. Martinez Fischer was a provision that was constitutional whether any infirmity must be addressed in this bill or any bill if the bill is effective unless changed. It's precisely the type of constitutional points of order traditionally not ruled on. The chair will continue that tradition and the point of order is respectfully overruled.

Substantive Constitutional Challenge—Due Process; Bill Analysis—Inadequate Explanation of a Term (Rule 4, Sections 32(c), (f))
82 H.J. Reg. 625 (Martinez Fischer 3/3/11)

CSHB 15 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 15 under Rule 4, Section 32(c) and (f) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and had read the following statement:

Representative Martinez Fischer raises a point of order against further consideration of the bill under Rule 4, Section 32(c) and (f) of the Texas House Rules and under various due process provisions of the Texas and United States Constitutions. Representative Martinez Fischer contends that the bill analysis accompanying the bill is materially or substantially misleading in that it fails to capture the effect of or conflict between the number of references to the phrase "medical emergency" contained in other statutory provisions. Representative Martinez Fischer also argues that the conflict between the definitions of the phrase "medical emergency" may raise issues conflicting with or violating due process provisions of the Texas or United States Constitutions. The chair thanks both parties for their thoughtful arguments.

The chair has reviewed the bill analysis and the bill. The chair believes that the analysis is not materially or substantially misleading. The bill analysis

properly notes that the bill defines a "medical emergency" and properly notes that an exception to the sonogram requirement for a physician performing an abortion is a "medical emergency."

As to Representative Martinez Fischer's second point, due process violations, through many sessions, speakers have followed the plan of refusing to rule on constitutional points not related to legislative procedure by overruling the points directly then passing them on to the house for determination, in effect, on the vote involved. I will continue the plan. Accordingly, the chair respectfully overrules the points of order.

Other explanations addressing substantive constitutional challenges:
79 H.J. Reg. 4041 (Geren 5/23/05), *supra* at 1 (alleged violation of Sunset Law in the Government Code)

Appeal of Point of Order (Rule 1, Section 9)

83 H.J. 2nd C.S. 21 (Martinez Fischer 7/9/13)

HB 2 - APPEAL OF POINT OF ORDER RULING

Pursuant to Rule 1, Section 9 of the House Rules, an appeal was made to the chair's ruling of the above point of order [83 H.J. 2nd C.S. 20-21 (Martinez Fischer 7/9/13) *infra* at 40-41] by the following 10 members: Representatives Martinez Fischer, S. Turner, Dutton, Dukes, Rose, J. Rodriguez, Canales, Miles, S. Thompson, and Walle. The question on whether the chair's ruling should be sustained was before the house.

The chair's ruling was sustained by (Record 9): 91 Yeas, 53 Nays, 2 Present, not voting.

83 H.J. 2nd C.S. S67-S69 (Supplemental) (Martinez Fischer Appeal 7/9/13)

Comments Related to Martinez Fischer's Appeal of the Ruling on His Point of Order

[Representative Martinez Fischer raised a point of order against further consideration of HB 2 under Rule 4, Section 32(b)(4) and Rule 4, Section 18. The chair overruled the point of order.]

CHAIR: Mr. Martinez Fischer raises a point of order. The point of order is respectfully overruled. Mr. Martinez Fischer indicates that he wishes to appeal the ruling, on this point of order, of the chair. There must be 10 seconds, and Representative Martinez Fischer will give us the names of the 10 seconds at a later time.

CHAIR (Geren in the chair): At the end of the three minutes pro and three minutes con, the question will be whether to sustain the ruling of the chair.

Committee Meetings (Rule 4, Sections 8-17)

Rules Governing Operations; Witness Affirmation Form—Translators & Interpreters

85 H.J. Reg. 1873 (Lucio 4/26/17)

CSSB 4 - POINT OF ORDER

Representative Lucio raised a point of order against further consideration of CSSB 4 pursuant to Rule 4, Section 20(h), and Rule 4, Section 13(a), of the House Rules on the grounds that the interpreters used during the public hearing were not "qualified." The point of order is respectfully overruled.

Representative Lucio argues that the interpreters used in house committee meetings must be treated the same as interpreters in a Texas civil trial. He points out that none of the interpreters used during public testimony on CSSB 4 were "qualified" as he alleges they must be to interpret during a Texas civil trial.

Rule 4, Section 20(h), provides that an interpreter who serves as a translator before a committee "must execute a form prescribed by the committee coordinator" and that "the form must at least include the name of the translator and the name of the witness whom the translator is serving." The express language of the rule does not require interpreters to be "qualified" before the committee. Nor does the rule require that an interpreter take an oath before translating in the committee meeting. And the chair could locate no house precedent requiring interpreters to take an oath or be qualified according to the standards laid out in the Texas Rules of Evidence. The translator forms on this bill complied with the mandates of Rule 4, Section 20(h).

Rule 4, Section 13(a), states that committee hearings and operations are governed by the Rules of Procedure of the House of Representatives and "to the extent applicable, the rules of evidence and procedure in the civil courts of Texas." This rule appears to have been added to the House Rules in 1981 as part of what was supposed to have been a nonsubstantive revision of the rules prepared by the Legislative Council. Since its inception, the rule appears to have had minimal to no impact on the work of the house, probably because of the stark differences between the work of house committees (to which it would be difficult and possibly nonsensical to apply these court rules in most routine committee work) and the work of litigators and courts. In any event, the chair finds that interpreters in the house need not be "qualified" as that term is used by trial courts.

Posting Notice (Rule 4, Section 11)—Senate Companions; Minutes—Completeness
84 H.J. Reg. 4245-46 (S. King 5/23/15)

CSSB 204 - POINT OF ORDER

Representative S. King raised a point of order against further consideration of CSSB 204 under Rule 4, Section 18 of the House Rules on the grounds that the committee minutes are incomplete.

The speaker overruled the point of order and submitted the following statement:

Representative S. King raised a point of order against further consideration of CSSB 204 under Rule 4, Section 18, asserting that the committee minutes are inaccurate and incomplete. Specifically, Representative S. King observes that at the formal meeting of the Committee on Human Services on May 14, the chair laid out CSSB 204 as pending business. Representative S. King argues that CSSB 204 had never been posted for hearing or consideration by the committee, although she acknowledges that its companion, HB 2699, had been both posted and heard. The point of order is respectfully overruled.

Rule 4, Section 11(b) governs notice requirements for a committee to meet in a formal meeting or work session. The express language of this rule prohibits a committee from meeting "for the purpose of a formal meeting or work session during a regular or special session unless written notice has been posted and transmitted to each member of the committee two hours in advance of the meeting or an announcement has been filed with the journal clerk and read by the reading clerk while the house is in session." The requisite contents of that notice are not delineated by the rule. *See* 79 H. J. Reg. 2106 (2005) (parliamentary inquiry by Representative Dunnam). As a matter of house practice, notice for formal meetings has included the specific business a committee intends to consider, such as listing the bills by number or specifying that a committee will consider pending business. Assuming that this established practice rises to the level of a requirement, the chair notes that even for public hearings (the posting requirements for which are more onerous than those for formal meetings) "a public hearing on a senate bill which is substantially the same as house bill that has previously been the subject of a duly posted public hearing by the committee" does not require separate notice. Rule 4, Section 11(a). Thus, senate bills the companions for which have already been considered may be listed, if they are listed at all, as pending business under the house rules. Because CSSB 204's house companion had already been heard by the committee, the chair determines that, even if notice of a bill to be considered in a formal meeting is required, this requirement was satisfied by the committee's notice that it was considering pending business.

Meeting While House in Session (Rule 4, Section 9); Posting Notice (Rule 4, Section 11)
83 H.J. 1st C.S. 1091 (S. Thompson 6/23/13)

CSSB 5 - POINT OF ORDER

Representative S. Thompson raised a point of order against further consideration of CSSB 5 under Rule 4, Section 9 and Rule 4, Section 11(b) of the House Rules on the grounds that the committee met while the house was in session without getting permission to meet.

The chair overruled the point of order and submitted the following statement:

Representative S. Thompson raised a point of order against further consideration of CSSB 5 under Rule 4, Section 9 and Rule 4, Section 11(b) of the House Rules, asserting that the Committee on State Affairs did not have permission to meet while the house was in session and did not properly post the time of its meeting. The point of order is respectfully overruled.

The Committee on State Affairs met while the house was in recess. It posted to meet at 1 p.m. on the day of its meeting, but actually convened at 1:16 p.m. Because the house was in recess, the committee did not need permission to meet while the house was in session, and, therefore, did not violate Rule 4, Section 9. Further, because the committee met after the time for which it had posted its meeting, it did not contravene Rule 4, Section 11.

Meeting While House in Session (Rule 4, Section 9)
83 H.J. Reg. 2659 (Miles 5/7/13)

CSHB 500 - POINT OF ORDER

Representative Miles raised a point of order against further consideration of CSHB 500 under Rule 4, Section 9 of the House Rules on the grounds that the Committee on Ways and Means met while the house was in session without being given permission to meet.

The chair overruled the point of order and submitted the following statement:

Representative Miles raised a point of order against further consideration of CSHB 500 under Rule 4, Section 9 of the House Rules, asserting that the Committee on Ways and Means, which considered CSHB 500 in a formal meeting while the house was in session, did not have permission to meet while the house was in session. Representative Miles acknowledges that all committees that had posted for their meetings were permitted to meet during session, but asserts that the Committee on Ways and Means did not post its meeting. The point of order is respectfully overruled.

The house journal reflects that an announcement for the Committee on Ways and Means's formal meeting was filed with the journal clerk and read by the reading clerk while the house was in session, in compliance with Rule 4, Section 11(b)'s posting requirements for formal meetings. Therefore, the blanket permission for all committees to meet while the house was in session, pursuant to their committee postings, applied to the Committee on Ways and Means's formal meeting to consider CSHB 500.

Meeting While House in Session (Rule 4, Section 9); Posting Notice (Rule 4, Section 11)
79 H.J. Reg. 3509-10 (Gallego 5/17/05)

SB 447 - POINT OF ORDER

Representative Gallego raised a point of order against further consideration of SB 447 under Rule 4, Section 9; Rule 4, Section 11(b); Rule 4, Section 12; Rule 4, Section 18; and Rule 4, Section 32(b) of the House Rules and Article III, Section 16 of the Texas Constitution on the grounds that the committee on Local Government Ways and Means had a meeting while the house was in session that was not announced, the meeting is not included in the committee report, and because there are no minutes of the meeting, it was an improper closed meeting not open to the public.

The speaker overruled the point of order, speaking as follows:

Representative Gallego raised a point of order against further consideration of SB 447 on the grounds that a violation of Rule 4, Section 9; Rule 4, Section 11(b); Rule 4, Section 12; Rule 4, Section 18; and Rule 4, Section 32(b) of the House Rules and a violation of Article III, Section 16 of the Texas Constitution has occurred.

The Local Government Ways and Means Committee met at 8:45 p.m. on May 11. At that meeting, SB 447 was discussed. The record is clear that the 8:45 p.m. meeting was not properly posted or announced.

Subsequent to that meeting, it was discovered that the 8:45 p.m. meeting had not been properly posted, the chairman of the committee made a motion to hold a 9 p.m. meeting. The motion was approved by the house and the committee met properly, subsequent to the motion, and passed out SB 447.

It is clear that the 8:45 p.m. meeting was not a properly posted meeting, therefore it was not required to be reflected in the committee report and any action arising from the meeting would have been a nullity. If the committee had not recognized their error and held a subsequent proper meeting, the points of order raised by Representative Gallego relating to properly posting notice of a meeting under the House Rules would likely have been sustained. However, in this case, the committee recognized the error, took appropriate remedial action

for their error by properly announcing the meeting, and then announced and conducted their meeting properly and voted out SB 477.

Accordingly, the point of order is respectfully overruled.

Other explanations addressing meeting while the house is in session:
81 H.J. Reg. 3525 (S. Miller 5/14/09), *infra* at 44-45 (minutes reflect permission to meet, but journal does not)

Posting Notice (Rule 4, Section 11)—Five-Day Posting Rule
83 H.J. Reg. 1144-45 (Taylor 3/27/13)

CSHB 4 - POINT OF ORDER

Representative Taylor raised a point of order against further consideration of CSHB 4 under Rule 4, Section 11 of the House Rules on the grounds that proper notice of the committee meeting was not given.

. . .

The chair overruled the point of order and submitted the following statement:

Representative Taylor raised a point of order against further consideration of CSHB 4 under Rule 4, Section 11(a) of the House Rules, specifically arguing that the notice of a public hearing on CSHB 4, posted at 4:28 p.m. February 14, 2013 (five calendar days—the 14th, 15th, 16th, 17th, and 18th of February—before the date of the hearing at 7:30 a.m. February 19, 2013) was insufficient to comply with the Rule 4, Section 11(a) requirement that a posting for a public hearing during a regular session, absent a rules suspension, must be posted "at least five calendar days in advance of the hearing." The point of order is overruled.

In this case, Rule 4, Section 11(a) of the House Rules was complied with. The proponent's argument on the point of order is that Rule 4, Section 11(a)'s five-calendar-day requirement really means that 120 hours' notice (5 days x 24 hours) of the posting is required, rather than a requirement that the posting must be available for five consecutive days. However, the terms "calendar day" and "day of 24 hours" are not synonymous. *See* Tex. Atty. Gen. Op. No. WW-372 (1958). Nor is the phrase "calendar day" unique and indefinite in meaning requiring reference back to a dictionary definition. It is used on over 38 separate occasions in state law and it appears in 21 sections of the House Rules. Further, the House Rules reflect the house is able to express when it wishes to base the passage of time by the measurement of hours. *E.g.*, Rule 4, Section 11(a) (requiring public hearings in special sessions to be posted "at least 24 hours in advance of the hearing").

Posting Notice (Rule 4, Section 11); Meetings Open to the Public (Rule 4, Section 12)
82 H.J. Reg. 952-53 (Farrar 3/23/11)

CSSB 14 - POINT OF ORDER

Representative Farrar raised a point of order against further consideration of CSSB 14 under Rule 4, Section 11 and Rule 4, Section 12 of the House Rules on the grounds that proper notice of the committee meeting was not given and the committee meeting was not open to the public.

The speaker overruled the point of order, speaking as follows:

Representative Farrar raises a point of order under Rule 4, Section 11 and 12. Representative Farrar indicates that the meeting of the Calendars Committee began at 10:07 p.m., and that the Capitol was closed and access to the meeting room may have been denied. While the Calendars Committee did not begin meeting until 10:07 p.m., the meeting was initially posted for 9 p.m. As noted on the State Preservation Board website, the hours of the Capitol are normally between 7 a.m. and 10 p.m. but are extended during legislative sessions, including during house committee meetings. It appears that the provisions of Rule 4, Section 11, were complied with. The point of order is respectfully overruled.

Posting Notice (Rule 4, Section 11); Minutes—Date of Posting Notice (Rule 4, Section 18(a)(4))
79 H.J. 3rd C.S. 303-04 (Dunnam 5/11/06)

CSHB 153 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHB 153 under Rule 4, Section 11(a) and (b) and Rule 4, Section 18(a)(4) of the House Rules on the grounds that the committee meetings violated the posting notice and the committee minutes are inaccurate.

. . .

The speaker overruled the point of order and had read the following statement:

Mr. Dunnam raises a point of order for violation of Rule 4, Section 11(a) and (b) and Rule 4, Section 18(a)(4) of the House Rules.

The chair overrules the point of order against all three rules because:

(1) The minutes accurately show that notice was given regarding the committee's intent to hear the bill.

(2) The committee received permission to meet on May 4 and was granted permission by the house, and the posting states that the committee was to meet

upon final adjournment or recess. Accordingly, the chair finds that the committee complied with the posting rules.

The point of order is respectfully overruled.

Posting Notice & Two-Hour Notice to Committee Members (Rule 4, Section 11(b))—Sustained
78 H.J. Reg. 3883 (Villarreal 5/25/03)

CSSB 1704 - POINT OF ORDER

Representative Villarreal raised a point of order against further consideration of CSSB 1704 under Rule 4, Section 11(b) of the House Rules on the grounds that proper notice of the committee meeting was not given.

The speaker sustained the point of order, speaking as follows:

Mr. Villarreal raises a point of order under Rule 4, Section 11(b), in that the committee failed to give two hours' notice of a formal meeting at which the bill was considered.

A review of the minutes and the record of notice, in this case an e-mail, confirms that notice to the committee members individually was not timely.

Accordingly, the point of order is well taken and sustained.

Posting Notice (Rule 4, Section 11); Meetings Open to the Public (Rule 4, Section 12)
78 H.J. Reg. 2027-28 (Mabry Jr. 4/29/03)

CSHB 5 - POINT OF ORDER

Representative Mabry raised a point of order against further consideration of CSHB 5 under Rule 4, Section 11(a) and Rule 4, Section 12 of the House Rules and Article III, Section 16 of the Texas Constitution on the grounds that the time and place of meeting was not announced when the five day posting rule was suspended.

The speaker overruled the point of order, speaking as follows:

Mr. Mabry raises a point of order under Rule 4, Sections 11 and 12, and under the open meetings law, in that HB 5 was not posted at the meeting at which the bill was considered.

The bill was heard in committee at a properly noticed meeting called before the suspension of the five day posting rule. Accordingly, there was nothing improper in the committee's consideration of the bill.

Accordingly, the point of order is respectfully overruled.

Posting Notice (Rule 4, Section 11)
77 H.J. Reg. 2389 (Talton 5/7/01)

CSHB 150 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of CSHB 150 under Rule 4, Section 11 of the House Rules on the grounds that a meeting of the committee was held for which no notice was given.

The speaker overruled the point of order speaking as follows:

During the April 26 hearing, which was posted five days in advance, the minutes reflected that the committee recessed subject to the call of the chair. The recess lasted for one minute, after which the committee was reconvened and the roll was called. The minutes reflect the hearing on April 26th as a single hearing, and no action was taken after the recess other than to finally adjourn the hearing.

The speaker overruled the point of order.

Meetings Open to the Public (Article III, Section 16); Cure Through Subsequent Committee Meeting
78 H.J. Reg. 787-88 (Gallego 3/25/03)

CSHB 4 - POINT OF ORDER

Representative Gallego raised a point of order against further consideration of CSHB 4 under Article III, Section 16 of the Texas Constitution on the grounds that each committee meeting must be open to the public.

. . .

The speaker overruled the point of order, speaking as follows:

Mr. Gallego raises a point of order against further consideration of HB 4. The substance of this point of order is that because HB 4 was derived from a meeting that violated Article III, Sec. 16, Texas Constitution (the open sessions provision of the Texas Constitution), HB 4 is incurably tainted and is therefore permanently ineligible for consideration by the house.

The house has routinely held that returning a bill to committee cures any procedural flaws or infractions if the bill is eventually voted out of committee in conformity with the rules. By way of precedent, the chair notes that during the 74th Legislature (1995), three bills were returned to committee after a point of order was sustained and during the 76th Legislature (1999), two bills were returned to committee after a point of order was sustained. In three of these instances, these bills were subsequently considered in a formal meeting and reported favorably from committee. Since the 75th Legislative Session, nine bills have been recommitted to committees and subsequently reported favorably from

those committees. Like these examples, CSHB 4 was considered in a formal meeting and was reported favorably from the committee to which it was returned after the point of order was sustained.

The chair is not in a position to decide a point of order based on testimony. Rather, the chair must look to the records of the house. Based on the record, the chair cannot hold that the constitution was violated. Although the chair makes no findings of fact as to whether the constitutional requirements for open sessions were violated with respect to CSHB 4, any actions that were potentially invalidated under these provisions were subsequently cured by the Committee on Civil Practices at its formal meeting on March 20, 2003. As an analogy, the Texas Attorney General has noted that under the Open Meetings Law, "a governmental body that has taken action on a matter at a meeting that violates the act may meet again and validly authorize the action at a properly convened meeting of which the public has received adequate notice." (Open Meetings Handbook, OAG, p. 51).

Futhermore, the chair notes that although HB 4 was returned to committee to remove the procedural taint (and thereby preserve the clear and open process of the house), the chair adopts the generally held proposition that a defect in committee procedures does not survive to the floor if the records of the house reflect that things are in order. (See House Precedents following Rule 4, Section 14).

Accordingly, the point of order is respectfully overruled.

Meetings Open to the Public (Rule 4, Section 12)—Sustained
78 H.J. Reg. 741-44 (Dunnam 3/20/03)

CSHB 4 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHB 4 under Rule 4, Section 11(b); Rule 4, Section 12; Rule 4, Section 32(b); and Rule 4, Section 18 of the House Rules; and Article III, Section 16 of the Texas Constitution on the grounds that the Committee on Civil Practices met in a work session that was not announced. This work session is not included in the committee report on CSHB 4. There are no minutes for the work session and the work session was an improper closed meeting.

. . .

Speaker Craddick read the following statement:

Members, I apologize for the delay. This is a very significant question raised by Mr. Dunnam's point of order. The chair has listened to extensive debate from interested parties as to the proper ruling on this point of order. The point goes to the fundamental operations of the house. Mr. Dunnam raises a point of order against further consideration of CSHB 4 under Rule 4, Sections 11(b), 12, 18, and 32(b)(9), in that the Committee on Civil Practices conducted an improper closed meeting. Article 3, Section 16, of the Texas Constitution, provides that the "sessions of each House shall be open."

Because of the constitutional significance of this issue, in accordance with Rule 1, Section 9, the chair submits the point of order to the house for decision. The question before the house is, "Shall the point of order be sustained?"

The issue is fully debatable. The chair will recognize members for and against.

. . .

The speaker sustained the point of order, speaking as follows:

The chair truly believes that both sides of this issue have merit. But the chair concludes that the better option is to preserve the clear and open process of the house, without determining facts.

Accordingly, the point of order is sustained under Rule 4, Section 12 of the House Rules.

[Note: Instead of submitting the point to the house for a vote, the speaker sustained the point.]

Committee Meeting—"Sandwiched" Meetings
84 H.J. Reg. 1662-63 (Martinez Fischer 4/17/15)

CSHB 910 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 910 under Rule 4, Section 8 and Rule 4, Section 13 of the House Rules on the grounds that the committee minutes are incomplete.

The speaker overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of CSHB 910 under Rule 4, Section 8 and Rule 4, Section 13, asserting the formal meeting at which CSHB 910 was adopted was improperly "sandwiched" between the recess and resumption of a properly adjourned public hearing. This presents a question of first impression. For the reasons set out, the point of order is respectfully overruled.

On the morning of April 14, 2015, the committee that would handle CSHB 910 began a public hearing, one of three types of purposes for which a committee may be assembled. Rule 4, Section 10. At 9:57 a.m. that morning, the minutes of the committee reflect that "on the motion of the chair and without objection, the meeting [a public hearing] was recessed until upon final adjournment/recess or during reading and referral of bills if permission received on the house floor." Subsequent to the recess, CSHB 910 was heard on the house floor, found to be subject to a point of order, and was, under the rules and practice of the house, returned to the source of the point of the error—the committee. *See* 84 H.J. Reg.

1545-46 (Martinez Fischer point of order on CSHB 910). The committee then properly announced for a formal meeting on the returned CSHB 910, a second type of meeting allowed under the House Rules. The committee met in the formal meeting which was held in a different room than the original meeting, voted out CSHB 910, and then, when appropriate, returned to their original committee room, returned from the recess of the public hearing and completed their public hearing. Representative Martinez Fischer argues that the recess of the public hearing at 9:57 a.m. barred the committee from taking any action on any matter in any format, absent either the committee reconvening their original meeting or a suspension of the House Rules (citing Section 625, *Mason's Manual*, in addition to the House Rules). He also argues that certain practical considerations, such as the use of two separate rooms for the conduct of the properly announced and posted public hearing and formal meeting limit the transparency of the legislative process.

Rule 4, Section 10 of the House Rules allows for a committee to be assembled for a public hearing, formal meeting, or work session. Each type of committee meeting allows the committee to take actions in different ways. There is no restriction in the House Rules that restricts a committee from only holding one type of meeting in a single day. Later in session, such "sandwich" meetings are common as committees struggle to keep up with the hearing of public testimony on bills presented for the first time in committee (usually in a public hearing), the demands of the floor, formal meetings held to vote out bills or to handle bills returned or recommitted to the committee during a brief floor recess, and work sessions to allow a committee to discuss bills, debate, but take no formal action. (*See*, *e.g.*, "sandwich" meetings held by the Committee on Higher Education on May 15, 2013, and the Committee on Public Health on April 13, 2011.) Further, the recess motion for the committee during the public hearing was only to recess the actions of the public hearing and was not a blanket prohibition from the committee taking any action in any format. In this case, having reviewed the minutes of the two meetings, the arguments of the members, and the cited house rules and precedents, the chair determines that the holding of a properly called formal meeting during the recess of a public hearing is not in violation of either Rule 4, Section 8 or Rule 4, Section 13.

Witnesses—Resource Witness
83 H.J. Reg. 3011-12 (Gutierrez 5/9/13)

CSHB 1882 - POINT OF ORDER

Representative Gutierrez raised a point of order against further consideration of CSHB 1882 under Rule 4, Section 10 and Rule 4, Section 11 of the House Rules on the grounds that proper notice of the committee meeting was not given.

The chair overruled the point of order and submitted the following statement:

Representative Gutierrez raised a point of order against further consideration of CSHB 1882 under Rule 4, Section 10 and Rule 4, Section 11 of the House Rules arguing that the testimony of Ann Bishop, the executive director of the Employees Retirement System of Texas, as a resource witness at a formal meeting on April 15, 2013, of the Committee on Pensions was in error. Specifically, he argues that the explanatory notes of the House Rules provide that "a resource witness is a person who is employed by an agency of the legislative branch of government." Representative Gutierrez's written materials argue that since the Employees Retirement System of Texas is not a legislative agency, Ms. Bishop could not be a resource witness who would be allowed to testify at a formal meeting. The point of order is respectfully overruled.

Interestingly, the explanatory note on Rule 4, Section 10 of the House Rules has an additional provision, immediately following Representative Gutierrez's quoted provision, that directly addresses and resolves the matter. A resource witness may also offer testimony "in very limited circumstances, by an agency of the executive branch of government . . . when providing a committee . . . . with background information or technical information on a particular bill or resolution but may not testify for or against the measure." In this case, Ms. Bishop, who testified neutrally and provided the committee with background or technical information on CSHB 1882, was a proper resource witness who properly provided testimony to the Committee on Pensions.

Committee Documents (Rule 4, Sections 18-35)

Witness Affirmation Form—Completeness

85 H.J. Reg. 1850-51 (E. Rodriguez 4/26/17)

CSSB 4 - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of CSSB 4 pursuant to Rule 4, Section 20(a)(2), of the House Rules on the grounds that the sworn witness affirmation form is incomplete. The point of order is respectfully overruled.

Under Rule 4, Section 20(a)(2), a sworn statement of a witness "shall provide for showing at least . . . the name, address and telephone number of the person appearing." "The purpose of the section of the rules relating to witness affirmation forms is to provide a means to administer the oath to those persons who wish to be recognized to address the committee and to provide members of the legislature and the public a means to contact a witness regarding the testimony of that witness." 76 H.J. Reg. 1259 (1999) (Wilson point of order on CSHB 1152). Representative Rodriguez observes that one witness who testified did not provide a telephone number and listed her street address as "Heron st." The witness provided her city, state, and zip code. Representative Rodriguez asserts that the absence of both a street number and telephone number constitutes a violation of Rule 4, Section 20(a)(2).

The chair cannot determine whether the address provided by this witness would have been a sufficient means for contacting the witness, nor whether the witness had a phone number or street number to provide. Indeed, the chair does not verify the accuracy of the information provided by any witness. Instead, the chair, like all other committee chairs, depends on each witness to manually enter and provide accurate information on each witness affirmation form, which contains an oath sworn by the witness to the body representing that the document has been completed truthfully and accurately and is a government record, the falsification of which may have adverse legal implications. Further, although it was not provided or highlighted to the chair, at least two witnesses for the bill who did not testify used the same contact address (Heron St. and Heron St.) in their WAFs.

These bases are why an additional argument of the proponent of the point of order also fails. The proponent argued that any failure of a witness to include a street number, even on a witness affirmation card that is dropped and in which a witness indicates that they do not wish to testify, would create an incurable point of order that would sink any bill. The chair expressly disapproves such an argument.

Witness Affirmation Form—Completeness—Sustained
84 H.J. Reg. 1545-47 (Martinez Fischer 4/14/15)

CSHB 910 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 910 under Rule 4, Section 20 of the House Rules on the grounds that the sworn statement of witnesses is incomplete.

The speaker sustained the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of CSHB 910 under Rule 4, Section 20 of the House Rules on the grounds that the bill's automatically generated change position report inaccurately reflects two witnesses. The point of order is sustained.

One purpose of Rule 4, Section 20 is to ensure that a committee has accurate witness information. Prior to implementation of the electronic witness affirmation form system, when a witness changed positions on a bill, the committee clerk would note the change by hand on the witness's paper witness affirmation form. Beginning in the 83rd Legislative Session, paper witness affirmation forms were replaced by an electronic system, which, rather than allowing clerks to record the history of a witness changing positions directly on the witness affirmation form, provided the same function by means of an automatically generated change position report that could be requested from the committee coordinator's office.

In advance of the 84th Legislative Session, the electronic witness affirmation form system was updated to accommodate the instances in which a committee lays out multiple measures at one time. However, when this option of laying out multiple bills at once is utilized, the change position report does not accurately aggregate the data for the witnesses who have changed their positions on the bills. Instead, even when data is accurately entered into the system, the system incorrectly generates change position reports that list all of the witnesses who have changed their positions on any of the bills laid out together as having testified and changed their positions on the first bill listed in the report. Meanwhile, all of the other bills laid out at the same time are reported as having no witnesses that changed positions.

As a result of this error, CSHB 910's change position report reads:

Last Name	First Name	Original Position	New Position	Audit Time Stamp
HB 910				
Pangborn	George	On	For	3/17/2015 1:19:20 PM
Hamouie	Angie	Against	On	3/17/2015 12:31:03 PM
Sieli	Tony	On	For	3/17/2015 12:28:09 PM
HB 937				
No witness position changes were made for this item				

However, two of the witnesses listed as having testified and changed positions on CSHB 910—Angie Hamouie and Tony Sieli—did not testify on CSHB 910; they testified only on HB 937. Had the change position report accurately compiled the data, the report would have reflected the following:

Last Name	First Name	Original Position	New Position	Audit Time Stamp
HB 910				
Pangborn	George	On	For	3/17/2015 1:19:20 PM
HB 937				
Hamouie	Angie	Against	On	3/17/2015 12:31:03 PM
Sieli	Tony	On	For	3/17/2015 12:28:09 PM

The error in this instance was not caused by entry of any inaccurate data or other actions taken by a house member or staff. Instead, it was solely an error in the system's aggregation of otherwise accurate information. The Texas Legislative Council forthrightly took responsibility for this failure. Unfortunately, because the change position report inaccurately reflects the history of the electronic witness affirmation forms that were changed, the report, which substitutes for the notations previously made to paper affirmation forms, is misleading and violates Rule 4, Section 20.

This error in the change position report was not isolated; it reflects a systemic problem with the potential to have affected any measure laid out in a hearing in

which multiple measures were considered at one time. Over 40 witness affirmation forms relating to 21 measures were already found to have been impacted. Due to the systematic nature of this problem, house members requested from the floor and I have directed the Texas Legislative Council (TLC) to take the following remedial measures:

- TLC should provide in writing to all members no later than 5 p.m. today a detailed written explanation to all house members of the error that currently exists in the witness affirmation system, which causes the change position report to inaccurately list witnesses who have changed positions to appear as though they testified on the first bill listed, regardless of whether they actually testified on that bill. TLC will also provide a written explanation to all members of precisely how that error has been or will be fixed.
- TLC has assured the committee coordinator's office that the work to fix this error has already been done, so TLC should implement and have tested that repair no later than 5 p.m. today.
- TLC will, by 8 a.m. on Monday, April 20, provide a written report to the Committee on House Administration that confirms the accuracy of the reports generated by TLC systems that affect house legislation, including the systems of the committee coordinator, chief clerk's office, house journal, or any other house offices.

CSHB 910 was returned to the Committee on Homeland Security and Public Safety.

Witness Affirmation Form—Completeness
83 H.J. Reg. 1890 (Walle 4/25/13)

CSHB 148 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 148 under Rule 4, Section 18 and Rule 4, Section 20 of the House Rules on the grounds that the committee minutes are incomplete and the sworn statement of witnesses is incomplete.

The chair overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSHB 148 under Rule 4, Section 18 and Rule 4, Section 20 of the House Rules. Specifically, he asserts that the witness list is impermissibly inconsistent with the witness affirmation report because the witness list shows that a particular witness was testifying "on" CSHB 148 but the affirmation report shows that witness as not intending to testify. The point of order is overruled.

Representative Walle is correct that the witness list shows the witness as "on" the bill and that the affirmation report shows that the witness responded to the intent to testify field by marking "no." However, these two responses are not

inconsistent. In the box on the affirmation form indicating the witness's position on the bill, the witness marked "on," which is consistent with the witness list reflecting that the witness testified "on" the bill. As for the witness marking "no" as his intent to testify, the chair notes that although the witness did end up testifying on the bill, this is not inconsistent with his intention, at the time he filled out the witness form, to not testify. The witness's intent not to testify does not have to be updated if, contrary to the intent stated on the form, he ultimately testifies. *See* 78 H.J. Reg. 2645 (2003) (noting that the purpose of the witness affirmation form is to swear the witnesses and provide information that would permit contacting the witness). In this case, the affirmation report showed that the witness was recognized by the chairman to have testified "on" the bill. This similar information is reflected on the witness list.

Witness Affirmation Form—Completeness
83 H.J. Reg. 1881-82 (M. González 4/25/13)

CSHB 611 - POINT OF ORDER

Representative M. González raised a point of order against further consideration of CSHB 611 under Rule 4, Section 20(b) of the House Rules on the grounds that the sworn statement of witnesses is incomplete.

The speaker overruled the point of order and submitted the following statement:

Representative M. González raised a point of order against further consideration of CSHB 611 under Rule 4, Section 20(b) of the House Rules. Representative González explains that two witnesses testified in Spanish against the bill with the use of an interpreter. She further observes that the interpreter who translated the conversation between these witnesses and the committee members completed a witness form stating that the interpreter was testifying "on" the bill and that the interpreter was representing herself. Representative González urges that the interpreter should instead have listed herself as testifying against the bill and as representing the two witnesses for whom she was translating. Alternately, she suggests that the interpreter should not have completed a witness form. The point of order is respectfully overruled.

In this case, the interpreter was recognized to address the committee as a translator for the witnesses and the members of the committee without expressing an independent position on the bill. The chair concludes that the purpose of Rule 4, Section 20, which is to gather contact information and to administer an oath to the person wishing to be recognized to address the committee regarding a particular matter, has been complied with. *See* Rule 4, Section 20(a) and Rule 4, Section 20(d). Over the past several sessions, the house has relied on interpreters to communicate with witnesses who speak foreign languages and who are hearing or visually impaired, and this may be a topic that invites further development of the rules.

Witness Affirmation Form—Completeness (Rule 4, Section 20(a))
82 H.J. Reg. 3139 (Martinez Fischer 5/6/11)

CSHB 12 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 12 under Rule 4, Section 20(a) of the House Rules on the grounds that the sworn statement of witnesses is incomplete.

The chair overruled the point of order and had read the following statement:

Representative Martinez Fischer raised a point of order under Rule 4, Section 20. Representative Martinez Fischer has provided one witness affirmation form that has a form left entirely blank on the line entry of a telephone number. Mr. Martinez Fischer states that other forms may contain this same defect.

A similar point was considered in HB 2292, 78th Regular Session (2003). In that case, two witness affirmation forms were left entirely blank or had an entry "N/A." The speaker in that case ruled that if there was sufficient information to allow an interested party to contact a witness regarding testimony given by a witness during a committee hearing, the purpose of the rule had been complied with. In this case, as in the ruling on HB 2292, the witness provided a complete mailing address that was sufficient for the purpose of the rule to be satisfied. Accordingly, the point of order is respectfully overruled.

Witness Affirmation Form—Completeness (Rule 4, Section 20(a))
78 H.J. Reg. 1987-88 (Dukes 4/28/03)

CSHB 15 - POINT OF ORDER

Representative Dukes raised a point of order against further consideration of CSHB 15 under Rule 4, Section 20(a)(2) of the House Rules on the grounds that a sworn witness statement was not properly completed.

The chair overruled the point of order and submitted the following statement.

Representative Dukes raised a point of order against further consideration of CSHB 15 under Rule 4, Section 20(a)(2), in that several witness affirmation forms were incomplete. The chair has reviewed eight witness affirmation forms submitted by the representative, seven of which lack a zip code and one of which lacks a complete city name. For each of those lacking a zip code, the address is otherwise complete and a complete telephone number is provided. For the form lacking a complete city name, the zip code is provided, as is a complete telephone number.

Consistent with prior precedents, the chair finds the information on the forms to be sufficient to allow an interested person to contact the testifying individual regarding the testimony.

Witness Affirmation Form—Completeness (Rule 4, Section 20(a))
78 H.J. Reg. 1803-04 (Rodriguez 4/24/03)

CSHB 2292 - POINT OF ORDER

Representative Rodriguez raised a point of order against further consideration of CSHB 2292 under Rule 4, Section 20(a)(2) of the House Rules on the grounds that the committee report contains an incomplete witness affirmation form.

. . .

The speaker overruled the point of order for the following reason:

Mr. Rodriguez raises a point of order against further consideration of HB 2292 under Rule 4, Section 20(a)(2), in that two witness affirmation forms on file with the committee minutes failed to include a telephone number for those witnesses.

Review of the witness affirmation forms shows that two forms did not include telephone numbers for the witnesses. One form has an ambiguous entry of what appears to be "N/A"; the other form is left entirely blank on the line for entry of a telephone number.

Mr. Rodriguez directs the chair's attention to a precedent at 75 H.J. Reg. 3896 (1997), in which the speaker overruled a point of order that a witness affirmation form failed to include both a home and a business address of the individual. The speaker in that ruling stated, "the purpose of the rule is to provide sufficient information to allow an interested party to contact a witness regarding the testimony given by the witness during the committee hearing." In that specific situation, the chair then found that one address and one telephone number was sufficient for the purpose of the rule to be fulfilled.

In this case, the signed witness affirmation forms include a complete address. The chair has no way of determining whether the witnesses had telephone numbers to enter, nor whether the chair of the committee specifically requested that information when recognizing the witnesses. Under these circumstances, the chair finds that inclusion of the complete mailing address is sufficient for the purpose of the rule to be satisfied.

Accordingly, the point of order is respectfully overruled.

Witness Affirmation Form—Completeness (Rule 4, Section 20(b))
76 H.J. Reg. 1259 (Wilson 4/22/99)

CSHB 1152 - POINT OF ORDER

Representative Wilson raised a point of order against further consideration of CSHB 1152 under Rule 4, Section 20(b) of the House Rules on the grounds that some of the witness affirmation forms filed with the original minutes for the hearing of the Public Safety Committee held on March 2, 1999 did not contain an indication of whether the witness testified.

The chair overruled the point of order, speaking as follows:

The witness lists attached to the committee minutes for that hearing and to the committee report for the bill both indicate that the witnesses in question did testify, and the witness affirmation forms for those witnesses were filed with the minutes in accordance with Rule 4, Section 20(c), which requires the affirmation forms for those witnesses who testified to be filed with the minutes. The purpose of the section of the rules relating to witness affirmation forms is to provide a means to administer the oath to those persons who wish to be recognized to address the committee and to provide members of the legislature and the public a means to contact a witness regarding the testimony of that witness. The purpose of the provision requiring the chair to indicate whether the witness testified is to provide a means for the chair and the committee staff to determine which forms are required to be filed with the minutes. Because the official minutes and committee report indicate that the witnesses in question did testify and the affirmation forms for those witnesses were filed with the minutes as required by the rules, the chair finds that the purpose of the indicated section of the rules has been substantially fulfilled.

Accordingly, the point of order is respectfully overruled in accordance with Rule 1, Section 9(c).

Witness Affirmation Form—Completeness (Rule 4, Sections 20(a)-(c))
75 H.J. Reg. 3895-96 (Danburg 5/27/97)

CSSB 86 - POINT OF ORDER

Representative Danburg raised a point of order against further consideration of CSSB 86 under Rule 4, Section 20(a), (b) and (c) of the House Rules on the grounds that several of the witness affirmation forms do not contain both the home and business address of the witness.

The speaker overruled the point of order, speaking as follows:

Representative Danburg raises a point of order against further consideration of CSSB 86 under Rule 4, Section 20(a), (b) and (c), in that several of the witness affirmation forms do not contain both the home and business address of the witness.

Although the cited section of the rules requires the witness affirmation form to provide for showing the home and business address of the witness, the purpose of the rule is to provide sufficient information to allow an interested party to contact a witness regarding the testimony given by the witness during the committee hearing. All of the witness affirmation forms in question were signed by the witness, filed with the minutes, and contain at least one address and phone number for the witness, and the purpose of the rule has therefore been fulfilled.

Accordingly, the point of order is respectfully overruled.

Witness Affirmation Form—Inaccurate (Rule 4, Section 20(a))—Sustained
78 H.J. Reg. 2862 (Mowery 5/9/03)

CSHB 262 - POINT OF ORDER

Representative Mowery raised a point of order against further consideration of CSHB 262 under Rule 4, Section 20 of the House Rules on the grounds that a witness affirmation form is incorrect.

. . .

The chair sustained the point of order, speaking as follows:

Ms. Mowery raises a point of order under Rule 4, Section 20 in that a witness listed as having testified on HB 262 did not identify on the witness affirmation form the measure he wished to testify against.

The point of order is well taken and sustained.

The ruling precluded further consideration of CSHB 262.

Witness Affirmation Form—Inaccurate (Rule 4, Sections 20(a) & 32(b)(10))
78 H.J. Reg. 2645 (Y. Davis 5/7/03)

CSHB 262 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 262 under Rule 4, Section 20 and Rule 4, Section 32(b)(10) of the House Rules on the grounds that the committee report contains an inaccurate witness statement.

The speaker overruled the point of order, speaking as follows:

Representative Y. Davis raises a point of order under Rule 4, Section 20 and Rule 4, Section 32(b)(10), in that the witness list for HB 262 incorrectly classifies a witness as having addressed the committee in favor of the bill when the witness affirmation form shows the witness as neutral.

Witness affirmation forms are completed by the individual before the person is recognized for testimony, and the forms often vary in different ways from what actually happens in committee.

The chair believes that the committee chair has the obligation to classify the witnesses. In addition, previous chairs have determined that the purpose of the form is to swear the witnesses and provide information that would permit contacting the witness.

Accordingly, the point of order is respectfully overruled.

Witness Affirmation Form—Inaccurate (Rule 4, Sections 20(a) & 32(b)(10))—Sustained
78 H.J. Reg. 2142 (Dunnam 4/30/03)

CSHB 1254 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHB 1254 under Rule 4, Section 20(b) and Rule 4, Section 32(b)(10) of the House Rules on the grounds that a sworn statement of a witness is inaccurate and the witness list in the committee report is incorrect.

. . .

The speaker sustained the point of order, speaking as follows:

Mr. Dunnam raises a point of order against further consideration of CSHB 1254 under Rule 4, Sections 20(b) and 32(b)(10), in that a sworn statement of a witness is inaccurate and the witness list in the committee report is incorrect.

A review of the records of the house shows that the witness affirmation form signed by the subcommittee chair indicates that the witness did testify and that the witness is included in both the witness list filed with the minutes and attached to the committee report. However, the electronic recording of the meeting clearly indicates that the witness did not testify, and that the chair announced that the witness did not testify.

Previous presiding officers have consistently declined to use electronic recordings as a basis for a point of order, deferring instead to the printed records of the house. The chair is unable to find any precedent in which a presiding officer relied on an electronic recording for this purpose.

However, the video is clear. Accordingly, the point of order is sustained.

The ruling precluded further consideration of CSHB 1254.

Minutes—Incorrect Minutes
85 H.J. Reg. 1853-54 (Blanco 4/26/17)

CSSB 4 - POINT OF ORDER

Representative Blanco raised a point of order against further consideration of CSSB 4 under Rule 4, Section 18, of the House Rules on the grounds that the corrected committee minutes were incorrect.

The House Committee on State Affairs meeting on March 15, 2017, was not good. The chair acknowledged that the initial attempt to begin the meeting was beset by errors. It would not be the first or last attempted meeting of a house committee that did not occur officially for a variety of reasons. To ensure that the meeting was conducted in compliance with the House Rules, just as in the earlier decision, the chairman began anew and proceeded, correctly, under a theory

that the meeting improperly started with no access to the public was a nullity. The chair started by calling the meeting to order anew, and the properly started meeting got underway. Under any reading of the rules, the initial erroneously started meeting was a nullity; the error was promptly remedied and restarted the meeting from the very beginning. *See* 79 H.J. Reg. 3509 (2005) (Gallego point of order on SB 477).

Representative Blanco argues that failure to state in the committee minutes the actions taken in the null "meeting" renders the committee minutes fatally flawed. This is incorrect. Rule 4, Section 12, requires "all meetings of a committee or subcommittee, including a calendars committee, shall be open to other members, the press, and the public." Additionally, Rule 4, Section 18, requires:

> (a) For each committee, including a calendars committee, the chair, or the member acting as chair, shall keep complete minutes of the proceedings in committee, which shall include:
>
> (1) the time and place of each meeting of the committee;
>
> (2) a roll call to determine the members present at each meeting of the committee, whether that meeting follows an adjournment or a recess from a previous committee meeting;
>
> (3) an accurate record of all votes taken, including a listing of the yeas and nays cast on a record vote;
>
> (4) the date of posting of notice of the meeting; and
>
> (5) other information that the chair shall determine.

While there is no doubt that the House Committee on State Affairs made a number of mistakes, those that occurred before the beginning of the properly conducted meeting do not need to be recorded in the committee minutes because they were in fact not the actions of the committee.

Committee Documents—Minutes; Witness List; Witness Affirmation Form 85 H.J. Reg. 1724-26 (Stickland 4/20/17)

CSHB 2335 - POINT OF ORDER

Amanda Herron came to the Capitol to testify on HB 2335. While physically present in the Capitol Complex, she certified under oath that she personally filled out a witness affirmation form. Under House Rules and adopted policies, and under normal conditions (the absence of a situation when the electronic witness affirmation system was unavailable), Ms. Herron's form complied with all house requirements, including being made while present in the Capitol Complex, appropriately using the Electronic Witness Affirmation Form, and personally affixing her digital signature to the required oath under the penalty of perjury. Like many Texans who fill out a computer form, Ms. Herron made an error. On the first card she submitted, she spelled her last name "Herrom." She also noted

on that card that she did not intend to testify. For whatever reason, she submitted a second card that was an exact duplicate of the first card except that on the second card, she apparently correctly spelled her name "Herron," and noted her intent to testify on HB 2335. At some point, after submitting the cards, Ms. Herron did, in fact, testify for the bill—the same position noted on both her witness affirmation cards and correctly on the witness list under Rule 4, Section 18.

Representative Stickland raised a point of order against further consideration of CSHB 2335 pursuant to Rule 4, Section 18(b), of the House Rules on the grounds that the witness list is inaccurate. Specifically, he alleges that Ms. Herron's card (the first one) indicated that she did not intend to testify, when she in fact did. The notation on a form of the witness's initial intent to testify (or not testify) does not limit the courses of action open to a witness who has changed her mind (or of a chair to call up a witness who is at the back of a committee room who did not anticipate testifying). *See* 83 H.J. Reg. 1890 (2013) (Walle point of order on CSHB 148) and 78 H.J. Reg. 2645 (2003) (Y. Davis point of order on CSHB 262).

Further, Representative Stickland argues that Ms. Herron's typographical error in the spelling of her own last name means that the witness list notation of both of the Amanda Herron cards (each of which carried the same unique identifying information) was in error, since only one Amanda Herron testified. In short, Representative Stickland contends that a person who has two witness cards, one with the last name spelled correctly and another with the typographical error, can only be reflected in the witness list one time. Representative Stickland expressed no opinion of how to resolve the other card.

This argument is also incorrect. The purpose of Rule 4, Section 18(b), is to provide information to the public regarding the witnesses who submitted a sworn statement of a position on a bill but who were not recognized by the chair to address the committee. Here, both of Amanda Herron's entries are consistent in reflecting that she was in favor of the bill, thereby satisfying the purpose of Rule 4, Section 18(b). The duplicate entry into the Witness Affirmation Report did not deceive or mislead; instead, the entries accounted for each witness affirmation form submitted and in fact presented an accurate statement of the witness's testimony (typographical error and all). It should be noted that points of order are not sustained on mere typographical errors. *See* 78 H.J. Reg. 2717 (Canales point of order on HB 3185); 78 H.J. Reg. 3981 (Thompson point of order on CSSB 1370).

Finally, Representative Stickland notes that "video of the proceeding also confirms that no witness named Amanda Herrom was ever recognized to testify on the bill." The chair continues to "follow 'precedents of the house in consistently declining to use electronic recordings as a basis of a point of order, deferring instead to the printed records of the house.'" 84 H.J. Reg. 3089-90 (2015) (Stickland point of order on CSHB 22 quoting 82 H.J. Reg. 1734 (2011) (Y. Davis point of order on CSSB 18)).

The point of order is respectfully overruled.

Minutes—Suspension of Posting Rule—Sustained
84 H.J. Reg. 4692 (K. King 5/26/15)

CSSB 424 - POINT OF ORDER

Representative K. King raised a point of order against further consideration of CSSB 424 under Rule 4, Section 18 and Rule 4, Section 32 of the House Rules on the grounds that the committee minutes are incomplete and the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative K. King raised points of order against further consideration of CSSB 424 pursuant to Rule 4, Section 18 and Rule 4, Section 32 of the House Rules. Because the meeting minutes are flawed in that they do not accurately and completely reflect that the committee had suspended the 5-day posting rule and all necessary rules to add bills to a previously posted agenda, the point of order is sustained.

Minutes—Correction of Minutes—Sustained
84 H.J. Reg. 3254 (Martinez Fischer 5/12/15)

HB 1668 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of HB 1668 under Rule 4, Section 18 of the House Rules on the grounds that the committee minutes are incomplete.

The speaker sustained the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of HB 1668 under Rule 4, Section 18 of the House Rules on the grounds that the minutes from the Committee on Business and Industry from April 28, 2015, are inaccurate. The point of order is sustained.

Rule 4, Section 18 of the House Rules requires each committee to "keep complete minutes of the proceedings in committee . . . ." Rule 4, Section 18(a). Specifically, he complains that the corrected minutes of the April 7 meeting do not comply with the rules in that they show the minutes of the April 7 meeting were corrected on both April 23, 2015, and April 28, 2015, while the minutes from the April 28 meeting do not indicate any correction being made to the April 7 meeting. Representative Martinez Fischer has provided us with the corrected minutes of the April 7 meeting, the April 23 meeting, and the April 28 meeting. Although the minutes of the April 23 meeting do show that the minutes of the April 7 meeting were corrected on that day, an examination of the minutes of the April 28 meeting indicates that there were not corrections to the April 7 meeting. This error renders both the April 7 and April 28 minutes misleading

and inaccurate. Inaccuracy in the minutes of a committee meeting is "especially harmful to this body because they constitute the only written record of house committee proceedings. As such, they should be corrected and held to the highest standards of accuracy." 80 H.J. Reg. 2536-37 (2007) (Dunnam point of order on HB 1801). The point of order is therefore sustained.

HB 1668 was returned to the Committee on Business and Industry.

Minutes—Date of Adjournment
84 H.J. Reg. 2942-43 (González 5/8/15)

HB 1514 - POINT OF ORDER

Representative González raised a point of order against further consideration of HB 1514 under Rule 4, Section 18 of the House Rules on the grounds that the committee minutes are incomplete.

The speaker overruled the point of order and submitted the following statement:

Representative González raised a point of order against further consideration of HB 1514 under Rule 4, Section 18 of the House Rules on the grounds that the Insurance Committee's minutes fail to state the date the committee adjourned. The point of order is respectfully overruled.

Rule 4, Section 18 requires each committee to "keep complete minutes of the proceedings in committee, which shall include . . . the time and place of each meeting of the committee." Rule 4, Section 18(a)(1). Representative González correctly observes that the minutes for the Committee on Insurance show that the committee met at 5:34 p.m. on April 8, 2015, and adjourned at 2:56 a.m. Representative González notes "[o]bviously the committee did not adjourn at 2:56 a.m. on the same day it was called to order." However, because the minutes failed to specifically state that the committee adjourned at 2:56 a.m., April 9, 2015, Representative González argues that the minutes are "at best ambiguous and at worst incorrect."

The minutes are neither a violation of Rule 4, Section 18 nor inaccurate. The minutes accurately recorded a meeting that began one calendar day and continued for nine hours into the next calendar day. The minutes of a meeting are not a "blow-by-blow" description of the events that transpired at the meeting. The minutes must only contain the items required by the House Rules and any "other information that the chair shall determine." *See* Rule 4, Section 18(a)(5). In this case, the minutes accurately reflected the correct day of the meeting, the correct time of adjournment, and all the other required information in the minutes.

In her point of order, Representative González raises the issue that other committees handle their notations of time in different manners. In the absence of a uniform format, it is not surprising that the chairmen of the committees in the house, responsible for the effective conduct of the business of their committee, choose to conduct their meetings, direct their staff, and prepare their official

committee documents (including their committee minutes) in different manners. These are the duties and prerogatives of the chair of each committee and are not disturbed absent the violation of another house rule. *See* Rule 4, Section 6 of the House Rules. The question of whether the house should adopt more uniform standards for committee minute reporting or whether the method suggested by Representative González is in fact a "best practice" that all committees should embrace is an issue for the house to study or, alternatively, one which the committee coordinator may wish to review with the committee clerks. The point of order is respectfully overruled.

Minutes & Committee Report—Date of Committee Meeting
83 H.J. 2nd C.S. 20-21 (Martinez Fischer 7/9/13)

HB 2 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of HB 2 under Rule 4, Section 32(b)(4) and Rule 4, Section 18 of the House Rules on the grounds that the committee report is incorrect and the committee minutes are incomplete.

The chair overruled the point of order and submitted the following statement:

During the consideration of HB 2, Representative Martinez Fischer raised a point of order under Rule 4, Section 32(b)(4) of the House Rules. That provision requires that a committee report must be in writing and shall contain "the date the committee made its recommendation." Representative Martinez Fischer argues that the record vote in committee on HB 2 occurred on the morning of July 3, 2013, and, therefore, that the date on the committee report of July 2, 2013, the date the hearing commenced, is in error and requires that the bill be returned to committee. The point of order is respectfully overruled.

The situation of a house committee beginning deliberation of a bill or hearing on one day and continuing to the next is not unique. The limited dates that a legislature may convene often require house committee hearings to straddle two calendar days. Since at least 2001, house committees appear to have used as "the date the committee made its recommendation" (the requirement set out in Rule 4, Section 32(b)(4)) the date the committee hearing began rather than the date the record vote on a matter was taken (the position advanced by Representative Martinez Fischer). *See, e.g.*, HB 1374, 77th Legislature (March 13, 2001, committee report dated on date committee hearing began and not on date of record vote in committee); HB 2378, 77th Legislature (April 4, 2001, committee report date on date committee hearing began and not on date of record vote in committee); HB 3108, 77th Legislature (April 17, 2001, committee report date on date committee hearing began and not on date of record vote in committee); HB 1321, 78th Legislature (March 26, 2003, committee report date on date committee hearing began and not on date of record vote in committee); HB

770, 78th Legislature (April 30, 2003, committee report date on date committee hearing began and not on date of record vote in committee); HB 1557, 80th Legislature (April 12, 2007, committee report date on date committee hearing began and not on date of record vote in committee); HB 4471, 81st Legislature (March 31, 2009, committee report date on date committee hearing began and not on date of record vote in committee); SB 1581, 82nd Legislature (May 20, 2011, committee report date on date committee hearing began and not on date of record vote in committee).

In considering these issues, it is the chair's opinion that the purpose of Rule 4, Section 32(b)(4) of the House Rules has been fulfilled. By using the date the committee hearing began as the date the committee made its recommendation, house committees, over the course of three speakers and an extended period of time, have allowed house staff and members of the public methods to link and review the information in committee reports, postings, and committee minutes. While this issue has never been raised before, members of the house are certainly free to amend the requirements of Rule 4, Section 32(b)(4) of the House Rules to allow any other explicit date to be placed in the committee reports, including the date of the record vote as suggested by Representative Martinez Fischer. Representative Martinez Fischer desires to appeal the ruling of the chair on this matter.

83 H.J. 2nd C.S. 21

HB 2 - APPEAL OF POINT OF ORDER RULING

Pursuant to Rule 1, Section 9 of the House Rules, an appeal was made to the chair's ruling of the above point of order by the following 10 members: Representatives Martinez Fischer, S. Turner, Dutton, Dukes, Rose, J. Rodriguez, Canales, Miles, S. Thompson, and Walle. The question on whether the chair's ruling should be sustained was before the house.

The chair's ruling was sustained by (Record 9): 91 Yeas, 53 Nays, 2 Present, not voting.

See supra at 14 on Appeal of Point of Order for further commentary on the process for appealing this ruling.

Minutes—Temporary Absence of Committee Member
83 H.J. Reg. 2448-49 (Walle 5/4/13)

CSHB 972 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 972 under Rule 4, Section 18 of the House Rules on the grounds that the committee minutes are incomplete.

The speaker overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSHB 972 under Rule 4, Section 18 of the House Rules. The point of order is respectfully overruled.

Representative Walle observes that the minutes for the hearing at which CSHB 972 was considered show that at 2:29 p.m. the committee reconvened. Roll was called, and Representative Cortez was shown as present. After showing that a quorum was present and before the committee considered any bills, the minutes show "Representative Cortez now present." Representative Walle asserts that showing Representative Cortez as now present meant that either Representative Cortez had not initially been in attendance, such that the record of the roll call was inaccurate, or that the notation that he was now present was inaccurate because he had been present the entire time.

The chair notes that committee minutes do not reflect the precise moment when a committee member has left a hearing. Indeed, after the roll was called, the committee considered eight bills for which Representative Cortez was present and voting on the bills. Then, on the votes for the ninth bill and tenth bill, which was CSHB 972, Representative Cortez is shown as absent. This notation regarding his absence during votes is one of the few instances following a roll call when a committee member that has left is shown in the minutes. In any event, the notation that Representative Cortez was "now present" following a roll call in which he was also shown as present did not necessarily reflect an error in the roll call, but instead may have reflected either that Representative Cortez briefly left the room or that he was redundantly, but nonetheless accurately, recorded as being present.

Minutes & Summary of Committee Hearing—Bills Left Pending
83 H.J. Reg. 2442 (E. Rodriguez 5/4/13)

CSHB 972 - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of CSHB 972 under Rule 4, Section 18 and Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative E. Rodriguez raised a point of order against further consideration of CSHB 972 under Rule 4, Sections 18 and 32 of the House Rules. Specifically, Representative E. Rodriguez argues that the committee minutes and the summary of committee action of the March 14, 2013, committee meeting are incorrect. Representative E. Rodriguez points out that the summary of committee action for that meeting states that CSHB 972 was left pending in committee. Representative E. Rodriguez also offered one page (page 4) of the March 14, 2013, committee minutes which stated: "HB 972. The chair laid out HB 972. The chair recognized Representative Fletcher to explain HB 972."

Representative E. Rodriguez argues that the failure to include in the minutes an express statement that the bill was left pending is an error. In fact, if this were the complete state of the record, the point of order would not have been sustained. An examination of the committee minutes for the March 14, 2013, meeting and the next meeting in which this bill was dealt with makes it clear that CSHB 972 was left pending at the end of the March 14, 2013, meeting. Further, whether an item is left pending is not among the list of items required to be captured in Rule 4, Section 18 of the House Rules, although a committee chair may certainly properly record it.

More importantly, the chair has reviewed, in addition to the single page offered by Representative E. Rodriguez, the complete committee minutes of the March 14, 2013, meeting. On page 6 of those minutes, the committee reports: "Testimony taken/registration recorded for HB 972, HB 1313, HB 1078, and HB 706. (See attached witness list.) . . . The chair recognized Representative Fletcher to close on HB 972. HB 972 was left pending without objection."

There was no violation of any rule, and the point of order is overruled.

Minutes & Summary of Committee Hearing—Inconsistent Minutes & Summary—Sustained
83 H.J. Reg. 2308-09 (Martinez Fischer 5/3/13)

CSHB 14 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 14 under Rule 4, Section 18 and Rule 4, Section 32 of the House Rules on the grounds that the committee minutes are incomplete and the committee report is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of CSHB 14 under Rule 4, Section 18 and Rule 4, Section 32 of the House Rules. The point of order is sustained.

Rule 4, Section 18 of the House Rules directs the chair of a committee to keep minutes of the proceedings. Rule 4, Section 32(b)(9) of the House Rules requires that the committee report on a bill include a summary of the committee hearing on the bill or resolution. In this instance, HB 14 was referred by the chair of the Committee on Appropriations to the Subcommittee on Budget Transparency and Reform. The summary of the committee actions reflects that, after being considered by the subcommittee, the bill was "[r]ecalled from subcommittee" on April 11, 2013. The minutes for the committee, however, do not reflect that the bill was recalled from the subcommittee. Accordingly, either the minutes are not complete because they omit a reference to the bill having been recalled from committee, or the summary of the committee hearing is incorrect. Because either

this omission in the minutes or an error in the summary violates the House Rules, CSHB 14 is out of order.

CSHB 14 was returned to the Committee on Appropriations.

Minutes—Witness List (Rule 4, Section 18(b))—Sustained
82 H.J. Reg. 3771 (Coleman 5/12/11)

CSHB 32 - POINT OF ORDER

Representative Coleman raised a point of order against further consideration of CSHB 32 under Rule 4, Section 18(b) of the House Rules on the grounds that the committee minutes are incomplete.

The chair sustained the point of order and submitted the following statement:

Representative Coleman raised a point of order under Rule 4, Section 18(b) in that the witness list fails to properly reflect that a witness, who submitted a witness affirmation form in favor of both the introduced bill and the committee substitute, as testifying both for the introduced bill and the committee substitute. The chair has examined the witness affirmation card and the witness list for the committee's March 17, 2011, meeting. The witness list does not reflect the information on the witness affirmation form that the witness testified on. Because the committee minutes failed to list the name of a person who submitted to the committee a sworn statement indicating that the person was present in favor of, in opposition to, or without taking a position on the measure, the witness list violates Rule 4, Section 18, and the point of order is sustained.

CSHB 32 was returned to the Select Committee on State Sovereignty.

Minutes—Permission to Meet While House in Session—Sustained
81 H.J. Reg. 3525 (S. Miller 5/14/09)

CSHB 3245 - POINT OF ORDER

Representative S. Miller raised a point of order against further consideration of CSHB 3245 under Rule 4, Section 18 of the House Rules on the grounds that committee minutes of the April 23 meeting are inaccurate.

The speaker sustained the point of order and submitted the following statement:

Mr. S. Miller raises a point of order against further consideration of CSHB 3245 in that the minutes of the committee meeting at which the bill was passed are in violation of Rule 4, Section 18. In particular, it is argued that the committee minutes of the April 23, 2009, meeting are inaccurate as the minutes state the committee was given permission to meet while the house was in session, and that the House Journal does not reflect that permission was given for the meeting.

The chair has reviewed this claim and determined that the minutes are inaccurate on this matter. Past precedent indicates that inaccurate minutes are "especially harmful" to the house and that the minutes should be "held to the highest standard of accuracy." (House Journal, 80th Regular Session (2007), page 2537) Points of order have consistently been sustained against bills with inaccurate minutes. (House Journal, 79th Regular Session (2005), page 1723; House Journal, 78th Regular Session (2003), page 3804; House Journal, 75th Regular Session (1997), page 3591)

The point of order is well taken and sustained.

CSHB 3245 was returned to the Committee on State Affairs.

Minutes—Timely Filing (Rule 4, Section 18(c)); Bill Analysis—Incorrect and Misleading Analysis
80 H.J. Reg. 2760-61 (Dunnam 5/1/07)

CSHB 3928 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHB 3928 under Rule 4, Section 18(c) and Rule 4, Section 32(c) of the House Rules on the grounds that the committee minutes and bill analysis are incorrect.

The speaker overruled the point of order, and submitted the following statement:

Mr. Dunnam raises a point of order against further consideration CSHB 3928, arguing that the minutes were not timely filed. Specifically, Mr. Dunnam argues that the minutes were due on Good Friday, April 6, 2007, or the Monday following Easter, April 9, 2007. Mr. Dunnam specifically argues that the only holidays that the state may recognize are the legal holidays noted in Section 662.003(a) or (b), Government Code.

This interpretation is incorrect. First, the House Rules refer only to "holidays," and not legal holidays under Section 662.003, Government Code.

Second, the provisions of Section 662.003 are not binding on the house. In the provision directly before Section 622.003, which is not cited by Mr. Dunnam, the section notes that "this subchapter applies to a state employee of the house of representatives or the senate only at the discretion of the presiding officer or the administration committee of each respective house."

In this case, such discretion was exercised. On March 23, 2007, the speaker of the house wrote a memo given to all house members noting that the Speaker's Office and House Business Office would be closed Friday, April 6 and Monday, April 9 in the observance of Easter.

On April 4, 2007, the committee coordinator issued a memorandum noting that the Committee Coordinator's Office would be closed on the same days, in accordance with the decision by the speaker to close the House Business Office. The notice, posted on the door of the Committee Coordinator's Office and on all bulletin boards on which announcements are normally placed, clearly stated

the closing. Accordingly, because the offices were properly closed for a holiday which was properly announced, the minutes were timely filed and the point of order is respectfully overruled.

Additionally, Mr. Dunnam raises a point of order against further consideration of CSHB 3928 under Rule 4, Section 32(c) of the House Rules. The chair finds that the amendatory language for Section 171.0003 is properly treated in the bill analysis and is not misleading. The point of order is overruled.

Minutes & Committee Report—Date of Committee Meeting—Sustained
80 H.J. Reg. 2536-37 (Dunnam 4/26/07)

HB 1801 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of HB 1801 under Rule 4, Section 18(a) of the House Rules on the grounds that the committee minutes are incomplete and submitted the following statement:

House Rule 4, Section 18(a) states, "For each committee, including a Calendars Committee, the chair, or the member acting as chair, shall keep complete minutes of the proceedings in committee, which shall include . . . the time and place of each meeting of the committee," House Rule 4, § 18(a)(1) (80th Leg. 2007). Subcommittees are governed by the same rules of procedure as are committees, House Rule 4, § 45 (80th Leg. 2007).

The minutes for the April 2, 2007, meeting contain the following sentence: "On March 29, 2007, pursuant to a suspension of the 5-day posting rule and permission to meet while the house is in session, during reading and referral of bills, the House Committee on Criminal Jurisprudence, Subcommittee on Criminal Procedure, met in a public hearing and was called to order by the chair." The subcommittee actually met on April 2, 2007. As a result of this factual error, the minutes are inaccurate. Inaccuracy in the minutes of a public hearing are especially harmful to this body because they constitute the only written record of house committee proceedings. As such, they should be corrected and held to the highest standards of accuracy.

For the foregoing reasons, the point of order should be sustained.

The speaker sustained the point of order.

HB 1801 was returned to the Committee on Criminal Jurisprudence.

Minutes—Vote Shows Members Present
79 H.J. Reg. 2018-19 (Y. Davis 4/20/05)

CSHB 4 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 4 under Rule 4, Section 32(b) and (c) and Rule 4, Section 18(a)(2) and

(3) of the House Rules on the grounds that the committee minutes failed to show the presence of a member prior to the vote.

. . .

The speaker overruled the point of order and had read the following statement:

Representative Y. Davis raised a point of order to HB 4 that the April 5, 2005, minutes of the Public Education committee violated Rule 4, Section 18(a)(2) and (3) and Section 32(b) and (c). Representative Y. Davis argued specifically that Representative Bill Keffer was not shown answering roll call but was later shown voting in favor of HB 4 without being reflected as being present at any point between the roll call and the committee vote on HB 4.

Rule 4, Section 18(a)(2) requires that the minutes contain "a roll call to determine the members present at each meeting." The minutes for the April 5, 2005, Public Education meeting contain such an accurate roll call.

Rule 4, Section 18(a)(3) requires that there be an accurate record of all votes taken, including a listing of the yeas and nays cast on a record vote. The minutes for the April 5, 2005, Public Education meeting contain such an accurate record.

The committee report for HB 4 also contains records that match the notation of the vote reflected in the minutes. Taken together, the minutes and the committee report are prima facia evidence that Mr. Keffer was present and voting on HB 4.

The chair also notes that Rule 4, Section 32(b) sets out 10 required elements for a committee report and that each of the applicable elements appears in the committee report to HB 4. In addition, Rule 4, Section 32(c) sets out five required elements of a bill analysis and each of these applicable elements appears in the committee report to HB 4.

Because the elements of Rule 4, Section 18 and Rule 4, Section 32 were complied with, the point of order is respectfully overruled.

Minutes—Typographical Error of Room Number (Rule 4, Section 18(a)) 78 H.J. Reg. 3981 (Thompson 5/26/03)

CSSB 1370 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of CSSB 1370 under Rule 4, Section 18(a)(1) of the House Rules on the grounds that the committee minutes have an incorrect room number for the committee meeting.

. . .

The speaker overruled the point of order, speaking as follows:

Representative Thompson raises a point of order under Rule 4, Section 18(a)(1), in that the minutes list that the committee met in Room E2.108, while the posting indicated the committee was to meet in E2.018.

The chair finds the error to be minor and clearly typographical.

Accordingly, the point of order is respectfully overruled.

Minutes—Incorrect Reporting of Amendments (Rule 4, Section 18(a))—Sustained
78 H.J. Reg. 3804-05 (Mabry 5/24/03)

CSSB 945 - POINT OF ORDER

Representative Mabry raised a point of order against further consideration of CSSB 945 under Rule 4, Section 18(a)(3) of the House Rules on the grounds that there was an inaccuracy in the committee meeting minutes.

. . .

The speaker sustained the point of order, speaking as follows:

Representative Mabry raises a point of order under Rule 4, Section 18(a)(3), in that the committee minutes reflect that the senate engrossment was reported without amendments, when in fact a complete committee substitute was adopted and reported.

The point of order is well taken and sustained.

The ruling precluded further consideration of CSSB 945.

Minutes—Incorrect Date of Posting Notice (Rule 4, Section 18(a))
77 H.J. Reg. 1546 (Chisum 4/25/01)

HB 2123 - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of HB 2123 under Rule 4, Section 18(a)(4) of the House Rules.

. . .

The speaker overruled the point of order, speaking as follows:

Mr. Chisum raised a point of order under Rule 4, Section 18(a)(4). In that the date of posting of notice contained in the minutes is not accurate. The purpose of that section of the rules is to provide information that adequate notice of the hearing was given. The date contained in the minutes, while incorrect, reflected that notice was posted five days in advance. The purpose of that section of the rules has been fulfilled and the point of order is respectfully overruled in accordance with Rule 1, Section 9(c).

Other explanations addressing minutes:
84 H.J. Reg. 4245-46 (S. King 5/23/15), *supra* at 16 (minutes and posting of notice for companion bills)
79 H.J. 3rd C.S. 303-04 (Dunnam 5/11/06), *supra* at 20-21 (minutes containing date of posting of notice of meeting)

Committee Reports—Signature
85 H.J. Reg. 2689 (Isaac 5/5/17)

HB 1183 - POINT OF ORDER

Representative Isaac raised a point of order against further consideration of HB 1183 pursuant to House Rule 4, Section 32(b)(1), on the grounds that an accurate committee report signed by the chair of a committee in compliance with Rule 4, Section 32(b)(1), was in fact invalid because the chair of the committee was absent from the hearing. The point of order is overruled.

The following facts are not in dispute:

- Rule 4, Section 32(b)(1), requires a committee report to "be signed by the chair" or by other certain persons;
- Representative Coleman is the chair of County Affairs;
- The committee report for HB 1183 was the report of a bill heard in and disposed by a vote in the County Affairs Committee; and
- Representative Coleman, in compliance with Rule 4, Section 32(b)(1), attached his signature to the report.

Representative Isaac has failed to identify any other shortcoming of the report. Representative Isaac's sole allegation, that a chair must be present in a meeting in order to sign a committee report, is unsupported by the rule he cites or any house precedent. Given the circumstances, the point of order is overruled.

Summary of Committee Hearing (Rule 4, Section 32(b)(9))—Sustained
82 H.J. Reg. 3073 (Martinez Fischer 5/5/11)

CSHB 274 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 274 under Rule 4, Section 32(b)(9) of the House Rules on the grounds that the committee report is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order under Rule 4, Section 32(b)(9) that the summary of committee actions to HB 274 is inaccurate. Specifically, Representative Martinez Fischer points out that the summary of committee action for April 11, 2011, states that the members of Tort Subcommittee of the Judiciary and Civil Jurisprudence Committee were named on April 11, 2011, when in fact the subcommittee members had been named at an earlier

meeting, on April 4, 2011, and were not separately named at the April 11, 2011, meeting.

The chair has reviewed the summary of committee actions and agrees. Accordingly, the point of order is sustained.

CSHB 274 was returned to the Committee on Judiciary and Civil Jurisprudence.

Summary of Committee Hearing (Rule 4, Section 32(b)(9)), Bill Analysis (Rule 4, Section 32(d)) & Printing (Rule 12, Section 1)—Effect of Recommittal or Return to Committee
78 H.J. Reg. 944, 956 (Wolens 3/27/03)

CSHB 4 - POINT OF ORDER

Representative Wolens raised a point of order against further consideration of CSHB 4 under Rule 4, Section 32(b)(9) and Rule 12, Section 1(a) of the House Rules on the grounds that the committee printing of CSHB 4 refers to the bill as "recommitted" rather than "returned."

. . .

The speaker overruled the point of order, speaking as follows:

Mr. Wolens raises a point of order under Rule 4, Sections 32(b)(9) and 32(d), and Rule 12, Section 1(a)(1)(B), in that CSHB 4, having been returned to committee rather than recommitted by motion, bears the inappropriate heading of "Recommitted" and the committee report should have included a summary of actions of the committee prior to its return.

As the chair noted in response to parliamentary inquiry, the "Recommitted" heading has long been used in house practice for bills that were returned to committee following the sustaining of a point of order.

The long-standing practice in the house is to return to committee bills against which a point of order is sustained. That practice is consistent with general principles of parliamentary procedure and, accordingly, is not specifically provided for in the rules of the house. There are but two references to the practice in the House Rules. Rule 4, Section 41, provides that if a point of order is sustained that a complete committee substitute is not germane, the bill is returned first to the Committee on Calendars, who may either set the original bill on a calendar or return the bill to substantive committee. Rule 4, Section 41, is present in the rules to provide a specific practice in those specific circumstances.

In the parliamentary inquiry dialogue with Mr. Wolens, the chair mentioned this rule only to show an example of a reference to a bill being returned to committee; the chair did not intend to suggest that rule was applicable to this point of order. The only other reference to the practice is in Rule 11, Section 6,

which twice references the chief clerk's duties to retain copies of amendments to a measure that "is recommitted or returned to committee."

Similarly, the motion to recommit is a standard parliamentary motion not expressly provided for in the rules, but referenced for different purposes in Rule 4, Sections 29 and 30; Rule 7, Sections 3, 18, 19, and 20; Rule 8, Sections 11 and 16; and Rule 11, Sections 5 and 6.

At the heart of the point of order is the reference in Rule 8, Section 11, which provides "after a bill has been recommitted, it shall be considered by the committee as a new subject." The precise meaning of the phrase "new subject" is not provided, but the chair understands it to mean that a recommitted bill is considered by the committee as if being originally considered. Accordingly, the committee report need only include a summary of committee actions following the bill's return to committee. Mr. Wolens argues that the committee report on a bill that is returned to committee—as opposed to being recommitted—should include a summary of all prior actions of the committee in reference to the bill. The chair finds house precedent to indicate that a summary of committee action for a bill returned to committee need only include the actions after the bill was returned.

For example, in the 75th Legislature, CSHB 1452 was returned to committee following a point of order being sustained. The bill had originally been reported from the committee in a formal meeting held April 9, 1997, and after being returned to committee was subsequently reported in a formal meeting held May 5. The committee report printing following the return showed only the May 5 meeting, and made no reference to the earlier actions. The next session, a point of order was sustained against HB 537. The bill had been originally reported from committee on April 21, 1999, and following its return was again reported from that committee on May 5. The committee report summarizes only the May 5 meeting. The bill was passed by the house.

It is apparent that house practice has been for the committee report of a bill that has been returned to committee to summarize only committee actions that occur following the bill's return to committee. Of course, as noted in Mr. Wolens' comments, Rule 2, Section 1(a)(3) requires a complete record of all actions. The prior actions on CSHB 4 are maintained in those records, and are available to the members and the public online, copies of which Mr. Wolens submitted.

Accordingly, the point of order is respectfully overruled.

Witness List
85 H.J. Reg. 663-64 (Stickland 3/15/17)

HB 62 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of HB 62 pursuant to House Rule 4, Section 32(b), on the grounds that the witness list shows a witness registered for conflicting positions, both for and against the bill. The point of order is respectfully overruled.

Representative Stickland objects that the witness list for HB 62 impermissibly records one witness three times in favor of the bill and one time in opposition to the bill. Specifically, he notes that a registered Texas lobbyist submitted three witness affirmation forms in favor of the bill on behalf of client SM Energy, on behalf of client BHP Billiton, and on behalf of client Newfield Exploration, and one against the bill on behalf of client QEP Resources. It is uncontroverted that the same lobbyist filled out all four of the electronic witness affirmation forms, one on behalf of each separate client, and that the lobbyist complied with all requirements of Rule 4, Section 20, in completing the information on each card while present in the Capitol Complex.

Under Rule 4, Section 32(b)(10), "[a]ll committee reports must be in writing and shall . . . include a list of the names of the persons, other than members of the legislature, and persons or entities represented by those persons, who submitted to the committee sworn statements indicating that the persons were present in favor of, in opposition to, or without taking a position on the bill or resolution." The part of Rule 4, Section 18(b), that requires the names of testifying witnesses to be attached to the minutes of committee proceedings similarly refers to the "persons, other than members of the legislature, and the persons or entities represented by those persons." The express language of these rules does not preclude a testifying witness from submitting multiple witness affirmation forms, nor from representing multiple entities, nor from representing divergent positions of multiple clients. Supporters of the point of order suggest that the lobbyist, who "might be an attorney" or a registered lobbyist, could be subject to laws or other regulations about representing clients with conflicting interests. But these supporters also acknowledge that there are exceptions to the laws regarding client representation. Whether the witness has complied with the Government Code or other laws regarding client representation is beyond the reach of the House Rules. Regardless, no rule of legislative process prohibits a witness from submitting a registration to testify in a house committee on behalf of each of the witness's clients, even if those clients each have a different position on a measure.

Witness List (Rule 4, Section 32(b)(10))
84 H.J. Reg. 3089-90 (Stickland 5/11/15)

CSHB 22 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 22 under Rule 4, Section 32(b)(10) of the House Rules on the grounds that the committee report is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of CSHB 22 under Rule 4, Section 32(b)(10) of the House Rules on the grounds

that the committee report fails to accurately state the persons or entities represented by a witness on that bill. The point of order is respectfully overruled.

Rule 4, Section 32(b)(10) of the House Rules requires each committee report to:

> (10) include a list of the names of the persons, other than members of the legislature, and persons or entities represented by those persons, who submitted to the committee sworn statements indicating that the persons were present in favor of, in opposition to, or without taking a position on the bill or resolution.

Representative Stickland argues that a witness, Tom Smith, noted that he was at the committee hearing to testify for both himself and an organization. Mr. Smith's witness card was marked that he was only representing himself. Representative Stickland notes that "[t]he chairman noted that Smith was registered on behalf of himself . . . ." Representative Stickland has provided a written transcript to support his position that the committee report was "misleading in that it deprives members of the knowledge that Smith testified on behalf of the organization Public Citizen when he testified on House Bill 22."

In deciding points of order, the chair will follow "precedents of the house in consistently declining to use electronic recordings as a basis of a point of order, deferring instead to the printed records of the house." 82 H.J. Reg. 1734 (2011) (Y. Davis point of order on CSSB 18). Accordingly, the chair has examined the committee report and the witness affirmation card filed by Mr. Smith. The electronic witness affirmation card was filled out by Mr. Smith. Mr. Smith alone submitted his sworn statement on who he was representing that day. He indicated on his sworn form that he was representing only himself. The chairman of the committee, pursuant to Rule 4, Section 6 of the House Rules, was responsible for the efficient conduct of the meeting and presided over the meeting. He called the witness and recognized him to testify according to the terms of the witness affirmation card that Mr. Smith personally filed. The chairman does not have the ability to alter, subtract from, or add to the witness information regarding representation of persons or entities represented by those persons. Mr. Smith was certainly free to file a new card to correct the alleged error (which he did not) or choose not to testify under the position he placed on his card (which he did not).

The point of order is respectfully overruled. Having reviewed the official documentation, the rules, and precedent provided by Representative Stickland, the chair finds that the committee hearing was conducted properly.

Witness List (Rule 4, Section 32(b)(10))
82 H.J. Reg. 1734 (Y. Davis 4/13/11)

CSSB 18 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSSB 18 under Rule 4, Section 32(c) of the House Rules on the grounds that the committee report is incorrect.

The speaker overruled the point of order and had read the following statement:

Representative Y. Davis raised a point of order under Rule 4, Section 32(b)(10) in that the committee report fails to include a correct list of the names of persons who submitted sworn statements and their position on the bill.

Ms. Davis has alleged that the sworn statement of Witness A which indicates that Witness A was against the bill and which is accurately reflected in the committee report, is in fact, incorrect. Ms. Davis contends that, during the course of the meeting, that Witness A made statements that should have caused the chair of the committee to alter the witness's affirmation form.

The point of order is respectfully overruled. Pursuant to Rule 4, Section 20 of the House Rules, Witness A made a sworn written statement of his position. The position on the witness affirmation is correctly noted in the committee report. The chair continues to follow prior precedents of the house in consistently declining to use electronic recordings as a basis of a point of order, deferring instead to the printed records of the house.

Accordingly, the point of order is respectfully overruled.

Witness List (Rule 4, Section 32(b)(10))—Sustained
75 H.J. Reg. 3896 (Danburg 5/27/97)

CSSB 86 - POINT OF ORDER

Representative Danburg raised a point of order against further consideration of CSSB 86 under Rule 4, Section 32(b)(10) of the House Rules on the grounds that the entity represented by two of the witnesses does not appear on the witness list attached to the committee report.

The speaker sustained the point of order, speaking as follows:

Representative Danburg raises a point of order against further consideration of CSSB 86 under Rule 4, Section 32(b)(10), in that the entity represented by two of the witnesses does not appear on the witness list attached to the committee report.

The witness affirmation forms for Jill Martinez and Judith Shure, who testified against SB 86, indicate that they appeared before the Committee on State Affairs on behalf of themselves and the Greater Dallas Coalition for Reproductive Freedom. However, the witness list attached to the committee report indicates only that these two witnesses appeared on their own behalf. The fact that a person or persons appeared before a committee on behalf of any group in favor of or in opposition to a bill is vital information that is necessary to assist the members of the house in casting an informed vote on the bill.

Accordingly, the point of order is well-taken and sustained.

Bill Analysis—Background & Purpose
85 H.J. Reg. 3933 (Ortega 5/20/17)

SB 873 - POINT OF ORDER

Representative Ortega raised a point of order against further consideration of SB 873 pursuant to Rule 4, Section 32(c)(1), on the grounds that the background and purpose is inaccurate and misleading. The point of order is respectfully overruled.

Rule 4, Section 32(c)(1), requires the bill analysis to include "background information on the proposal and information on what the bill or resolution proposes to do." The entire background and purpose section of the bill analysis reads: "Interested parties contend that certain water billing disputes sometimes result in costly and time-consuming litigation, the cost of which may ultimately be borne by water users through increased charges. S.B. 873 seeks to address this issue by revising certain water rates and service provisions."

Representative Ortega objects that this language is misleading and incorrect because state law prohibits passing the costs of litigating water disputes on to water users in the form of increased water charges. Defenders of the bill analysis observe that the bill analysis does not specify that "increased charges" will be charges for water, and that those charges could come in other forms that nonetheless impact water users. Further, the background and purpose identifies what "interested parties contend" and what "may" result, rather than purporting to contain objective facts about what actually happens and what actually results. Although this may not educate readers as thoroughly as one might hope, this appears to identify (1) the concerns giving rise to the piece of legislation, whether legitimate or not, and, (2) what the bill does, however imprecisely this may be worded. After carefully reviewing the bill, the bill analysis, and house precedents, the chair finds that the background and purpose section satisfies the requirements of Rule 4, Section 32(c)(1). *See* 85 H.J. Reg. 2628-29 (2017) (Walle point of order on CSHB 1774).

Bill Analysis—Background & Purpose
85 H.J. Reg. 2628-29 (Walle 5/4/17)

CSHB 1774 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 1774 under House Rule 4, Section 32(c)(1), on the grounds that the bill analysis is inaccurate. The point of order is respectfully overruled.

Rule 4, Section 32(c)(1), requires each committee report on a bill to "include . . . background information on the proposal and information on what the bill or resolution proposes to do." Representative Walle argues the background and purpose section of the bill analysis is fatally flawed because it did not discuss the "bill's provisions to overrule certain court of appeals opinions permitting

prejudgment interest to be awarded on the prompt pay law's 18 percent penalty. Nor is any mention made that the bill reaches prompt pay claims under chapter 542." He further asserts these defects are not cured by the rest of the bill analysis, including the side-by-side comparison of the original bill to the committee substitute.

The entire background and purpose section of the bill analysis says, "Concerns have been raised regarding the handling of legal actions for certain insurance claims, including those arising from damage to or loss of property due to hailstorms and other forces of nature. C.S.H.B. 1774 addresses this issue by establishing requirements and procedures applicable to such an action, and makes other changes." Although this section of the bill is disturbingly sparse, perhaps for reasons of which the membership is already aware, it says that the background for the bill is that "[c]oncerns have been raised" regarding certain insurance claims, and it provides the purpose of the bill by explaining how the bill "addresses this issue." *See* 85 H.J. Reg. 1861-62 (2017) (E. Rodriguez point of order on CSSB 4) ("[T]he more pressure the drafters (and authors) face to protect the bill analyses from points of order, the less likely they are to draft bill analysis with the broader goal of educating the public"). While a more robust explanation of the bill's background might have helped interested readers better understand why the bill was created and what it is intended to do, the bill analysis was not required to explain that the bill responds to or overrules any court of appeals opinions. After carefully reviewing the bill, the entire analysis, and house precedents, the chair determines that the background and purpose section of the bill did not violate Rule 4, Section 32(c)(1), by omitting the information complained of by Representative Walle.

Bill Analysis—Background & Purpose
83 H.J. Reg. 4056 (M. González 5/21/13)

SB 11 - POINT OF ORDER

Representative M. González raised a point of order against further consideration of SB 11 under Rule 4, Section 32(c)(1) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative M. González raised a point of order against further consideration of SB 11 under Rule 4, Section 32(c)(1) of the House Rules, asserting that the bill analysis is incomplete because the background and purpose section of the analysis does not describe Section 31.0321(m) of the Family Code, which contains reporting requirements relating to failed drug tests. Representative M. González asserts that the key elements of the bill must be described both in the background and purpose as well as in the body of the analysis, and that the omission of a section from the background and purpose is particularly egregious

where the background and purpose does mention the part of the bill that requires drug testing as a prerequisite for receiving Temporary Assistance for Needy Families money. The point of order is respectfully overruled.

Having carefully reviewed the bill and the analysis, the chair determines that the background and purpose provides sufficient "background information on the proposal and information on what the bill . . . proposes to do" to satisfy Rule 4, Section 32(c)(1) of the House Rules.

[Note: This point was probably intended to refer to Section 31.0321(m) of the Human Resources Code, but the point submitted cited the Family Code.]

Bill Analysis—Background & Purpose
83 H.J. Reg. 2441 (Canales 5/4/13)

CSHB 972 - POINT OF ORDER

Representative Canales raised a point of order against further consideration of CSHB 972 under Rule 4, Section 32(c)(1) of the House Rules on the grounds that the committee report is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Canales raised a point of order against further consideration of CSHB 972 under Rule 4, Section 32(c)(1) of the House Rules. That provision requires that each bill analysis must include "background information on the proposal and information on what the bill or resolution proposes to do." Specifically, Representative Canales argued that the statement in the background information in the bill analysis relating to a statement of current law regarding carrying concealed handguns on the premises of a school or institution of higher education is misleading.

The chair has reviewed the sections cited by Representative Canales and has reviewed the entire bill analysis, including the analysis, rulemaking, and comparison of the original to the substitute sections. The chair finds, taken together, the bill analysis accurately complies with the provisions of Rule 4, Section 32 of the House Rules. *See also* 81 H.J. Reg. 4138-39 (2009) (finding references may be clarified or expanded on in other sections of bill analysis).

Bill Analysis—Background & Purpose
81 H.J. Reg. 3406-07 (P. King 5/13/09)

HB 1657 - POINT OF ORDER

Representative P. King raised a point of order against further consideration of HB 1657 under Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incorrect.

. . .

The chair overruled the point of order, speaking as follows:

Representative P. King raises a point of order against further consideration of HB 1657 on the grounds that the bill analysis is materially and substantially misleading. Mr. King specifically bases his objection on the premise that the Background and Purpose section of the bill analysis incorrectly states that the Entergy opinion that was decided in 2007 "did not consider the legislative intent of the definition of 'general contractor'."

Although the chair declines to discuss the long procedural history of the case, it is clear that the case that is referenced in the background paragraph of the bill analysis is the one that was decided by the Texas Supreme Court in August 2007. In that case, the court discussed the term "general contractor" and based its ruling on the plain meaning of the words of the statute, rejecting a claim of legislative intent as a sufficient basis for its ruling. In a subsequent opinion, the court discussed legislative intent in greater depth.

While ambiguously stated, a review of the background against the opinion indicates that the bill analysis is not materially or substantially misleading and complies with the stated purpose of the rules.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Omits a Section of the Bill—Sustained
85 H.J. 1st C.S. 426-28 (Turner 8/12/17)

CSHB 208 - POINT OF ORDER

The sole question raised by this point of order is whether a bill analysis satisfies Rule 4, Section 32(c)'s requirement of a "detailed analysis" in summary or section-by-section form when the analysis omits any reference to an entire substantive section of the bill.

Representative Turner raised the point of order, observing that the analysis portion of the bill analysis completely omits any mention of the existence or contents of Section 4 of the bill. He further observed that Section 4 is reproduced in the side-by-side comparison, which shows that Section 4 was added to the bill by the committee substitute. Section 4 says:

> Chapter 316, Government Code, is amended by adding Subchapter I to read as follows:
>
> SUBCHAPTER I. APPROPRIATION OF CONSTITUTIONALLY DEDICATED REVENUE
>
> Sec. 316.151. LEGISLATIVE INTENT. It is the intent of the legislature that, to the extent practicable under Section 316.001 and other law, all revenue dedicated by the Texas Constitution for a particular purpose be appropriated in each state fiscal biennium for that purpose.

In responding to the point of order, no member was able to identify any portion of the analysis that pertained in any way to this legislative intent section

of the bill. Representative Parker and others presented three thoroughly prepared arguments in opposition to the point of order: (1) the analysis did not need to mention this language because language on legislative intent has no legal effect, (2) the side-by-side comparison sufficed to satisfy House Rule 4, Section 32, and (3) other bills containing the same flaw (a legislative intent section omitted from the analysis) have passed in this same 85th session.

In defending Section 4 as having no legal effect, one member explained that the provision was meant to ensure that money meant to go to the highway fund was actually appropriated for that purpose. The legislative intent section specifies the intent, contrary to previous practice, that "all revenue" dedicated for a particular purpose be appropriated each biennium for that purpose. In other words, the section was meant to encourage a change in current behavior and actually affect an existing situation. The chair is mindful that the courts "do not lightly presume that the Legislature may have done a useless act." *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.,* 966 S.W.2d 482, 485 (Tex. 1998) (opinion joined by Hecht, J. and Abbott, J.). The courts presume an *entire* enacted statute is effective because the legislature has expressly directed them to do so in Section 311.021(2) of the Government Code. The issue of legislative intent carries such weight within this body that even as recently as this week a motion to print remarks specifically for the purpose of reflecting legislative intent was denied by a record vote because members wanted to ensure that remarks made during debate by individual members, which might not be carefully vetted and reviewed to represent the intent of the entire body, were not recorded in the House Journal as "legislative intent." The chair cannot conclude that voting to include legislative intent as part of a statute for the purpose of impacting the way laws are construed will have "no legal effect."

The chair also cannot conclude that members of the public and this body are not entitled to rely on the analysis to contain a detailed summary of all substantive sections of a bill when our own rules require it. *See* 85 H.J. Reg. 1861-62 (2017) (E. Rodriguez point of order on CSSB 4; "The purpose of a bill analysis is to educate both members and the public on the contents of bills."). This remains true even where the omitted section is included in the side-by-side comparison. *Compare* 85 H.J. Reg. 4050-51 (2017) (Martinez point of order on CSSB 715; point of order overruled because bill analysis "discusses the relevant sections" and the side-by-side also showed the added language); 85 H.J. Reg. 3141-42 (2017) (Ortega point of order on CSHB 3859; same). Determining that language contained in the side-by-side comparison need not be discussed in any way in the analysis would render the analysis, meant to educate readers and save research time during session, a nullity.

In his final point in defense of the omission in the analysis, Representative Parker observes that the house has passed other bills containing the same flaw earlier in the session. He cites SB 11 from the regular session as one example. However, in reviewing the history of SB 11 and other bills for which the analysis omitted a reference to the legislative intent section, no ruling was made on this

particular point of order, nor is there any journal record of anyone raising this complaint. Furthermore, failing to raise a point of order on bills with a particular procedural feature does not necessarily indicate that those bills are not defective or that a point of order on the defect is waived. In this very session, points of order were raised and sustained on two bills creating a criminal offense where the captions read "creating an offense" rather than "creating a criminal offense," while none of the other 30 bills with this defect (including, for example, HB 1501, which was signed by the governor) were affected. *See* 85 H.J. Reg. 3096-98 (2017) (Rose point of order on HB 731); 85 H.J. Reg. 2132-33 (2017) (Tinderholt & Bell point of order on HB 1156). Representative Parker also noted that no points of order have been sustained under Rule 4, Section 32(c), for the entire 85th session. While that had been the case up until this point of order, the previous rulings were based on substantially different facts, such as where the bill analysis actually discussed the allegedly omitted section in addition to reproducing the bill language in the side-by-side. *E.g.*, 85 H.J. Reg. 4050-51 (2017) (Martinez point of order on CSSB 715); 85 H.J. Reg. 3141-42 (2017) (Ortega point of order on HB 3859). Moreover, omission of an entire section from the analysis is a point of order that has been sustained in the past, most recently in the 84th session. *See* 84 H.J. Reg. 2740-41 (2015) (Coleman point of order on CSHB 3097). The argument also fails to acknowledge that glaring defects, such as the omission of an entire section of a bill, are usually corrected by printing a corrected committee report, or, if the bill had been set on the calendar, by recommittal to committee to fix the error, as occurred at least 26 times this session. The fact that points of order under Rule 4, Section 32, are rarely sustained is a testament to the diligent efforts of the Texas Legislative Council in preparing drafts and analyses of thousands of bills each session. In this case, the drafters of the bill analysis made an open and obvious error. The error was of a type that precedent required sustaining. Neither the committee clerk nor the author's staff identified the error before the bill was set on the calendar. The author chose not to take corrective action prior to coming to the floor. The rarity of the error does not permit the chair to disregard this body's procedural rules any more than the popularity of a particular piece of legislation would. If this is to be a house governed by rules, the point of order must be well-taken and sustained.

Bill Analysis—Omits a Section of the Bill
85 H.J. Reg. 4050-51 (Martinez 5/21/17)

CSSB 715 - POINT OF ORDER

Representative Martinez raises a point of order against further consideration of CSSB 715 under House Rule 4, Section 32(c), asserting that the bill analysis omits a section of the bill. The point of order is respectfully overruled.

The bill analysis omits two provisions of the bill, according to Representative Martinez. First, Representative Martinez claims that the bill analysis omits Section 43.014, which limits a municipality's authority to annex to extraterritorial

jurisdiction. The bill analysis does not expressly discuss Section 43.014 because the only change to Section 43.014 was a nonsubstantive renumbering change. Therefore, the omission is not materially misleading.

Second, Representative Martinez argues that the bill analysis omits the notice provisions found in Section 43.0673 of the bill. The bill analysis discusses the relevant section. Page 3 of the bill analysis states that the "bill establishes procedures for such an annexation and provides for the adoption of a resolution by the municipality's governing body, notice of a proposed annexation, a public hearing, petition requirements and results, and voter approval by municipal residents on petition." Additionally, Section 43.0673 is covered in the side-by-side section. Between the bill analysis and the side-by-side, CSSB 715 complies with House Rule 4, Section 32(c). The point of order is respectfully overruled.

Bill Analysis—Omits a Section of the Bill
85 H.J. Reg. 2619-20 (Ortega 5/4/17)

CSHB 1774 - POINT OF ORDER

Representative Ortega raised a point of order against further consideration of CSHB 1774 pursuant to Rule 4, Section 32(c), on the grounds that the bill analysis omits the section of the bill that defines the applicability of Chapter 542A, which is added by the bill.

CSHB 1774 establishes requirements and procedures regarding the handling of legal actions for certain insurance claims, to include those arising from damage to or loss of property by way of hailstorms and other forces of nature. The section of the bill that Representative Ortega alleges is missing from the bill analysis reads:

> (a) Except as provided by Subsection (b), this chapter applies to an action on a claim against an insurer or agent, including:
>
> (1) an action alleging a breach of contract;
>
> (2) an action alleging negligence, misrepresentation, fraud, or breach of a common law duty; or
>
> (3) an action brought under:
>
> (A) Subchapter D, Chapter 541;
>
> (B) Subchapter B, Chapter 542; or
>
> (C) Subchapter E, Chapter 17, Business & Commerce Code.

Certainly, it would have been acceptable for the analysis to have explained the causes of action expressly included in the applicability section of the bill, but the list provided in that section of the bill is not exclusive; the bill appears to apply to any action on a claim against insurers or agents. To reflect the breadth of the bill's applicability, the first sentence of the analysis section of the bill analysis says, "C.S.H.B. 1774 amends the Insurance Code to establish requirements and procedures applicable to an action on a claim against any insurer . . . or agent . . . ." In addition, these provisions are reflected in the side-by-side comparison between

the original bill and the committee substitute. Having carefully reviewed the bill, the complete analysis, and house precedents, the chair finds that the bill analysis does not violate Rule 4, Section 32(c). Accordingly, the point of order is respectfully overruled.

Bill Analysis—Omits a Section—Sustained
84 H.J. Reg. 2740-41 (Coleman 5/7/15)

CSHB 3097 - POINT OF ORDER

Representative Coleman raised a point of order against further consideration of CSHB 3097 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

. . .

The chair sustained the point of order and submitted the following statement:

Representative Coleman raised a point of order against further consideration of CSHB 3097 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect. The point of order is sustained.

Rule 4, Section 32(c)(2) requires each committee report to include "an analysis of the content of the bill or resolution . . . ." Rule 4, Section 32(c)(2). Section 8 of CSHB 3097 amends Section 382.052(a) of the Local Government Code, which, as the section currently stands, requires that in a district with a population over 1,000, a person must reside in the relevant district to be qualified to serve as a director. While CSHB 3097's bill analysis provides that "the bill removes from the list of required qualifications for service as a director of a municipal management district residency in the district," it makes no reference to the additions or to the bill's contradictory provision in Section 8—that in order to qualify for service as a director in a district with a population over 1,000, a person must in fact reside in the relevant district. Representative Coleman asserts that omitting any reference to Section 8 and, in particular, the residency requirement, in CSHB 3097's bill analysis constitutes either an "affirmative misstatement of fact or a fatal omission, either of which means the analysis fails to substantially comply with . . . Rule [4, Section 32(c)(2)]." Further, Representative Coleman points out that the bill analysis's side-by-side comparison of the original bill and committee substitute "does not reprint in whole S[ection] 8" of the bill, such that the conflicting provision in the current statute and the additions made by Section 8 of the bill are absent from the analysis altogether. Therefore, he argues, "nothing else in the analysis cures the error in the summary analysis."

Having reviewed the bill and the entire bill analysis, the chair determines that the bill analysis does not comply with Rule 4, Section 32(c)(2) of the House Rules. The point of order is therefore sustained. *See* Rule 4, Section 32(c)(2); 83 H.J. Reg. 2323-2324 (2013) (Y. Davis point of order on CSHB 2748).

CSHB 3097 was returned to the Committee on Special Purpose Districts.

Bill Analysis—Omits a Section
83 H.J. 2nd C.S. 23 (Reynolds 7/9/13)

HB 2 - POINT OF ORDER

Representative Reynolds raised a point of order against further consideration of HB 2 under Rule 4, Section 32(c) of the House Rules.

The chair overruled the point of order and submitted the following statement:

Representative Reynolds raised a point of order against further consideration of HB 2 under Rule 4, Section 32(c) of the House Rules, asserting that the bill analysis omits Section 1 of the bill. The point of order is respectfully overruled.

Section 1(a) of the bill contains legislative findings related to unborn children and the state's interest in protecting them, and Section 1(b) contains a severability clause. The bill analysis states that the bill "provides for the construction, enforcement, and severability of its provisions." Having reviewed the bill analysis and the bill, the chair concludes that this statement summarizes the contents of Section 1 and complies with the requirements of Rule 4, Section 32(c) of the House Rules. *See* 83 H.J. 1st C.S. 1092 (2013).

Bill Analysis—Omits a Subchapter
83 H.J. 1st C.S. 1091 (Y. Davis 6/23/13)

CSSB 5 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSSB 5 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of CSSB 5 under Rule 4, Section 32 of the House Rules, asserting that the bill analysis omitted Subchapter D from its analysis. The chair has reviewed Subchapter D and the bill analysis and determines that page three of the bill analysis properly addresses Subchapter D under Rule 4, Section 32. Therefore, the point of order is respectfully overruled.

Bill Analysis—Omits a Section
83 H.J. Reg. 2322-23 (C. Turner 5/3/13)

CSHB 2748 - POINT OF ORDER

Representative C. Turner raised a point of order against further consideration of CSHB 2748 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative C. Turner raised a point of order against further consideration of CSHB 2748 under Rule 4, Section 32(c) of the House Rules, asserting that the bill analysis did not contain an adequate "summary or section-by-section" analysis. The point of order is overruled.

Representative C. Turner observes that the bill analysis does not explain Section 3 of the bill, which provides that the changes made by the bill "relating to a permit to operate a pipeline apply only to a permit the application for which is filed . . . on or after the effective date of this Act," but a "permit the application for which was filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose." Representative C. Turner's point of order contends that failing to discuss Section 3 created a misleading impression that the bill applies to all pending matters because there exists a legal presumption that the bill's provisions apply to pending matters, absent a savings clause such as Section 3. The point bases its contention on case law decided at least a decade prior to the enactment of Section 311.022 of the Government Code, which, surprisingly, was omitted from the point's analysis.

Contrary to the contention raised by the point of order, Section 311.022 of the Government Code states, "A statute is presumed to be prospective in its operation unless expressly made retrospective." Because Section 3 merely restates the legal presumption that the bill is prospective in nature, omitting a discussion of Section 3 in the bill analysis did not render the analysis misleading. *Compare* 82 H.J. Reg. 3710 (2011) (sustaining a point of order where the bill analysis omitted mention of the provision that the section added by the bill "applies according to its terms in relation to travel vouchers that have not been released before the effective date of this Act").

Bill Analysis—Omits a Subsection; Incorrect Definition; Omits Necessary Reference
83 H.J. 1st C.S. 1082-83 (C. Turner 6/23/13)

CSHB 16 - POINT OF ORDER

Representative C. Turner raised a point of order against further consideration of CSHB 16 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative C. Turner raised three points of order against further consideration of CSHB 16 under Rule 4, Section 32(c) of the House Rules. The points of order are respectfully overruled.

Representative C. Turner first asserts that the bill analysis omits Subsections (a) and (b) of Section 1 of the bill. Section 1(a) of the bill states that the bill may be cited as the Preborn Pain Act. Section 1(b) contains legislative findings related to unborn children and the state's interest in protecting them. The bill analysis states that the bill "provides for the construction, [and] enforcement . . . of its provisions." Having reviewed the bill analysis and the bill, the chair concludes that this statement summarizes the contents of Sections 1(a) and (b).

In his second point of order, Representative C. Turner asserts that the bill analysis's statement that "severe fetal abnormality" is "defined as a life-threatening physical condition that, in reasonable medical judgment, is incompatible with life outside the womb regardless of the provision of lifesaving medical treatment" is incomplete because it does not include a definition of "reasonable medical judgment." The bill adopts the definition of "severe fetal abnormality" from Section 285.202 of the Health and Safety Code, which provides a separate definition of "reasonable medical judgment." Having reviewed the bill, the chair concludes that the analysis complied with Rule 4, Section 32(c) and was not required to include the definition of the term "reasonable medical judgment."

In his third point of order, Representative C. Turner asserts that the bill analysis failed to mention in its second through seventh paragraphs that the bill amends the Health and Safety Code. Having reviewed the entire bill and bill analysis, the chair determines that the bill analysis complied with Rule 4, Section 32(c) and is not subject to a point of order for failing to expressly mention the Health and Safety Code in paragraphs two through seven.

Bill Analysis—Omits Explanation of Committee Amendments
74 H.J. Reg. 3292 (Greenberg 5/23/95)

SB 1697 - POINT OF ORDER

Representative Greenberg raised a point of order against further consideration of SB 1697 on the grounds that SB 1697 violates Rule 4, Section 32(c), of the House Rules.

The speaker overruled the point of order, speaking as follows:

Representative Greenberg raised a point of order against further consideration of SB 1697 under Rule 4, Section 32(c), in that the committee report does not contain an explanation of the committee amendments.

The chair has reviewed the committee report and notes that 2/3 of page 2 of the bill analysis explains the amendments.

Accordingly, the point of order is without merit and overruled.

Bill Analysis—Inadequate Explanation
85 H.J. Reg. 3293-94 (Canales 5/11/17)

CSHB 2962 - POINT OF ORDER

Representative Canales raised a point of order against further consideration of CSHB 2962 pursuant to House Rule 4, Section 32(c), on the grounds that the bill analysis is inaccurate.

CSHB 2962 amends a provision of the Health and Safety Code to require the reporting of certain complications that result from abortion complications. Representative Canales asserts that the provisions of Section 171.006(g), which keeps that information confidential, are not adequately summarized in the bill analysis (paragraph 5 of the bill analysis). The chair has examined those two provisions and the entire bill analysis and finds that the bill analysis complies with the requirements of Rule 4, Section 32.

Therefore, this point of order is respectfully overruled.

Bill Analysis—Inadequate Explanation
84 H.J. Reg. 2331 (Rinaldi 5/1/15)

CSHB 2267 - POINT OF ORDER

Representative Rinaldi raised a point of order against further consideration of CSHB 2267 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Rinaldi raised a point of order against further consideration of CSHB 2267 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis does not accurately reflect the effective date of the bill's provisions. The point of order is respectfully overruled.

Rule 4, Section 32(c)(2) requires a committee report to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill or resolution, specifically including . . . an analysis of the content of the bill or resolution . . . ." CSHB 2267 would add a chapter consisting of 10 sections to the Occupations Code. The bill also provides that, "[e]xcept as provided by Subsection (b) . . . this Act takes effect September 1, 2015." Subsection (b) of the effective-date provision identifies three sections of the bill that take effect September 1, 2016. Representative Rinaldi asserts that the bill analysis is misleading because it fails to disclose that the subsection of Section 207.152 of the bill that discusses how a student in an anesthesiologist assistant training program must be identified does not take effect until September 1, 2016. He bases this contention on the facts that (1) this subsection is summarized in part of the only paragraph of the "Analysis" section of the bill analysis that does not mention the 2016 effective

date and (2) the "Effective Date" section of the bill analysis does not clarify which specific sections are subject to the 2016 effective date, stating instead: "Except as otherwise provided, September 1, 2015." Determining whether a bill analysis complies with Rule 4, Section 32 of the House Rules requires examining the particular bill and analysis in question and comparing them to the mandates of the rule. *See* 83 H.J. Reg. 3450-51 (2013). Having carefully reviewed the bill and the complete analysis, including the side-by-side comparison that highlights Section 207.152's effective date of September 1, 2016, the chair determines that the bill analysis's treatment of the bill's effective dates complies with Rule 4, Section 32(c)(2).

Bill Analysis—Inadequate Explanation
83 H.J. 1st C.S. 1092 (Y. Davis 6/23/13)

CSSB 5 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSSB 5 under Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of CSSB 5 under Rule 4, Section 32 of the House Rules, asserting that the bill analysis does not adequately detail Section 2 of the bill. The point of order is respectfully overruled.

Section 2 of the bill provides that a physician who performs an abortion must provide the patient with a telephone number where she "may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance of the abortion or ask health-related questions regarding the abortion." The bill analysis states that the physician must provide the patient with "certain contact information for potential medical assistance needed after the abortion." Having reviewed the bill analysis and the bill, the chair determines that the bill analysis for Section 2 complies with the requirements of Rule 4, Section 32. *See* 83 H.J. Reg. 3450-51 (2013).

Bill Analysis—Inadequate Explanation
83 H.J. Reg. 2983 (Dutton 5/9/13)

CSHB 34 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of CSHB 34 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Dutton raised a point of order against further consideration of CSHB 34 under Rule 4, Section 32(c) of the House Rules arguing that Chapter 81 of the Alcoholic Beverage Code is not adequately described in the bill analysis. The point of order is respectfully overruled.

Chapter 81 of the Alcoholic Beverage Code addresses use of permitted premises in a manner constituting a common nuisance. The bill analysis states that the bill "specifies that statutory provisions relating to a common nuisance apply to a permit issued under these provisions." Having examined the complete bill analysis and the bill, the chair finds that the bill analysis complies with Rule 4, Section 32(c) of the House Rules.

Bill Analysis—Inadequate Explanation (Rule 4, Section 32(c))
82 H.J. Reg. 3351 (Gallego 5/10/11)

CSHB 272 - POINT OF ORDER

Representative Gallego raised a point of order against further consideration of CSHB 272 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and had read the following statement:

Representative Gallego raised a point of order against further consideration of CSHB 272 under Rule 4, Section 32(c) because the bill analysis is substantially and materially misleading. The chair has reviewed the bill and bill analysis, as well as the argument presented by both Representative Gallego and Representative Smithee. The chair finds that the bill analysis of CSHB 272 is not substantially or materially misleading. Accordingly, the point of order is respectfully overruled.

Bill Analysis—Inadequate Explanation (Rule 4, Section 32(c)(4))
82 H.J. Reg. 1024 (Castro 3/23/11)

CSSB 14 - POINT OF ORDER

Representative Castro raised a point of order against further consideration of CSSB 14 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, speaking as follows:

Representative Castro raises a point of order against further consideration of SB 14. Specifically, he alleges the bill analysis violates Rule 4, Section 32 in that it fails to identify the effective dates of the bill, including a website providing notice of identification requirements. The chair has reviewed the bill and the bill analysis. The chair finds the bill analysis was not substantially or materially

misleading as it relates to the effective date of the bill. The point of order is respectfully overruled.

[Note: The language of the 82nd Session's House Rule 4, Section 32(c)(4) ("a statement of the substantial differences between a complete committee substitute and the original bill") is currently found in Rule 4, Section 32(c)(5).]

Bill Analysis—Inadequate Explanation (Rule 4, Sections 32(c), (f))
82 H.J. Reg. 953 (Martinez Fischer 3/23/11)

CSSB 14 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSSB 14 under Rule 4, Section 32(c) and Rule 4, Section 32(f) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, speaking as follows:

Representative Martinez Fischer raises a point of order under Rule 4, Section 32 in that the bill analysis fails to discuss changes on page 11, line 7 and page 11, line 27 of the bill. Specifically, Representative Martinez Fischer argues that the bill analysis fails to compare the bill to existing law and fails to list revision on page 11, line 27 as an express repeal. The chair has reviewed the bill and the bill analysis. The chair finds that the language of the bill analysis is not materially or substantially misleading and that the bill analysis, which is a summary, accurately reflects the substance of the bill. The point of order is respectfully overruled.

Bill Analysis—Inadequate Explanation
81 H.J. Reg. 4280 (Martinez 5/21/09)

CSSB 175 - POINT OF ORDER

Representative Martinez raised a point of order against further consideration of CSSB 175 under Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incomplete.

The speaker overruled the point of order and had read the following statement:

Mr. Martinez raises a point of order against further consideration of CSSB 175 in that the bill analysis violates Rule 4, Section 32(c)(2) and (4) of the House Rules. Specifically, it is argued that the comparison of the original and substitute is inadequate in that it fails to mention in the analysis the omission of language that provides for the adoption of forms under Section 28.026(b), Education Code, to implement the notice required under Section 28.026(a) of that code. Both of these provisions were contained in the senate version but omitted in the house version.

The bill analysis is a summary analysis which is permitted under the rules. House precedent is clear that a summary analysis is not required to reference each element of the bill and may omit sections or articles and still comply with the rules. The provision at issue was not specifically stated in the bill analysis but is fairly covered by the statements that were made in the analysis. As such, the chair finds that the language at issue in this instance is not materially or substantially misleading and in compliance with the House Rules.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Inadequate Explanation; One-Subject Rule; Rulemaking 81 H.J. Reg. 4138-39 (Dutton 5/20/09)

SB 865 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of SB 865 under Rule 8, Section 3; Rule 4, Section 32(c)(1); and Rule 4, Section 32(c)(3) of the House Rules and under Article III, Section 30 of the Texas Constitution on the grounds that the bill violates the one subject rule and the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Dutton raises a point of order against further consideration of SB 865 under Rule 8, Section 3; Rule 4, Section 32(c)(1); and Rule 4, Section 32(c)(3) of the House Rules, and Article III, Section 30 of the Texas Constitution.

Rule 8, Section 3 and Article III, Section 30: Mr. Dutton raises a point of order and argues that the bill is not limited to a single subject. This bill is an omnibus bill regarding child support which amends various provisions of current law relating to child support enforcement. The chair finds that the contents of the bill relate to this subject and, therefore, is not in violation of Rule 8, Section 3 or Article III, Section 30.

Rule 4, Section 32(c)(1): Mr. Dutton raises a point of order under this rule and argues that the bill analysis is materially and substantially misleading because it states that the bill only amends the family code and does not mention the other provisions of code modified in the bill. While the background and purpose section states that the bill "amends multiple sections of the Family Code," the analysis section provides a detailed discussion of each section of the bill and outlines the various code sections being modified. The chair finds that the bill analysis, which is a summary analysis, accurately reflects the substance of the bill in compliance with the House Rules and, therefore, is not materially or substantially misleading.

Rule 4, Section 32(c)(3): This rule provides that the bill analysis must contain a statement indicating whether or not any rulemaking authority is expressly delegated and to identify the section in which that rulemaking authority is delegated. In this instance, the bill analysis does reflect that rulemaking authority

previously granted to the Office of the Attorney General is modified in Section 22 of the bill and, therefore, is in compliance with the rules.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Statement of Repeal; Omits Analysis of Changed Wording
84 H.J. Reg. 3368 (González 5/13/15)

CSHB 1798 - POINT OF ORDER

Representative González raised a point of order against further consideration of CSHB 1798 under Rule 4, Section 32(c); Rule 4, Section 32(c)(2); and Rule 4, Section 32(c)(5) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative González raised three points of order against further consideration of CSHB 1798 on the grounds that the analysis inaccurately represents a statute being repealed by the bill, Rule 4, Section 32(c)(2), the side-by-side comparison is inaccurate, Rule 4, Section 32(c)(5), and that the bill analysis omits two provisions of the bill, Rule 4, Section 32(c). The points of order are respectfully overruled.

Each bill analysis must contain a "separate statement that lists each statute or constitutional provision that is expressly repealed by the bill or resolution." Representative González argues that CSHB 1798 expressly repeals Section 12.017 of the Education Code. The chair has reviewed the bill and determined that any repeal of Section 12.017 is not express; the bill analysis, therefore, does not violate Rule 4, Section 32(c)(2) of the House Rules. *See* 83 H.J. Reg. 4026 (2013).

Rule 4, Section 32(c)(5) requires a bill analysis to include a statement of substantial differences between a complete committee substitute and the original bill. Representative González argues that the bill analysis fails to contain an accurate side-by-side comparison of the substitute to the original because the comparison highlights changes made in the committee substitute that are not substantially different from the original. The chair has reviewed the bill, the complete bill analysis, and Rule 4, Section 32(c)(5) and finds that the bill analysis is in compliance.

Representative González raised a point of order pursuant to Rule 4, Section 32(c) that there are two significant provisions of the bill that are not included in the bill analysis: "4 year old out before amendments may be made to the local control plan" and "[d]uties of lead petitioner, including their ability to appoint 8 members of the local control commission." The chair has reviewed the bill analysis and the bill and finds it in compliance with Rule 4, Section 32(c).

Bill Analysis—Statement of Repeal; Misleading/Inadequate Explanation of a Definition
83 H.J. Reg. 4027-28 (Canales 5/21/13)

SB 549 - POINT OF ORDER

Representative Canales raised a point of order against further consideration of SB 549 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Canales raised a point of order against further consideration of SB 549 under Rule 4, Section 32(c) of the House Rules. The point of order is overruled.

Representative Canales asserts that the bill analysis violates Rule 4, Section 32(c) of the House Rules in two ways. First, he asserts that the bill analysis's description that "the bill broadens the definition of 'criminal street gang' for purposes of statutory provisions regarding the offense of directing activities of criminal street gangs" is deceptive and misleading. The bill relates to criminal street gangs, which are defined in Section 71.01 of the Penal Code. Section 71.01 is not amended by the bill. However, Section 71.023(c) of the statute added further requirements for a criminal street gang to be considered a criminal street gang for the purposes of Section 71.023. SB 549 deleted this different definition by striking Subsection (c) of Section 71.023. As such, the definition of criminal street gang reverted to the broader definition contained in Section 71.01. Having carefully reviewed the bill and the analysis, the chair determines that this portion of the bill analysis complied with Rule 4, Section 32(c) of the House Rules.

Second, Representative Canales asserts that the bill analysis failed to describe in a separate statement the deletion of the definition of criminal street gang as the repeal of a statute. The chair concludes that Rule 4, Section 32(c)(2) of the House Rules did not require separately listing the deletion of this definition as the repeal of a statute.

Bill Analysis—Statement of Repeal; Omits Analysis of Changed Wording
83 H.J. Reg. 4026 (Burnam 5/21/13)

SB 347 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of SB 347 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Burnam raised a point of order against further consideration of SB 347 under Rule 4, Section 32(c) of the House Rules. The point of order is respectfully overruled.

Representative Burnam alleges two deficiencies in the bill analysis. First, he asserts the bill analysis fails to include a separate statement listing Subsection (b) of Section 401.251 of the Health and Safety Code (which is deleted by the bill) as a repealed statute. The bill strikes the language of Subsection (b) and adds new language in its place. Because the bill struck and substituted new language into the subsection, rather than expressly repealing a statute, Rule 4, Section 32(c)(2) did not require the bill analysis to include a statement listing this subsection as a repealed statute.

Second, Representative Burnam asserts that the bill analysis omits a reference to changes made to Subsection (c) of Section 401.251 of the Health and Safety Code. Subsection (c) states:

> (c) Money in the low-level radioactive waste disposal compact commission account may be used [~~appropriated~~] only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

The changes made to Subsection (c) do not change the substance of the law. The "account" referenced in Subsection (c) of the existing statute was the low-level radioactive waste disposal compact commission account, so the addition of this modifying language adds nothing. The shift in language from "appropriated" to "used" was intended to clarify that the money from the account was to be used to support the operations of the commission but was not money "appropriated" by the legislature. Considering the bill and the entire bill analysis, the chair determines that the analysis complied with Rule 4, Section 32(c) of the House Rules.

Bill Analysis—Typographical Error in Statement of Repeal
78 H.J. Reg. 2717 (Canales 5/8/03)

HB 3185 - POINT OF ORDER

Representative Canales raised a point of order against further consideration of HB 3185 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis identifies a statute different from that listed in the bill.

. . .

The speaker overruled the point of order, speaking as follows:

Ms. Canales raises a point of order against further consideration of HB 3185 under House Rule 4, Section 32(c)(2) in that the bill analysis identifies as repealed a different statute from that listed in the bill.

In context, it is clear that the difference is a minor typographical error.

Accordingly, the point of order is respectfully overruled.

[Note: In 78R, Rule 4, Section 32(c)(2), did not expressly require a separate statement of repeal.]

Bill Analysis—Side-by-Side Comparison
85 H.J. Reg. 1861-62 (E. Rodriguez 4/26/17)

CSSB 4 - POINT OF ORDER

Representative Rodriguez raised a point of order against further consideration of CSSB 4 pursuant to Rule 4, Section 32(c)(5), of the House Rules on the grounds that there are substantial differences between the committee substitute and the original bill.

The purpose of a bill analysis is to educate both members and the public on the contents of bills. Further, bill analyses should save research time during the legislative session when there are thousands of bills and limited time. With this purpose in mind, the drafters of the bill analyses often seek to include as much helpful information as possible. However, the more helpful information that a drafter includes, some believe that there is a higher likelihood that the drafter will make an error. Some errors are major and risk misleading the public, and other errors are minor. Of course, there is always a potential point of order on both the major and minor errors. If it is perceived, even incorrectly, that members raise points of order, for any reason, as a result of the possibility of errors injected by providing additional information, a race to the bottom occurs. That is, the more pressure the drafters (and authors) face to protect the bill analyses from points of order, the less likely they are to draft bill analysis with the broader goal of educating the public. For example, compare information provided on bills in a bill analysis and in an HRO Daily Floor Report. It can be argued that the bill analysis drafters are incentivized to do the bare minimum to shield the bill from points of order. This is not the first time the chair has raised this issue. 84 H.J. Reg. 4442-43 (2015) (Rinaldi point of order on CSSB 900).

Representative Rodriguez argues that the bill analysis for CSSB 4 does not describe the differences between the committee substitute and the original bill in three ways.

First, he argues that in the side-by-side comparison of the committee substitute and the original bill there is no indication that the "lawful detention" provision found in Section 752.053 of SB 4 was removed in the committee substitute. The highlighted portions of the side-by-side indicate changes made by the committee substitute. Here, the portion of SB 4 that dealt with "lawful detention" was highlighted in the side-by-side comparison. While the side-by-side comparison did not explicitly say that the "lawful detention" provision had been removed, it was apparent from the highlighting on the original language regarding the "lawful detention" provision and then the absence of that language on the committee substitute, that the provision had been removed.

Second, Representative Rodriguez argues that the committee substitute added a mens rea requirement not found in the original bill. The senate version did not have a mens rea requirement for the violation of Section 752.053 of the bill. The committee substitute states under Section 752.056 that a local entity that "intentionally violates" the provision is subject to civil liability. While the side-by-side comparison in the bill analysis does not explicitly point out this change through use of highlighting, page 2 of the bill analysis does note the change.

Third, Representative Rodriguez argues that the side-by-side comparison should not have compared the definitions of "immigration detainer request" found in Section 772.0073 with that of Section 752.051(2). Representative Rodriguez argues that the bill analysis should state that there were no equivalent sections in the original bill because the two definitions were from different chapters and provisions of the bill. The comparison of the two definitions was not substantially misleading.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Side-by-Side Comparison
84 H.J. Reg. 3250-51 (E. Rodriguez 5/12/15)

CSHB 1091 - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of CSHB 1091 under Rule 4, Section 32(c)(5) of the House Rules on the grounds that the committee report is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative E. Rodriguez raised a point of order pursuant to Rule 4, Section 32(c)(5) of the House Rules, arguing that the committee report must contain a statement of substantial differences between the complete substitute and the original bill. Representative E. Rodriguez states that the comparison of the original to the substitute in the report as it relates to Section 1 of the bill, specifically Section 22A.001 of the Government Code, is insufficient because there is a substantial difference that is not highlighted or annotated, thus rendering the document substantially or materially misleading. The point of order is respectfully overruled.

Pursuant to Rule 4, Section 32(c)(5), the bill analysis must contain only a statement of substantial differences between a complete committee substitute and the original bill. This is accomplished since the 83rd Legislative Session by side-by-side comparison of the original bill and the committee substitute. Representative E. Rodriguez asserts that Section 22A.001 was substantially different because the "original allows the State of Texas to originate the claim that leads to the three-judge panel," while the "Substitute [sic] says that the State of Texas must be the defendant in the claim." In reviewing the original bill and

the committee substitute, the chair notes that Representative E. Rodriguez's statements are true—but both of his statements are true of both versions of the bill and do not constitute a difference between the original and the substitute. Both the original and the substitute allow for the attorney general to petition for a three-judge panel only when a state, a state officer, or state agency is a defendant. And both also allow for this to happen in a suit filed by any party: the original does so by using the phrase "a claim . . . filed by any party," while the substitute uses the language "any suit filed," without any limitation regarding who files the suit. The substance of these provisions is the same in both versions. Having reviewed the bill and the comparison carefully, the chair determines that Representative E. Rodriguez has not identified a violation of Rule 4, Section 32(c)(5).

Bill Analysis—Side-by-Side Comparison Is Inaccurate—Sustained
83 H.J. Reg. 4044 (Walle 5/21/13)

CSSB 1718 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSSB 1718 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSSB 1718 under Rule 4, Section 32(c) of the House Rules asserting that the side-by-side comparison in the bill analysis is inaccurate and misleading. The point of order is sustained.

The side-by-side comparison accurately shows that Section 11.408 of the engrossed bill pertained to expenditures for support of students enrolled in an achievement school district. It then states that Section 11.408 of the house committee substitute is "substantially the same as engrossed version." However, Section 11.408 of the substitute is not substantially the same as Section 11.408 of the engrossment. As a result, the side-by-side does not accurately compare the engrossed bill to the committee substitute.

CSSB 1718 was returned to the Committee on Public Education.

Bill Analysis—Caption Change
84 H.J. Reg. 4246 (S. King 5/23/15)

CSSB 204 - POINT OF ORDER

Representative S. King raised a point of order against further consideration of CSSB 204 under Rule 4, Section 32(c)(5) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative S. King raised a point of order against further consideration of CSSB 204 under Rule 4, Section 32(c)(5) on the grounds that the bill analysis fails to accurately state the substantial differences between the committee substitute and the original bill. The point of order is respectfully overruled.

Representative S. King objects to consideration of the bill because, when the bill was received from the senate, the caption read, "relating to the functions and operations of the Department of Aging and Disability Services; increasing penalties," but the caption was amended in a house committee, by way of a committee substitute to the bill, to read, "relating to the continuation of the functions of the Department of Aging and Disability Services; increasing penalties." The chair determines that this change was not a substantive change that required separate analysis.

Bill Analysis—Caption Change
83 H.J. Reg. 2323 (Y. Davis 5/3/13)

CSHB 2748 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 2748 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the committee report is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of CSHB 2748 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the bill analysis did not mention the change to the bill's caption in the committee substitute. The point of order is respectfully overruled.

The committee substitute authorized a fee that was not mentioned in the introduced version of the bill. Accordingly, to comply with Rule 8, Section 1(b) of the House Rules the caption of CSHB 2748 was amended to reflect that the substituted bill authorized a fee. Although the bill analysis does not specify that a change was made to the caption, it does reflect that the committee substitute authorizes a fee and the side-by-side analysis shows that this provision did not exist in the original bill. Accordingly, the requirements of Rule 4, Section 32(c)(4) were satisfied.

Bill Analysis—Insufficient Detail
84 H.J. Reg. 3369 (Walle 5/13/15)

CSHB 1798 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 1798 under Rule 4, Section 32(c) of the House Rules on the grounds that the committee report is incorrect.

. . .

The chair overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSHB 1798 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis fails to satisfy the detailed-analysis requirement. The point of order is respectfully overruled.

Rule 4, Section 32(c) requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill." Rule 4, Section 32(c). Representative Walle argues the bill analysis fails to satisfy the rule because the analysis states that the bill "sets out provisions relating to the requirements for such petition and the composition and duties of a local control commission" without listing the six requirements for the composition of the local control commission. After thorough consideration of the bill analysis, the bill, and the rule, the chair finds the bill analysis complies with the rule. *See* 83 H.J. Reg. 4045 (2013) (Martinez Fischer point of order on CSSB 21).

Bill Analysis—Insufficient Detail
84 H.J. Reg. 2613-14 (Martinez 5/6/15)

HB 996 - POINT OF ORDER

Representative Martinez raised a point of order against further consideration of HB 996 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Martinez raised a point of order against further consideration of HB 996 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that "the bill analysis is incorrect, provides insufficient detail, and is materially and substantially misleading." The point of order is respectfully overruled.

Rule 4, Section 32(c)(2) of the House Rules requires each committee report to include "an analysis of the content of the bill or resolution . . . ." Rule 4, Section 32(c)(2). HB 996, in part, disallows both an institution of higher education and a governmental entity "awarding a public work contract funded with state money" from "prohibit[ing], requir[ing], discourag[ing], or encourag[ing] a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to" certain agreements. HB 996 also disallows these entities from discriminating against such a person "based on the person's involvement in the agreement, including the person's: (A) status or lack of status as a party to the agreement; or (B) willingness or refusal to enter into the agreement."

The bill analysis does not specifically address either the bill's description of "a person" as "including a contractor or subcontractor," nor does it address

the bill's description of relevant bases of discrimination as including "status as a party to the agreement" or "willingness or refusal to enter into the agreement." Representative Martinez asserts that the failure of the bill analysis to specifically reference these provisions renders the analysis incorrect, insufficient, and misleading in violation of Rule 4, Section 32(c)(2). HB 996 does not limit a person bidding on a public work contract to contractors or subcontractors; rather, subcontractors and contractors are referenced as non-exclusive examples of the types of people included in this category. Similarly, the prohibited bases of discrimination mentioned in the bill—status as a party to the agreement and willingness or refusal to enter into the agreement—also constitute non-exclusive examples of prohibited discriminatory bases. Because the language of HB 996 is broad enough to reasonably include more than the above-referenced examples, the bill analysis's reference to the broader category in which the examples were included sufficed to satisfy Rule 4, Section 32(c)(2). For these reasons, the chair determines that the bill analysis is neither incorrect, insufficient, nor misleading. *See* Rule 4, Section 32(c)(2).

Bill Analysis—Insufficient Detail; Caption for Bill Creating Criminal Offense; Captions—Criminal Offense, Punishment, or Eligibility for Supervision
84 H.J. Reg. 1999-2000 (Stickland 4/27/15)

CSHB 409 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 409 under Rule 4, Section 32(c)(4) and Rule 8, Section 1(c) of the House Rules on the grounds that the committee report is incorrect and the bill caption is inaccurate.

The speaker overruled the point of order and submitted the following statement:

Representative Stickland raised two points of order against further consideration of CSHB 409. He first asserts that the bill is out of order because the bill analysis contains an inconsistency with the bill's caption, such that either Rule 8, Section 1(c) or Rule 4, Section 32(c)(4) is violated. He then asserts that the committee report violates Rule 4, Section 32(c) of the House Rules. The points of order are respectfully overruled.

In his first point, Representative Stickland observes that CSHB 409's caption reads, in part, "adding a provision that is subject to a criminal penalty," and the bill analysis states that "[i]t is the committee's opinion that the bill does not expressly create a criminal offense, [or] increase the punishment for an existing criminal offense or category of offenses . . . ." He asserts that these statements are inconsistent such that one of them is necessarily inaccurate, resulting in a violation of either Rule 8, Section 1(c), which requires bills "that would create a

criminal offense, increase the punishment for an existing offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision" to "include a short statement at the end of its title or caption indicating the general effect of the bill on the offense, punishment, or eligibility," or a violation of Rule 4, Section 32(c)(4), which requires the bill analysis to state "whether or not the bill . . . expressly creates a criminal offense, [or] expressly increases the punishment for an existing criminal offense or category of offenses . . . ."

CSHB 409 requires certain permit holders to have either liability insurance or proof of financial responsibility. It does not create a criminal offense, increase a punishment for an existing offense or category of offenses, or affect eligibility for community supervision, parole, or mandatory supervision. Consequently, it is not subject to the requirements of Rule 8, Section 1(c) of the House Rules, nor is it subject to the requirements of Rule 4, Section 32(c)(4) of the House Rules. The "criminal penalty" language in the caption was added by the Texas Legislative Council, whose attorneys, fearing a point of order under this new section of the rule, determined that placing this extra language in the caption would inoculate the bill against a possible point of order under Rule 8, Section 1(c). Although the addition of extraneous language in bill captions has the potential to jeopardize a bill when that language is unnecessary and in any way inaccurate or misleading, the caption language in this instance was technically accurate. A permit holder that fails to comply with the requirements of CSHB 409 would be subject to the general criminal penalty under Section 1.05 of the Alcoholic Beverage Code. Thus, the bill "add[s] a provision that is subject to a criminal penalty," though this description in the caption is unnecessary, because knowledge of the existing criminal penalty would require reference to and knowledge of a portion of the statute that is not mentioned within the four corners of the bill. Because the extraneous language in the caption is technically correct, the point of order is respectfully overruled.

In his second point of order, Representative Stickland contends that the bill analysis is primarily a section-by-section analysis that fails to mention Section 11.14(d) in violation of Rule 4, Section 32(c). Rule 4, Section 32(c) requires that each committee report on a bill "include in summary or section-by-section form a detailed analysis of the subject matter of the bill . . . ." Rule 4, Section 32(c). Section 11.14(d) of CSHB 409 sets out minimum insurance coverage requirements for certain governmental units and provides options for satisfying those requirements. The bill analysis describes this provision by stating that "[t]he bill sets out provisions relating to the minimum insurance coverage required for a permit holder that is a specified governmental unit." Having reviewed the bill and the analysis, the chair determines that this description of Section 11.14(d) complies with Rule 4, Section 32(c).

Bill Analysis—Insufficient Detail; Misleading Explanation of a Provision
84 H.J. Reg. 1993-94 (Coleman 4/27/15)

CSHB 1794 - POINT OF ORDER

Representative Coleman raised a point of order against further consideration of CSHB 1794 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Coleman raised two points of order against further consideration of CSHB 1794 under Rule 4, Section 32(c)(2) of the House Rules. These points of order are respectfully overruled.

Rule 4, Section 32(c)(2) requires each committee report to include "an analysis of the content of the bill or resolution . . . ." Rule 4, Section 32(c)(2). In his first point of order, Representative Coleman asserts that "the bill analysis contains a substantially and materially misleading incorrect statement of fact" because it "incorrectly states that a trier of fact, in determining the amount of the civil penalty in a civil suit brought by a local government, must 'consider the factors the Texas Commission on Environmental Quality (TCEQ) is required to consider when determining the amount of an administrative penalty.'" He urges that this portion of the bill analysis was not sufficiently specific, because although it refers to "the factors the Texas Commission on Environmental Quality (TCEQ) is required to consider when determining the amount of an administrative penalty," the bill itself requires a trier of fact to consider "the factors described by Section 7.053 [of the Water Code]." Thus, Representative Coleman argues that the bill analysis incorrectly suggests that the trier of fact must consider more factors than those listed in Section 7.053 of the Water Code. *See* Tex. Water Code Ann. § 7.053 (West 1997). To support his assertion, Representative Coleman points to the TCEQ's authority to assess administrative penalties under both the Texas Health and Safety Code and the Texas Transportation Code, in addition to under the Water Code. The provisions he cites, however, do not contain factors to consider in addition to those enumerated in Section 7.053 of the Water Code; they merely grant authority to assess penalties. Having reviewed the bill, the analysis, and the provisions cited by Representative Coleman, the chair determines that this portion of the bill analysis is not misleading.

In his second point of order, Representative Coleman asserts that the bill analysis failed to specify that the TCEQ "is the successor agency to the Texas Natural Resource Conservation Commission (TNRCC) and that references to 'commission' in the bill and statute refer to the TNRCC. By failing to explain the reference, the bill analysis contains an incorrect statement of fact." The legislature decided to change the name of the agency from the Texas Natural

Resource Conservation Commission to the Texas Commission on Environmental Quality in 2001 in HB 2912. That bill specified that "the name of the [TNRCC] is changed to the [TCEQ], and all powers, duties, rights, and obligations of the [TNRCC] are the powers, duties, rights and obligations of the [TCEQ]." It further provided, "effective January 1, 2004, a reference in law to the [TNRCC] is a reference to the [TCEQ]." Because the legislature previously contemplated and provided that references to the TNRCC apply to the TCEQ, it was not necessary for this transition to be explained in the bill analysis.

Bill Analysis—Insufficient Detail
83 H.J. Reg. 4045-46 (Miles, M. González 5/21/13)

CSSB 21 - POINT OF ORDER

Representatives Miles and M. González raised a point of order against further consideration of CSSB 21 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Miles and Representative M. González raised a point of order against further consideration of CSSB 21 under Rule 4, Section 32(c) of the House Rules. The point of order is respectfully overruled.

Representatives Miles and M. González contend the bill analysis failed to contain a sufficiently detailed analysis because it did not acknowledge that the language "subject to Section 207.021(a)(4)" was added to the bill in committee. In the absence of this added language, the bill would appear to have created an exception to eligibility requirements such that a person not available for work, but who was participating in a drug abuse treatment program, could receive unemployment compensation benefits. Determining whether a bill analysis complies with Rule 4, Section 32 of the House Rules requires examining the particular bill and analysis in question and comparing them to the mandates of the rule. *See* 83 H.J. Reg. 3450-51 (2013). Having carefully reviewed the bill, the analysis, and Section 207.021(a)(4) of the Labor Code, the chair determines that the bill analysis accurately describes the bill's provisions, in compliance with Rule 4, Section 32(c) of the House Rules.

Bill Analysis—Insufficient Detail
83 H.J. Reg. 4045 (Martinez Fischer 5/21/13)

CSSB 21 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSSB 21 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of CSSB 21 under Rule 4, Section 32(c) of the House Rules asserting the bill analysis failed to provide a sufficiently detailed analysis of the bill's provision regarding notice to an individual who fails a drug test. The point of order is respectfully overruled.

The bill analysis explains, among other things, that the Texas Workforce Commission is required to provide "initial notice to an individual who fails a required drug test for an appeal under statutory provisions relating to disputing a resolution and for the retaking of a drug test failed by an individual under the bill's provisions. The bill sets out the items those procedures are required to provide." Determining whether a bill analysis complies with Rule 4, Section 32 of the House Rules requires examining the particular bill and analysis in question and comparing them to the mandates of the rule. *See* 83 H.J. Reg. 3450-51 (2013). Having carefully reviewed the bill and the analysis, the chair determines that the bill analysis complies with Rule 4, Section 32(c) of the House Rules.

Bill Analysis—Insufficient Detail; Misleading Explanation of a Provision; Germaneness of Committee Substitute
83 H.J. Reg. 3450-51 (Y. Davis 5/16/13)

CSSB 2 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSSB 2 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

Representative Y. Davis raised a point of order against further consideration of CSSB 2 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

Representative Y. Davis raised a point of order against further consideration of CSSB 2 under Rule 11, Section 2 and Rule 4, Section 41 of the House Rules on the grounds that the committee substitute is not germane to the bill.

The chair overruled the three points of order and submitted the following statement:

Representative Y. Davis raised three points of order against further consideration of CSSB 2. Her first two points assert that the bill analysis fails to satisfy Rule 4, Section 32(c) of the House Rules. Her third point asserts that the committee substitute to CSSB 2 is not germane to the original bill, thereby violating Rule 11, Section 2 of the House Rules, and invoking Rule 4, Section 41 of the House Rules. These points of order are respectfully overruled.

In her first point of order, Representative Y. Davis alleges the bill analysis inadequately addresses three conditions that must be satisfied before a charter

holder may establish a new open-enrollment charter school campus because, rather than listing the conditions, the analysis explains that the campus may be established "if certain conditions are met."

In her second point, Representative Y. Davis asserts the bill analysis's statement regarding a campus or program's ability to challenge an "adverse academic or financial accountability rating" is misleading because the bill refers to Subchapter F of Chapter 39 of the Education Code, which permits an open-enrollment charter school to challenge an agency decision that relates to "an academic or financial accountability rating that affects the district or school" without using the term "adverse." Determining whether a bill analysis complies with Rule 4, Section 32 of the House Rules requires examining the particular bill and analysis in question and comparing them to the mandates of Rule 4, Section 32. *See* 83 H.J. Reg. 2323-24 (2013). Having carefully reviewed the bill, the analysis, and the requirements of Subchapter F of Chapter 39 of the Education Code, the chair determines that the bill analysis complies with Rule 4, Section 32(c).

In her third point of order, Representative Y. Davis challenges the germaneness of the committee substitute to SB 2, contending the section in the substitute that requires the University Interscholastic League (UIL) to allow participation by the high schools of open-enrollment charter schools is not germane to the senate engrossment. The senate engrossment is a comprehensive charter schools bill; it sets out requirements for multiple entities (such as the State Board of Education, the Commissioner of Education, employees of the Texas Education Agency, boards of trustees of school districts, independent school districts, and open-enrollment charter schools) to act in relation to charter schools. The chair determines that the portion of the substitute relating to participation by charter high schools in UIL activities is germane to the original bill.

Bill Analysis—Insufficient Detail—Sustained
83 H.J. Reg. 2323-24 (Y. Davis 5/3/13)

CSHB 2748 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 2748 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of CSHB 2748 under Rule 4, Section 32(c) of the House Rules. The point of order is sustained.

Representative Y. Davis observes that the bill creates Section 111.043(b) of the Natural Resources Code, which sets forth in detail six requirements that an applicant must include in its notice of the application for common-carrier status.

She asserts that the bill analysis inadequately addresses Section 111.043(b)'s requirements by stating, without further elaboration, "[t]he bill sets out the required contents of the notice of application."

Determining whether a bill analysis complies with Rule 4, Section 32 of the House Rules requires examining the particular bill and analysis in question and comparing them to the mandates of Rule 4, Section 32 of the House Rules. In this case, after careful review, the chair determines that a detailed analysis of the bill's subject matter has not been provided, and the chair is compelled to sustain the point of order. Having reviewed the bill and the analysis in light of the requirements of the rule, the chair concludes that in this case, the bill analysis accompanying CSHB 2748 does not satisfy Rule 4, Section 32's detailed analysis requirement.

CSHB 2748 was returned to the Committee on Judiciary and Civil Jurisprudence.

Bill Analysis—Insufficient Detail (Rule 4, Section 32(c))
82 H.J. Reg. 955 (Coleman 3/23/11)

CSSB 14 - POINT OF ORDER

Representative Coleman raised a point of order against further consideration of CSSB 14 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is materially or substantially misleading.

The speaker overruled the point of order, speaking as follows:

Mr. Coleman raises a point of order under Rule 4, Section 32. Specifically, the provision relating to the use of passports found on page 1 of the bill analysis is not sufficiently detailed enough continuously through the bill analysis. The chair has reviewed the bill and the bill analysis and finds that the provision complained of, relating to passports, is contained in the bill analysis and is not materially or substantially misleading. Accordingly, the point of order is respectfully overruled.

Bill Analysis—Insufficient Detail (Rule 4, Section 32(c))
80 H.J. Reg. 3222-23 (Talton 5/7/07)

CSHB 9 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of CSHB 9 under Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, and submitted the following statement:

Representative Talton raises a point of order against further consideration of CSHB 9 under Rule 4, Section 32 of the House Rules. Specifically, Representative Talton alleges that the comparison of the original to the substitute section fails to specifically address Section 169.104 and Section 169.105, Health and Safety Code.

As has been mentioned in previous points of order on this bill, this is a summary bill analysis. In two pages, it describes 22 pages of text in the introduced and committee substitute. A summary is just that—a summary.

The chair has reviewed the introduced bill, the committee substitute, and the bill analysis. Both the ability of governmental bodies to seek injunctive relief for violations of the chapter and the ability of state agencies and political subdivisions to enforce the smoking prohibitions of this bill are described in the comparison section. The chair is of the opinion that the CSHB 9 bill analysis complies with the cited rule.

Accordingly, the point of order is overruled.

Bill Analysis—Insufficient Detail (Rule 4, Section 32(c))
80 H.J. Reg. 3177-78 (Hodge 5/4/07)

CSHB 9 - POINT OF ORDER

Representative Hodge raised a point of order against further consideration of CSHB 9 under Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, and submitted the following statement:

Representative Hodge raises a point of order against further consideration of CSHB 9, arguing the comparison of the original to the substitute is deficient and inaccurate in describing Sections of CSHB 9 related to injunctive relief and public education.

The chair has reviewed the introduced version of the bill, the committee substitute, and the bill analysis. The chair has reviewed the summary bill analysis describing the 10 page committee substitute and 11 page introduced version of the bill in two pages.

In the opinion of the chair, the portions of the bill analysis relating to injunctive relief and public education comply with the requirements of Rule 4, Section 32, and the point of order is respectfully overruled.

Bill Analysis—Insufficient Detail (Rule 4, Section 32(c))
78 H.J. Reg. 862-63 (Wise 3/26/03)

CSHB 4 - POINT OF ORDER

Representative Wise raised a point of order against further consideration of CSHB 4 under Rule 4, Section 32(c) of the House Rules on the grounds that it does not contain a proper bill analysis.

. . .

The speaker overruled the point of order, speaking as follows:

Mr. Wise raises a point of order under Rule 4, Section 32(c), in that the bill analysis fails to adequately detail the elements of the bill, omitting references to several sections and articles of the bill. The chair finds that, in accordance with the rules, the committee chair directed a summary analysis. A summary analysis does not need to reference each element of the bill, and the chair believes the analysis in the committee report on CSHB 4 satisfies the requirements of the rule.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Insufficient Independent Analysis
83 H.J. Reg. 4060 (M. González 5/21/13)

SB 11 - POINT OF ORDER

Representative M. González raised a point of order against further consideration of SB 11 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative M. González raised a point of order against further consideration of SB 11 under Rule 4, Section 32 of the House Rules, asserting that the bill analysis is so similar to the text of the bill that it provides no independent analysis. The point of order is respectfully overruled.

Rule 4, Section 32 of the House Rules requires, "in summary or section-by-section form, a detailed analysis of the subject matter of the bill," including, in Rule 4, Section 32(c)(2) of the House Rules, an analysis of the content of the bill or resolution. Determining whether a bill analysis complies with Rule 4, Section 32 of the House Rules requires examining the particular bill and analysis in question and comparing them to the mandates of the rule. *See* 83 H.J. Reg. 3450-51 (2013). Having carefully reviewed the bill and the analysis, which consists of both a detailed summary analysis and a side-by-side comparison, the chair determines that the bill analysis satisfies Rule 4, Section 32(c) of the House Rules.

Bill Analysis—Conforming Change
83 H.J. Reg. 2443-44 (Walle 5/4/13)

CSHB 972 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 972 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSHB 972 under Rule 4, Section 32(c) of the House Rules. Specifically, Representative Walle asserts that the bill analysis is misleading because it fails to reflect a change in the bill—the addition of the word "school" in one section—that he contends would expand state law to allow persons with written permission from a preschool, elementary school, or secondary school to carry certain weapons on campus. The point of order is respectfully overruled.

Rather than changing current law, the addition of the word "school" to Section 3(a)(1)(A) of the bill was a conforming change that did not effect a change in the law. Whereas the current statute applies to "schools or educational institutions," CSHB 972 amends the statute to refer to schools and institutions of higher education. As a result, the bill required conforming changes to the language in order to ensure that the bill now refers to both schools, which have always been subject to this provision under the Penal Code, and institutions of higher education, which CSHB 972 would add. Therefore, the bill analysis, which sufficiently described the changes made by the bill, was not misleading.

Bill Analysis—Omits Definition of a Term
85 H.J. 1st C.S. 266-67 (Moody 8/8/17)

HB 214 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of HB 214 pursuant to House Rule 4, Section 32(c), on the grounds that the bill analysis is inaccurate. Specifically, Representative Moody argues that the bill analysis, which notes that three new definitions are added by the bill, is substantially and materially misleading because the added definitions "take on new significance within the context of the bill, a member who reads the bill analysis would be left with a misleading or inaccurate understanding of the bill." The point of order is respectfully overruled.

In this case, the chair has reviewed the bill and the bill analysis and finds that the analysis is neither substantially nor materially misleading. The house has recently addressed the issue of whether definitional terms must appear in a bill analysis. For instance, during this session of the 85th Legislature, a member raised a point of order on CSSB 1524, which authorized the Texas Department of

Transportation to issue permits for the movement of certain "sealed intermodal shipping containers." The member argued that the bill analysis is substantially misleading because it fails to define "intermodal shipping containers." The member, as Representative Moody does in this case, asserted that the presence of similar well-defined terms in other statutes justified requiring the bill analysis to explain the definition of the newly defined term. The chair held that "[t]he rules do not require the bill analysis to define key terms, nor to distinguish key terms contained in a bill from different terms found in other unrelated statutes." Further, the chair noted that even if the complained-of phrases had been omitted entirely, "the bill analysis's failure to state that the bill is defining a key term is not a fatal flaw." 85 H.J. Reg. 3206-07 (2017) (Minjarez point of order on CSSB 1524); *see* 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316); 83 H.J. Reg. 2815-16 (2013) (Schaefer point of order on CSHB 75).

Additionally, during this same session, the chair noted that "[i]f, however, the bill analysis were to contain a definition of a term different from the bill's definition of the same term, that might give rise to a sustainable point of order." 85 H.J. Reg. 1587 (2017) (Walle point of order on HB 100, citing 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316)). In that instance, the bill analysis was found not to contain a contradictory explanation or use of the term "digital network" from the bill's definition of the same term. It simply did not explain that the bill defined that key term. Further, the chair had not discovered, nor had anyone alleged, any example of the bill analysis using the term incorrectly. 85 H.J. Reg. 1587 (2017) (Walle point of order on HB 100); *see also* 84 H.J. Reg. 2543 (2015) (Schaefer point of order on CSHB 335). Likewise, Representative Moody does not allege the incorrect use of the terms, only that the failure to further explain the terms' definitions may lead to error. Having reviewed HB 214 and its bill analysis, the chair finds that the bill analysis complies with Rule 4, Section 32(c)(2). Therefore, this point of order is respectfully overruled.

Bill Analysis—Omits Definition of a Term
85 H.J. Reg. 1587 (Walle 4/19/17)

HB 100 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of HB 100 under Rule 4, Section 32(c)(2), on the grounds that the bill analysis is misleading. The point of order is respectfully overruled.

Rule 4, Section 32(c), states that "each committee report on a bill . . . must include in summary or section-by-section form a detailed analysis of the subject matter of the bill." Representative Walle observes that the bill analysis for HB 100 explains the bill's definitions of "digitally prearranged ride" and "transportation network company," but fails to explain the bill's new definition of the term "digital network," which the bill would add to the Occupations Code. He further argues that because "digital network" is already defined in the Insurance Code,

the bill analysis's failure to explain the new and different definition that the bill would add in the Occupations Code is misleading and inadequate.

The mere fact that a bill analysis "does not state that the bill is defining this key term . . . is not a fatal flaw." 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316); *see* 83 H.J. Reg. 2815-16 (2013) (Schaefer point of order on HB 75); 83 H.J. 1st C.S. 1082-83 (2013) (C. Turner point of order on CSHB 16). If, however, the bill analysis were to contain a definition of a term different from the bill's definition of the same term, that might give rise to a sustainable point of order. *See, e.g.*, 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316). In this instance, the bill analysis does not contain a contradictory explanation or use of the term "digital network" from the bill's definition of the same term. It simply does not explain that the bill is defining that key term. Further, the chair has not discovered, nor has anyone alleged, any example of the bill analysis using the term incorrectly. Having reviewed HB 100 and the bill analysis, the chair finds that the bill analysis complies with Rule 4, Section 32(c)(2).

Bill Analysis—Omits Definition of a Term; Germaneness of Committee Substitute
84 H.J. Reg. 3462-63 (Walle 5/14/15)

CSHB 3374 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 3374 under Rule 4, Section 32(c)(2); Rule 4, Section 41; and Rule 11, Section 2 of the House Rules on the grounds that the bill analysis is incorrect and the committee substitute is not germane to the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Walle raised points of order against further consideration of CSHB 3374 on the grounds that the committee substitute is not germane to the introduced bill, Rule 4, Section 41; Rule 11, Section 2, and that the bill analysis is inaccurate and materially misleading, Rule 4, Section 32(c)(2). The points of order are respectfully overruled.

Under Rule 11, Section 2, no proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the proposition under debate. As filed, CSHB 3374 addressed the circumstances under which a health care provider would be obligated to provide an expectant or new parent with information on Down syndrome. It further set guidelines for the content and form of the information to be provided. Representative Walle argues that the committee substitute is not germane to the introduced bill because the substitute (1) expands the circumstances under which a health care provider is required to provide information on Down syndrome from when there is a positive

test result to when there is a probability of a child having Down syndrome, and (2) contains a provision that shields a health care provider from liability or disciplinary action if the provider is not able to access the information that the bill directs them to provide. Because the changes in the committee substitute fall squarely within the subject of the original bill—a health care provider's obligations to provide information on Down syndrome to expectant or new parents—the committee substitute complies with Rule 11, Section 2.

Rule 4, Section 32(c)(2) of the House Rules requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill." Rule 4, Section 32(c)(2). Representative Walle contends the bill analysis is inaccurate and materially misleading because it fails to detail "to whom the bill applies" in that it does not explain the bill's definition of "health care provider." The fact that a bill analysis does not state a definition of a key term, even where the bill itself is defining that key term, is not in itself a fatal flaw. 83 H.J. Reg. 2815-16 (2013) (Schaefer point of order on CSHB 75); 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316). In this instance, the bill adopts the definition of "health care provider" that already exists in Section 34.001 of the Health and Safety Code and clarifies that the definition "includes a genetic counselor." Having reviewed the bill, the complete analysis, and house precedents, the chair determines that the bill analysis complies with Rule 4, Section 32(c)(2).

Bill Analysis—Omits Definition of a Term
84 H.J. Reg. 2543 (Schaefer 5/5/15)

CSHB 335 - POINT OF ORDER

Representative Schaefer raised a point of order against further consideration of CSHB 335 under Rule 4, Section 32(c) of the House Rules on the grounds that the committee report is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Schaefer raised a point of order against further consideration of CSHB 335 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is misleading. The point of order is respectfully overruled.

Rule 4, Section 32(c) states that "each committee report on a bill . . . must include in summary or section-by-section form a detailed analysis of the subject matter of the bill." Rule 4, Section 32(c). Representative Schaefer asserts that the bill analysis for CSHB 335 explains the definition of three of the four terms defined in the bill but fails to define the term "household." Representative Schaefer, therefore, argues, citing a point of order for which no explanation is provided in the house journal, that omitting an explanation of this definition from the bill analysis, while including other definitions, renders the bill analysis

misleading in violation of Rule 4, Section 32(c). *See* 80 H.J. Reg. 5084 (2007) (sustaining without comment a point of order by Dutton on CSSB 785).

The mere fact that a bill defines a term, but the bill analysis "does not state that the bill is defining this key term . . . is not a fatal flaw." 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316); *see* 83 H.J. Reg. 2815-16 (2013) (Schaefer point of order on HB 75); 83 H.J. 1st C.S. 1082-83 (2013) (C. Turner point of order on CSHB 16). Having reviewed the bill and the entire bill analysis, including the side-by-side comparison, the chair finds that CSHB 335's bill analysis complies with the requirements of Rule 4, Section 32(c).

Bill Analysis—Omits Statement That Bill Is Defining a Key Term
83 H.J. Reg. 3005-06 (Martinez Fischer 5/9/13)

CSHB 3316 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 3316 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised two points of order against further consideration of CSHB 3316 under Rule 4, Section 32(c) of the House Rules. In his first point, he argued that the bill analysis should have defined "construction trust fund account" and explained more thoroughly the provisions on page 5 of the bill. Although the bill defines "construction trust fund account," the bill analysis does not state that the bill is defining this key term. As noted by the chair's previous rulings and the ruling issued yesterday, May 8, 2013, regarding the same point of order raised by Representative Schaefer against HB 75, this is not a fatal flaw. Regarding the provisions on page 5 of the bill, the chair has reviewed the bill and the bill analysis and has found these provisions to be adequately explained on page 2 of the bill analysis. Therefore, this point of order is respectfully overruled.

Bill Analysis—Misleading/Inadequate Explanation of a Definition—Sustained
83 H.J. Reg. 3006 (Martinez Fischer 5/9/13)

CSHB 3316 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 3316 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

In his second point, Representative Martinez Fischer challenges the bill analysis's explanation of the definition of "retainage" as materially and substantially misleading. The background and purpose of the bill analysis states that under certain provisions, "an owner is required to hold a specified percentage of the amount paid for such labor or materials during the project's progress until after the entire project is completed. This unpaid portion of the bill is known as retainage." The bill, however, defines retainage as "an amount or agreed percentage of money in a construction contract between an owner and a contractor that is withheld from a payment and not due to be paid until completion of the contract or on an agreed date." The bill analysis failed to explain the difference between these definitions. Therefore, the point of order that the definition was materially and substantially misleading was sustained.

Bill Analysis—Omits Statement That Bill Is Defining a Key Term
83 H.J. Reg. 2815-16 (Schaefer 5/8/13)

CSHB 75 - POINT OF ORDER

Representative Schaefer raised a point of order against further consideration of CSHB 75 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

. . .

The chair overruled the point of order and submitted the following statement:

Representative Schaefer raised a point of order against further consideration of CSHB 75 under Rule 4, Section 32(c)(2) of the House Rules contending the bill analysis does not adequately reflect the content of the bill. Specifically, he asserted the bill analysis should have explained that the bill created definitions of key terms used in the bill: "[c]amera systems company" and "[c]losed circuit television or still camera system." He further noted that the bill analysis acknowledged the bill's changing of the definition of a different term and concludes that if the analysis reflected a mere change in a definition, it should have also reflected that the bill created definitions of key terms. The point of order is respectfully overruled.

The chair has reviewed the sections cited by Representative Schaefer and has reviewed the entire bill analysis, including the analysis, rulemaking, and comparison of the original to the substitute sections. The chair finds, taken together, the bill analysis complies with the provisions of Rule 4, Section 32 of the House Rules. *See* 81 H.J. Reg. 4138-39 (2009); 83 H.J. Reg. 1900 (2013).

Other explanations addressing inadequate explanations of a term:
82 H.J. Reg. 625 (Martinez Fischer 3/3/11), *supra* at 13-14 (inadequate explanation of a term)

Bill Analysis—Incorrect and Misleading Analysis; Captions—Reasonable Notice of Bill's Subject; Minutes—Posting Notice
85 H.J. Reg. 4511-13 (Moody/Dutton/Farrar/Cain 5/23/17)

CSSB 1148 - POINT OF ORDER

Representatives Moody, Dutton, Farrar, and Cain raised a multitude of points of order against further consideration of CSSB 1148, some of which were withdrawn. The remaining points of order are respectfully overruled.

One point of order, raised by Representative Moody under House Rule 4, Section 32(c)(2), asserted that the bill analysis is incorrect and misleading. Rule 4, Section 32(c)(2), requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill." Representative Moody argues that the bill analysis reference to "an institution or program that is owned, operated, or licensed by the state or a political subdivision of the state" does not accurately reflect the bill, which also applies to some private institutions or programs that indirectly or directly receive state financial assistance. The relevant language in the bill lists entities that may not differentiate between physicians based on a physician's maintenance of certification. One such entity is "an institution or program that is owned, operated or licensed by this state, including an institution or program that directly or indirectly receives state financial assistance . . . ." The entities Representative Moody alleges are not addressed in the bill analysis are a subset of the entities referenced in the bill analysis: those that are owned, operated, or licensed by the state.

A second point of order, raised by Representative Dutton under House Rule 8, Section 1(a), urges that the caption does not accurately give the legislature and the public reasonable notice of the subject of the proposed measure as required by House Rule 8, Section 1(a). The caption of CSSB 1148 is "relating to maintenance of certification by a physician or an applicant for a license to practice medicine in this state." Representative Dutton argues that the caption is misleading because "maintenance of certification" is a term of art, and one could reasonably expect a bill with this caption to address details of how physicians are licensed to practice medicine, instead of what the bill refers to, which is being certified as a medical specialist by certain certifying boards. Representative Dutton further asserts that the caption is overly broad because it fails to detail what aspects of maintaining certification are addressed in the bill. Having examined the bill, the chair finds that the caption does provide reasonable notice that the bill addresses maintenance of certification (and not licensure) and is not overly broad.

A third point of order, raised by Representatives Farrar and Cain under House Rule 4, Section 18, asserts that the committee minutes are factually inaccurate and misleading. House Rule 4, Section 18, requires that each committee keep complete minutes of the proceedings in committee. These minutes must include an accurate reflection of the time and place of each meeting of the committee.

The minutes from the May 16, 2017, public hearing for the House Committee on Public Health state "pursuant . . . to permission granted on May 16, 2017, to meet while the House was in session, the House Committee on Public Health met in a public hearing. . . ." Representatives Farrar and Cain argue that an error exists because although the committee received permission to meet while the house was in session, it did not actually meet until after the house had adjourned. It is undisputed and clear from the committee documents that the committee did not meet while the house was in session, and instead met only before the house convened (a meeting not in dispute on this point of order) and after final adjournment (which is alleged to be out of order). But there is no error in this procedure. When the chair of the Committee on Public Health announced the committee meeting from the floor, two things happened. First, the chair requested permission for the committee to meet while the house was in session. This request was granted. Second, the clerk read a separate announcement providing notice of the committee's meeting upon adjournment. The notice read by the clerk satisfied the notice requirement of Rule 4, Section 18. The grant of permission to meet during session, while superfluous and unnecessary, was not out of order, nor did it render the subsequent committee meeting out of order.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 4457-58 (E. Rodriguez/Moody/Turner 5/23/17)

SB 5 - POINT OF ORDER

Representatives E. Rodriguez, Moody, and Turner raised points of order against further consideration of SB 5 under House Rule 4, Section 32(c)(2), on the grounds that the bill analysis is incorrect and misleading. The points of order are respectfully overruled.

Rule 4, Section 32(c)(2), requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill."

The first point of order was raised by Representative E. Rodriguez. Representative E. Rodriguez argues that the bill analysis omits the seven impediments in Section 2 of the bill, which amends Section 63.001(i)(3) of the Election Code. The seven impediments include lack of transportation, lack of document needed to obtain a photo ID, work, lost or stolen ID, disability or illness, family responsibilities, and a pending photo ID application. While the bill analysis does not list all seven impediments as desired by proponent, the bill analysis discusses "reasonable impediments" and the reasonable impediment declaration form and the impact of both items. Therefore, the bill analysis is not misleading. The first point of order is respectfully overruled.

The second point of order was raised by Representative Moody. Under Section 2 of the bill, Section 63.001(i)(1) of the Election Code is amended to subject a person to prosecution for perjury for a false statement or false information on the declaration. Representative Moody points out that perjury is under the Penal

Code. Separately, Section 3 of the bill adds Section 63.0013 to the Election Code. Section 63.0013 states that a person commits a felony of the third degree if the person intentionally makes a false statement or provides false information on a declaration. Representative Moody argues that the second to last paragraph of the bill analysis incorrectly conflates the two penalties created in the bill, specifically the sentence "The bill subjects a person to prosecution for perjury under the Penal Code for a false statement or false information on the declaration and creates a third degree felony offense for a person who intentionally makes such a false statement or provides such false information." The use of the word "and" in the bill analysis indicates that the offenses are separate and should not be read together. The point of order is respectfully overruled.

The third, and final, point of order was raised by Representative Turner. Representative Turner argues that the bill analysis incorrectly summarized the voter ID requirements. Specifically, that the term "voter identification requirement" is not defined in the bill. Because of this, Representative Turner argues that one would incorrectly believe that the phrase "includes as acceptable proof of identification for purposes of satisfying the voter identification requirement to be accepted as a voter" to mean literally what that text says, and that items like government checks would be acceptable forms of identification. The chair agrees that the bill analysis would have been far more helpful had it mentioned the function of a declaration of reasonable impediment and its use much sooner, but the analysis eventually sufficiently describes this key component of the bill on page 2. After examining the entire bill and bill analysis, the chair does not find this omission misleading. The point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 4320-21 (K. King 5/22/17)

CSSB 277 - POINT OF ORDER

Representative King of Hemphill raises a point of order against further consideration of CSSB 277 pursuant to Rule 4, Section 32(c)(2), of the House Rules on the grounds that the bill analysis is incorrect. Specifically, Representative King complains that the bill analysis is in error because the term "wind-powered energy device" is improperly believed to mean only giant wind turbines or vast wind farms and does not denote smaller devices such as the mechanical windmill. Other representatives point to documents prepared by the Senate Research Center and the Legislative Budget Board which discuss "encroaching wind farms" and "enormous sized wind turbines."

The point of order is respectfully overruled. While the Senate Research Center and the LBB might (or might not) have been duped into believing the bill only dealt with vast wind farms and giant turbines, the bill analysis did not. The bill analysis consistently used the correct term "wind-powered energy device" throughout the bill analysis, and the bill analysis in the side-by-side noted that the term was defined in Section 11.27 of the Tax Code. The bill analysis did

not discuss any of the slippery slope arguments raised by Representative King and others. In short, the bill analysis was correct and not a violation of Rule 4, Section 32.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 3644 (Stickland 5/17/17)

SB 1343 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of SB 1343 pursuant to House Rule 4, Section 32(c), on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(4), requires the bill analysis to include "a statement indicating whether or not the bill or resolution expressly creates a criminal offense, expressly increases the punishment for an existing criminal offense or category of offenses, or expressly changes the eligibility of a person for community supervision, parole, or mandatory supervision." Representative Stickland argues that SB 1343 adds a criminal punishment. Specifically, Representative Stickland argues that page 2 of the bill expressly creates a criminal offense that was not present before. Because the bill analysis states that SB 1343 neither creates a new criminal offense nor expressly increases the punishment for an existing criminal offense, Representative Stickland argues that the bill analysis does not comply with House Rule 4, Section 32(c)(4).

SB 1343 deals with the prosecution of criminal offenses for unauthorized recordings, an offense which already exists and is punishable by a term of imprisonment, a monetary fine, or "both." The claim by Representative Stickland is that the wording change from "imprisonment, fine or both" to "imprisonment, fine or both *fine and imprisonment*" is something beyond nonsubstantial, clearer drafting. Adding clearer, nonmandatory language in a statute that makes it easier to read to Texans is not a point of order but a desired state of legislative drafting. Because SB 1343 neither creates a new offense nor increases the punishment for an existing offense, the bill analysis complies with House Rules. The point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 3215-16 (Dutton 5/10/17)

CSSB 1524 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of CSSB 1524 pursuant to House Rule 4, Section 32(c)(4), on the grounds that the bill analysis inaccurately describes the section of the bill entitled "Offense."

Rule 4, Section 32(c)(4), requires "each committee report on a bill . . . must include . . . a statement indicating whether or not the bill or resolution expressly creates a criminal offense, expressly increases the punishment for an existing

criminal offense or category of offenses, or expressly changes the eligibility of a person for community supervision, parole, or mandatory supervision."

The relevant provision of the bill reads:

> Sec. 623.409. OFFENSE. (a) A person commits an offense if the person fails to:
>
> (1) display the sticker described by Section 623.407(a) in the manner required by that section;
>
> (2) carry a permit issued under this subchapter as required by Section 623.408(a); or
>
> (3) carry or present a weight record as required by Section 623.408(b).
>
> (b) An offense under this section is a Class C misdemeanor.

The bill analysis for CSSB 1524 states: "It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense . . . ."

Representative Dutton argues that this analysis is flawed because, rather than creating a new offense, the bill expands the class of persons to whom the penalty of "class C misdemeanors" applies. He concludes that every offense to which a Class C misdemeanor applies is not a new offense, but an expansion of the class of persons to whom the penalty applies. Under this theory, no new offense would ever be created unless the penalty for the offense were also something other than a currently existing felony, misdemeanor, or other penalty. In this instance, the bill creates out of whole cloth an entirely new offense which was not previously subject to any penalty whatsoever. It does not merely alter the elements of an existing offense or change the class of persons to whom an existing offense would apply. Accordingly, the chair finds that the bill analysis's statement that the bill creates an offense gives readers, the public, and even legal philosophers reasonable notice of this new offense.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 3206-07 (Minjarez 5/10/17)

CSSB 1524 - POINT OF ORDER

Representative Minjarez raised a point of order against further consideration of CSSB 1524 pursuant to House Rule 4, Section 32(c), on the grounds that the bill analysis is inaccurate. The point of order is respectfully overruled.

CSSB 1524 authorizes the Texas Department of Transportation to issue permits for the movement of certain "sealed intermodal shipping containers." Representative Minjarez argues that the bill analysis is substantially misleading because the bill analysis fails to define "intermodal shipping containers." Representative Minjarez asserts that the presence of similar terms, intermodal containers and intermodal hubs, in other statutes justifies requiring the bill

analysis to explain the definition of "intermodal shipping container." The rules do not require the bill analysis to define key terms, nor to distinguish key terms contained in a bill from different terms found in other unrelated statutes. As noted by the chair's previous rulings, the bill analysis's failure to state that the bill is defining a key term is not a fatal flaw. *See* 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316); 83 H.J. Reg. 2815-16 (2013) (Schaefer point of order on CSHB 75). Therefore, this point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 3202 (Villalba 5/9/17)

HB 4011 - POINT OF ORDER

Representative Villalba raised a point of order against further consideration of HB 4011 pursuant to Rule 4, Section 32, on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(2), requires each committee report to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill or resolution." Representative Villalba argues that the bill analysis is deficient in three ways. First, the bill analysis fails to define nonemergency medical care in Section 2 of the bill. Second, the bill analysis fails to define and describe the attorney general's right to bring suit in Section 3 of the bill. Finally, the bill analysis fails to describe venue provisions in Section 5 of the bill. After reviewing the bill, the complete analysis, and house precedents, the chair finds that the bill analysis does not deceive or mislead and complies with the requirements of Rule 4, Section 32.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 3141-42 (Ortega 5/9/17)

CSHB 3859 - POINT OF ORDER

Representative Ortega raised a point of order against further consideration of CSHB 3859 pursuant to House Rule 4, Section 32(c)(2), on the grounds that the bill analysis is inaccurate. Representative Ortega argues that the bill analysis for CSHB 3859 is flawed in that it fails to discuss that the chapter may not be construed to prohibit the department from exercising its duty as the child's managing conservator to make decisions in the child's best interest. This is incorrect, in proposed Section 45.001 and added Section 45.009(h), Human Resources Code. While the bill analysis does not use the words "managing conservator" verbatim (and is not required to), the bill analysis discusses the relevant sections. Additionally, the side-by-side comparison of the original and substitute bill language shows the language was added in the committee substitute. Both the bill analysis and the side-by-side comparison are sufficient to make people aware of these sections' existence. Because a bill analysis is not

required to restate the bill word for word, and the side-by-side makes people aware of the language's existence, the bill analysis is not substantially misleading. *See* 84 H.J. Reg. 4442-43 (2015) (Rinaldi point of order on CSSB 900, discussing the multiple times Rule 4, Section 32, points of order have been raised); 83 H.J. Reg. 4060 (2013) (M. González point of order on SB 11, asserting that a bill analysis is unhelpful when it restates the bill to such an extent that the analysis does not actually provide any independent analysis). After reviewing the bill, the complete analysis, and house precedents, the chair finds that the bill analysis does not deceive or mislead and complies with the requirements of Rule 4, Section 32. Accordingly, the point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 3141 (Turner 5/9/17)

CSHB 3859 - POINT OF ORDER

Representative Turner raised a point of order against further consideration of CSHB 3859 pursuant to Rule 4, Section 32(c)(2), on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(2), requires each committee report to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill or resolution." Representative Turner observes that the first sentence of the bill analysis does not include a "person that contracts with this state or operates under governmental authority." While this is true, the oversight, if any, was cured by the third sentence, "The bill prohibits a governmental entity or any person that contracts with the state . . . ." While the first sentence of the bill analysis could have been more helpful and informative, the chair, having reviewed the entire bill, the entire bill analysis, and house precedents, finds that the bill analysis neither ran afoul of Rule 4, Section 32(c)(2), nor was materially misleading or incorrect and complies with the provisions of the rule.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 3139-40 (E. Rodriguez & Moody 5/9/17)

CSHB 3859 - POINT OF ORDER

Representatives E. Rodriguez and Moody raised a point of order against further consideration of CSHB 3859 pursuant to House Rule 4, Section 32(c)(2), on the grounds that the bill analysis is inaccurate. The point of order is respectfully overruled.

Representatives E. Rodriguez and Moody argue that the bill analysis for CSHB 3859 is flawed in several ways. They argue that the bill analysis is substantially misleading because it broadly describes the bill's specific prohibition of discrimination based on a list of four items. Specifically, they argue that only the first item on the list pertains to a child welfare service provider's "sincerely held religious belief," and that the other items on the list do not mention "sincerely held religious beliefs." Additionally, they argue that the bill analysis's use of the word "includes" regarding what is an exhaustive list in the bill is substantially misleading.

Additionally, Representatives E. Rodriguez and Moody argue that the bill analysis fails to account for the bill's protections of a provider's future intentions. Lastly, Representatives E. Rodriguez and Moody argue that the bill analysis omits an element of the cause of action. The chair has reviewed the bill, the bill analysis, and house precedent, and finds that the bill analysis complies with Rule 4, Section 32. *See* 84 H.J. Reg. 3380 (2015) (Collier point of order on CSHB 3994); 84 H.J. Reg. 3369 (2015) (Walle point of order on CSHB 1798); 84 H.J. Reg. 3368 (2015) (González point of order on CSHB 1798). The bill analysis is not in error or substantially misleading.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 2865-66 (Springer 5/6/17)

HB 478 - POINT OF ORDER

Representative Springer raises a point of order against further consideration of HB 478 pursuant to House Rule 4, Section 32(c)(2), on the grounds that the bill analysis is incorrect. Specifically, Representative Springer asserts that the defined term "domestic animal" in Section 1 of the bill is not sufficiently described in the bill analysis. The point of order is overruled.

Rule 4, Section 32(c)(2), requires "an analysis of the content of the bill or resolution, including a separate statement that lists each statute or constitutional provision that is expressly repealed by the bill or resolution." Representative Springer contends that the failure to define the term "domestic animal" may lead to confusion as to the types of animals that are covered by the bill. During a lively discussion of the point of order, a number of domesticated animals and livestock were discussed. What was not discussed was how the bill analysis was incorrect or materially misleading.

In this case, "a horse is a horse, of course, of course." The phrase from the bill "domestic animal" is used properly in each place it appears in the bill analysis. The bill analysis is correct. Having reviewed the bill, the complete bill analysis, and the House Rules, the chair determines that the bill analysis satisfies the requirements of Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis
(Rule 4, Section 32(c)(2))
85 H.J. Reg. 2611-12 (Nevárez 5/4/17)

CSHB 1774 - POINT OF ORDER

Representative Nevárez raised a point of order against further consideration of CSHB 1774 under House Rule 4, Section 32(c)(2), on the grounds that the bill analysis is inaccurate. The point of order is overruled.

Rule 4, Section 32(c)(2), requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill." Representative Nevárez argues CSHB 1774's bill analysis omits the requirement to keep contemporaneous time records for the purpose of calculating attorney's fees incurred up to the time of providing pre-suit notice. Additionally, Representative Nevárez argues that the bill analysis fails to provide a detailed description of the method for calculating attorney's fees awarded after judgment has been rendered.

The chair finds that the bill analysis at issue is not materially misleading and that it contains sufficient information to inform the reader of its substance. Page 1 of the bill analysis states that a claimant is required to give written notice "of the amount of reasonable and necessary attorney's fees incurred by the claimant as of the date of the notice. The bill provides the method for calculation of such attorney's fees . . . ." Page 3 of the bill analysis explains that:

> C.S.H.B. 1774 sets the amount of attorney's fees that may be awarded to a claimant in an action to which the bill's provisions apply at the lesser of the amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action, the amount of attorney's fees that may be awarded to the claimant under other applicable law, or the amount determined by a specified calculation involving a ratio based on the amount to be awarded in the judgment and the amount alleged to be owed on the claim in a notice given under the bill's provisions.

The analysis goes on to talk about the circumstances under which the fees may be awarded or not awarded. A bill analysis does not have to restate the bill word for word. Instead, a bill analysis must provide sufficient information to inform the reader of the substance of the issues in the bill. Having reviewed the bill, the complete analysis, and house precedents, the chair determines that this thorough and accurate analysis of the attorney's fees provisions satisfies Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 1920 (Martinez 4/26/17)

CSSB 4 - POINT OF ORDER

Representative Martinez raised a point of order against further consideration of CSSB 4 pursuant to Rule 4, Section 32(c)(2), of the House Rules on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

CSSB 4 amends the Government Code to prohibit a campus police department of a public, or private, or independent institution of higher education or a local entity, as the governing body of or any other body that is part of a municipality, county, or special district or authority or an officer or employee of such a body whose primary duties involve the oversight or management of, or controlling the direction of, other officers or employees of the body from adopting or enforcing a measure under which such a department or local entity prohibits the enforcement of state or federal immigration laws or from prohibiting, as demonstrated by pattern or practice, the enforcement of those immigration laws.

Rule 4, Section 32(c)(2), requires "an analysis of the content of the bill or resolution, including a separate statement that lists each statute or constitutional provision that is expressly repealed by the bill or resolution." Representative Martinez highlights two areas he contends make the bill analysis deficient and misleading:

(1) A "critical and material sentence" was not included in the bill analysis: "The citizen must include a sworn statement with the complaint . . . . the facts asserted are true and correct" and Representative Martinez claims that the absence of any mention of the sworn statement is materially and substantially misleading.

(2) The analysis fails to mention where the attorney general must file a petition for a writ of mandamus or for equitable relief and what type of appeal is available.

The chair has reviewed the bill analysis at issue and both items complained of are appropriately described in the bill analysis on pages 2 and 11-13. Accordingly, the bill analysis is not materially misleading in that it contains sufficient information to inform the reader of the substance of the disputed issues in the bill analysis. *See* 84 H.J. Reg. 4442-43 (2015) (Rinaldi point of order on CSSB 900).

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 1875 (Ortega 4/26/17)

CSSB 4 - POINT OF ORDER

Representative Ortega raised a point of order against further consideration of CSSB 4 pursuant to Rule 4, Section 32(c)(2), of the House Rules on the grounds that the bill analysis is incorrect. Specifically, Representative Ortega complains that the bill analysis is in error because it states that there are state immigration laws. The point of order is respectfully overruled.

CSSB 4 amends the Government Code to prohibit certain police departments and local entities from prohibiting the enforcement of state or federal immigration laws.

Rule 4, Section 32(c)(2), requires "an analysis of the content of the bill or resolution, including a separate statement that lists each statute or constitutional provision that is expressly repealed by the bill or resolution." Representative Ortega contends that there are no state immigration laws and that the power is exclusively federal in nature.

Page 5 of the bill analysis outlines the authority by which officers of the law are empowered to carry out their duties, noting both the United States Constitution and the Texas Constitution. There are both current state and federal immigration laws. For instance, in the 84th Legislature alone, the passage of House Bills 11, 12, and 188 show the intertwining of Texas statutes and federal immigration law. Additionally, state officers are authorized to enforce federal immigration law.

Having reviewed the bill, the complete bill analysis, and the House Rules, the chair determines that the bill analysis satisfies the requirements of Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 1869-70 (Ortega & Martinez 4/26/17)

CSSB 4 - POINT OF ORDER

Representative Ortega and Representative Martinez raised a point of order against further consideration of CSSB 4 pursuant to Rule 4, Section 32(c)(2), on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(2), requires each committee report to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill or resolution." Representative Ortega objects that the bill analysis inadequately summarizes Section 752.055(c), Government Code. That section reads, in its entirety: "(c) An appeal of a suit brought under Subsection (b) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay." The bill analysis summarizes this process as "The bill . . . provides for an appeal of a suit brought for relief."

This cursory mention of the appeal process is troubling because, as noted by various members, some of whom supported the point of order and some of whom opposed it, most of the time, lawsuits are subject to an ordinary appeal process already defined by existing statutes. This bill provided for an *accelerated* appeal, which several members agreed is a different animal subject to special rules, and the bill further requires courts to issue orders or judgments "with the least possible delay." Those defending against the point of order volunteered that

the latter requirement was meaningless language that did not actually burden courts because it established no concrete deadline. But proponents of the point of order asserted that this requirement to act with the least possible delay would be read by the courts as having some meaning and might conflict with the rules of appellate procedure for accelerated appeals in civil cases, which prohibit courts from making a determination earlier than ten days after a petition is filed. *See* Tex. R. App. P. 28.3(j) (Permissive Appeals in Civil Cases). The wording of this appeal provision may well add pressure to the courts to decide yet another category of cases on an accelerated schedule. And it is clear that the bill analysis treated this matter broadly, such that it might be assumed that the "appeal of a suit" was an ordinary appeal rather than the accelerated appeal provided by the bill. However, the analysis is not technically wrong, and by flagging that the bill provides for "an appeal of a suit," it provided just enough notice to interested parties, who would then have been well advised to review the provisions of the bill itself.

Although the analysis of this section could have been more helpful and informative, it did not deceive or mislead and complied with the requirements of Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 1615-16 (Walle 4/19/17)

HB 100 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of HB 100 under House Rule 4, Section 32(c)(2), on the ground that the bill analysis is inaccurate and misleading. The point of order is respectfully overruled.

HB 100 defines "transportation network company" and then goes on to state that:

> The term does not include an entity that provides . . .
> (D) a type of ride service for which:
> (i) the fee received by the driver does not exceed the driver's costs of providing the ride; or
> (ii) the driver receives a fee that exceeds the driver's costs associated with providing the ride but makes not more than three round-trips per day between the driver's or passenger's place of employment and the driver's or passenger's home.

The bill analysis explains this part of the bill by saying, "The bill expressly excludes from the meaning of 'transportation network company' . . . a type of ride service that meets certain criteria with respect to the fee received by the driver and number of round-trips per day."

Representative Walle argues that the use of "and" in the bill analysis, when the bill contained the word "or," renders the bill analysis misleading in violation

of Rule 4, Section 32(c). The bill analysis is a detailed analysis in summary form intended to aid members in understanding the contents of a bill. Done properly, it can provide notice to members of areas they might wish to further scrutinize. The portion of HB 100's bill analysis subject to this point of order does not misstate the bill's provisions; the analysis specifically refers to exclusions from the definition of a transportation network company, including "a type of ride service" meeting certain criteria "with respect to" certain features. And, it correctly identifies the features—the fee received by the driver and number of round-trips per day—that impact whether a ride service is excluded. The bill does not restate or paraphrase the exact provisions of the bill, nor is it required to, so long as it provides a summary of the bill with detailed analysis that is not misleading. Having thoroughly reviewed HB 100 and the bill analysis, the chair finds that this point of order should be respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis
85 H.J. Reg. 1588 (E. Rodriguez 4/19/17)

HB 100 - POINT OF ORDER

HB 100 presents uniform requirements and operational standards for transportation network companies ("TNC") statewide. One of these requirements is that a TNC must adopt a policy that prohibits a driver from "refusing to provide service to a potential passenger with a service animal unless the driver has a medically documented condition that prevents the driver from transporting animals." Under Rule 4, Section 32(c), of the House Rules, each committee report on a bill "must include in summary or section-by-section form a detailed analysis of the bill."

Representative E. Rodriguez argues that provisions for service animals are not included in the bill analysis, thus rendering it incomplete. However, on page 2 of the bill analysis, service animals are accounted for: "HB 100 requires a transportation network company to adopt a policy of nondiscrimination . . . from refusing to provide service to a potential passenger with a service animal unless the driver has a medically documented condition that prevents the driver from transporting animals." Additionally, on page 3, the bill analysis states: "The bill requires . . . the driver to comply with the policy, and sets out further requirements and prohibited actions of a transportation network company regarding the accommodation of passengers with service animals and physical disabilities." Having reviewed the bill, the complete analysis, and house precedents, the chair determines that the bill analysis complies with Rule 4, Section 32(c).

Bill Analysis—Incorrect and Misleading Analysis—Sustained
84 H.J. Reg. 4692-93 (Martinez Fischer 5/26/15)

CSSB 197 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSSB 197 under Rule 4, Section 18 and Rule 4, Section 32(c) of the House Rules on the grounds that the committee minutes are incomplete and the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Martinez Fischer raised several points of order against further consideration of CSSB 197. He asserts that the bill is in violation of Rule 4, Section 18 and Rule 4, Section 32(c) of the House Rules. Because the bill analysis contains errors (describing the issuance of $3 billion in general obligation bonds versus the text of the bill, and in light of the number of types of general obligation bonds authorized under the Texas Constitution other than Article III, Section 67), the chair sustains the point of order.

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 4504-05 (González 5/25/15)

SB 1934 - POINT OF ORDER

Representative González raised a point of order against further consideration of SB 1934 under Rule 4, Section 32(c)(1) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative González raised a point of order against further consideration of SB 1934 under Rule 4, Section 32(c)(1), arguing that the "Background and Purpose" section of the bill analysis is incorrect and misleading. The point of order is respectfully overruled.

The bill analysis states that interested parties "contend that the law governing the issuance of identification cards is not as stringent as the law governing the issuance of a driver's license. SB 1934 seeks to remedy this situation by aligning the requirements for the issuance of an identification card with those of a driver's license." Representative González asserts that the requirements are already aligned, such that the bill analysis language is incorrect and misleading in suggesting that the requirements are different. Under current statutes, the Department of Transportation may require applicants to provide their social security numbers for limited purposes. Current statutes also say that the department "may" require applicants for identification cards to furnish certain information that driver license applicants must provide to obtain a license. In addition,

Representative González provided the chair with a copy of the application that those seeking a driver license or an identification card must fill out, which states the department's policy on requiring social security numbers: "Disclosure of your social security number is mandatory for driver license applicants, but voluntary for identification card applicants." Thus, under statutes governing issuance of driver licenses and identification cards and under the department's policy, there are greater mandatory requirements for obtaining a driver license than for obtaining an identification card. SB 1934 appears to align some requirements related to driver licenses and identification cards in that the department must enter an applicant's social security number in its database, but prohibits the department from printing that number on either a driver license or identification card. In that respect, it aligns this one requirement relating to the department's treatment of driver licenses and identification cards. Having carefully reviewed the bill, the analysis, and the statutes and application provided by Representative González, the chair determines that the Background and Purpose does not violate Rule 4, Section 32(c)(1).

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 4442-43 (Rinaldi 5/24/15)

CSSB 900 - POINT OF ORDER

Representative Rinaldi raised a point of order against further consideration of CSSB 900 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Rinaldi raised a point of order against further consideration of CSSB 900 under Rule 4, Section 32(c)(2) arguing that the bill analysis to CSSB 900 fails to summarize Section 10 of the bill. The point of order is respectfully overruled.

Section 10 of the bill provides for payment of Texas Wind Insurance Association losses in excess of premium and other revenue from issuance of Class 3 public securities and then from Class 3 member assessments, in that order, if the losses cannot be covered by other available funds (which are listed in the bill by section number). The bill analysis on page 2 states: "The bill adds the assessments to the sequence so that assessments are made after the use of available TWIA reserves and the issuance of Class 1, Class 2, and Class 3 public securities, respectively." In addition to providing a succinct overview of what Sections 5 through 10 of the bill accomplish, the analysis goes on to summarize specific changes made to each of these sections on the following two pages, and the side-by-side comparison of the bill and the committee substitute reproduces Section 10 in its entirety. Having reviewed the bill, the complete bill analysis, and the House Rules, the chair determines that the bill analysis satisfies the requirements of Rule 4, Section 32(c)(2).

The chair notes that this is at least the thirtieth point of order raised this session under Rule 4, Section 32(c) of the House Rules, which requires, for each bill or joint resolution except the appropriations bill, a bill analysis. Drafters are tasked with following the mandate to provide a "detailed analysis" of every bill and joint resolution (except for the general appropriations act), to meet members' needs to have their bills heard, sometimes in short order. Representative Rinaldi's point of order is at least the eleventh point of order raised under Rule 4, Section 32(c)(2) of the House Rules. Points of order complaining of flaws in the bill analysis account for over 40 percent of the points of order called so far during this session. Members have regularly asserted that these analyses are incomplete, incorrect, or misleading, *e.g.*, 84 H.J. Reg. 3380 (2015) (Collier point of order on CSHB 3994); 84 H.J. Reg. 3369 (2015) (Walle point of order on CSHB 1798); 84 H.J. Reg. 3368 (2015) (González point of order on CSHB 1798); 84 H.J. Reg. 3327 (2015) (Springer point of order on CSHB 3113); 84 H.J. Reg. 2613-14 (2015) (Martinez point of order on HB 996); 84 H.J. Reg. 2543 (2015) (Schaefer point of order on CSHB 335); 84 H.J. Reg. 2331 (2015) (Rinaldi point of order on CSHB 2267); 84 H.J. Reg. 1993-94 (2015) (Coleman point of order on CSHB 1794); 84 H.J. Reg. 1615-16 (2015) (González point of order on HB 1690); 84 H.J. Reg. 1614-15 (2015) (Moody point of order on HB 1690); 84 H.J. Reg. 1058-60 (2015) (Simpson point of order on SB 293). Oftentimes, these contentions are based on a bill analysis's omission of certain details of the bill or definitions contained therein. On the other end of the spectrum, on at least one recent occasion, a member has asserted that the bill analysis is unhelpful when it restates the bill to such an extent that the analysis does not actually provide any independent analysis. 83 H.J. Reg. 4060 (2013) (M. González point of order on SB 11). This embarrassing number of issues (actual or perceived) with bill analyses suggests that the requirements of Rule 4, Section 32(c) may not be meeting the membership's need for a helpful summary of the often complex measures that the house considers, in which case the membership might wish to address this issue in future versions of the rules.

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 4442 (Smithee 5/24/15)

CSSB 900 - POINT OF ORDER

Representative Smithee raised a point of order against further consideration of CSSB 900 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Smithee raised a point of order against further consideration of CSSB 900 under Rule 4, Section 32(c)(2) arguing that the bill analysis to

CSSB 900 is materially misleading. The main argument is that the bill analysis systemically and repetitively uses "the wrong definition of association by using the definition in current law and not the new definition of Texas Coastal Insurance Association which is set forth in this bill." The point of order is respectfully overruled.

Both the analysis portion of the bill analysis (on page 5 of the analysis, "CSSB 900 redefines 'association' to mean the Texas Coastal Insurance Association") and the comparison of the original to the substitute (pages 5-25 of the analysis) reflect the definition at issue and the complained of wording changes. The chair has had an opportunity to review the 5,897 words, 686 lines of text, and 164 paragraphs of the house committee report with the 2,443 words, 245 lines, and 52 paragraphs of the bill analysis (the latter figure does not include the side-by-side comparison of the senate version of the bill and the house substitute). The chair is of the opinion the summary complies with the provisions of Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 3515-16 (Burrows 5/14/15)

CSHB 1891 - POINT OF ORDER

Representative Burrows raised a point of order against further consideration of CSHB 1891 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Burrows raised a point of order against further consideration of CSHB 1891 under Rule 4, Section 32(c)(2) on the grounds that bill analysis inaccurately represents the rulemaking authority of the commissioner of education. The point of order is respectfully overruled.

Rule 4, Section 32(c)(2) requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill." Rule 4, Section 32(c)(2). CSHB 1891 deals exclusively with the transition of a school to a Texas community school by detailing the methods for becoming a Texas community school along with the requirements for maintaining that status. To implement these changes, the bill adds the provision: "The commissioner may adopt rules as necessary to implement this subchapter." The bill analysis summarizes this provision as "The bill authorizes the commissioner of education to adopt rules as necessary to implement the bill's provisions providing for a school's transition to a Texas community school [the subject of the subchapter]." Having reviewed the bill, the complete analysis, and house precedents, the chair determines that the analysis of the rulemaking provision satisfies Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis—Sustained
84 H.J. Reg. 3510-11 (T. King 5/14/15)

HB 3835 - POINT OF ORDER

Representative T. King raised a point of order against further consideration of HB 3835 under Rule 4, Section 32(c)(1) and Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker sustained the point of order and submitted the following statement:

Representative T. King raised two points of order against further consideration of HB 3835 under Rule 4, Section 32(c)(2) and Rule 4, Section 32(c)(1) on the grounds that the bill analysis is misleading and incomplete. The point of order is sustained.

The bill analysis fails to state that a state agency may not purchase or lease a vehicle that uses "biodiesel/diesel blends of 20 percent or greater." Section 1 of HB 3835. It was one of two fuels excluded from use in state agency vehicles that may be purchased or leased under Section 2158.003(a). In the context of this bill, and this bill analysis, the bill analysis violates Rule 4, Section 32(c). The point of order is sustained.

HB 3835 was returned to the Committee on Energy Resources.

Bill Analysis—Incorrect, Misleading, and Inaccurate Analysis—Sustained
84 H.J. Reg. 3502-04 (Coleman, Walle, and Martinez Fischer 5/14/15)

CSHB 2221 - POINT OF ORDER

Representatives Coleman, Walle, and Martinez Fischer raised a point of order against further consideration of CSHB 2221 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker sustained the point of order and submitted the following statement:

Representatives Coleman, Walle, and Martinez Fischer raised points of order against further consideration of CSHB 2221 under Rule 4, Section 32(c)(2) on the grounds that the bill analysis is incorrect. Rule 4, Section 32(c)(2). The points of order are sustained.

Rule 4, Section 32(c)(2) requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill." Rule 4, Section 32(c)(2). Representative Coleman asserts that CSHB 2221's bill analysis fails to correctly summarize the notice requirements for a municipality that proposes the annexation of an area with a population of 200 or more. Specifically, he observes

that Section 43.0613 of CSHB 2221 requires notice of annexation to be sent to each "property owner," while the analysis says that a municipality proposing annexation of an area with a population of 200 or more must send a notice to each "resident." Because the bill analysis identifies a different group—residents, as opposed to property owners—that do not necessarily overlap, the bill analysis is inaccurate and misleading.

In their point of order, Representatives Walle and Martinez Fischer asserted that the bill analysis is misleading because it inaccurately summarizes Section 20 of the bill. Section 20 reads:

> SECTION 20. Section 43.203(a), Local Government Code, is amended to read as follows:
>
> (a) This section applies only to the [~~The~~] governing body of a district that by resolution petitioned [~~may petition~~] a municipality to alter the annexation status of land in the district from full-purpose annexation to limited-purpose annexation and before September 1, 2015:
>
> (1) entered into an agreement to alter the status of annexation as provided by this section; or
>
> (2) had its status automatically altered by operation of Subsection (c).

The bill analysis summarizes this section as follows:

> The bill removes the authorization for the governing body of certain districts to petition a municipality to alter the annexation status of land in the district from full-purpose annexation to limited purpose annexation and restricts the applicability of statutory provisions regarding such an alteration of status to a governing body that entered into an agreement before September 1, 2015, to alter the status of annexation or had its status automatically altered.

They contend the bill analysis is misleading because it is "difficult to understand" and "[e]ven if a member were to reread the sentence to discern its meaning, they would determine that (2) is not bound by the September 1, 2015, date." The fact that a bill analysis, which is often drafted within a very limited period of time as an analysis of complex statutory language, is difficult to understand is not a basis on which the chair would sustain a point of order. Here, however, the language of the bill analysis is misleading and inaccurate, and there is nothing anywhere in the complete bill analysis to cure the inaccuracy. In the bill, the date September 15, 2015, modifies (1) entering into an agreement and (2) having a status automatically altered. As Representatives Martinez Fischer and Walle point out, the bill analysis has shifted the position of the date in the sentence such that the sentence now inaccurately reads as though this provision

applied to a governing body that (1) entered into an agreement before September 1, 2015, or (2) had its status automatically altered (without a timing limitation).

Because this bill analysis is so fatally flawed, the points of order are sustained.

CSHB 2221 was returned to the Committee on Land and Resource Management.

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 3393-94 (Walle 5/13/15)

CSHB 3994 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 3994 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Walle raised a point of order pursuant to Rule 4, Section 32(c)(2) against further consideration of CSHB 3994 on the grounds that the bill analysis is incorrect and misleading. The point of order is respectfully overruled.

Rule 4, Section 32(c)(2) of the House Rules requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill," including "an analysis of the content of the bill." Rule 4, Section 32(c)(2). Representative Walle argues that the bill analysis fails to adequately address Section 4 of the bill, and in particular, the grounds for granting a judicial bypass such that the bill analysis is incorrect and misleading. Having reviewed the bill, the complete bill analysis, and an identical point of order, the chair determines that the analysis of Section 4 does not violate Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 3380 (Collier 5/13/15)

CSHB 3994 - POINT OF ORDER

Representative Collier raised a point of order against further consideration of CSHB 3994 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Collier raised a point of order against further consideration of CSHB 3994 on the grounds that the bill analysis is incorrect. Rule 4, Section 32(c)(2). The point of order is respectfully overruled.

Rule 4, Section 32(c)(2) requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter

of the bill," including "an analysis of the content of the bill." Rule 4, Section 32(c)(2) of the House Rules. Representative Collier argues that the bill analysis fails to adequately address the grounds for granting a judicial bypass such that the bill analysis is incorrect and misleading. She specifically asserts that the bill analysis fails to adequately clarify the evidentiary standard required for a minor to make an abortion decision. Having reviewed the bill and the complete bill analysis, the chair determines that the bill analysis's treatment of the evidentiary standard does not violate Rule 4, Section 32(c)(2).

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 3327 (Springer 5/13/15)

CSHB 3113 - POINT OF ORDER

Representative Springer raised a point of order against further consideration of CSHB 3113 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Springer raised a point of order against further consideration of CSHB 3113 under Rule 4, Section 32(c) on the grounds that the bill analysis to CSHB 3113 is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c) requires each committee report on a bill to "include in summary or section-by-section form a detailed analysis of the subject matter of the bill." Rule 4, Section 32(c). Representative Springer asserts the bill analysis does not adequately explain that the bill's provision referring to municipalities "described by this subsection" applies to municipalities fitting three descriptions: (1) eligible central municipalities, (2) municipalities with a population of 173,000 or more that is located within two or more counties, and (3) municipalities with a population of 96,000 or more located in a county that borders Lake Palestine or contains the headwaters of the San Gabriel River. He argues that the bill analysis "authorizes ONLY a municipality with a population of 173,000 or more . . ." while omitting the other two types of municipalities. The analysis states: "The bill makes the authorization for a municipality with a population of 173,000 or more that is located within two counties to pledge that revenue for those purposes applicable to a municipality with that same population located within two or more counties." In addition to accurately summarizing this change, the analysis explains "CSHB 3113 amends the Tax Code to include a municipality with a population of 96,000 or more that is located in a county that borders Lake Palestine or contains the headwaters of the San Gabriel River among the municipalities authorized to pledge revenue derived from the municipal hotel occupancy tax from certain hotel projects for payment of obligations issued or incurred to acquire, lease, construct, and equip the hotels and any facilities ancillary to the hotels." Thus, the bill analysis addresses these two types of municipalities, which are added or amended by CSHB 3113. The "Analysis" section of the bill analysis does

not mention changes to an "eligible central municipality" because this category was already among the types of municipalities authorized to pledge revenue from the municipal hotel occupancy tax under the existing subsection. The bill analysis, therefore, adequately addressed the municipalities encompassed in those "described by this subsection." Having thoroughly reviewed the bill and the analysis, the chair determines that the point of order should be overruled.

Bill Analysis—Incorrect and Misleading Analysis—Sustained
84 H.J. Reg. 1615-16 (González 4/16/15)

CSHB 1690 - POINT OF ORDER

Representative González raised a point of order against further consideration of CSHB 1690 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

. . .

The speaker sustained the point of order and submitted the following statement:

Representative González raised a point of order against further consideration of CSHB 1690 under Rule 4, Section 32(c)(2) on the ground that the bill analysis is incorrect. The point of order is sustained.

Generally, CSHB 1690 requires the investigation of a formal or informal complaint alleging an offense against public administration specified under the bill's provisions to be conducted by an officer of the Texas Rangers, rather than by a division of the Travis County District Attorney's Office. To that end, the bill amends Section 301.027(b) of the Government Code by removing the reference to the Travis County district attorney and instead referring to the "appropriate prosecuting" attorney. The portion of the bill analysis that reflects this change states:

> CSHB 1690 changes from the Travis County district attorney to the appropriate prosecuting attorney as provided under the bill's public integrity prosecution provisions the entity to which the president of the senate or speaker of the house of representatives must certify a statement of facts relating to a prosecution for contempt of the legislature by failing to cooperate with a general investigating committee.

However, the provisions of the Government Code that this statement analyzes address contempt for failure to cooperate with either house or any legislative committee, not just a general investigating committee. *See* Tex. Gov't Code §§ 301.024, 301.027(a), (b). The bill analysis's mention of only "a general investigating committee" is therefore misleading, and thus the bill analysis violates Rule 4, Section 32(c)(2).

CSHB 1690 was returned to the Committee on General Investigating and Ethics.

Bill Analysis—Incorrect and Misleading Analysis
84 H.J. Reg. 1614-15 (Moody 4/16/15)

CSHB 1690 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of CSHB 1690 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Moody raised a point of order against further consideration of CSHB 1690 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incomplete and misleading. The point of order is respectfully overruled.

Under Rule 4, Section 32(c), each committee report on a bill must include in summary or section-by-section form a detailed analysis of the bill. Rule 4, Section 32(c). Representative Moody asserts that by adding statutory definitions to the new Public Integrity Prosecutions subchapter of the Government Code, CSHB 1690 effectively adds a new element to existing Public Integrity Unit offenses by narrowing the focus of the statutes. Representative Moody references a point of order raised in the 83rd Legislative Session as guiding precedent. *See* 83 H.J. Reg. 2323-24 (2013) (Y. Davis point of order on CSHB 2748).

Having reviewed the bill, the bill analysis, and the argument presented by Representative Moody, the chair finds that the bill's addition of statutory definitions to the Public Integrity Prosecutions subchapter does not operate to add a new element to existing statutory offenses. As such, the bill analysis accurately reflects the subject matter of the bill and is in compliance with Rule 4, Section 32(c). Accordingly, the point of order is respectfully overruled. *Cf.* 83 H.J. Reg. 3005-06 (2013) (Martinez Fischer point of order on CSHB 3316); 83 H.J. Reg. 4027-28 (Canales point of order on SB 549); 83 H.J. Reg. 4045 (2013) (Martinez Fischer point of order on CSSB 21).

Bill Analysis—Incorrect and Misleading Analysis—Sustained
83 H.J. Reg. 2462-63 (McClendon 5/4/13)

CSHB 2665 - POINT OF ORDER

Representative McClendon raised a point of order against further consideration of CSHB 2665 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative McClendon raised a point of order against further consideration of CSHB 2665 under Rule 4, Section 32(c) of the House Rules, asserting that the bill analysis is inaccurate. The point of order is sustained.

As the author of the bill forthrightly acknowledged, the bill contains a reference to Section 411.205 of the Transportation Code, which does not exist. The author had intended to cite to Section 411.205 of the Government Code. The bill analysis, rather than recognizing that the bill cites a nonexistent code, seems to analyze the bill as though it had in fact referenced the Government Code, stating that the "bill's provisions expressly do not affect the requirement to display both a concealed handgun license and a driver's license or personal identification certificate on request by a peace officer or magistrate or affect the types of identification required under federal law to access airport premises or pass through airport security." Because the bill's provisions did not actually address the appropriate Government Code provision and instead referred to a nonexistent section of a statute, this statement in the bill analysis was incorrect and misleading. See Rule 4, Section 32(c)(2) of the House Rules (requiring an analysis of the content of the bill).

CSHB 2665 was returned to the Committee on Homeland Security and Public Safety.

[Note: Compare to 80 H.J. Reg. 2999-3000 (2007).]

Bill Analysis—Incorrect and Misleading Analysis
83 H.J. Reg. 2449-50 (Walle 5/4/13)

HB 1009 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of HB 1009 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

. . .

The chair overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of HB 1009 under Rule 4, Section 32(c) of the House Rules. Specifically, Representative Walle asserts that the bill's provision that a person may renew the school marshal license by completing a renewal course that "will not exceed 16 hours combined of classroom and simulation training" is inconsistent with the bill analysis's statement that the bill "sets out minimum training and aptitude requirements" for school marshal license renewal. Representative Walle emphasizes that a 16-hour limit on classroom training is inconsistent with the description of minimum standards. The point of order is respectfully overruled.

Representative Walle is correct that the bill requires a renewal course that may not exceed 16 hours of classroom and simulation training. In addition, the bill also requires persons seeking renewal of a school marshal license to demonstrate knowledge on a written exam, demonstrate handgun proficiency, and demonstrate psychological fitness. These four requirements together, which are listed together in Subsection (h) of Section 1701.260, Occupations Code, which is added by the bill, constitute the minimum training and aptitude requirements to which the bill analysis refers.

Bill Analysis—Incorrect and Misleading Analysis
83 H.J. Reg. 1900 (M. González 4/25/13)

CSHB 611 - POINT OF ORDER

Representative M. González raised a point of order against further consideration of CSHB 611 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative M. González raised a point of order against further consideration of CSHB 611 under Rule 4, Section 32(c) of the House Rules, asserting that the bill analysis is misleading. The chair has reviewed the bill analysis and the bill and finds that the bill analysis complies with the cited rule and is not misleading in the context of the bill. The point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Sections 32(c), (f))—Sustained
82 H.J. Reg. 920 (Martinez 3/21/11)

CSSB 14 - POINT OF ORDER

Representative Martinez raised a point of order against further consideration of CSSB 14 under Rule 4, Section 32(c)(2) and Rule 4, Section 32(f) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker sustained the point of order, speaking as follows:

Mr. Martinez raises a point of order under Rule 4, Section 32(c)(2) and Rule 4, Section 32(f) in that the bill analysis is substantially or materially misleading, specifically because the bill analysis refers to six business days while the text of the bill refers only to six days.

The chair has reviewed the bill and bill analysis and finds the reference in the bill analysis to be materially or substantially misleading in the context of the bill. The point of order is sustained.

CSSB 14 was returned to the Select Committee on Voter Identification and Voter Fraud.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Sections 32(c), (f))—Sustained
81 H.J. Reg. 2322-23 (Dunnam 5/2/09)

CSHB 2873 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHB 2873 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Dunnam raises a point of order against further consideration of CSHB 2873 in that the bill analysis in incorrect, and, therefore, in violation of Rule 4, Section 32(c) of the House Rules.

CSHB 2873 relates to punishment prescribed for the offense of evading arrest or detention and creates and offense in connection with same under Section 38.04 of the Penal Code.

The bill analysis that accompanies CSHB 2873 states that under current law "there are no enhanced penalties for repeat offenders." This statement is materially incorrect, however, because Section 38.04 of the Penal Code contains a provision that makes it felony of the third degree if the actor uses a vehicle while the actor is in the flight and the actor had been previously convicted under the section. Therefore, the bill analysis is materially and substantially misleading because it misstates current law which does provide for an enhanced penalty for repeat offenders.

Accordingly, the point of order is well taken and sustained.

CSHB 2873 was returned to the Committee on Criminal Jurisprudence.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c)(4))
80 H.J. Reg. 3163 (Hodge 5/4/07)

CSHB 9 - POINT OF ORDER

Representative Hodge raised a point of order against further consideration of CSHB 9 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order, and submitted the following statement:

Representative Hodge raised a point of order against further consideration of CSHB 9 because of violations of Rule 4, Section 32(c)(4). The chair has reviewed the bill, the substitute, and the bill analysis and is of the opinion that the bill analysis complies with the rule. Accordingly, the point of order is overruled.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32)
80 H.J. Reg. 3052 (Burnam 5/3/07)

HB 1034 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of HB 1034 under Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, and submitted the following statement:

Representative Burnam raises a point of order under Rule 4, Section 32, that the bill analysis to HB 1034 is incorrect. Specifically, Representative Burnam argues the following phrase is inaccurate and misleading: "HB 1034 amends Section 3100.101 of the Government Code by adding the words 'state under God' immediately proceeding the word 'one' in the current Texas State pledge." Representative Burnam argues this analysis is false and misleading because the word "proceeding" means only a "procedure or a legal action."

The chair will proceed, which according to the Webster's Ninth New Collegiate Dictionary means "to continue after a pause or interruption," "to go on in an orderly regulated way," "to begin and carry on an action, process, or movement," to review the authorities raised by Representative Burnam. A majority of the point of order raised by Representative Burnam are not about the actual words contained in the bill analysis to HB 1034, but rather the words that Representative Burnam says the author probably intended to type. The chair declines to adopt this analysis.

The chair, reviewing the bill analysis, finds it does not violate the provisions of Rule 4, Section 32. The point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32)—Sustained
80 H.J. Reg. 3051-52 (Talton 5/3/07)

CSHB 465 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of CSHB 465 under Rule 4, Section 32 of the House Rules on the grounds that the bill analysis is incorrect.

The speaker sustained the point of order, and submitted the following statement:

Representative Talton raises a point of order against further consideration of CSHB 465 on the grounds that the bill analysis is incorrect because it misstates substantive law and is therefore materially and substantially misleading.

The chair sustains the point of order.

CSHB 465 was returned to the Committee on Licensing and Administrative Procedures.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32)
80 H.J. Reg. 2999-3000 (Martinez Fischer 5/3/07)

CSHB 13 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 13 under Rule 4, Section 32(c)(3) and Rule 4, Section 32(c)(4) of the House Rules on the grounds that bill analysis is incorrect.

The speaker overruled the point of order, and had read the following statement:

Representative Martinez Fisher raises a point of order against further consideration of HB 13 under Rule 4, Section 32, specifically noting that in the bill analysis of Section 8 of the bill analysis states the Office of Homeland Security, in reviewing grants and other funding, shall consider several accurately described sections and "Chapter 42.061 of the Government Code," a provision that both Representative Martinez Fischer and the bill's author agree does not exist in any way.

So the question before the chair is, can an error in a bill analysis that refers to a non-existent law cause a violation of Rule 4, Section 32? As most members of the house are aware, perfection in the legislative process is a desired goal, but one that is unlikely attainable. Over the years, members and their staffs in drafting bill analyses have made any number of mistakes, including typos and errors in cutting and pasting documents. But, not all of those errors are in equal weight. For instance, yesterday, in sustaining Representative Thompson's point of order against HB 2006, where the point of order was sustained because: 1) the bill analysis misidentified a statute in the bill confusing it with another section, 2) that the misidentified section existed in law, and 3) that the misidentified statutes dealt with the same subject (assessment of monetary costs—damages or costs and attorney fees in eminent domain action). All three of these errors led the analysis to be materially misleading.

In this case, only one of those elements is present. In the bill analysis, a nonexistent section of the law was described. Everyone agrees there is not one there. The Office of Homeland Security cannot use the nonexistent section in performing its duties. In this case, there is no chance for misleading or misinforming members. At worst, members were told a nonexistent section was being considered that couldn't be considered anyway. Accordingly, the point of order is overruled.

[Note: Compare to 83 H.J. Reg. 2462-63 (2013).]

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c))
80 H.J. Reg. 2791 (Thompson 5/1/07)

CSHB 626 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of CSHB 626 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, and submitted the following statement:

The point of order is overruled. The chair finds that the bill analysis complies with Rule 4, Section 32(c), and is not materially or substantially misleading.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c))
80 H.J. Reg. 2466 (Burnam 4/25/07)

CSHB 3678 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of CSHB 3678 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, and submitted the following statement:

The chair finds that the deletion of a section that authorizes the citation of the titles in the substitute is not substantially misleading for purposes of complying with the House Rules and house precedent and practice.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c))
80 H.J. Reg. 1663 (Krusee 4/10/07)

CSHB 1892 - POINT OF ORDER

Representative Krusee raised a point of order against further consideration of CSHB 1892 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

. . .

The speaker overruled the point of order, and submitted the following statement:

The chair overrules the point of order on the grounds that the bill contains a summary analysis which fulfills the purpose and requirements of Rule 4, Section 32(c) under long-standing house precedent. The point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c))—Sustained
80 H.J. Reg. 1600-01 (Talton 4/4/07)

CSSB 482 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of CSSB 482 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker sustained the point of order and submitted the following statement:

Rep. Talton raises a point of order against further consideration of SB 482 on the grounds that the bill analysis violates Rule 4, Section 32(c) because it is inaccurate.

SECTION 6 of SB 482 amends Section 39.902, Utilities Code, a statute which addresses "Customer Education." The bill analysis refers, in error, to SECTION 6 as amending Section 39.202, Utilities Code, which actually addresses "Price to Beat" provisions of the code. To add to the confusion, the analysis notes that SECTION 7 of the original amends Section 39.902, Utilities Code, the provision relating to "Customer Education."

The chair is aware that committee clerks and other house staff make every reasonable effort to analyze complex legislation under crushing deadlines, often with limited expertise in the subject matter that they are discussing in their bill analyses. This is why, in the absence of the "substantial compliance rule" (which was repealed by the 78th Legislature when it adopted its house rules), the chair has balanced these concerns against the requirement that an error in a bill analysis be substantially or materially misleading before sustaining a point of order.

Because both Section 39.202 and Section 39.902, Utilities Code exist in law, were both mentioned in the analysis, and were both amended in SB 482 at some point during the legislative process, the chair has no choice but to find that the discussion and treatment of these provisions in the analysis is materially or substantially misleading to the reader.

Accordingly, the point of order is well-taken and sustained.

CSSB 482 was returned to Committee on Regulated Industries.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c)(2))
80 H.J. Reg. 520 (Martinez Fischer 2/20/07)

SCR 20 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of SCR 20 under Rule 4, Section 32(c)(2) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order, speaking as follows:

The chair finds that the bill analysis at issue is not materially misleading and that it contains sufficient information to inform the reader of its substance. This is especially the case with respect to the resolving clause.

Therefore, for the reasons stated above, the point of order is respectfully overruled.

. . .

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c))
79 H.J. 1st C.S. 345 (Y. Davis 7/6/05)

CSHB 3 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 3 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis contains multiple inaccuracies.

The speaker overruled the point of order, speaking as follows:

Representative Y. Davis raised a point of order against further consideration of CSHB 3. Ms. Davis raises eight violations of Rule 4, Section 32(c) (accuracy of the bill analysis), which the chair respectfully overrules.

The chair has examined the bill analysis, which is a summary analysis authorized under the rules. The chair believes that the analysis is not significantly misleading or inaccurate and that it complies with the rules.

For these reasons, the point of order is respectfully overruled.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c))—Sustained
79 H.J. Reg. 4100-01 (Dunnam 5/23/05)

CSSB 422 - POINT OF ORDER DISPOSITION

Representative Dunnam had raised a point of order against further consideration of CSSB 422 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis contains multiple inaccuracies.

The speaker sustained the point of order, and had read the following statement:

Representative Dunnam raised seven points of order on the sufficiency of the bill analysis to CSSB 422. Five of those violations have been previously overruled.

Violation 4 notes the failure of the bill analysis to satisfy the requirements of Rule 4, Section 32(c)(4) to discuss two proposed sections. The first, a standard Sunset across-the-board provisions, language relating to encouraging the use of negotiated rulemaking and alternative dispute resolution provisions, and the second, a provision that require the commissioner to evaluate, before adopting a rule, whether it would impose additional paperwork requirements on teachers and attempt to minimize that paperwork.

Both of these provisions appear in the senate engrossed version and do not appear in house committee of the bill. There is no discussion of the absence of these two provisions in the portion of the bill analysis containing a comparison of the original to the substitute.

In making a determination of whether a bill analysis complies with the provisions of Rule 4, Sec. 32(c), the presiding officer must examine each unique bill and each unique bill analysis. In this case, the chair has reviewed the house and senate version of the bills and the bill analysis. Failure to describe, in this case, the deletion of the rulemaking and alternative dispute resolution provision and the reduction of paperwork provision failed to set out a statement of substantial differences between the complete committee substitute and the original bill.

Accordingly, the point of order raised by Representative Dunnam is sustained.

The ruling precluded further consideration of CSSB 422.

[Note: See 79 H.J. Reg. 4086-88 (Dunnam 5/23/05), *infra* at 125-27, for background information and to see the overruled portions of this ruling.]

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32(c)) 79 H.J. Reg. 4086-88 (Dunnam 5/23/05)

CSSB 422 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSSB 422 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis contains multiple inaccuracies.

The speaker overruled the point of order with respect to violations 1, 3, 5, 6, and 7, and had read the following statement:

Mr. Dunnam raised several points of order as to the sufficiency and accuracy of the bill analysis. The chair has reviewed the bill analysis in detail and states the following:

With respect to violations 1, 3, 5, 6, and 7, the chair believes that the analysis is sufficient under the rules and that it fulfills the purpose of Rule 4, Section 32(c) in that it is a proper analysis.

The point of order is respectfully overruled with respect to violations 1, 3, 5, 6, and 7. (The chair ruled on the remaining violations later today.)

MEMORANDUM BY REPRESENTATIVE DUNNAM

VIOLATION 1

The bill analysis violates Rule 4, Section 32(c)(3) by inaccurately describing a rulemaking authority provision in the bill. The bill analysis states, "rulemaking authority previously granted to the Commissioner of Education is transferred to the Texas Commission of Licensing and Regulation in SECTION 2.08, SECTION 2.10, SECTION 2.13, SECTION 2.16, SECTION 2.17, SECTION 2.18." This statement omits SECTION 2.06 in which the rulemaking authority previously granted to the Commissioner of Education is transferred to the Texas Commission of Licensing and Regulation. Under current law the Commissioner of Education is granted necessary rulemaking authority to administer Chapter 1001, Education Code. Under CSSB 422 the Texas Commission of Licensing and Regulation is given this rulemaking authority.

VIOLATION 2

The bill analysis violates Rule 4, Section 32(c)(3) in another place where it states, "rulemaking authority is expressly granted to the Commissioner of Education in...SECTION 1.30." This is inaccurate. SECTION 1.30 directs the commissioner to take certain actions if a school district does not satisfy the accreditation criteria under Section 39.071, the academic performance standard under Section 39.072, or any financial accountability standard as determined by commissioner rule. This does not in any way grant rulemaking authority to the commissioner. The authority to adopt rules relating to financial accountability standards that the bill refers to is expressly granted in Section 39.204, Education Code.

VIOLATION 3

The "analysis" section of the bill analysis states, "a child attending a qualifying school is entitled to receive an annual scholarship" (page 2, 2nd paragraph). This is explicitly untrue. The quantifier "a" must logically be interpreted to mean "any." However, only some children attending a qualifying school—not any child attending a qualifying school—are entitled to receive an annual scholarship. Only children that are at risk of dropping out, are a victim or sibling of a victim of assault, have limited English proficiency, are receiving special education services or are from a family with income no more than twice the reduced price lunch income limit are entitled. Additionally, other children who do not attend a qualifying school (drop-outs and first time students) are entitled to receive a scholarship.

VIOLATION 4

The bill analysis fails to satisfy Rule 4, Section 32(c)(4). "Each committee report on a bill . . must include . . . a detailed analysis . . . specifically including . . . a statement of substantial differences between a complete committee substitute and the original bill." See Rule 4, Section 32(c) of the House Rules (79th Legislature)

Two sections of statute proposed by the senate engrossed version of the bill are removed in the committee substitute. The "comparison of original

to substitute" section of the bill analysis makes no mention of the following substantial differences:

(1) Proposed Section 7.062, Education Code, would have required the commissioner to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution (page 6, line 27 through page 7, line 20 of engrossed version).

(2) Proposed Section 7.063 would have required the commissioner, before adopting a new rule, to evaluate whether it would impose additional paperwork requirements on teachers and attempt to minimize that (page 7, line 21 through line 25 of engrossed version).

VIOLATION 5

The "background and purpose" section of the bill analysis explicitly violates the House Rules. The "background and purpose" section contains absolutely no information on what the bill proposes to do. This violates Rule 4, Section 32(c)(1). "Each committee report on a bill . . . must include . . . a detailed analysis . . . specifically including . . . background information on the proposal and information on what the bill or resolution proposes to do." See Rule 4, Section 32(c) of the House Rules (79th Legislature).

VIOLATION 6

The "analysis" section of the bill analysis (page 1, 2nd paragraph) contains a substantial omission that creates an affirmative harm and misrepresents the content of the bill. The analysis does not mention that the informal review by the Commissioner of Accountability and School Finance is final and not subject to appeal. In fact, the section of the bill takes away all avenues of appeal parties currently have under other law (page 5, lines 15-16), including court cases and administrative hearings. In other places where the bill states that a commissioner's determination is final, the bill analysis notes this (e.g. page 2, 7th paragraph). This omission is deceptive.

VIOLATION 7

The "analysis" section of the bill analysis makes no mention of the requirement to designate private non-profits as schools of choice resource centers or the requirement for this private organization to determine whether or not a child is eligible for a state program. This should be included in the section of the analysis that discusses voucher programs (page 2, 2nd paragraph). These centers are an integral part of the voucher program, yet they are not mentioned anywhere in the bill analysis. This omission is deceptive.

For the foregoing reasons, the point of order should be sustained.

[Note: See 79 H.J. Reg. 4100-01 (Dunnam 5/23/05), *supra* at 124-25, to see the ruling sustaining a point of order based on alleged Violation 4.]

Bill Analysis—Incorrect and Misleading Analysis; Rulemaking; Omission of Material Provision (Rule 4, Section 32)—Sustained
79 H.J. Reg. 2934-35 (Martinez Fischer 5/10/05)

CSHB 846 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSHB 846 under Rule 4, Section 32 of the House Rules on the grounds that the reports of the standing committee on the bill were not duplicated.

The speaker sustained the point of order and submitted the following statement:

Representative Martinez Fischer raises three points of order against further consideration of HB 846 on three grounds: First, Representative Martinez Fischer argues that the bill analysis for HB 846 does not adequately describe all of the provisions that relate to rulemaking as required by Rule 4, Section 32(c)(3), House Rules. Second, Representative Martinez Fischer contends that the bill analysis for HB 846 omits several material provisions and is therefore misleading and inaccurate and a violation of Rule 4, Section 32(c)(2), House Rules. Third, Representative Martinez Fischer argues that the bill analysis omits "substantial differences" between the complete committee substitute and the original bill in violation of Rule 4, Sec. 32(c)(4), House Rules. The chair respectfully overrules the first two points of order and sustains the third point of order.

(1) Rulemaking Authority. Rule 4, Sec. 32(c)(3) requires that rulemaking authority be expressly delegated to a state officer, department or agency. The purpose of the rule is to enable members to make informed decisions about the types of powers that they are authorizing agencies to exercise. The rule is not, however, designed to require a committee or staff to be the arbiter of legal questions about whether particular actions an agency is permitted or directed to take constitute rulemaking. The provisions that Representative Martinez Fischer cites in his point of order would require committees and staff to do just that and, incidentally, contain no express use of the word "rule" at all. Therefore, this point of order is overruled.

(2) General Omission of Material Provisions. The rule for a committee report allows a summary or a section by section report. While the report must form a detailed analysis of the subject matter of the bill and include the 5 enumerated topics of the subsection (c), if applicable, the rule does not require that each item within a bill be specifically covered. By nature, summaries are shorter than the documents summarized. Therefore, the chair overrules the second point of order with respect to Rule 4, Sec. 32(c)(2).

(3) Omission of Substantial Differences Between Committee Substitute and Original Bill. In order to comply with Rule 4, Sec. 32(c)(4), a comparison of an original bill to a substitute must adequately describe substantial changes in the bill. The chair has reviewed the original bill, the committee substitute, and bill

analysis and is of the opinion that the analysis (which is a mixture of a summary analysis and a section by section analysis) does not meet the rule's threshold.

The failure of the analysis to comply with this rule renders it misleading because it does not accurately describe substantial changes in the bill nor does it accurately compare the original bill to the substitute.

For this reason, the third point of order is sustained.

The ruling precluded further consideration of CSHB 846.

Bill Analysis—Incorrect and Misleading Analysis (Rule 4, Section 32)—Sustained
79 H.J. Reg. 2481-82 (Rodriguez 5/2/05)

CSHB 2833 - POINT OF ORDER

Representative Rodriguez raised a point of order against further consideration of CSHB 2833 under Rule 4, Section 32(c) of the House Rules on the grounds that a section number cited in the bill analysis is incorrect.

. . .

The speaker sustained the point of order, speaking as follows:

Representative Rodriguez raises a point of order against further consideration of CSHB 2833 under Rule 4, Section 32(c), in that the bill analysis for the bill was incorrect and misleading.

The chair has reviewed the bill and the bill analysis. The bill analysis describing Section 7 of the bill incorrectly states and describes the section of Government Code added by the bill.

Additionally, the bill analysis describing Sections 3 and 4 of the bill incorrectly states and describes the types of lawsuits affected by the bill.

Because of these errors in the bill analysis, the point of order is well-taken and sustained.

The ruling precluded further consideration of CSHB 2833.

Other explanations addressing incorrect and misleading bill analysis:
80 H.J. Reg. 2760-61 (Dunnam 5/1/07), *supra* at 45-46 (also addressing timely filing of committee minutes)

Bill Analysis—Rulemaking
85 H.J. 1st C.S. 203-04 (Moody 8/3/17)

CSHB 215 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of CSHB 215 under Rule 4, Section 32(c)(3), asserting that the bill analysis fails to identify rulemaking authority delegated by the bill.

Rule 4, Section 32(c)(3), requires the bill analysis to include "a statement indicating whether or not any rulemaking authority is expressly delegated . . . and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." The bill analysis for CSHB 215 states that the bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

CSHB 215 requires certain physicians to provide written certification of certain information to the Health and Human Services Commission (HHSC). Previously, these certifications were provided to the Department of Health and Human Services (DSHS). Representative Moody argues that this transfer from DSHS to HHSC "amounts to" an express grant of new, independent rulemaking authority. Additionally, he urges that this is a direct delegation because HHSC will be required to create new forms.

Looking within the four corners of the bill, the chair does not find any express, new, independent grant of rulemaking authority. Nor is the fact that HHSC is now receiving these certifications rather than DSHS grounds to assume a transfer of rulemaking authority occurred, was necessary, or amounts to an express, new, independent grant of rulemaking authority. *See* 85 H.J. Reg. 2239-40 (2017) (Leach point of order on HB 1133; citing HHSC's existing rulemaking authority in Section 531.0051 of the Government Code); 84 H.J. Reg. 3387 (2015) (C. Turner point of order on CSHB 3994; "[T]he Administrative Procedures Act requires rulemaking proceedings for generally applicable requirements that are the responsibility of a state agency. Looking within the four corners of the bill, however, the chair does not find any express, new, independent grant of rulemaking authority."); 83 H.J. Reg. 3001 (2013) (Morrison point of order on CSHB 2996; "Usually, such delegations are easily able to be spotted by the use of the phrase, 'The state agency shall adopt rules.'"). For these reasons, the point of order is respectfully overruled.

Bill Analysis—Rulemaking
85 H.J. Reg. 4520 (Workman 5/23/17)

CSSB 470 - POINT OF ORDER

Representative Workman raised a point of order against further consideration of CSSB 470 under House Rule 4, Section 32(c)(3), on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

House Rule 4, Section 32(c)(3), requires the bill analysis to include "a statement indicating whether or not any rulemaking authority is expressly delegated . . . and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." Representative Workman argues that Section 3 of the bill, which amends Section 158.009(a-1) of the Local Government Code, creates rulemaking authority because it allows the *commissioners court of a county* to "adopt, publish, or enforce a rule." (Emphasis added). Representative Workman points out that the bill analysis states "it is the committee's opinion

that this bill *does not* expressly grant any additional rulemaking authority to a state officer, department, agency, or institution." (Emphasis added). While Representative Workman read the bill analysis correctly it is important to remember that House Rule 4, Section 32(c)(3), only applies to a state officer, department, agency, or institution. However, the rule, by its express terms, does not apply to local county entities. The bill analysis complies with House Rule 4, Section 32(c)(3). The point of order is respectfully overruled.

Bill Analysis—Rulemaking; Captions—Reasonable Notice of Bill's Subject
85 H.J. Reg. 4485-87 (Canales 5/23/17)

SB 1566 - POINT OF ORDER

Representative Canales raised two points of order against further consideration of SB 1566. The first point of order was pursuant to House Rule 8, Section 1, on the grounds that the bill caption does not give reasonable notice of the subject of the bill. The second point of order was pursuant to House Rule 4, Section 32(c), on the grounds that the bill analysis is incorrect. Both points of order are respectfully overruled.

For the first point of order, House Rule 4, Section 32(c)(3), requires every bill analysis to contain "a statement indicating whether or not any rulemaking authority is expressly delegated to a state officer, department, agency, or institution, and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." Representative Canales argues that in Section 2, the phrase "shall create a policy" denotes a granting of rulemaking authority that is not reflected in the bill analysis. The bill expressly grants rulemaking authority to the commissioner of education in Section 3 of the bill. The language to which the proponent refers in Section 2 requires that a school district create a policy on visits to a district campus or other facility by a member of the board of trustees of the district, "in accordance with commissioner rule." This is a reference to existing rules created by the commissioner and does not constitute an express, independent grant of new rulemaking authority. *See* 85 H.J. Reg. 4071-72 (2017) (E. Rodriguez point of order on SB 2078).

As to the second point of order, House Rule 8, Section 1(a)(1), requires that the bill contain a caption "that gives the legislature and the public reasonable notice of the subject of the proposed measure." A caption "need not detail every element of a bill." 78 H.J. Reg. 1676 (2003) (Burnam point of order on CSHB 1567); 74 H.J. Reg. 2186 (1995) (Moreno point of order on HB 2646). SB 1566's caption reads "relating to certain powers and duties of the board of trustees of an independent school district and the governing body of an open-enrollment charter school." The chair has reviewed the caption of the bill and its substance and finds that it complies with House Rule 8, Section 1(a)(1).

For these reasons, the points of order are respectfully overruled.

Bill Analysis—Rulemaking; Captions—Reasonable Notice of Bill's Subject
85 H.J. Reg. 4071-72 (E. Rodriguez 5/21/17)

SB 2078 - POINT OF ORDER

Representative E. Rodriguez raised two points of order against further consideration of SB 2078. The first point of order was pursuant to House Rule 8, Section 1, on the grounds that the bill caption does not give reasonable notice of the subject of the bill. The second point of order was pursuant to House Rule 4, Section 32(c), on the grounds that the bill analysis is incorrect. Both points of order are respectfully overruled.

For the first point of order, House Rule 8, Section 1(a)(1), requires that the bill contain a caption "that gives the legislature and the public reasonable notice of the subject of the proposed measure." A caption "need not detail every element of a bill." 78 H.J. Reg. 1676 (2003) (Burnam point of order on CSHB 1567); 74 H.J. Reg. 2186 (1995) (Moreno point of order on HB 2646). SB 2078's caption reads "relating to the duties of school districts, open-enrollment charter schools, the Texas Education Agency, and the Texas School Safety Center regarding multihazard emergency operations plans and other school safety measures." Representative Rodriguez argues that while a bill caption does not have to detail every element of a bill, this bill's caption lists some entities to which the bill applies, but fails to mention public junior college districts. A review of the bill reveals that the phrase "public junior college district" appears twice in the bill. In both instances, it is printed as part of the background language of sections of the bill being amended. Nothing in the bill actually amends or affects a public junior college district. It was therefore correct for the caption to omit this language.

As to the second point of order, House Rule 4, Section 32(c)(3), requires every bill analysis to contain "a statement indicating whether or not any rulemaking authority is expressly delegated to a state officer, department, agency, or institution, and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." Representative E. Rodriguez argues that the bill grants rulemaking authority to the education commission in Section 6 of the bill. The language to which he refers in Section 6 requires that a school district report results of audits to "the agency, in accordance with commissioner rule." This reference to existing rules created by the commissioner does not constitute an express, independent grant of new rulemaking authority.

For these reasons, the points of order are respectfully overruled.

Bill Analysis—Rulemaking
85 H.J. Reg. 3814-15 (Turner 5/19/17)

CSSB 8 - POINT OF ORDER

Representative Turner raised a point of order against further consideration of CSSB 8, the fetal tissue remains bill, pursuant to Rule 4, Section 32(c)(3), on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(3), requires the bill analysis to include "a statement indicating whether or not any rulemaking authority is expressly delegated . . . and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." The bill analysis for CSSB 8 identifies Section 3 of the bill as granting rulemaking authority to the executive commissioner of the Health and Human Services Commission.

Earlier in the day, the chair overruled a point of order by Representative Turner, in which he argued that Section 8 of the bill created rulemaking authority. He asserts on this new point of order that, given the chair's ruling on the earlier point of order, the bill analysis must be incorrect in identifying Section 3 of the bill as creating an express, independent grant of new rulemaking authority. In short, he says that if Sections 2 and 8 are not included in the rulemaking section of the bill analysis, Section 3 should also not be identified.

But Section 3 of the bill contains the following: "Sec. 697.009. RULES. The executive commissioner shall adopt rules to implement this chapter." This is an express, independent grant of new rulemaking authority. As discussed in the chair's ruling on Representative Turner's other point of order on this bill, Section 2 of the bill contains no such language, and Section 8 of the bill merely creates a deadline by which rules must be adopted. Having thoroughly reviewed the bill and the bill analysis again, the chair finds that the bill analysis correctly identified Section 3 as expressly granting rulemaking authority that is independent of the executive commissioner's general powers under Chapter 12 of the Health and Safety Code. Therefore, the chair finds no violation of Rule 4, Section 32(c)(3).

One-Subject Rule; Bill Analysis—Rulemaking
85 H.J. Reg. 3810-11 (Canales 5/19/17)

CSSB 8 - POINT OF ORDER

Representative Canales raised two points of order against further consideration of CSSB 8, the fetal tissue remains bill. The first point of order was pursuant to House Rule 8, Section 3, on the grounds that the bill contains an impermissible second subject. The second point of order was pursuant to House Rule 4, Section 32(c), on the grounds that the bill analysis is incorrect. Both points of order are respectfully overruled.

For the first point of order, House Rule 8, Section 3, limits "[e]ach bill (except a general appropriations bill . . .) shall contain only one subject." Representative Canales argues that the requirement on page 9, lines 6-9, to maintain a registry of "participating funeral homes and cemeteries willing to provide free common burial or low-cost private burial" creates an impermissible second subject. The section Representative Canales points to is under a newly created chapter titled "Disposition of Embryonic and Fetal Tissue Remains." The provisions of that section repeatedly specify their application to the disposition of embryonic and fetal remains. Having reviewed the bill, the chair does not find a subject outside of prohibited abortions and the disposition of human fetal and embryonic remains. The point of order is respectfully overruled.

As to the second point of order, Rule 4, Section 32(c)(3), requires the bill analysis to include a detailed analysis of the subject matter of the bill. Representative Canales specifically argues that the bill creates two different criminal penalties based on similar elements, and that the bill analysis does not sufficiently describe them. Section 2 of the bill adds Section 173.007 to the Health and Safety Code, which creates a Class A misdemeanor for offering a woman monetary or other consideration to have an abortion or consent to the donation of fetal tissue. Separately, Section 7 of the bill amends Section 48.03 of the Penal Code to create a state jail felony for a person who knowingly offers to buy or offers to sell fetal tissue for economic benefit. Both penalties are discussed in the bill analysis. The Class A misdemeanor section is discussed on page 2 of the bill analysis, and the state jail felony penalty is discussed on page 3 of the bill analysis. Having thoroughly reviewed the bill, the bill analysis, and house precedent, the chair finds that the bill analysis complies with House Rule 4, Section 32(c). The second point of order is respectfully overruled.

Bill Analysis—Rulemaking
85 H.J. Reg. 3809-10 (Turner 5/19/17)

CSSB 8 - POINT OF ORDER

Representative Turner raised a point of order against further consideration of CSSB 8, the fetal tissue remains bill, pursuant to Rule 4, Section 32(c)(3), on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(3), requires the bill analysis to include "a statement indicating whether or not any rulemaking authority is expressly delegated . . . and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." The bill analysis for CSSB 8 identifies Section 3 of the bill as granting rulemaking authority to the executive commissioner of the Health and Human Services Commission.

Representative Turner argues that Section 8 of the bill also creates rulemaking authority and should accordingly have also been identified in the rulemaking section of the bill analysis. The portion of Section 8 at issue reads: "Not later

than December 1, 2017, the executive commissioner . . . shall adopt any rules necessary to implement Chapters 173 and 697, Health and Safety Code, as added by this Act." Representative Turner acknowledges that the chair has previously found similar language to be a deadline for the adoption of rules rather than an express independent grant of new rulemaking authority. *See* 83 H.J. Reg. 4053-54 (2013) (Schaefer point of order on SB 1079); 83 H.J. Reg. 4053 (2013) (Cortez point of order on SB 14). However, Representative Turner contends that in this case, Section 8 must be creating rulemaking authority because Section 2 of the bill, which adds Chapter 173 to the Health and Safety Code, does not contain its own express, independent grant of new rulemaking authority. He therefore concludes that Section 8's deadline for adopting rules must also serve as a grant of rulemaking authority; otherwise, he contends, Section 8's reference to Chapter 173 would be meaningless, as the executive commissioner would otherwise have no authority to adopt rules to implement Chapter 173. This conclusion is incorrect. Section 12.001(b) of the Health and Safety Code requires the executive commissioner to adopt rules "for the performance of each duty imposed by law on the executive commissioner, the department, or the commissioner . . . ." Thus, the executive commissioner has existing authority to adopt rules to implement Chapter 173, and Section 8 of the bill merely sets the deadline by which adoption of those rules must be accomplished.

Bill Analysis—Rulemaking
85 H.J. Reg. 3466 (Stickland 5/15/17)

SB 303 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of SB 303, the sunset bill for the State Board of Law Examiners, pursuant to Rule 4, Section 32(c)(3), on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(3), requires the bill analysis to include "a statement indicating whether or not any rulemaking authority is expressly delegated . . . and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." Representative Stickland specifically argues that the bill analysis fails to identify express rulemaking authority either by the Supreme Court of Texas or the State Board of Law Examiners. He argues that key components of the bill are not expressly or sufficiently described.

While the bill makes reference to "supreme court rules," this is not new authority granted to the Supreme Court of Texas but rather the authority already exists under Article V, Section 31, of the Texas Constitution and other law. Representative Stickland also alleges the bill analysis fails to identify the rulemaking authority of the Board of Law Examiners. We have scoured the bill and can find no reference to rulemaking power given to that board, nor have we been pointed to any.

Finally, Representative Stickland argues that the senate committee report set out rulemaking authority in the bill. He is correct—the senate report did so. However, the senate bill analysis would be in error under the House Rules. Neither Section 5 nor Section 6 of the senate bill, nor the house substitute, would require the rulemaking notation found in the senate bill analysis because none of the affected sections of the bill before the house contain an express, independent grant of new rulemaking authority. *See* 83 H.J. Reg. 2651 (2013) (Miles point of order on CSHB 500). Further, the bill analysis is neither inaccurate nor materially misleading. Accordingly, the point of order is respectfully overruled.

Bill Analysis—Rulemaking
85 H.J. Reg. 2391 (Tinderholt 5/3/17)

CSSB 507 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of CSSB 507 pursuant to House Rule 4, Section 32(c)(3), on the grounds that the bill analysis does not contain a statement indicating that the bill expressly delegates rulemaking authority. The point of order is respectfully overruled.

Representative Tinderholt argues that page 3 of the bill grants new rulemaking authority to the Teacher Retirement System, so the bill analysis's statement that the bill does not grant additional rulemaking authority is incorrect. CSSB 507 states that "[t]he commissioner, the Texas Medical Board, any other appropriate regulatory agency, and the chief administrative law judge shall adopt rules as necessary to implement their respective powers and duties under this chapter." Representative Tinderholt urges that this provision grants new rulemaking authority to the commissioner. However, this provision merely references and provides requirements for the exercise of the commissioner's existing rulemaking authority found in Section 531.0051(e) of the Government Code. Because the bill does not contain a new, independent, express delegation of rulemaking authority, the bill analysis does not violate Rule 4, Section 32(c)(3). *See* 84 H.J. Reg. 1612-13 (2015) (Walle point of order on CSHB 1690); 83 H.J. Reg. 4053-54 (2013) (Schaefer point of order on SB 1079).

Bill Analysis—Rulemaking
85 H.J. Reg. 2239-40 (Leach 5/2/17)

HB 1133 - POINT OF ORDER

Representative Leach raised a point of order against further consideration of HB 1133 pursuant to House Rule 4, Section 32(c)(3), on the grounds that the bill analysis does not contain a statement indicating that the bill expressly delegates rulemaking authority. The point of order is respectfully overruled.

Representative Leach argues that Section 2 of the bill grants new rulemaking authority to the executive director of the Health and Human Services Commission,

so the bill analysis's statement that the bill does not grant additional rulemaking authority is incorrect. HB 1133 states that the "methodology adopted by rule by the executive commissioner to determine Texas pharmacies' actual acquisition cost (AAC) must be consistent with the actual prices pharmacies pay to acquire prescription drugs . . . ." Representative Leach urges that this provision grants new rulemaking authority to the commissioner. To the contrary, this provision merely references and provides requirements for the exercise of the commissioner's existing rulemaking authority found in Section 531.0051(e) of the Government Code. Because the bill does not contain a new, independent, express delegation of rulemaking authority, the bill analysis does not violate Rule 4, Section 32(c)(3). *See* 84 H.J. Reg. 1612-13 (2015) (Walle point of order on CSHB 1690); 83 H.J. Reg. 4053-54 (2013) (Schaefer point of order on SB 1079).

Bill Analysis—Rulemaking
84 H.J. Reg. 4244-45 (S. King 5/23/15)

CSSB 204 - POINT OF ORDER

Representative S. King raised a point of order against further consideration of CSSB 204 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative S. King raised a point of order against further consideration of CSSB 204 under Rule 4, Section 32(c)(3) on the grounds that the bill analysis fails to properly identify rulemaking authority delegated by the bill. The point of order is respectfully overruled.

Representative S. King specifically argues that Section 43 of the bill, which adds amended Subchapter A-1, Chapter 161 to the Human Resources Code, is not included in the portion of the bill analysis that covers rulemaking authority. The cited provision stated that "a rule, policy, or form adopted by or on behalf of the department or council that relates to a function that is transferred . . . becomes a rule, policy, or form of the commission on the transfer of the related function . . . ." This transfer of the rule from one agency to another is not a delegation of new, independent rulemaking authority and does not need to be reflected in the bill analysis. As we have previously noted, to be subject to Rule 4, Section 32(c)(3)'s requirement, the provision must be an express, independent grant of new rulemaking authority. *See* 83 H.J. Reg. 4053-54 (2013) (Schaefer point of order on SB 1079); 83 H.J. Reg. 2651 (2013) (Miles point of order on CSHB 500) (treatment of existing rulemaking authority).

Bill Analysis—Rulemaking
84 H.J. Reg. 3705-06 (Moody 5/18/15)

SB 455 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of SB 455 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Moody raised a point of order against further consideration of SB 455 under Rule 4, Section 32(c)(3) on the grounds that the bill analysis fails to properly identify rulemaking authority delegated by the bill. The point of order is respectfully overruled.

Specifically, Representative Moody argues that the portion of the bill analysis of SB 455 that notes that Section 1 of the bill is an express grant of rulemaking authority is incorrect. He observes that Section 22.004 of the Government Code gives the Supreme Court of Texas existing "full rulemaking authority in the practice and procedure in civil actions." Tex. Gov't Code § 22.004(a); *see* Tex. Gov't Code § 22.004(b), (c). Representative Moody could also have noted the court's existing authority in Article V, Section 1 and Article V, Section 3 to the Texas Constitution to exercise "the judicial power" of the state. In any event, he contends any express rulemaking authority mentioned in Section 1 of the bill is not a delegation of new authority because it is subsumed in the existing grant of legislative (or constitutional) authority.

The point of order is overruled for several reasons. First, Section 1, which twice says "the supreme court may adopt rules" for various aspects of special three-judge district courts, constitutes an express grant of new, independent rulemaking authority under Rule 4, Section 32(c)(3). *See* 84 H.J. Reg. 3387 (2015) (C. Turner point of order on HB 3994); 84 H.J. Reg. 2782 (2015) (Tinderholt point of order on HB 3512); 84 H.J. Reg. 3515-16 (2015) (Burrows point of order on HB 1891); 83 H.J. Reg. 3001 (2013) (Morrison point of order on CSHB 2996); 83 H.J. Reg. 874-75 (2013) (Y. Davis point of order on HB 1600); 79 H.J. Reg. 2934 (2005) (Martinez Fischer point of order on CSHB 846) ("The purpose of [Rule 4, Section 32(c)(3)] is to enable members to make informed decisions about the types of powers that they are authorizing agencies to exercise.").

Second, the power to delegate rulemaking authority belongs to the legislature, not to the courts, and the chair does not believe the legislature ever would indefinitely yield by statute the power to grant rulemaking authority to its sister branch, particularly where the legislature is considering a measure that creates an entirely new type of court. Here, consistent with past legislative practice, the bill both creates a new entity and delegates rulemaking authority to ensure that the entity will have appropriate guidelines for operating.

Finally, the chair notes that when the legislature mandates or permits rulemaking authority, the Supreme Court has responded to this delegation of authority, whether out of obligation or comity, by promulgating appropriate rules. By expressly granting new and independent rulemaking authority in SB 455, the legislature is providing clear guidance to the court in how the court might proceed without the risk of encroaching on legislative powers.

Having reviewed the bill, the analysis, the rules, and precedents related to the delegation of rulemaking authority, the chair determines that SB 455's bill analysis correctly reflects the rulemaking authority delegated by the bill.

Bill Analysis—Rulemaking
84 H.J. Reg. 3387 (C. Turner 5/13/15)

CSHB 3994 - POINT OF ORDER

Representative C. Turner raised a point of order against further consideration of CSHB 3994 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative C. Turner raised a point of order against further consideration of CSHB 3994 pursuant to Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis fails to properly identify rulemaking authority delegated by the bill. The point of order is respectfully overruled.

Rule 4, Section 32(c)(3) requires each bill analysis to include a statement indicating whether any rulemaking authority is expressly delegated to a state agency. This authority must be a new, independent, express grant of rulemaking authority to invoke Rule 4, Section 32(c)(3). *See* 83 H.J. Reg. 2651 (2013) (Miles point of order on CSHB 500); 83 H.J. Reg. 874-75 (2013) (Y. Davis point of order on HB 1600). Representative C. Turner asserts that the committee substitute to HB 3994 fails to identify a section of the measure that delegates rulemaking authority to the Office of Court Administration. Section 4 of the bill directs that "the clerk of the court, at intervals prescribed by the Office of Court Administration of the Texas Judicial System, shall submit a report to the office . . ." Representative C. Turner contends that the word "prescribed" indicates that the Office of Court Administration will be adopting rules to direct the court clerk. He further argues that the Administrative Procedures Act requires rulemaking proceedings for generally applicable requirements that are the responsibility of a state agency. Looking within the four corners of the bill, however, the chair does not find any express, new, independent grant of rulemaking authority. Because the bill does not direct the state agency to adopt rules, the bill analysis correctly states that "this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution."

Bill Analysis—Rulemaking
84 H.J. Reg. 3363-64 (Martinez 5/13/15)

CSHB 1798 - POINT OF ORDER

Representative Martinez raised a point of order against further consideration of CSHB 1798 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Martinez raised a point of order against CSHB 1798 pursuant to Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Each bill analysis must contain "a statement indicating whether or not any rulemaking is expressly delegated to a state officer, department, agency, or institution, and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." Rule 4, Section 32(c)(3). Representative Martinez argues that Section 5 of the bill does not contain an express independent grant of rulemaking authority, and that therefore, the statement in the bill analysis that, in the committee's opinion, "the rulemaking authority previously granted to the State Board of Education is transferred to the commissioner is SECTION 5 of this bill" is incorrect. Section 5 of the bill reads: "The commissioner [~~State Board of Education~~] by rule shall adopt . . . ." This is a transfer to the commissioner of rulemaking authority that had previously been granted to the State Board of Education. Having carefully reviewed the bill, analysis, and house precedents, the chair finds that the bill analysis's rulemaking statement regarding Section 5 of the bill does not violate Rule 4, Section 32(c)(3).

Bill Analysis—Rulemaking
84 H.J. Reg. 2234 (Rose 4/30/15)

SB 709 - POINT OF ORDER

Representative Rose raised a point of order against further consideration of SB 709 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Rose raised a point of order against further consideration of SB 709 on the grounds that the bill analysis failed to sufficiently identify Section 4 of the bill as containing rulemaking authority. The point of order is respectfully overruled.

Rule 4, Section 32(c)(3) of the House Rules requires the bill analysis to include "a statement indicating whether or not any rulemaking authority is expressly delegated . . . and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." Section 4 of SB 709 provides that "Not later than January 1, 2016, the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this Act." Representative Rose correctly notes that this provision contains a deadline for implementing rules. She further observes that the chair has previously ruled that such provisions do not normally constitute a new, independent, express grant of rulemaking authority that must be identified in the bill analysis. 83 H.J. Reg. 4053 (2013) (Cortez point of order on SB 14); 83 H.J. Reg. 4053-54 (2013) (Schaefer point of order on SB 1079). She asserts, however, that because the sections of code amended by the bill do not contain a grant of rulemaking authority that would allow the commission to implement all rules necessary to effectuate the bill's provisions, the Section 4 deadline provides the sole basis for such authority, and, therefore, Section 4 functions as an independent grant of rulemaking authority. Contrary to the assertion that the commission's current rulemaking authority would not allow the commission to make rules as to the changes made by the bill, Section 5.103 of the Water Code, which governs the commission's general powers and duties, provides: "The commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state." The chair, therefore, determines that Section 4 is not a new, independent, express grant of rulemaking authority.

Bill Analysis—Rulemaking
84 H.J. Reg. 1612-13 (Walle 4/16/15)

CSHB 1690 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 1690 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSHB 1690 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis does not accurately describe all provisions of the bill related to rulemaking authority. The point of order is respectfully overruled.

Rule 4, Section 32(c)(3) requires that the bill analysis contain "a statement indicating whether or not any rulemaking authority is expressly delegated to a state officer, department, agency, or institution, and, if so, identifying the sections of the measure in which that rulemaking authority is delegated." Rule 4, Section 32(c)(3). Representative Walle asserts that Sections 41.353 and 41.356 of CSHB 1690, in dealing with the investigatory authority of the Texas Rangers, contain

express delegations of rulemaking authority, which should have been described in the bill analysis.

Having reviewed the bill, the bill analysis, and the argument presented by Representative Walle, the chair finds that neither of the two sections of the bill addressed by Representative Walle contain new, independent, express delegations of rulemaking authority under Rule 4, Section 32(c)(3). *See* 83 H.J. Reg. 4053-54 (2013) (Schaefer point of order on SB 1079). Accordingly, the point of order is respectfully overruled.

Bill Analysis—Rulemaking—Sustained
83 H.J. Reg. 4053-54 (Schaefer 5/21/13)

SB 1079 - POINT OF ORDER

Representative Schaefer raised a point of order against further consideration of SB 1079 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker sustained the point of order and submitted the following statement:

Representative Schaefer raised a point of order against further consideration of SB 1079 under Rule 4, Section 32(c)(3) of the House Rules, contending the rulemaking portion of the bill analysis is incorrect. The point of order is sustained.

The bill analysis states that Sections 3 and 4 of the bill expressly grant rulemaking authority to the Texas Medical Board. Section 4 of the bill provides a deadline by which rules necessary to administer Chapter 207 of the Occupations Code must be adopted. It does not contain an express, independent grant of new rulemaking authority. The authority for adopting rules to administer Chapter 207 is delegated in Section 3 of the bill. Therefore, the bill analysis was inaccurate. *See* 83 H.J. Reg. 3848-49 (2013); 83 H.J. Reg. 3831 (2013); 83 H.J. Reg. 3001 (2013).

Representative Schaefer further argued that Section 2 of the bill should have been identified in the bill analysis as expressly delegating rulemaking authority. Section 2 assigned certain duties to the executive commissioner of the Health and Human Services Commission that had previously been assigned to the board, but did not create new rulemaking authority. Any rulemaking authority existing in that portion of the statute was not delegated by the bill. *See* 83 H.J. Reg. 2651 (2013); 83 H.J. Reg. 874-75 (2013).

SB 1079 was returned to the Committee on Public Health.

Bill Analysis—Rulemaking—Sustained
83 H.J. Reg. 4053 (Cortez 5/21/13)

SB 14 - POINT OF ORDER

Representative Cortez raised a point of order against further consideration of SB 14 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Cortez raised a point of order against further consideration of SB 14 under Rule 4, Section 32(c)(3), asserting that the rulemaking portion of the bill analysis is incorrect. The point of order is sustained. The bill analysis states that Section 24 of the bill expressly grants rulemaking authority to the Texas Commission on Environmental Quality. Although Section 24 provides a deadline by which rules must be adopted, Section 24 does not actually delegate any new rulemaking authority; the rulemaking authority referenced in Section 24 is expressly delegated in Section 22 of the bill. Therefore, the bill analysis did not comply with Rule 4, Section 32(c)(3). *See* 83 H.J. Reg. 3848-49 (2013); 83 H.J. Reg. 3831 (2013); 83 H.J. Reg. 3001 (2013); 83 H.J. Reg. 2651 (2013); 83 H.J. Reg. 874-75 (2013).

SB 14 was returned to the Committee on Appropriations.

Bill Analysis—Rulemaking—Sustained
83 H.J. Reg. 3848-49 (McClendon 5/20/13)

SB 190 - POINT OF ORDER

Representative McClendon raised a point of order against further consideration of SB 190 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative McClendon raised a point of order against further consideration of SB 190 under Rule 4, Section 32(c)(3) asserting the bill analysis incorrectly states whether the bill contains an express delegation of rulemaking authority. The point of order is sustained.

The bill analysis states that rulemaking authority is expressly granted in Sections 5, 11, and 12 of the bill. Representative McClendon asserts that Sections 5 and 11 do not expressly grant new rulemaking authority. Having reviewed the bill, the chair determines that the grants of rulemaking authority quoted in Sections 5 and 11 are not express grants of new rulemaking authority. *See* 83 H.J. Reg. 3001 (2013); 83 H.J. Reg. 874-75 (2013).

SB 190 was returned to the Committee on Public Health.

Bill Analysis—Rulemaking—Sustained
83 H.J. Reg. 3831 (Burnam 5/20/13)

CSSB 791 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of CSSB 791 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Burnam raised a point of order against further consideration of CSSB 791 under Rule 4, Section 32(c)(3) of the House Rules asserting that the bill analysis incorrectly states whether the bill contains an express delegation of rulemaking authority. The point of order is sustained.

The bill analysis states that three sections of the bill create rulemaking authority: Sections 4, 7, and 14. The chair agrees that Sections 4 and 7 contain express grants of independent rulemaking authority. For example, Section 4 of the bill conditions acceptance of nonparty waste for disposal at certain facilities on whether the waste has been volume-reduced by a factor of three. It also contains new language stating that "The commission by rule shall establish requirements for ensuring that low-level radioactive waste has been volume-reduced in a manner consistent with this subchapter." Thus, it contains an express grant of new rulemaking authority. Section 14 requires the Texas Commission on Environmental Quality to adopt rules to implement certain provisions of the bill "as soon as practicable." Rather than granting new authority, Section 14 merely references other sections of the bill that independently create or refer to existing rulemaking authority. Because Section 14 is not an express grant of new rulemaking authority to the TCEQ, the bill analysis was incorrect. *See* 83 H.J. Reg. 3001 (2013); 83 H.J. Reg. 874-75 (2013).

CSSB 791 was returned to the Committee on Environmental Regulation.

Bill Analysis—Rulemaking—Sustained
83 H.J. Reg. 3001 (Morrison 5/9/13)

CSHB 2996 - POINT OF ORDER

Representative Morrison raised a point of order against further consideration of CSHB 2996 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair sustained the point of order and submitted the following statement:

Representative Morrison's second point of order is that under Rule 4, Section 32, the rulemaking authority portion of the bill analysis is incorrect. The chair sustains this point of order.

Rule 4, Section 32(c)(3) says that a bill analysis must contain "a statement indicating whether or not any rulemaking authority is expressly delegated to" certain state officers or institutions. This is a (1) new, and (2) express delegation of authority. It is not an expansion of an existing delegation of authority (as it is in this case). Usually, such delegations are easily able to be spotted by the use of the phrase, "The state agency shall adopt rules." In this case, the bill analysis states that rulemaking authority was expressly granted to the TCEQ. The chair examined the bill and found that no new authority was expressly granted to the TCEQ.

[Note: The ruling on Representative Morrison's first point of order on this bill is at 83 H.J. Reg. 3000 (Morrison 5/9/13), *infra* at 214 (addressing Rule 8, Section 1(b)'s caption rule).]

Bill Analysis—Rulemaking
83 H.J. Reg. 2651 (Miles 5/7/13)

CSHB 500 - POINT OF ORDER

Representative Miles raised a point of order against further consideration of CSHB 500 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Miles raised a point of order against further consideration of CSHB 500 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report is incorrect. Specifically, Representative Miles asserts the bill analysis fails to show that rulemaking authority is delegated in Sections 3, 5, and 6 of CSHB 500. The point of order is respectfully overruled.

Sections 3, 5, and 6 of the bill amend sections of the Tax Code that currently contain subsections requiring or allowing the comptroller to adopt rules to implement the other subsections within those sections of the code. Representative Miles contends changing any subsections of sections of code for which the comptroller already possesses rulemaking authority constitutes a change in rulemaking authority such that it should be stated in the bill analysis. However, Sections 3, 5, and 6 of the bill do not involve the express delegation of any rulemaking authority. Instead, the delegation of rulemaking authority was enacted in a previous measure. Accordingly, Rule 4, Section 32(c)(3) does not apply because the sections referenced do not independently grant rulemaking authority. *See* Rule 4, Section 32(c)(3) (requiring the bill analysis to identify the sections of the measure in which rulemaking authority is delegated); 83 H.J. Reg. 874-75 (2013); 78 H.J. Reg. 1920 (2003).

Bill Analysis—Rulemaking
83 H.J. Reg. 874-75 (Y. Davis 3/20/13)

HB 1600 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of HB 1600 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of HB 1600 under Rule 4, Section 32(c)(3) on the grounds that the committee report is incorrect. Specifically, Representative Davis asserts the bill analysis fails to show that rulemaking authority is delegated in Section 2.01, Subsection (5) of HB 1600. The point of order is respectfully overruled.

The sole change made by Section 2.01 of the bill is to remove the Texas Commission on Environmental Quality's jurisdiction over the administration of the state's water rate program under Chapter 13 of the Water Code. This provision does not involve the express delegation "to a state officer, department, agency, or institution" of any rulemaking authority. Therefore, Rule 4, Section 32(c)(3) does not apply because the section referenced is not an independent grant of rulemaking authority. *See* Rule 4, Section 32(c)(3); 78 H.J. Reg. 1920 (2003); 79 H.J. Reg. 2934 (2005) ("The purpose of [Rule 4, Section 32(c)(3)] is to enable members to make informed decisions about the types of powers that they are authorizing agencies to exercise.").

Bill Analysis—Rulemaking
81 H.J. Reg. 4669-70 (Alonzo 5/25/09)

CSSB 175 - POINT OF ORDER

Representative Alonzo raised a point of order against further consideration of CSSB 175 under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Alonzo raises a point of order against further consideration of CSSB 175 under Rule 4, Section 32(c)(3) of the House Rules.

Rule 4, Section 32(c)(3) provides that the bill analysis must contain a statement indicating whether or not any rulemaking authority is expressly delegated and to identify the section in which that rulemaking authority is delegated. Representative Alonzo argues that Section 1, Subsection (a-2) of the bill grants new, additional rulemaking authority to an agency and the bill analysis fails to reflect this, pursuant to the rule. More specifically, it is argued that the

statement "in the manner prescribed by the Texas Education Agency" grants this new and additional rulemaking authority. The rule does not require a committee to review language that does not expressly use the term "rule" to resolve legal questions that might direct or authorize actions that would constitute rulemaking. (House Journal, 79th Regular Session (2005), page 2934)

In this instance, the chair finds that the bill does not contain such a term as to expressly delegate rulemaking authority; therefore, a statement indicating such is not required in the bill analysis.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Rulemaking—Sustained
78 H.J. Reg. 2994 (Y. Davis 5/10/03)

CSHB 2 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 2 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill expressly grants rulemaking authority not described in the bill analysis.

. . .

The speaker sustained the point of order, speaking as follows:

Representative Y. Davis raises a point of order against further consideration of CSHB 2 under Rule 4, Section 32(c)(3), in that the bill expressly grants rulemaking authority not described in the bill analysis.

The point of order is well taken and sustained.

The ruling precluded further consideration of CSHB 2.

Bill Analysis—Rulemaking
78 H.J. Reg. 1920 (Thompson 4/25/03)

CSHB 2292 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of CSHB 2292 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report does not contain a statement indicating whether or not rulemaking authority is delegated.

The speaker overruled the point of order, speaking as follows:

Mrs. Thompson raises a point of order under Rule 4, Sec. 32(c)(3) in that the rulemaking statement does not reference rulemaking authority granted the commissioner.

The chair finds that the sections referenced are not independent grants of rulemaking authority.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Rulemaking
78 H.J. Reg. 1686 (Burnam 4/22/03)

CSHB 1567 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of CSHB 1567 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report's statement of rulemaking authority is misleading and inaccurate.

The speaker overruled the point of order, speaking as follows:

Mr. Burnam raises a point of order against further consideration of CSHB 1567 under Rule 4, Section 32(c)(3), in that the committee report's description of the delegation of rulemaking authority is inaccurate and misleading, referencing the Radiation Advisory Board when in fact the board referenced is the Texas Board of Health.

The section of the bill at issue references rules adopted by the board of health, who "shall consult with the advisory board." The rulemaking statement says that the "rulemaking authority is further amended to the Radiation Advisory Board." Since the committee report directs the members' attention to that section, and since the advisory board in fact is consulted on those rules and is referred to in the statute at issue, the chair finds that the committee report is neither inaccurate nor materially misleading.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Rulemaking
77 H.J. Reg. 3830-31 (Wilson 5/22/01)

SB 1783 - POINT OF ORDER

Representative Wilson raised a point of order against further consideration of SB 1783 under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the bill expressly delegates rulemaking authority to a state agency, but the rulemaking authority statement in the bill analysis states that the bill does not expressly delegate any additional rulemaking authority.

The chair overruled the point of order, speaking as follows:

Representative Wilson raises a point of order against further consideration of SB 1783 under Rule 4, Section 32(c)(3), of the House Rules, in that the bill expressly delegates rulemaking authority to a state agency, but the rulemaking authority statement in the bill analysis states that the bill does not expressly delegate any additional rulemaking authority.

Representative Wilson has directed the chair's attention to Section 55.403(b), Utilities Code, as added by the bill. That section provides that a retail request for advanced service must be signed by subscribers in a community that has 1,000 or fewer access lines, "as determined in accordance with rules adopted by the Public Utility Commission (PUC), which rules must require consideration" of various factors, and that the request must comply "with rules adopted by the commission relating to requirements for a bona fide retail request."

Section 32(c) of Rule 4 was amended in 1999 to require the bill analysis attached to the committee report to be prepared by the Office of House Bill Analysis, and in accordance with the standard format used by that office since 1999, the rulemaking authority statement in the bill analysis for SB 1783 provides "(i)t is the opinion of the Office of House Bill Analysis that this bill does not expressly delegate any additional rulemaking authority." (Emphasis added.)

The attention of the chair has been directed to Sections 14.002, 55.002, and 55.014, Utilities Code, each of which grant the PUC broad rulemaking authority to administer and enforce laws under the commission's jurisdiction, including Chapter 55 of that code, which is amended by SB 1783. The attention of the chair has also been directed to the last subsection of Section 54.2045 of the Utilities Code, which is added by SB 1783 in Section 10 of the bill. That subsection provides that "(t)he commission may not adopt any rule related to this section." The inclusion of this language in the bill indicates to the chair that the PUC, through its existing rulemaking authority, would have the authority to adopt any rules necessary to implement the provisions of this bill. Otherwise, it would not be necessary to expressly restrict that authority. It is clear to the chair from reading the provisions of the bill in context with existing statutory authority of the PUC, that the Office of House Bill Analysis reached a reasonable conclusion in considering the references in SB 1783 to be references to existing rulemaking authority, not to the granting of additional or new authority.

There has not been a ruling on a point of order raised under this section of the rules since the establishment of the Office of House Bill Analysis. The chair finds that Office of House Bill Analysis can be compared to the Legislative Budget Board (LBB), in that the office employs staff to provide objective, independent analysis of proposed legislation. The chair is unaware of any instance in which a point of order has been sustained regarding the opinion of the LBB on the fiscal implications of a bill when considered against the text of the bill.

The chair is of the opinion that the analysis reflects an objectively supportable opinion of the office based on its analysis of the bill and research of existing law.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Rulemaking
75 H.J. Reg. 3444-45 (Dutton 5/23/97)

CSSB 220 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of CSSB 220 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the rulemaking authority statement in the bill analysis fails to include the word "department" in the language that indicates that rulemaking authority is not granted.

The chair overruled the point of order, speaking as follows:

Representative Dutton raises a point of order against further consideration of CSSB 220 under Rule 4, Section 32(c)(4), in that the bill does not comply with the strict requirements of the rule.

The rule requires that the committee report form include, "a statement indicating whether or not any rulemaking authority is expressly delegated to a state officer, department, agency, or institution, and if so, identifying the sections of the measure in which that rulemaking authority is delegated." The committee report indicates that the bill does not grant any additional rulemaking authority to a, "state officer, institution, or agency," omitting from the required list whether or not rulemaking has been granted to a state department.

Because the granting of rulemaking to an executive entity is a legislative delegation of legislative power, this rule is designed to assist the members of the house in making as informed a decision as possible in regard to this issue on each bill. The listing of the different types of entities—officers, departments, agencies, institutions—is a redundant list designed to describe in broad terms every possible delegation. It is not designed to be an exclusive list nor an all-inclusive list. The omission of "department" from the list as it appears in this committee report form neither confused nor misled any member to believe that a rulemaking authority has been granted, and the bill in fact does not grant rulemaking authority to any entity of any type.

Accordingly, the point of order is respectfully overruled.

Bill Analysis—Rulemaking—Sustained
74 H.J. Reg. 943 (Wilson 3/28/95)

CSHB 1863 - POINT OF ORDER

Representative Wilson raised a point of order against further consideration of CSHB 1863 on the grounds that CSHB 1863 violates Rule 4, Section 32(c)(4), of the House Rules.

The speaker sustained the point of order, speaking as follows:

Mr. Wilson raises a point of order against further consideration of CSHB 1863 under Rule 4, Section 32(c)(4), of the House Rules, which requires the committee report to identify sections of the measure that expressly delegate rulemaking authority to a state agency.

Mr. Wilson directs the chair's attention to Section 11.2093, Education Code, as added by Section 2.03 of the bill on page 13 and to Section 31.015(a), Human Resources Code, as added by Section 2.04 of the bill on page 14. The chair has examined those sections, and each expressly delegates rulemaking authority to the Department of Human Services or the Texas Commission on Alcohol and Drug Abuse, or both. Neither of those sections is identified in the committee report's listing of grants of rulemaking authority.

Accordingly, the point of order is well-taken and sustained.

Other explanations addressing rulemaking:
84 H.J. Reg. 2782 (Tinderholt 5/7/15), *supra* at 6-7 (also discussing Rule 1, Section 4)
81 H.J. Reg. 4138-39 (Dutton 5/20/09), *supra* at 70-71 (alleged violation of one-subject rule, bill analysis, and rulemaking)

Bill Analysis—Creating a Criminal Offense; Captions—Criminal Offense, Punishment, or Eligibility for Supervision; Reasonable Notice of Bill's Subject
85 H.J. Reg. 2286 (Cain 5/2/17)

CSHB 913 - POINT OF ORDER

Representative Cain raised a point of order against further consideration of CSHB 913 pursuant to Rule 4, Section 32(c)(4), and Rule 8, Section 1(c), on the grounds that neither the bill analysis nor the caption contains a statement indicating that the bill expressly creates a criminal offense. He further alleges that the caption is deficient under Rule 8, Section 1(a). The point of order is respectfully overruled.

CSHB 913 amends the Penal Code by defining "improvised explosive device" and expanding the conduct that constitutes a third degree felony offense by adding "an improvised explosive device" to the list of weapons that generally may not be knowingly possessed, manufactured, transported, repaired, or sold. Rather than creating a new offense, the bill merely adds improvised explosive devices to the existing list of prohibited weapons. Adding an item to a list of items that are the subjects of an existing offense does not amount to expressly creating a new offense. *See* 84 H.J. Reg. 3086-87 (2015) (Tinderholt point of order on SB 97); *cf.* 84 H.J. Reg. 3375 (2015) (Moody point of order on CSHB 3994). For these reasons, and having reviewed the bill, the bill analysis, and house precedents, the chair determines that the bill does not create a criminal offense. Therefore, there is no violation of Rule 4, Section 32(c)(4), or Rule 8, Section 1(c).

Regarding Representative Cain's assertion that the caption fails to give reasonable notice of the bill's subject, the caption of the bill reads "relating to the prosecution of the criminal offense of the possession, manufacture, transport, repair, or sale of certain prohibited explosive weapons." Representative Cain argues that this caption is misleading because "knuckles," which are one of the weapons in the existing list of prohibited items, are not explosive. The bill itself, however, defines and then prohibits possession, manufacture, transport, repair, or sale of improvised explosive devices, without affecting any other type of weapon. The chair concludes that the caption is sufficient to satisfy Rule 8, Section 1(a).

Bill Analysis—Creating a Criminal Offense
84 H.J. Reg. 3375 (Moody 5/13/15)

CSHB 3994 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of CSHB 3994 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order and submitted the following statement:

Representative Moody raised a point of order against further consideration of CSHB 3994 pursuant to Rule 4, Section 32(c)(4) on the grounds that the bill analysis is incorrect. The point of order is respectfully overruled.

Rule 4, Section 32(c)(4) requires each bill analysis to contain a statement indicating whether the bill "expressly creates a criminal offense . . . ." Representative Moody notes that the caption to the committee substitute added the language "amending provisions subject to a criminal penalty." He further observes that the bill does, in fact, amend provisions subject to a criminal penalty because it expands the class of people to whom the bill applies and alters some elements of existing offenses. He urges that the criminal justice impact statement contained in the bill analysis is inconsistent with the bill's caption and inaccurate because it states that the bill does not expressly create a criminal offense. However, expanding the class of persons to whom a penalty applies or adding an element to an offense does not constitute creation of a new criminal offense. *See* 84 H.J. Reg. 3086-87 (2015) (Tinderholt point of order on SB 97); *see also* 84 H.J. Reg. 1999-2000 (2015) (Stickland point of order on HB 409).

For these reasons, and having reviewed the bill, the bill analysis, and house precedents, the chair determines that the bill does not create a criminal offense, expressly or otherwise. Consequently, there is no violation of Rule 4, Section 32(c)(4) of the House Rules.

Bill Analysis—Creating a Criminal Offense; Captions—Criminal Offense, Punishment, or Eligibility for Supervision
84 H.J. Reg. 3086-87 (Tinderholt, Rinaldi 5/11/15)

CSSB 97 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of CSSB 97 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the bill analysis is incorrect.

. . .

Representative Rinaldi raised a point of order against further consideration of CSSB 97 under Rule 8, Section 1(c) of the House Rules on the grounds that the bill caption is inaccurate.

The chair overruled the points of order and submitted the following statement:

Representative Tinderholt raised a point of order against further consideration of CSSB 97 under Rule 4, Section 32(c)(4) on the grounds that the bill analysis is inaccurate. Representative Rinaldi raised a point of order under Rule 8, Section 1(c) on the grounds that the caption is incorrect. These points of order are respectfully overruled.

Rule 4, Section 32(c)(4) requires each bill analysis to contain a statement indicating whether the bill "expressly creates a criminal offense . . . ." Rule 8, Section 1(c) provides that a "house bill that would create a criminal offense . . . must include a short statement at the end of its title or caption indicating the general effect of the bill on the offense . . . ." CSSB 97 adds e-cigarettes to a list of products whose distribution, possession, use, sale, and advertising are regulated in various provisions of the Health and Safety Code, Penal Code, and Education Code. In some of these provisions, e-cigarettes are added to a list of items whose distribution, possession, use, sale or advertising form the basis of existing criminal offenses. Representative Tinderholt urges that adding e-cigarettes to these lists creates a criminal offense and that the bill analysis, which says "It is the committee's opinion that this bill does not expressly create a criminal offense . . ." is therefore inaccurate. But because the bill merely adds e-cigarettes to lists of items that are the subjects of existing offenses, the chair determines that the bill does not expressly create a new offense. Representative Rinaldi's point of order under Rule 8, Section 1(c) is based on the same addition of e-cigarettes to lists of regulated items. He contends the bill should have had a caption indicating that it creates a criminal offense. The chair notes that CSSB 97 is not a house bill. By its plain language, Rule 8, Section 1(c) applies only to house bills. Moreover, as with the point of order raised by Representative Tinderholt, the bill merely adds e-cigarettes to lists of items whose distribution, possession, use, sale or advertising form the basis of existing criminal offenses, rather than creating a

new offense. Looking at the changes made within the four corners of the bill, the chair finds no new offense. *See* 84 H.J. Reg. 1999-2000 (2015) (Stickland point of order on HB 409). For these reasons, the points of order are respectfully overruled.

Bill Analysis—Creating a Criminal Offense
84 H.J. Reg. 1664-65 (Miles 4/17/15)

CSHB 910 - POINT OF ORDER

Representative Miles raised a point of order against further consideration of CSHB 910 under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the bill analysis is incorrect.

The speaker overruled the point of order and submitted the following statement:

Representative Miles raised a point of order against further consideration of CSHB 910 under Rule 4, Section 32(c)(4), asserting the bill analysis fails to comply with the provisions of that subdivision which requires that the bill analysis include "a statement indicating whether or not the bill or resolution expressly creates a criminal offense, expressly increases the punishment for an existing criminal offense or category of offenses, or expressly changes the eligibility of a person for community supervision, parole, or mandatory supervision." Representative Miles argues that the criminal impact statement, a new section of the bill analysis added in this session, should have further explained the types of criminal impact changes rather than rotely, but correctly, reciting the rules and determining whether one or more changes has occurred. The point of order is respectfully overruled.

The chair, having reviewed the rule and the bill analysis, finds that the provisions of Rule 4, Section 32(c)(4) have been fulfilled. Further, the chair notes that the body of the bill analysis provides information on the three types of criminal impacts that are highlighted by the statement required by Rule 4, Section 32(c)(4).

Fiscal Notes—Bill Reported Before Receipt of Fiscal Note
78 H.J. Reg. 2095 (Rodriguez 4/29/03)

SB 7 - POINT OF ORDER

Representative Rodriguez raised a point of order against further consideration of SB 7 under Rule 4, Section 33(d) of the House Rules on the grounds that the bill was reported from committee before the receipt of the fiscal note.

The speaker overruled the point of order, speaking as follows:

Mr. Rodriguez raises a point of order under Rule 4, Section 33(d), against further consideration of SB 7 in that a fiscal note was provided to the chair on April 24 on the senate engrossment, but the bill was reported the day before.

The chair finds that the fiscal note was unnecessary and not required before the bill was reported.

Accordingly, the point of order is respectfully overruled.

Fiscal Notes—Accuracy
85 H.J. Reg. 664-65 (Tinderholt 3/15/17)

HB 62 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of HB 62 pursuant to Rule 4, Section 33, and Rule 1, Section 9(b), of the House Rules on the grounds that the fiscal note is misleading. The point of order is respectfully overruled.

HB 62 would amend Chapter 545 of the Transportation Code to create a misdemeanor offense for reading, writing, or sending an electronic message while operating a moving motor vehicle. The bill further specifies the acceptable ranges for fines to be charged for this offense.

The fiscal note for HB 62 states, "There could be a negative impact to cities that currently ban the use of wireless communication devices for text-based communication depending on whether the fines imposed by the cities exceed the limits specified by the provisions of the bill." Representative Tinderholt argues that this part of the fiscal note is misleading because it "implies that HB 62 would preempt local ordinances regarding the use of devices while driving for the purpose of electronic messaging." Representative Tinderholt observes that, unlike similar bills by Dean Craddick in previous sessions, HB 62 does not contain any explicit preemption provision, and Representative Tinderholt further urges that Speaker Craddick did not intend for this bill to preempt local laws. Finally, he refers to the House Research Organization analysis of HB 62, which says HB 62 "would create more regulatory certainty by establishing a uniform set of rules" for texting while driving in Texas. He therefore concludes the seemingly inconsistent assertion in the fiscal note violates House Rule 4, Section 33, and Rule 1, Section 9(d).

Rule 4, Section 33, requires the chair of a standing committee to request a fiscal note from the Legislative Budget Board (LBB) if the chair determines that a bill or joint resolution authorizes or requires the expenditure or diversion of state funds. Committee chairs do not have control over the information contained or the conclusions reached in the LBB's fiscal notes. Consistent with house precedent, the chair continues to take the view that a committee chair is entitled to rely upon the information received from the LBB as accurate and complete. *See* 78 H.J. Reg. 1052 (Thompson 2003). The chair notes that while the House Research Organization bill analysis is a helpful, plain-English resource for those wishing

to understand the content of bills, it is not a document within the committee's control, nor is it subject to any house rule. As such, it cannot form the basis for a point of order. For these reasons, the chair declines to sustain a point of order related to the accuracy of the fiscal note under Rule 4, Section 33.

Under Rule 1, Section 9(b), a "point of order as to a violation of a section of the rules governing committee reports, committee minutes, or accompanying documentation may be overruled if the purpose of that section of the rules has been substantially fulfilled and the violation does not deceive or mislead." Rather than creating additional duties for committee members and staff, this substantial-compliance rule has been relied upon to save bills when the alleged error is technical in nature and the purpose of the allegedly violated rule has nonetheless been fulfilled. *E.g.*, 77 H.J. Reg. 1546 (2001) (Chisum point of order on HB 2123); 76 H.J. Reg. 3229 (1999) (Chisum point of order on CSSB 1468); 76 H.J. Reg. 1259 (1999) (Wilson point of order on CSHB 1152). Where, as here, the committee chair requested and was entitled to rely on the LBB's fiscal note, the chair determines that there is no violation to which Rule 1, Section 9(b), could apply.

Fiscal Notes—Accuracy
78 H.J. Reg. 1052 (Thompson 3/28/03)

CSHJR 3 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of CSHJR 3 under Rule 4, Section 33 of the House Rules on the grounds that the fiscal note for CSHJR 3 was not accurate.

The speaker overruled the point of order, speaking as follows:

Ms. Thompson raises a point of order under Rule 4, Section 33 of the House Rules on the grounds that the information contained in the fiscal note to HJR 3 was not accurate.

Rule 4, Section 33 requires the chair of a standing committee to request a fiscal note from the Legislative Budget Board if the chair believes that a bill or joint resolution authorizes or requires the expenditure or diversion of state funds. It is this chair's view that the chairman of a committee is entitled to rely upon the information received from the Legislative Budget Board as accurate and complete.

The chair believes that the rules have been complied with respect to requesting the fiscal note and will not sustain a point of order based on the accuracy of the information contained in the fiscal note.

Accordingly, the point of order is respectfully overruled.

Fiscal Notes—Requested on Senate Engrossment
76 H.J. Reg. 3229 (Chisum 5/25/99)

CSSB 1468 - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of CSSB 1468 under Rule 4, Section 33(d) of the House Rules on the grounds that the fiscal note for the engrossed measure was requested but was not distributed to the members of the committee when the measure was first laid out in committee.

The speaker overruled the point of order, speaking as follows:

A review of the bill history and fiscal notes shows that SB 1486 was amended by five senate floor amendments after the preparation of the fiscal note on the senate committee substitute. The bill was first laid out in a formal meeting of the house committee on May 6. The chair requested and received a fiscal note on the house committee substitute on May 7, and the same day requested a fiscal note on the senate engrossment, which is dated May 10.

A review of the fiscal notes shows that the senate floor amendments did not change the fiscal impact of the bill. Although the chair requested a fiscal note on the senate engrossment after the hearing, the fiscal notes themselves show that none was necessary. Although it can be argued that the chair's request is evidence that the chair determined the senate amendments had potential fiscal impact and that a fiscal note on the senate amendments was necessary, in fact the notes show the fiscal notes to be unnecessary. If the chair had not requested the note after the fact, the committee could not be found to have improperly considered the bill without a fiscal note.

To sustain the point of order would punish the chair for providing more information to the house than the rules required. The purpose of the rule being to provide necessary information, the chair finds that the purpose has been fulfilled and that the technical violation did not deceive or mislead the house.

Accordingly, the point of order is respectfully overruled in accordance with Rule 1, Section 9(c).

Fiscal Notes—Attachment to Conference Committee Report
78 H.J. 3rd C.S. 419 (Mabry Jr. 10/10/03)

HB 3 - POINT OF ORDER

Representative Mabry raised a point of order against further consideration of the conference committee report on HB 3 under Rule 13, Section 10(c) and Rule 4, Section 33(e) of the House Rules on the grounds that the conference committee report does not contain a fiscal note.

The speaker overruled the point of order and submitted the following statement to the journal clerk:

Mr. Mabry raised a point of order against further consideration of HB 3 on the grounds that it violated Rule 13, Section 10(c), House Rules, because the fiscal note on the conference committee report was not provided to the members in a timely fashion. In particular, Mr. Mabry argues that the rules require the conference committee report to be attached to the conference committee report printing.

The floor amendment system, which is available to all of the members, indicated that a fiscal note for the conference committee report was made viewable to the members in accordance with the cited section of the rules. In addition, the chief clerk has indicated that paper copies of the fiscal note for HB 3 were available in three-ring binders on the printer tables in the back of the house chamber prior to the consideration of the bill on the floor. The chair believes that these are appropriate methods under Rule 13, Section 10(c) for providing members with the fiscal note for the conference committee report. (See House Journal, page 5152, 77th Regular Session.)

Accordingly, the point of order is respectfully overruled.

Fiscal Notes—Attachment Throughout the Legislative Process
75 H.J. Reg. 3895 (Danburg 5/27/97)

CSSB 86 - POINT OF ORDER

Representative Danburg raised a point of order against further consideration of CSSB 86 under Rule 4, Section 33(e) of the House Rules on the grounds that one of the fiscal notes is not attached to the committee report.

The speaker overruled the point of order, speaking as follows:

Representative Danburg raises a point of order against further consideration of CSSB 86 under Rule 4, Section 33(e), in that one of the fiscal notes for the bill is not attached to the committee report.

If a bill has fiscal implications, the house rules require the chair to request a fiscal note on the version of the bill that is referred to the committee and the version of the bill that is reported by the committee, if the committee amends the bill to alter its fiscal implications. Although the bill does not appear to have fiscal implications, the chair of the State Affairs Committee requested a fiscal note on both the engrossed version and committee substitute version of the bill, and both of these fiscal notes are attached to the committee report in accordance with the rules. The fiscal note in question is the fiscal note dated January 30, 1997, which was prepared for the introduced version of the bill. This fiscal note was not attached to the engrossed bill that was delivered to the house by the senate. However, it was the engrossed version of the bill, rather than the introduced version of the bill, that was referred to house committee, and therefore it was not necessary that the fiscal note for the introduced senate bill be attached to the house committee report.

Accordingly, the point of order is respectfully overruled.

Impact Statements—Criminal Justice Policy Impact Statement
79 H.J. Reg. 4085-86 (Dunnam 5/23/05)

CSSB 422 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSSB 422 under Rule 4, Section 34(b)(1) of the House Rules on the grounds that the committee report does not include a criminal justice impact statement.

The speaker overruled the point of order, and had read the following statement:

Mr. Dunnam raised a point of order against further consideration of CSSB 422 on the grounds that the House Committee Report does not include a criminal justice impact statement. Mr. Dunnam refers to the section of the bill which provides that a person creates an offense if the person "intentionally destroys, conceals, or tampers with a record that is required to be preserved, transferred, or surrendered."

The chair overrules the point of order based on longstanding precedent and practice it is within the discretion of the chair to determine whether an impact statement is required. In fact, Rule 4, Section 34 affirmatively places such a burden on the chair only if the chair determines that a bill or resolution authorizes or requires a change in sanctions applicable to adults convicted of felony crimes. (See 74 Regular Session House Journal 3038; 74 Regular Session House Journal 3309; 78 Regular Session House Journal 860; 78 Regular Session House Journal 1987; 78 Regular Session House Journal 3982; 74th Regular Session House Journal 2474.)

Even if the chair accepted Mr. Dunnam's analysis, the chair notes that merely referencing a provision in the Penal Code does not make the conduct an offense under the code, and in this case, would not necessarily make the conduct a felony. In every instance, it is the elements of the offense, as cited in the Penal Code that must be alleged and proven with specificity.

Therefore, the point of order is respectfully overruled.

Impact Statements—Tax Equity Note
85 H.J. Reg. 3215 (Dutton 5/10/17)

CSSB 1524 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of CSSB 1524 pursuant to House Rule 4, Section 34, on the grounds that the committee chair did not request a tax equity note. The point of order is respectfully overruled.

CSSB 1524 authorizes the Texas Department of Transportation to issue permits authorizing the movement of certain "sealed intermodal shipping containers." Representative Dutton argues that the bill required a tax equity note.

House precedent shows that the committee chair has the burden of determining whether an impact statement is required. *See* 78 H.J. Reg. 1987 (2003) (Dunnam point of order on CSHB 15); 81 H.J. Reg. 2625 (2009) (Burnam point of order on CSHB 4525). The committee chair has discretion in making this decision. Therefore, "if the committee chair determined that an impact statement is not necessary, it is not considered a violation of the rules if an impact statement was not requested or attached to the committee report." 78 H.J. Reg. 1987 (2003) (Dunnam point of order on CSHB 15). Representative Dutton argues that the determination may be overruled by the speaker if the bill creates a condition requiring an impact statement on its face. He further argues that because Rule 8, Section 34, states that "it is the intent of this section that all members of the house are timely informed as to the impact of proposed legislation on the state or other unit of government," that the tax equity note was required. The rule's statement of intent (to inform the members) does not negate the remaining portion of the rule which places sole discretion with the committee chair. For these reasons, the point of order is respectfully overruled.

Impact Statements—Tax Equity Note
81 H.J. Reg. 2625 (Burnam 5/6/09)

CSHB 4525 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of CSHB 4525 under Rule 4, Section 34 of the House Rules on the grounds that the committee chairman did not request a tax equity note.

The chair overruled the point of order and submitted the following statement:

Representative Burnam raises a point of order against further consideration of CSHB 4525 under Rule 4, Sec. 34 of the House Rules on the grounds that the committee chairman did not request a tax equity note.

The bill would amend Chapter 2303 of the Government Code, regarding Enterprise Zones to allow a governmental body, including a municipality, county or political subdivision, to agree to rebate, refund, or pay eligible taxable proceeds to the owner of a qualified manufacturing project at which the eligible taxable proceeds were generated.

Representative Burnam argued that the bill on its face impacted the state sales and use tax and, therefore, required a tax equity note.

The house has consistently held that Rule 4, Section 32(b) places a burden of determining whether an impact statement is required on the chair of the committee and allows a bill to proceed through the process without a requested impact statement being attached to the bill. Therefore, if the chair of the committee

determined that an impact statement was not necessary, it could not be considered a violation of the rules if an impact statement was not requested or attached to the committee report. For example, see the House Journal for the 74th Regular Session at pages 3038, 3229, and 3309.

Accordingly, the point of order is respectfully overruled.

Impact Statements—Tax Equity Note
78 H.J. Reg. 1987 (Dunnam 4/28/03)

CSHB 15 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHB 15 under Rule 4, Section 34(b)(5) of the House Rules on the grounds that a tax equity note was not prepared on the bill.

The chair overruled the point of order and submitted the following statement:

Mr. Dunnam raised a point of order against further consideration of HB 15 under Rule 4, Section 34(b)(5) in that the bill authorizes the imposition of a fee but lacks a tax equity note.

The house has consistently held that Rule 4, Section 32(b), places a burden of determining whether an impact statement is required on the chair of the committee and allows a bill to proceed through the process without a requested impact statement being attached to the bill. Therefore, if the chair of the committee determined that an impact statement is not necessary, it is not considered a violation of the rules if an impact statement was not requested or attached to the committee report. For example, see the House Journal for the 74th Regular Session at pages 3038, 3229, and 3309.

Accordingly, the point of order is respectfully overruled.

Other explanations addressing impact statements:
78 H.J. Reg. 860 (Dunnam 3/26/03), *supra* at 1-2 (no obligation to obtain impact statement outside of Rule 4, Section 34)

Subcommittees

Subcommittee—Meeting & Documentation
81 H.J. Reg. 3639-40 (Driver 5/14/09)

CSHB 498 - POINT OF ORDER

Representative Driver raised a point of order against further consideration of CSHB 498 under Rule 4, Section 18; Rule 4, Section 32; and Rule 4, Section 48 of the House Rules on the grounds that the committee minutes are incomplete, the bill analysis is incorrect, and the substitute was offered prior to testimony being taken.

The speaker overruled the point of order and submitted the following statement:

Mr. Driver raises a point of order under this rule and argues that the minutes of March 9 and/or April 8, 2009, do not constitute "complete minutes of the proceeding in committee," because the minutes do not reflect HB 498 being recalled from subcommittee.

House Rules give the chair of a committee substantial discretion and latitude in appointing and scheduling the work of a subcommittee. (See Rule 4, Section (6)(2) and Rule 4, Sections 43, 44, 48, and 50). There is no requirement in the House Rules that action be taken by the full committee in order for the chair to perform its administrative functions nor is there a requirement that these functions be referenced in the minutes or the committee action report.

The chair of the committee may recall a bill from subcommittee and lay out a bill before the full committee at any time. These are long-standing practices of the house and are consistent with the rules. The chair can find no precedent that would limit a committee chair's powers to perform these functions.

Mr. Driver raises a point of order under this rule and argues that the bill analysis fails to include an accurate summary of the committee hearing on the bill because they do not reflect the bill as being recalled from the subcommittee and that the bill analysis is materially false and misleading.

As stated above, the chair of the committee may recall a bill from subcommittee and lay out a bill before the full committee at any time. There is no requirement that these functions be referenced in the minutes or the committee action report.

Furthermore, the chair finds that the bill analysis, which is a summary analysis, accurately reflects the substance of the bill in compliance with the House Rules, and therefore, is not materially or substantially misleading.

Mr. Driver raises a point of order under this rule and argues that the rule was violated because the subcommittee offered a complete substitute prior to testimony being taken.

In reading the rule in context, it is clear that the rule is meant only to ensure that the subcommittee starts with the original bill as filed without action or modification from the standing committee. Furthermore, the chair finds that the subcommittee properly considered the introduced version of HB 498 and then laid out a substitute for consideration which is in compliance with the rules.

The point of order is respectfully overruled.

Subcommittee—Meeting & Documentation
81 H.J. Reg. 3405-06 (Kleinschmidt 5/13/09)

HB 1657 - POINT OF ORDER

Representative Kleinschmidt raised a point of order against further consideration of HB 1657 under Rule 4, Section 11, Rule 4, Section 16, and Rule 4, Section 18 of the House Rules on the grounds that proper notice of the

committee meeting was not given, a quorum was not present at the committee meeting, and the committee minutes are incomplete.

. . .

The chair overruled the point of order, speaking as follows:

Representative Kleinschmidt raises a point of order against further consideration of HB 1657 under Rule 4, Sections 11, 16, and 18 of the House Rules.

House Rules give the chair of a committee substantial discretion and latitude in appointing and scheduling the work of a subcommittee. (See Rule 4, Section (6)(2) and Rule 4, Sections 43, 44, 48, and 50). There is no requirement in the House Rules that action be taken by the full committee in order for the chair to perform its administrative functions nor is there a requirement that these functions be referenced in the minutes or the committee action report.

The chair of the committee may recall a bill from subcommittee and lay out a bill before the full committee at any time. These are long standing practices of the house and are consistent with the rules. The chair can find no precedent that would limit a committee chair's powers to perform these functions.

It is true that the chair can find no minutes or documentation that reflects any action taken by the subcommittee on HB 1657. It appears that the subcommittee never met at all and that the bill was referred to subcommittee by the chair and then promptly recalled. This procedure is consistent with House Rules and is not a sustainable point of order.

Accordingly, the point of order is respectfully overruled.

Subcommittee—Bill Not Before Committee Not Subject to Point of Order
78 H.J. 1st C.S. 56-57 (Deshotel 7/7/03)

CSHB 3 - POINT OF ORDER

Representative Deshotel raised a point of order against further consideration of CSHB 3 on the following grounds:

Rule 4, Section 46: "All reports of a subcommittee must be approved by record vote by a majority of the membership of the subcommittee. Minutes of the subcommittee shall be maintained in a matter similar to that required by rules of standing committees." The minutes were filed but the report has not been.

Rule 4, Section 49: "At the conclusion of deliberations on a bill . . . the subcommittee shall prepare a written report, comprehensive in nature, for consideration by the whole committee." Clearly, this is different than the minutes required in Rule 4, Section 46. "The report shall include background material as well as recommended action . . . ." Both Representative McClendon and Representative Raymond repeatedly asked for this information in the June 30th

formal meeting, as reflected in the Redistricting Committee minutes of that meeting, and were refused access to that information.

Rule 4, Section 50: "Subcommittee reports shall be directed to the chair of the committee, who shall schedule meetings of the standing committee . . . for reception of subcommittee reports and for action on reports by the standing committee. No subcommittee report shall be scheduled for action by the standing committee until at least 48 hours after a copy of the subcommittee report is provided to each member of the standing committee." The minutes of the June 30th redistricting formal meeting reflect that Representative Raymond, by motion, specifically asked for two days to review these reports and was denied.

The speaker overruled the point of order, speaking as follows:

Mr. Deshotel raises a point of order against further consideration of CSHB 3 under Rule 4, Sections 46, 49, and 50 in that subcommittee reports were not filed as required by the rules.

The chair finds that at the subcommittee hearings, persons testified on the subject matter of congressional redistricting. The hearing was held before the convening of the current special session and was held before CSHB 3 was referred to the committee for consideration. Any procedural defect connected with such a hearing is not properly raised against consideration of CSHB 3, which was not before the committee at the time of the hearing.

Accordingly, the point of order is respectfully overruled.

Other explanations addressing subcommittees:

83 H.J. Reg. 2308-09 (Martinez Fischer 5/3/13), *supra* at 43-44 (inconsistency between minutes and summary of committee hearing)

80 H.J. Reg. 2536-37 (Dunnam 4/26/07), *supra* at 46 (wrong date on minutes—sustained)

Calendars (Rule 6)

System of Calendars (Rule 6, Section 7)
84 H.J. Reg. 4748-49 (C. Turner 5/26/15)

SB 11 - POINT OF ORDER

Representative C. Turner raised a point of order against further consideration of SB 11 under Rule 6, Section 7 of the House Rules on the grounds that the bill is inappropriately assigned to the major state calendar.

The speaker overruled the point of order and submitted the following statement:

Representative C. Turner raised a point of order against further consideration of SB 11 pursuant to Rule 6, Section 7 on the grounds that the placement of the bill on the major state calendar is incorrect. The point of order is respectfully overruled.

Representative C. Turner argues that this bill is ineligible under the definition of the major state calendar, "on which shall appear bills of statewide effect, not emergency in nature, which establish or change state policy in a major field of governmental activity and which will have a major impact in application throughout the state, without regard to class, area, or other limiting factors." Rule 6, Section 7(2). This bill, he argues, fails to act "without regard to class, area, or other limiting factors," because it protects only narrow, highly specific racial or socioeconomic groups, attending specific institutions, largely to the exclusion of others.

Under the house rules, the Calendars Committee has wide discretion in determining the proper placement of items on the calendar "to insure adequate consideration by the house of important legislation." Rule 6, Section 25. For instance, HJR 62 was placed on the major state calendar in the 83rd Legislature. It was a narrow bill affecting a highly specific group largely to the exclusion of others (exemptions from ad valorem taxes for surviving spouse of member of the armed services killed in action). Because of the broad latitude of the 15-member Calendars Committee, the placement of this bill was appropriate under Rule 6, Section 7 and Rule 6, Section 25.

System of Calendars (Rule 6, Section 7); Order of Bills Placed on Calendar (Rule 6, Sections 16, 17 & 25)
83 H.J. Reg. 2018 (Y. Davis 4/29/13)

CSHB 11 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 11 under Rule 6, Section 7 and Rule 6, Section 17 of the House Rules on the grounds that further action was taken on the bill after it had been placed on the calendar.

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of CSHB 11 under Rule 6, Section 7 and Rule 6, Section 17, asserting that the Committee on Calendars lacked authority to move the bill from the General State Calendar to the Major State Calendar. The point of order is respectfully overruled.

Representative Y. Davis notes that CSHB 11 was initially placed on the General State Calendar. Two days later, the Committee on Calendars reconsidered the vote by which the bill was placed on the calendar, then voted to place CSHB 11 on the Major State Calendar. Representative Y. Davis asserts that after placing the bill on the General State Calendar, the Committee on Calendars lacked authority to take any further action on the bill without first moving to recommit the bill to the committee.

The sections of Rule 6 on which Representative Y. Davis relies do not prohibit the Committee on Calendars from reconsidering its vote to place a bill on a calendar and moving that bill to a different appropriate calendar. Rule 6, Section 7 lists the calendars that compose the system of calendars. Rule 6, Section 17 provides that once a bill is placed on its appropriate calendar, the bill retains its position relative to other bills on the calendar such that any bills added later must be added later on the calendar. Section 17 further provides that if a bill is recommitted or withdrawn from the calendar, it relinquishes its position on the calendar and is removed from the calendar. Although recommittal and withdrawal of a bill would result in the bill losing its place on the calendar, recommittal and withdrawal are not the only conditions for moving a bill from the calendar. Further, it is clear that the Committee on Calendars may continue to act on a bill after it has been set on a calendar. *See* Rule 6, Section 16(f) (Committee on Calendars may adopt and publish a calendar rule to a bill already set on the calendar).

It is also clear the Committee on Calendars may correct or revise calendars. The Committee on Calendars may likewise exercise its wide discretion to move bills from one type of calendar to another. *E.g.*, HB 10 (83rd R.S., 2013); SB 650 (82nd R.S., 2011); HB 21, HB 102, HB 298, HB 1327, HB 1437, HB 1453, HB 1477, HB 1659, HB 1759, HB 1800, HB 2103, HB 2169, HB 2270, HB 2324, HB 2356, HB 2436, HB 2474, HB 2481, HB 2571, HB 2633, HB 2635, HB 2705, HB 2887, HB 2909, HB 2913, HB 3019, HB 3054, HB 3059, HB 3075, HB 3339, HB 3428, HB 3471, HB 3512, HB 3544, HB 3575, HB 3576 (75th R.S., 1997); *see* Rule 6, Section 25 (stating the intent "of the calendar system to give the Committee on Calendars wide discretion to insure adequate consideration by the house of important legislation").

System of Calendars (Rule 6, Sections 7, 9 & 16(e))—Sustained
80 H.J. Reg. 3317-19 (Thompson 5/7/07)

HB 4068 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of HB 4068 under Rule 6, Section 7; Rule 6, Section 9; and Rule 6, Section 16(e) of the House Rules on the grounds that the bill is not eligible for placement on the Major State Calendar.

The speaker overruled the point of order, and had read the following statement:

Representative Thompson raises a point of order against further consideration of HB 4068 under Rule 6, Section 7; Rule 6, Section 9; and Rule 6, Section 16(e). Specifically, Representative Thompson argues that HB 4068 is not a bill that is eligible for placement on the Major State Calendar.

Under Rule 6, Section 7, the Major State Calendar is for bills of statewide effect, not emergency in nature, which establishes or changes state policy in a major field of governmental activity and which will have a major impact in application throughout the state without regard to class, area, or other limiting factor.

The chair can find only one challenge to the placement of a bill in a category of the calendar. In the 78th Regular Session, a member raised a point of order against further consideration of SB 945 under Rule 6, Sections 7 and 9 on the grounds that a bill had been originally placed on the General State Calendar and then was placed on the Emergency Calendar. The point of order was raised that the placement was inappropriate because the bill was not emergency in nature. That point of order was overruled.

In addition to this precedent, Rule 6, Section 25, notes the wide discretion that the Committee on Calendars shall have, the rules state "full authority" to make placements in the portion of the calendar as they see fit. The bills may be set "in whatever order is necessary and desirable under the circumstances then existing." That portion of the rule concludes "it is the intent of the calendar system to give the Committee on Calendars wide discretion to insure adequate consideration by the house of important legislation." In deference to this rule and the discretion that the rule bestows on the Calendars Committee in setting bills for consideration by the house, the chair respectfully overrules the point of order.

. . .

HB 4068 - APPEAL OF POINT OF ORDER

Pursuant to Rule 1, Section 9 of the House Rules, an appeal was made to the chair's ruling in the above point of order. The question on whether the chair's ruling should be sustained was before the house.

A record vote was requested.

The chair's ruling failed to be sustained by (Record 1047): 50 Yeas, 87 Nays, 2 Present, not voting.

. . .

HB 4068 was returned to the Committee on Natural Resources.

System of Calendars (Rule 6, Section 7); Daily Calendars, Supplemental Calendars & Items Eligible (Rule 6, Section 16)
83 H.J. 1st C.S. 1096 (Martinez Fischer 6/23/13)

POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of the calendar under Rule 6, Section 7 and Rule 6, Section 16 of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of the calendar for June 23, 2013, under Rule 6, Section 7 and Rule 6, Section 16 of the House Rules. The point of order is respectfully overruled.

Representative Martinez Fischer observes that SCR 2 is listed on the supplemental calendar under the heading "concurrent resolutions calendar." He asserts that, under Rule 6, SCR 2 could only have been listed on either a local and consent calendar or on a resolutions calendar, but not under a calendar entitled "concurrent resolutions calendar." Earlier this session, and at least five times in the previous session, the house had before it a calendar consisting exclusively of one or more concurrent resolutions. In these instances, the calendar was entitled "concurrent resolutions calendar," rather than the more general term "resolutions calendar." Because this calendar was appropriately treated as a resolutions calendar in its placement in the order of business and in its consideration before the house, the chair concludes that adding the descriptor "concurrent" did not violate Rule 6, Sections 7 and 16.

System of Calendars (Rule 6, Section 7)
83 H.J. Reg. 3999-4000 (Martinez Fischer 5/21/13)

CSSB 1718 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of CSSB 1718 under Rule 6, Section 7(a)(2) of the House Rules on the grounds that the bill is mistakenly on the Major State Calendar.

The chair overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of CSSB 1718 under Rule 6, Section 7, asserting that CSSB 1718 does not have statewide effect and, therefore, should not have been placed on the Major State Calendar. Rule 6, Section 7(a)(2) provides that "bills of statewide effect, not emergency in nature, which establish or change state policy in a major field of governmental activity and which will have a major impact in application throughout the state without regard to class, area, or other limiting factors" shall appear on the Major State Calendar. CSSB 1718 provides for transfer of low-performing school campuses into "achievement school districts." A campus is eligible for transfer if the district from which it is to be transferred has at least 20,000 students enrolled at the time the campus is to be transferred. Although not every school district in the state would be eligible to transfer a campus to an achievement school district, the bill would apply to school districts throughout the state and have a statewide effect.

It should also be noted that pursuant to Rule 6, Section 25, the Committee on Calendars "shall have full authority to make placements on calendars in whatever order is necessary and desirable under the circumstances then existing . . . ." Further, the rule notes that it "is the intent of the calendar system to give the Committee on Calendars wide discretion to insure adequate consideration by the house of important legislation." In light of the Committee on Calendars' broad discretion and in light of a review of items placed on the Major State Calendar over the last 30 years, the chair is of the opinion that the committee had the authority to place that bill on that calendar. Therefore, the point of order is respectfully overruled.

Order of Consideration of Calendars—Postponed Business (Rule 6, Sections 15 & 16)
80 H.J. Reg. 2761-62 (Thompson 5/1/07)

POINT OF ORDER

Representative Thompson raised a point of order against further consideration of the calendar under Rule 6, Sections 15 and 16 of the House Rules.

The speaker overruled the point of order, and submitted the following statement:

House practice dictates that a member will make a motion on the floor to postpone a bill to a specific time for future consideration today or, more generally, to the end of a specific calendar (i.e. end of third readings or end of the calendar). When postponing a bill, the author may also choose to postpone to a specific date/time on another calendar day. The postponement of a bill does not cause the bill to lose its specific calendar placement category. The specific categories are assigned by the Calendars Committee in the original meeting to place the measures.

An example of this can be seen when a bill is postponed to another date and time. The "postponed business" is listed in a calendar category with a description of what time the measure is to appear as postponed (i.e. Tuesday, May 1, 2007, at 10 a.m.). No relation to the placement category is displayed in the postponed business categories on the supplemental calendar, but this does not mean the measure loses its calendar standing. Postponed bills to a specific time are displayed chronologically in the order they have been postponed (Rule 7, Section 16). The postponed business categories also do not give preference to readings. Second and third readings are mixed together according to when they were originally postponed. Once a bill in a postponed category is passed on second reading, it will then appear within its originally designated category on third reading in the next supplemental calendar. If a measure has been passed on third reading it obviously will not appear on the next supplemental calendar.

In the case of a measure being postponed to the end of the current day's calendar, or to the end of third readings, the document will appear at the end of the category as it was originally placed (i.e. major state or general state) on the next day's supplemental calendar. In today's example, CSHB 626 was postponed to the end of Monday's calendar and then not considered. Normal house practice dictates that the bill will be positioned at the end of the business within its assigned category, ahead of any new business. CSHB 626 should be placed as the first bill in the Major State Calendar, Second Readings, ahead of any new major state business from Tuesday's Daily Calendar. No other major state second readings were postponed to the end of the calendar for Tuesday, so CSHB 626 appears as the first bill in the Major State Calendar, Second Readings category. If the bill passes to third reading, it will appear on Wednesday's Supplemental Calendar in the Major State Calendar, Third Readings category in the order it was considered among all major state second readings on the previous day.

Accordingly, the point of order is overruled.

Daily Calendars, Supplemental Calendars & Items Eligible (Rule 6, Section 16)
82 H.J. Reg. 951 (Walle 3/23/11)

CSSB 14 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSSB 14 under Rule 6, Section 16 of the House Rules on the grounds that the calendar is ineligible for consideration.

The speaker overruled the point of order, speaking as follows:

Mr. Walle raises a point of order under Rule 6, Section 16 on the grounds that the corrected calendar is not properly in order for consideration and is not eligible for consideration at this time. A similar error occurred in HB 1111 during the 79th Legislature. In that case, an error was discovered and a new calendar was printed

and considered after a two-hour layout. The chair noted in that case that the error in the calendar was corrected and was laid out more than two hours. The chair finds no violation under Rule 6, Section 16. The point of order is respectfully overruled.

Daily Calendars, Supplemental Calendars & Items Eligible (Rule 6, Section 16)
82 H.J. Reg. 951 (Walle 3/23/11)

CSSB 14 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSSB 14 under Rule 6, Section 16 of the House Rules on the grounds that the calendar is ineligible for consideration.

The speaker overruled the point of order, speaking as follows:

Mr. Walle raises a point of order pursuant to Rule 6, Section 16 that the initial printing of the calendar contained an error that prevents further consideration. The chair has reviewed the original and revised calendar and finds that the purpose of Rule 6, Section 16 has been complied with. The point of order is respectfully overruled.

Daily Calendars, Supplemental Calendars & Items Eligible (Rule 6, Section 16)—Recommitted Bill Appearing on Calendar; Timeliness of Point of Order
80 H.J. Reg. 2256-57 (Thompson 4/24/07)

POINT OF ORDER

Representative Thompson raised a point of order against further consideration of the calendar under Rule 6, Section 16 of the House Rules.

The speaker overruled the point of order, and submitted the following statement:

On April 24, 2007, Representative Thompson raised a point of order against further consideration of the house calendar under Rule 6, Section 16, House Rules, on the grounds that HB 3170 was improperly placed on the calendar and that its placement rendered the entire calendar ineligible for consideration by the house. Ms. Thompson argued that HB 3170 should not have appeared on the Daily House Calendar or the Supplemental House Calendar because the bill had been recommitted to committee. The chair overruled the point of order, and enters its rationale into the journal at the request of Ms. Thompson.

A review of the House Journal indicates HB 3170 appeared on the house calendar on April 24, 2007, and was recommitted to Local Government Ways and Means on the same day. In instances such as these where a bill is set on a

calendar and then is recommitted after the calendar for the day is printed and distributed and eligible for consideration by the house, the chair has observed the longstanding practice of simply notifying the members that the bill is ineligible for consideration because it has been recommitted to committee. The chair, with the assistance of the chief clerk, notifies the members of this fact before the bill is even laid before the house.

In this instance, HB 3170 was treated in the same matter procedurally as other bills that have appeared on the calendar but that have also been recommitted to committee in that such bills are, at the time they are to be reached for consideration, not laid before the house. According to the journal, Ms. Thompson raised her point of order against the calendar shortly after HB 1472 passed to engrossment, before HB 3170 was reached on the calendar, and before the chair could inform the members that HB 3170 had been recommitted to committee. If HB 3170 had actually been laid out and considered by the house, such consideration would have been in direct violation of the House Rules, and a point of order against further consideration of HB 3170 and all bills considered after HB 3170 might have been sustainable. (*See* 75 H.J. Reg. 3810, 1997, where a point of order raised by Representative Wohlgemuth which emanated from a defect in the committee process was sustained and precluded consideration of the remainder of the calendar from the point at which the point of order was raised). Ms. Thompson's point of order was not timely because it was raised before HB 3170 was even eligible to be laid before the house for consideration and before the chair could notify the house of such (i.e. that the bill was ineligible).

Accordingly, the point of order was overruled.

Daily Calendars, Supplemental Calendars & Items Eligible (Rule 6, Section 16)—36-Hour Layout
78 H.J. Reg. 1050, 1054 (Dunnam 3/28/03)

CSHJR 3 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of CSHJR 3 under Rule 6, Section 16 of the House Rules on the grounds that the daily calendar on which CSHJR 3 was set does not meet the 36 hour layout requirement.

. . .

The speaker overruled the point of order, speaking as follows:

Mr. Dunnam raises a point of order against further consideration of HJR 3, under Rule 6, Section 16, in that the first daily calendar on which the bill appeared was not laid out in members' boxes 36 hours before the house convened that day.

The time stamp on the daily calendar for that day shows that the calendar was placed in members' boxes at 11:03 a.m. on Tuesday, March 25. Under the

consistent practice of the house under this rule, the calendar for that day became eligible for consideration 36 hours later, at 11:03 p.m. on Wednesday, March 26. Today is Friday, March 28, more than 24 hours after that calendar became eligible, and HJR 3 appears on the supplemental calendar in accordance with the rules.

Mr. Dunnam directed the chair's attention, during parliamentary inquiry, to the printed May calendar showing the effect of the end of session rules, which are established by Rule 8, Section 13. Under those rules, the calendar reflects that the daily calendar on the 120th day must be printed and distributed by 10 p.m. The rules do not establish that time; rather it is a recommended deadline assuming the likely 10 a.m. convening on the 122nd day.

Accordingly, the point of order is respectfully overruled.

Order of Bills Placed on Calendar (Rule 6, Sections 1, 16 & 17)—Sustained
84 H.J. Reg. 2545-46 (Rinaldi 5/5/15)

HB 170 - POINT OF ORDER

Representative Rinaldi raised a point of order against further consideration of HB 170 under Rule 6 of the House Rules on the grounds that the chair failed to properly lay the bill on the table subject to call after considering its senate companion.

The chair sustained the point of order and submitted the following statement:

Representative Rinaldi raised a point of order against further consideration of HB 170 on the grounds that the chair failed to lay the bill on the table subject to call after its senate companion was laid out and subsequently recommitted to committee, thereby contravening house practice and possibly violating Rule 6 of the House Rules. *See* Rule 6, Sections 1, 16, and 17 (explaining daily order of business and prohibiting deviations from posted calendars); *see also* Rule 6, Section 10 (obligating the speaker to give the place on the calendar of the house bill to any eligible senate bill and to lay before the house the senate bill to be considered in lieu of the house bill). The point of order is sustained.

When the house reached HB 170 on the calendar, HB 170's senate companion, SB 97, was eligible to be laid out in its place. The chair laid out SB 97 in accordance with Rule 6, Section 10, and SB 97 was ultimately recommitted to committee pursuant to a motion made by the bill's sponsor. *See* Rule 7, Section 18 (motion to recommit). Typically, at this point, the chair would have laid HB 170 on the table subject to call based on the author's motion. Instead, the chair continued through the calendar until Representative Rinaldi called a point of order on HB 170, which, the chair conceded, had neither been considered in its regular place on the calendar nor laid on the table subject to call consistent with house practice. Because HB 170 was listed on the calendar but not disposed of in

a manner consistent with house rules or practice, the bill was out of order and the chair was compelled to return HB 170 to the Calendars Committee.

HB 170 was returned to the Committee on Calendars.

Periods for Consideration of Local, Consent, and Resolutions Calendars (Rule 6, Section 13)
85 H.J. Reg. 3305 (Rinaldi 5/11/17)

MOTION TO SUSPEND THE RULES - POINT OF ORDER

Representative Rinaldi raised a point of order on the motion by Representative S. Thompson to suspend all necessary rules to allow the Local and Consent Calendars Committee to set a calendar and set the calendar for the next day. The motion was a subject of some debate. At the time the motion was made, there was no existing local and consent calendar posted and additional bills or resolutions (commonly called an addendum) were not being placed on an existing calendar. A question arose as to the proper vote total for passage of the motion—two-thirds of the members under the general vote threshold for a rules suspension as described in Rule 6, Section 13, and Rule 14, Section 4, or unanimous consent as described in Rule 6, Section 13, for adding additional bills to an existing calendar.

Rule 6, Section 13, states:

> "As the volume of legislation shall warrant, the chair of the Committee on Local and Consent Calendars shall move to designate periods for the consideration of local, consent, and resolutions calendars. Each such motion shall require a two-thirds vote for its adoption. In each instance, the Committee on Local and Consent Calendars shall prepare and post on the electronic legislative information system a calendar at least 48 hours in advance of the hour set for consideration. Once a calendar is posted, no additional bills or resolutions will be added to it. This requirement can be suspended only by unanimous consent."

(Emphases added.) That rule sets out two different vote totals: (1) a threshold for passage of a period for consideration of the Local and Consent Calendar (two-thirds of the members) and (2) a threshold for adding additional bills to the existing calendar (unanimous consent).

The motion by Chairwoman Thompson received 128 ayes and 9 nays. Representative Rinaldi argues that the vote failed to pass because it only received more than two-thirds votes of the members of the house and not the unanimous consent of the members of the house. Because Representative Thompson's motion fell within the first threshold (for setting an initial Local and Consent Calendar), the two-thirds vote total applies. The point of order is respectfully overruled.

Order of Bills Placed on Calendar (Rule 6, Sections 16, 17 & 25)
83 H.J. Reg. 4054-55 (Miles 5/21/13)

SB 11 - POINT OF ORDER

Representative Miles raised a point of order against further consideration of SB 11 under Rule 6, Section 16 and Rule 6, Section 17 of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Miles raised a point of order against further consideration of SB 11 under Rule 6, Section 16 and Rule 6, Section 17 of the House Rules, asserting that the calendar for May 21, 2013, is out of order.

Representative Miles observes that the Committee on Calendars' meeting minutes from May 19, 2013, reflect that a motion was made for several bills, which were listed in numerical order from the lowest to highest bill number in the minutes, to be placed on the calendar for May 21, 2013. At the same meeting, a second motion was made to place SB 11 on the calendar. He argues that the order in which these bills are listed in the committee minutes must correspond to the order in which the bills are placed on the calendar, and, further, that the second motion at the same meeting (to place SB 11 on the same calendar) necessitated placing SB 11 on the calendar after the measures subject to the first motion to place bills on the calendar.

Representative Miles correctly observes that the bills voted to be placed on the calendar were not, in fact, placed on the calendar in the order listed in the minutes; they were not listed numerically, and some of the bills subject to the first vote appeared on the calendar after SB 11. Representative Miles urges that Rule 6, Section 16 and Rule 6, Section 17 of the House Rules prohibit this placement on the calendar, and he further argues that a "historical review of the minutes of the calendars process indicates that in the last 10 years calendars motions to place bills on a calendar directly overwhelmingly correspond to the placement of those bills on a calendar."

Since 2009, the meeting minutes for the Committee on Calendars has listed in numerical order the bills the committee has voted to be placed on the calendar. The bills were nonetheless then placed on the calendar in varying orders. From 2001 until 2007, the Calendars Committee generally listed in their minutes the bills for placement on the calendar in the order in which those bills were later placed on the calendar, but this practice did not create a rule or practice that could bind future Committees on Calendars. Prior to 2001, Calendars meeting minutes listed groups of bills to be placed on the calendar in various orders that do not appear to have been related to the order in which the individual bills were actually placed on the calendar; as such, there is no long-standing practice of listing the bills in the Committee on Calendars minutes in the order in which they are to appear on the calendar. Moreover, the rules do not specify or suggest that

listing bills that are the subject of a motion to place on a calendar in committee minutes precludes the committee from then carrying out the placement of bills voted out at each meeting on the calendar "in whatever order is necessary and desirable under the circumstances then existing." Rule 6, Section 25.

Order of Bills Placed on Calendar (Rule 6, Section 17); Resolution to Exceed the Constitutional Spending Limit (Rule 8, Section 21)
80 H.J. Reg. 521-22 (Dunnam 2/20/07)

SCR 20 - POINT OF ORDER

. . .

Representative Dunnam raised a point of order against further consideration of SCR 20 under Rule 6, Section 17 of the House Rules on the grounds that it violates the position on a calendar.

The speaker overruled the point of order, and had read the following statement:

The chair overrules the point of order.

All parties agree that at some point the spending cap will be exceeded. In fact, SCR 20 encompasses language or similar legislation which clearly anticipates the spending cap will be exceeded at some point, most likely on the passage of HB 1. This point was raised several times today during the debate on SCR 20, including the debates regarding motions to postpone to review final consideration of HB 2 to a later date.

HB 2 is the type of bill described in both Article VIII, Section 22, and Rule 8, Section 21, of the House Rules. Bills of this type require, regardless of when passed, before third reading a resolution outlining an emergency and setting a dollar amount to be passed.

Under the current system of calendars, there was no method of calendars for setting an SCR required under the Constitution and House Rules on second reading that is specific to the engrossed version of HB 2. This is a blind spot in our rules. The rules require the resolution but don't give us a system of calendars to accomplish it. In fact, the rules specifically exclude the placement of emergency concurrent resolutions, like SCR 20, on any other calendar but the emergency calendar.

Accordingly, the chair has two choices: agree with Mr. Dunnam and not have an appropriate calendar to place it on, even if passed at a later date, or place SCR 20 before HB 2. Likewise, if we had taken up HB 2 first, members could have raised an objection that it was improper to move forward because both the House Rules and the Constitution require a second reading concurrent resolution (SCR 20), which could not have been placed in front of HB 2 on third reading because the two matters were placed equally on the calendar.

The chair declines to sustain a point of order in such a situation and it is in the chair's opinion that the interpretation does the least violence to the House Rules and is in line with our rules and the Constitution.

Order of Bills Placed on Calendar (Rule 6, Sections 1, 7 & 17); Resolution to Exceed the Constitutional Spending Limit (Rule 8, Section 21)
80 H.J. Reg. 520-21 (Y. Davis 2/20/07)

SCR 20 - POINT OF ORDER

. . .

Representative Y. Davis raised a point of order against further consideration of SCR 20 under Rule 6, Section 1; Rule 6, Section 7; and Rule 6, Section 17 of the House Rules on the grounds that it violates the regular order of business.

The speaker overruled the point of order, and had read the following statement:

Representative Y. Davis raised a point of order against SCR 20 on the grounds that it violates Rule 6, Sections 1, 7, and 17. Representative Y. Davis argues that the rules should have been suspended to take up SCR 20 before HB 2. The chair overrules the point of order for the following reasons:

The chair notes that the House Rules give the Calendars Committee broad discretion in interpreting its system of calendars and authorizes it to do so in "whatever order is necessary and desirable under the circumstances . . ." The constitutional nature and procedural requirements of HB 2 and SCR 20 require that SCR 20 be taken up prior to the final passage of HB 2. Accordingly, the point of order is respectfully overruled.

It is clear that HB 2 entitled "An Act relating to making appropriations to the Texas Education Agency for the purpose of school district property tax rate reductions" falls within both of these emergency proclamations. It is on the emergency calendar. SCR 20 is the procedural companion to HB 2 in which the legislature expressly finds that the existing need for lower school district property taxes constitutes an emergency for the people of Texas. It is also on the emergency calendar. The resolution also authorizes the 80th Legislature to appropriate state tax revenues not dedicated by the Texas Constitution for the state fiscal biennium ending August 31, 2009, in an amount not to exceed $14,191,100,000 more than the amount authorized by Subsection (a), Section 22, Article VIII, Texas Constitution.

Under Article VIII, Section 22, Texas Constitution, the method for making appropriations in excess of the amount authorized under Article VIII, Section 22(a), is described. The legislature must adopt a resolution outlining an emergency and must identify the amount of appropriations in excess of the amount authorized by Article VIII, Section 22(a). SCR 20 clearly is a resolution

contemplated by Article VIII, Section 22, of the Texas Constitution. Without SCR 20, HB 2 would be ineffective because SCR 20 is constitutionally required in order to implement HB 2. Therefore, an interpretation which would require consideration of HB 2 before SCR 20 would render SCR 20 incapable of being acted and would render Article VIII, Section 22(b), a nullity. The chair declines to adopt such an interpretation.

Further under Rule 8, Section 21(f), of the House Rules, unless SCR 20 is considered and passed, it is not in order for the house to consider for final passage on third reading, HB 2. Thus, without consideration of SCR 20, under the House Rules, HB 2, an emergency matter identified by the governor in two emergency proclamations, could never be passed.

The chair is of the opinion that such an interpretation would frustrate both the purpose and spirit of the House Rules and Article VIII, Section 22, of the Texas Constitution.

. . .

Recommittal; Cure Through Subsequent Committee Meeting
83 H.J. Reg. 2784-85 (E. Rodriguez 5/8/13)

CSHB 2767 - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of CSHB 2767 under Rule 2, Section 1; Rule 6, Section 17; and Rule 4, Section 38 of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative E. Rodriguez raised a point of order against further consideration of CSHB 2767 on the grounds that it violates Rule 2, Section 1; Rule 6, Section 17; and Rule 4, Section 38 of the House Rules. Representative Herrero argues it also violates Rule 4, Section 13 and Rule 7, Section 37 of the House Rules.

CSHB 2767 followed an interesting route to the calendar. The committee report was distributed to the Committee on Calendars on April 30, 2013. Sometime after April 30, 2013, and before the May 1, 2013 recommittal of CSHB 2767, two things occurred. First, the committee clerk for the Committee on Calendars printed and distributed an informal document to be used by the Committee on Calendars at their May 1 meeting. The informal document indicates that there was originally a Calendars meeting planned for May 1, 2013. However, as correctly noted by Representative E. Rodriguez, the actual committee hearing was held on May 2, 2013. This informal list properly reflected that, at that moment in time, the bill was in the Committee on Calendars.

However, subsequent events rendered the informal list inaccurate. On May 1, 2013, Representative Keffer, informed of a defect in the committee paperwork, received house approval to recommit the bill to the Committee on

Energy Resources. The effect of the recommittal was twofold—it divested the Committee on Calendars of any jurisdiction over the bill and it cleansed the bill of its prior defects and allowed it to start in its substantive committee as a new proposition, in accordance with Rule 8, Section 11(b). *Id*. ("After a bill has been recommitted, it shall be considered by the committee as a new subject."; *e.g*., Committee on Criminal Jurisprudence minutes, 83rd Leg. R.S. (April 29, 2013) (reporting CSHB 1790 favorably without reconsidering the vote by which the bill was reported prior to recommittal); Committee on Calendars minutes, 83rd Leg. R.S. (May 3, 2013) (placing CSHB 1790 on the general state calendar without first reconsidering the vote by which the bill was placed on the calendar before recommittal); *cf*. Rule 8, Section 21, explanatory note 2 (explaining that recommittal to conference would reopen the entire subject matter of a bill); Rule 11, Section 5 (explaining that a bill recommitted to a committee and later reported to the house with amendments shall again take the course of a bill at its second reading).

The rule that recommitted bills are a "new subject" has existed as part of the House Rules since 1941. *See* House Rules of the 47th Leg. R.S. 173 (1941). The same concept has existed in house precedent since at least 1917 when the house adopted the principle that "when a bill is recommitted to the committee which returned it, the whole question is before the committee anew as if it had not been before considered. When a resolution is recommitted the committee must take up the subject anew, the final action being of no further account." The chair further explained: "We must hold that where a bill or resolution is recommitteed without instructions, the committee has a right to review the whole subject matter and report such amendments as they desire, and were it not for our house rules to the contrary, the chair would hold that the original joint resolution has been stripped of all amendments." House Rules of the 35th Leg. R.S. 116. Under this longstanding principle, the Committee on Calendars could not act on the bill after recommittal without the bill first having been favorably reported from the Committee on Energy Resources, as with any other bill that remains pending in its substantive committee.

The Committee on Calendars, however, failed to be informed or act on the notice of the recommittal. In fact, the Committee on Calendars purported to set the bill at the 3:30 p.m. Calendars meeting on May 2, 2013 (despite not having possession of the bill). Although the Committee on Calendars was unaware of the recommittal, the chief clerk was. Under Rule 6, Section 17, the house chief clerk removed the bill from the May 4 calendar because the bill had been recommitted. In the meantime, almost five hours after the 3:30 p.m. May 2, 2013 meeting, the recommitted CSHB 2767 was distributed to the Committee on Calendars. It is at this point that Representative E. Rodriguez says that error occurred. Representative E. Rodriguez argues that even though the recommitted bill (by virtue of the recommittal) was a "new subject," before the committee anew as though it had not been before considered, error has occurred because there was no motion to reconsider the original vote by which CSHB 2767 was

set. Representative E. Rodriguez does not explain how there can be any motion for reconsideration made since, at the time the vote was taken, the Committee on Calendars did not have jurisdiction or control over the bill. The chair declines to hold that any motion for reconsideration is needed because Calendars was without jurisdiction to add the item to the calendar. Once the bill was recommitted and the Committee on Calendars placed the bill on the calendar, the chief clerk had no choice but to mechanically apply the rule regarding recommitted bills and removed the bill from the May 4 calendar.

When CSHB 2767 (the recommitted version) was printed and distributed to the Committee on Calendars on May 3, 2013, and was considered the same day and placed on the May 6, 2013 calendar, it was done properly. Bills placed on the calendar following recommittal do not lose their relative position in the calendar because their removal from the calendar is specifically contemplated by Rule 6, Section 17. Any error in setting the original bill is cured by the recommittal and a recommitted bill does not require a motion to reconsider before resetting the new recommitted measure.

Other explanations addressing recommittal:

78 H.J. Reg. 944, 956 (Wolens 3/27/03), *supra* at 50-51 (discussing effect of recommittal or return to committee on bill analysis & printing requirements)

Speaking & Debate

Addressing the House

85 H.J. 1st C.S. 298-301 (Cain 8/9/17)

POINT OF ORDER - DECORUM

Representative Cain raised a point of order under House Rule 5, Section 22, against remarks by Representative Israel, who was speaking in opposition to the passage of SB 5, as amended. Rule 5, Section 22, reads:

> **Section 22. Addressing the House** — When a member desires to speak or deliver any matter to the house, the member shall rise and respectfully address the speaker as "Mr. (or Madam) Speaker" and, on being recognized, may address the house from the microphone at the reading clerk's desk, and shall confine all remarks to the question under debate, avoiding personalities.

As far as researchers in the parliamentarian's office, the journal clerk's office, and the Legislative Reference Library can tell, this is the first point of order raised under this rule. The following is a transcription of both the entirety of the remarks of Representative Israel, who was speaking in opposition to the passage of SB 5, as amended, up until Representative Cain's point of order:

> REPRESENTATIVE ISRAEL: Thank you, Mr. Speaker, members. We are wrapping up a most important topic, and I would ask for your attention and consideration. Because in my view, we are very proud of the fact when we talk to our voters—I know I do this all the time—and say, we're not Congress. We haven't devolved to the point of the United States Congress where we don't listen to one another and we don't work across party lines. My friend Representative Goldman, in my view, is taking an assignment from the governor and making this go down as cleanly, as quickly as possible for the sake of political points. And it pains me. I serve as vice-chair of this committee. I've been a very good vice-chair to Chair Laubenberg. I have served hours upon hours and what Chair Laubenberg has taught me is that we work—
> REPRESENTATIVE CAIN: I raise a point of order on this debate under Rule 5, Section 22. The gentlelady has engaged in personalities and named Mr. Goldman by name in violation of the House Rules.

On further development of the point of order at the dais, Representative Cain reiterated his belief that it is improper to refer to Representative Goldman as "Mr. Goldman," and stated his belief that members at the microphone should refer to fellow members by "geographical district," not by name. In raising his point of order against the remarks of the Representative from Austin (who is one of 6 representatives from Austin, and one of 6 from Travis County), the

Representative from Deer Park (who is one of 24 representatives from Harris County), on the microphone, referred to the Representative from Fort Worth (who is one of 6 representatives from Fort Worth, and one of 11 from Tarrant County) as "Mr. Goldman." Lest this be mistaken for an isolated event, or as merely misquoting the allegedly improper remarks of Representative Israel, it should be noted that in nearly every instance when Representative Cain (and every other member) has referred to a fellow member at the microphone, the representative has used titles such as "Mr.," "Ms.," "Representative," and "Chair"; the chair is aware of no instance in which Representative Cain has referred to members by any variation of their district—geographical, numerical, or otherwise. The presiding officer and the reading clerk are all but alone in using counties to refer to members, and even then, they do so only to distinguish between members whose last names are or sound identical. Being a uniquely Texas body, with our amalgamation of local dialects and customs, it is not unexpected that in the course of over 150 years we have drifted from the more refined customs of the House of Commons. We speak Texan. At the close of session today, Representative Cain made a motion naming three of his fellow members. He said, "May I move that the remarks of Mr. Stickland and Tinderholt's parliamentary inquiries be placed in the journal—and Mr. Schaefer's, everybody's, parliamentary inquiries today?" It would appear, based on the example he has set, that Representative Cain may agree that this is a proper practice.

It should also be noted that Representative Israel's exact reference to her colleague was "My friend Representative Goldman," a phrase which Representative Goldman understandably did not find offensive. The chair has, as recently as this week, reminded members of the body to refer to one another using titles. One member who had been referring to colleagues by first name when the chair issued this reminder respectfully apologized to the body and explained that he engaged in this practice not out of disrespect, but because this was how he was accustomed to referring to members (of both political parties) who were his friends. As in that example, members who are offended by a particular form of address have generally accorded one another the courtesy of allowing their fellow members to explain themselves and, if necessary, self-correct. It should be heartening members on opposite sides of an issue can still honestly refer to one another as "friend." The chair is aware that *Mason's Manual* contains a suggestion that members should "avoid using the member's name, rather identifying that member by district, by seat, as the member who last spoke, or by describing the member in some other manner." *Mason's Manual of Legislative Procedure*, Sec. 124 (2010). The chair agrees that these methods for addressing fellow members contained in *Mason's* are proper and courteous. In addition to those methods, using titles such as "Representative" or "Mr." or "Ms." to refer to house members has been a common and equally proper and courteous practice on the house floor and in house journals both recently and well before any current member of this house was a member of the body. The chair finds that referring to the

Representative from District 97 as "My friend Representative Goldman," "The Honorable Craig Goldman," or even simply, as Representative Cain himself put it, "Mr. Goldman" does not run afoul of Rule 5, Section 22, any other house rule, or any rule of etiquette.

In addition to the point of order raised at the microphone, Representative Cain raised an objection at the dais that Representative Israel improperly engaged in personalities by saying, "she hopes we are not like Congress." Representative Israel's precise words were "we are very proud of the fact when we talk to our voters—I know I do this all the time—and say, we're not Congress." It appears that, in this statement, Representative Israel did not engage in personalities, nor did she impugn, arraign, or cast reflections on the motives of Representative Goldman. Instead, this appears to have been a preface to what Representative Israel believed was a compliment to the house on its ability to "listen to one another" and "work across party lines" on a voter fraud bill that would impact Texans of all political stripes. Accusations of a functional, collegial body do not violate any known rules of decorum. The chair is mindful that these remarks were followed by comments (not complained of by Representative Cain) that Representative Goldman had "tak[en] an assignment" from the governor, a claim which may have stemmed from the governor's press release and other media and social media sources suggesting that Representative Goldman may in fact have collaborated with the governor and Senator Hancock in crafting and passing this legislation. Such collaboration between the political branches is neither unheard of nor improper. The sole house precedent relied upon by Representative Cain in support of his point of order stands for the proposition that a member must confine remarks on a motion to postpone to the motion to postpone. *See* 64 H.J. Reg. 1357 (1975) (Sherman point of order on the remarks of Representative Hoestenbach). The chair finds that distinguishing the Texas House of Representatives from Congress based on this house's ability to work together and listen to one another does not violate Rule 5, Section 22.

Voting (Rule 5, Sections 40-58)

Entry of Yea & Nay Votes in Journal (Temporary Rule 5, Section 51 (Rule 5, Section 51, of the House Rules of the 79th Legislature); Article III, Section 12)—Secret Ballot

80 H.J. Reg. 10-14 (P. King 1/9/07)

AMENDMENT NO. 2 (HR 35) - POINT OF ORDER

Representative P. King raised a point of order against further consideration of Amendment No. 2 under Article III, Section 12 of the Texas Constitution and Rule 5, Section 51 of the temporary House Rules on the grounds that the amendment would not allow for the yeas and nays of the members of the house to be immediately entered in the journal.

. . .

Secretary Williams overruled the point of order and had read the following statement:

Representative King raises a point of order against further consideration of the Geren amendment in that the Geren amendment would not immediately release the results of the members' votes for speaker until "all committee assignments have been made for the 80th Legislature." Representative King argues that the Geren amendment constitutes a secret ballot and Article III, Section 12, of the Texas Constitution, which requires the "yeas or nays of the members on any question shall, at the desire of any three members present be entered on the journals" as well as Rule 5, Section 51, of the Temporary Rules and other temporary rules of the house relating to the recording of votes and entry of the votes on the journal.

Specifically, Representative King states that the very nature of a secret ballot is such that a member's vote for speaker cannot be ascertained or cannot be ascertained for a set period of time and the purpose of Article III, Section 12, and Rule 5, Section 51, and other temporary rules, the entering of the "yeas and the nays" on the House Journal is thwarted. Strong policy arguments for and against a secret ballot have also been raised in the argument and in the accompanying debate to this amendment.

First, as a general rule and as noted in explanatory note 1 to Rule 1, Section 9, of the Rules of the 79th Legislature, the presiding officers of the house "through many sessions . . . have followed a plan of refusing to rule on constitutional points not related to legislative procedure . . . ." The point of order in this case deals with such a legislative procedure and it is in order for the presiding officer to consider it.

Turning to the merits of the point of order, the resolution of which requires examining the Texas constitutional provision relating to the election of a speaker, the past practices of the house, and recent decisions of the Texas Supreme Court in the case entitled, *In Re Texas Senate*. Each of these points will be examined in turn:

A) Constitutional Provisions Relating to the Election of a Speaker

In addition to reviewing Article III, Section 12, there are three provisions of the Texas Constitution that relate the ability of the house to select procedures to elect a speaker. Article III, Section 9, requires that the house "shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a speaker from its own members." Article III, Section 11, makes it clear that this house may determine the rules of its own procedures, which includes adopting rules for the procedure for electing a speaker. And finally, Article III, Section 41, states that "in all elections by" the house, the vote "shall be given viva voce, except in the election of their officers." All of these provisions, as well as Article III, Section 12, were included in the 1876 Constitution.

Examination of these rules indicates some tension between the four constitutional provisions. Representative King and others argue that Article III, Section 12, mandates the recording of the "yeas and nays" despite the Article III, Section 41's language that appears to indicate that the house may use a method other than a viva voce method to elect a legislative officer. Opponents of the point of order argue Article III, Section 12, does not apply to a non-viva voce vote conducted under Article III, Section 41, because either the selection of a candidate in a speaker election is not either a "yea" or a "nay" on a "question." Finally, opponents argue that if Article III, Section 12, were read to require all votes to be recorded at the request of three members, no election of officers could be done by nonrecord ballot, including a secret ballot, effectively writing out the provision of Article III, Section 41. There appears to be no recorded Texas cases or attorney general opinions examining the tension between these two provisions, the issue has not been discussed and recorded in the House Journal, and the members have offered no authority on this issue.

It is important to note that Texas courts do have a well-established standard in dealing with conflicting constitutional provisions. "In construing apparently conflicting constitutional provisions, a general provision must yield to a special provision." *See Carrollton-Farmers Branch I.S.D. v. Edgewood I.S.D.* (Tex. 1992); *San Antonio & A.P. Ry. Co. v. State* (1936); *County of Harris v. Shepperd* (1956); *City of San Antonio v. Toepperwein* (1911). The only provisions of the four constitutional provisions that specifically deal with the election of a speaker are the timing requirements of Article III, Section 9, and the explicit recognition of non-viva voce voting requirements for the election of legislative officers under Article III, Section 41.

B) House Practice Regarding Election of Speakers

The history of the house must also be considered. Beginning with the first regular session of the Texas Legislature in 1846, secret ballots (or ballots in which the vote of each member cannot be ascertained by recording in the Journal) have been used 50 times as a method for selecting the speaker of the house. The last time that the secret ballot method of speaker selection was used was in the 58th Legislature in 1955. In addition to election by secret ballot, the members of the house have also used a record vote using the voting machine or paper ballot, acclamation, and acclamation following the announcement of the results of a secret ballot to select a speaker. It is clear that the history and practice of the house has allowed the members wide latitude to determine the method of election for speaker. But the fact that secret ballots have been allowed in the past is not determinative. The journals of the house for the years in which a secret ballot was used do not disclose whether there was any objection to the use of the secret ballot under any general objection or a specific Article III, Section 12, objection.

In fact, to the best of our knowledge, only one public written opinion by a presiding officer or parliamentarian on the matter has ever been issued. In 1992, Representative John Hirschi requested the parliamentarian to make a determination

of whether a secret ballot was constitutional. A copy of the letter and the response of the parliamentarian is attached. The parliamentarian, in responding to the letter, wrote that Article III, Section 41, of the Texas Constitution, allowing other votes other than viva voce votes for the election of a speaker, does not govern such an election. Rather, the parliamentarian determined that "a principle of constitutional interpretation requires that all applicable provisions be read together and, to the extent possible, each be given effect." The parliamentarian wrote "the house can adopt any procedure it chooses for electing a speaker, including a secret ballot, a voice vote, a record vote, or some other method, unless three members request a record vote. If a record vote is requested by three members, the only way to give effect to Section 12 is to conduct a record vote." The parliamentarian continued, "The House has used secret ballots, I believe, because a majority of its members chose to do so and no three members requested a record vote."

Because this is the only written document on the issue by a parliamentarian or a presiding officer and because it was distributed to all members of the 72nd Legislature, it is a useful barometer of the state of mind as to the parliamentarian's thoughts in 1992, but the value of this written opinion is tempered by the fact that it was not raised by a member during a legislative proceeding, was not considered by or debated by the body, or determined by the house's presiding officer. So, it is unclear whether the letter was anything more than an expression of the parliamentarian's opinion.

C) In Re Texas Senate

In the years since the parliamentarian's written interpretation, a significant case was determined by the Texas Supreme Court, *In Re Texas Senate*. In 2000, members of the Texas Senate determined that the chamber would vote for the replacement of the departing lieutenant governor by a secret ballot. Members of the news media sued the Texas Senate and the senate's presiding officer contending that the senate was prohibited by the Texas Open Meetings Act from electing one of its members to perform the duties of lieutenant governor by any method other than a viva voce vote in open session. In their initial petition to the trial court, the media plaintiffs, much like the 1992 parliamentarian's letter, argued that Article III, Section 12, required the senate to hold a non-secret record vote if requested by three or more members.

In briefing the case before the supreme court, the senate noted that Article III, Section 41, of the Texas Constitution was recognition that "the framers did not intend all votes to be public." They expressly provided in the Constitution that voting for the election of officers in the house of representatives and the senate could be properly closed. In Footnote 4 of the senate's brief, the senate noted that an open vote required by Article III, Section 12, if requested by any three senators "is not supported by the text of §12, [and] is inconsistent with the constitution's express approval of closed votes in elections for officers . . . ." The senate argued that "Section 12 requires that the 'yeas and nays' of the members be recorded,"

"but it presupposes a viva voce vote; otherwise there are no 'yeas and nays'." Further the senate argued, if "Section 12 were read to require all votes to be recorded at the request of three members, no election of officers could be done by nonrecord ballot except on near unanimity. That would be inconsistent with §41, which contemplates closed voting in any or all elections for officers." See Brief of Petitioners, The Texas Senate, In Re Texas Senate and the Honorable Rodney Ellis, Cause Number 00-1321, at page 6, Footnote 4.

The supreme court determined that the senate could proceed by secret ballot. *See In Re Texas Senate* (Tex. 2000). While the court's opinion did not directly address the effect of Article III, Section 12, on the ability to request a secret ballot, the unanimous court made very clear several principles:

First, Article III, Section 41, "clearly gives each house of the legislature the authority to elect its officers by means other than a viva voce vote." *Id*. at 120.;

Second, Article III, Section 41, authorizes each legislative chamber "to elect its officers by secret ballot, should it choose to do so." *Id*.; and

Third, arguments based on policy concerns for or against a secret ballot are not for the court (or a presiding officer) to consider. The Constitution, by allowing but not requiring a secret ballot, commits that choice to this chamber. *Id*. at 121.

Examining the history of these Texas constitutional provisions and the special specific provision regarding Article III, Section 41, the practice of the house in actually conducting elections by secret ballot and other methods, and the unanimous Texas Supreme Court decision in *In Re Texas Senate* which included the court's strong recognition of each legislative chamber's authority under Article III, Section 41, of the Texas Constitution to elect its officers by means the chamber determines is best, the presiding officer is of the opinion that the Texas Constitution leaves solely to the members of this house the authority to determine the manner of election of the speaker of the house, including by a means other than a viva voce vote, including by a secret ballot.

Additionally, the Texas Constitution is clear that arguments based on policy concerns for or against a secret ballot are not for the presiding officer to consider but are rather properly and wisely entrusted to the members of the Texas House. In short, the members must make this determination themselves.

Accordingly, the point of order is respectfully overruled.

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Motions (Rule 7)

Adjourning From Day to Day in Absence of Quorum
78 H.J. 3rd C.S. 419-21 (Dunnam 10/10/03)

POINT OF ORDER

Representative Dunnam raised a point of order that the house was meeting in violation of Article III, Section 10 of the Texas Constitution and Rule 7, Section 11 of the House Rules.

The speaker overruled the point of order and submitted the following statement to the journal clerk:

Mr. Dunnam raised a point of order on the grounds that the house violated both the Texas Constitution and the House Rules when it improperly adjourned from Sunday, October 5, 2003 until Wednesday, October 8, 2003. Specifically, Mr. Dunnam argues that both the Texas Constitution and the rules required the house to reconvene on Monday, October 6, 2003. Rule 7, Section 11 provides that "[a] smaller number of members than a quorum may adjourn from day to day, and may compel the attendance of absent members." The rule is a restatement of the provisions of Article III, Section 10, Texas Constitution. *Mason's Legislative Manual* notes that most state constitutions authorize their houses to adjourn from day to day in the absence of a quorum (*Mason's* Sec. 208). The chair can find no precedent that supports Mr. Dunnam's premise that the term "adjourn from day to day" must be construed to limit the house's ability to adjourn only to the immediate following day.

Mr. Dunnam refers to *Mason's Legislative Manual*, Section 201, in support of his point of order, offering the reference in support of the proposition that, because the house adjourned to an improper day, the effect of this action is to dissolve the body. That provision of *Mason's* provides only that an unqualified motion to adjourn is effectively a motion to dissolve the body where no future date has been set for reconvening. (Unlike Congress, which by resolution at the beginning of each session establishes the weekly date and times for regular meetings, the date and time for reconvening the Texas House is set by motion each day.) This provision of *Mason's* has no application in this instance because, rather than adopting an unqualified motion to adjourn, the house adjourned until the time certain of noon, Wednesday, October 8, 2003. The provision cited neither states nor offers support for the proposition that adjournment to an improper day is effectively adjournment sine die. In fact, *Mason's* Sec. 445-1 provides: "When a state legislature is duly convened it cannot be adjourned sine die nor be dissolved except in the regular legal manner, and an adjournment from day to day cannot have that effect." Because the members who were present on Sunday, October 5, 2003, did not constitute a quorum, a motion to adjourn sine die was not in order. (See *Deschler-Brown Precedents*, Ch. 20, Secs. 8.9-8.10).

Mr. Dunnam argues that adjournment of the house sine die with less than a quorum would have been proper Sunday, as evidenced by the senate's adjournment sine die of the Second Called Session with less than a quorum. It is clear that the senate's motion to adjourn sine die with less than a quorum present was proper because the senate so adjourned on August 26, 2003, the last possible day of that session, and there was no future day to which the Second Called Session could adjourn. Had more than three days remained in that called session, adjournment sine die would not have been in order, not only as evidenced by the congressional precedents cited earlier, but because it would have violated Article III, Section 17, Texas Constitution, which provides that neither house may adjourn for more than three days without the consent of the other house. Mr. Dunnam also argues that the house adjournment Sunday to Wednesday violated that provision. However, it is clear that, counting Monday as day one, adjournment from Sunday to Wednesday, day three, did not constitute adjournment for more than three days.

Article III, Section 17, is relevant to the issues raised in the point of order, however. According to *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, Braden, G. et al., (1977), p. 131, "[T]he reason for Section 17 is clear: to prevent one house from frustrating the other's business by packing up and going home . . . ." Clearly, permitting less than a quorum of one house to adjourn sine die when more than three days remain in a legislative session would violate the purpose of Article III, Section 17.

Under these circumstances, the chair finds that the power of less than a quorum to adjourn "day to day" does not require the house to set the immediately following day as the date of reconvening, but rather empowers those present to set a date for reconvening that is generally within the power of the house, that is, a date not more than three days after adjournment.

Accordingly, the point of order is respectfully overruled.

Postponed Business (Rule 7, Section 15)—Order of Postponed Business—Sustained
84 H.J. Reg. 4278-79 (M. White 5/23/15)

SB 1007 - POINT OF ORDER

Representative M. White raised a point of order against further consideration of SB 1007 under Rule 7, Section 15 of the House Rules on the grounds that the bill is out of order.

The chair sustained the point of order and submitted the following statement:

Representative M. White raised a point of order against further consideration of the calendar for May 23, 2015, under Rule 7, Section 15 on the grounds that the house was proceeding with business out of order. The point of order under Rule 7, Section 15 is sustained, but the defect does not bar consideration of the calendar; rather, the remedy is for the house to proceed in order.

Rule 7, Section 15 states that a "bill or proposition postponed to a day certain shall be laid before the house at the time on the calendar day to which it was postponed . . . ." and that "the postponed matter shall be deferred until the pending business is disposed of without prejudice otherwise to its right of priority." Earlier in the day, CSSB 204 had been considered and, to allow members to discuss issues related to the bill and amendments so that they could reach a reasoned compromise, the bill was postponed until 4:45 p.m. Shortly before 5:30 p.m., the house finished up a matter then pending and laid out the next bill listed on the calendar, SB 1007. Representative M. White raised a point of order against the calendar, observing that under Rule 7, Section 15, CSSB 204 should have had priority over SB 1007. The chair agrees with Representative M. White that under Rule 7, Section 15 of the House Rules, CSSB 204 had priority beginning at 4:45 p.m. and that, strictly speaking, the house was proceeding out of order and was subject to correction by Representative M. White or any other member.

The chair notes that as a matter of house practice, the membership often allows matters to be taken up out of their regular order to allow for more efficient or collegial conduct of house business. For example, the house takes up postponed matters later than the time for which they are postponed so that proponents and opponents of these matters have time to negotiate. When, however, a member wishes to compel the body to adhere to the restrictions contained within the rules, the chair is compelled to enforce the rules. *See* Rule 1, Section 1 of the House Rules. In most instances where the objection is that the chair has taken up matters in contravention of the rules governing the house's order of business, the remedy is for the house to proceed in order. As a result, the house cured the defect observed by Representative M. White by proceeding to consider CSSB 204.

Motion to Reconsider—Reconsideration in Committee (Rule 4, Section 14)
83 H.J. Reg. 2979-81 (C. Turner 5/9/13)

HB 3005 - POINT OF ORDER

Representative C. Turner raised a point of order against further consideration of HB 3005 under Rule 7, Section 37 of the House Rules on the grounds that the motion to reconsider by the standing committee was not properly made.

The chair overruled the point of order and submitted the following statement:

Representative C. Turner raised a point of order against further consideration of HB 3005 under Rule 7, Section 37 of the House Rules. He argues that the method by which the motion to reconsider HB 3005 was handled by the bill's standing committee was incorrect under the House Rules and that Rule 7, Section 37 requires that when "a question has been decided by the house and the yeas and nays have been called for and recorded, any member voting with the prevailing side may, on the same legislative day, or on the next legislative day, move a reconsideration." The text of Rule 7, Section 37 of the House Rules reads as follows:

Section 37. Motion to Reconsider a Vote — (a) When a question has been decided by the house and the yeas and nays have been called for and recorded, any member voting with the prevailing side may, on the same legislative day, or on the next legislative day, move a reconsideration; however, if a reconsideration is moved on the next legislative day, it must be done before the order of the day, as designated in the 10th item of Rule 6, Section 1(a) is taken up. If the house refuses to reconsider, or on reconsideration, affirms its decision, no further action to reconsider shall be in order.

(b) Where the yeas and nays have not been called for and recorded, any member, regardless of whether he or she voted on the prevailing side or not, may make the motion to reconsider; however, even when the yeas and nays have not been recorded, the following shall not be eligible to make a motion to reconsider:

(1) a member who was absent;

(2) a member who was paired and, therefore, did not vote; and

(3) a member who was recorded in the journal as having voted on the losing side.

(c) A motion to reconsider the vote by which a bill, joint resolution, or concurrent resolution was defeated is not in order unless a member has previously provided at least one hour's notice of intent to make the motion by addressing the house when the house is in session and stating that a member intends to make a motion to reconsider the vote by which the bill or resolution was defeated. It is not necessary for the member providing the notice to be eligible to make or to be the member who subsequently makes the motion to reconsider. If notice of intent to make a motion to reconsider is given within the period that the motion to reconsider may be made under Subsection (a) of this section and that period expires during the one-hour period required by this subsection, then the period within which the motion may be made under Subsection (a) is extended by the amount of time, not to exceed one hour during which the house is in session, necessary to satisfy the one-hour notice required by this subsection. For purposes of this subsection, a motion to reconsider includes a motion to reconsider and table and a motion to reconsider and spread on the journal.

The point of order is respectfully overruled. As admitted by Representative C. Turner and reflected in the committee minutes, no member of the committee objected to the motion to reconsideration. Therefore, any objection was waived. Second, even if an objection had been raised in committee, it does not survive to the house floor provided the bill was eventually voted out by a majority vote for favorable report and with a quorum present. *See* Rule 4, Section 14 of the House Rules, explanatory notes and house precedents. Third, it is unclear how or even if Rule 7, Section 37 of the House Rules could be applied to committee process. It is hard to tell how one would graft this rule to a committee process. For instance, Rule 7, Section 37 of the House Rules requires that if a reconsideration is moved on the next legislative day, it must be done before the order of the day, as designated in the 10th item of Rule 6, Section 1(a) of the House Rules. Does this

mean the committee must meet before the end of the next routine motion period of the house? What is the "next legislative day" in a committee? Do different committees have a different number of legislative days? Fourth, below is a graph of the number of motions to reconsider votes by house committees from 1989 forward:

Regular Session	House Bills	Senate Bills	All Bills
83rd	199	23	222
82nd	83	24	107
81st	83	28	111
80th	60	104	164
79th	59	13	72
78th	61	43	104
77th	43	22	65
76th	45	25	70
75th	49	26	75
74th	30	3	33
73rd	8	14	22
72nd	24	7	31
71st	108	40	148

While there are ebbs and flows in the total number raised, it is clear from the review of the over 1,200 motions in that time period that the membership has the information to determine if additional regulation of those motions in committees is warranted. Because the House Rules and established house practice address the issue, if the body desires to restrict the time, place, and manner of raising motions for reconsideration in committee, we are certain that it should be done by rule.

Motion to Reconsider—Timeliness (Rule 6, Section 1(a); Rule 7, Section 37)—Sustained
84 H.J. Reg. 3024 (Stickland 5/11/15)

CSHB 2919 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 2919 under Rule 7, Section 37 of the House Rules on the grounds that the motion to reconsider the bill was not timely made.

The chair sustained the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of CSHB 2919 under Rule 7, Section 37 of the House Rules on the grounds that Representative Raney's motion to reconsider was untimely. The point of order is sustained.

Rule 7, Section 37 permits "any member voting with the prevailing side" to, "on the same legislative day, or on the next legislative day, move a

reconsideration; however, if a reconsideration is moved on the next legislative day, it must be done before the order of the day, as designated in the 10th item of Rule 6, Section 1(a)" — before third readings are taken up. Rule 7, Section 37; *see* Rule 6, Section 1(a)(10). Representative Raney did not move to reconsider the vote until Monday, May 11, 2015, after the routine motions period. Because Representative Raney did not make his motion either on the same day or during the routine motions period on the legislative day following the action he wished to reconsider, the chair agrees that the motion to reconsider was out of order. *See* Rule 7, Section 37; Rule 6, Section 1(a)(10).

Motion to Reconsider—Timeliness (Rule 6, Section 1(a); Rule 7, Section 37)
80 H.J. Reg. 3202 (Thompson 5/7/07)

CSHB 9 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of CSHB 9 under Rule 7, Section 37 of the House Rules on the grounds that the motion to reconsider Amendment No. 1, as amended, was out of order.

. . .

The speaker overruled the point of order, and submitted the following statement:

Representative Thompson raises a point of order against further consideration of CSHB 9 under Rule 7, Section 37. Specifically, Representative Thompson argues that the motion to reconsider the Dutton amendment came after the calendar had begun and thus was too late for consideration by a mere majority vote.

Rule 7, Section 37(a), notes that "if a reconsideration is moved on the next legislative day" (as it was in this case), "it must be done before the order of the day, as designated in the item 11 of Rule 6, Section 1(a), is taken up."

Rule 6, Section 1(a)(9), notes that the ninth item of business is unfinished business. CSHB 9 is designated as unfinished business. Because the motion was timely made and considered within Rule 6, Section 1(a)(9), the point of order is respectfully overruled.

Bill Captions (Rule 8, Section 1)

Captions—Reasonable Notice of Bill's Subject; One-Subject Rule
85 H.J. 1st C.S. 204-05 (Ortega 8/3/17)

CSHB 215 - POINT OF ORDER

Representative Ortega raised a point of order against further consideration of CSHB 215 under Rule 8, Section 1(a) and Section 3, asserting that the caption does not give fair notice of changes made by the bill to Chapter 552 of the Government Code and that these changes to Chapter 552 introduce an impermissible second subject to the bill.

CSHB 215's caption reads "relating to reporting and certification requirements by certain physicians regarding certain abortions." Representative Ortega asserts that the caption was inadequate and should instead have read "relating to reporting and certification requirements by certain physicians regarding certain abortions *and amending open records law*" or should have included some similar phrase to alert readers to the portion of the bill addressing Chapter 552. Representative Ortega observes that CSHB 215 contains a provision requiring a physician who performs an abortion in the third trimester of a woman's pregnancy to certify to the Health and Human Services Commission (HHSC) in writing the form of fetal abnormality identified by the physician, and that the bill further requires a physician who performs an abortion on a female under the age of 18 to report certain information to HHSC. She agrees that the caption addresses these provisions, but urges that the second section of the bill, which requires reporting for abortions performed on females under 18, adds an impermissible second subject because it addresses when information contained in these reports about females under the age of 18 is confidential and when it may be released under the open records act. In reviewing the open records provisions contained in Section 2 of the bill, the chair finds that they are within the same subject as the rest of that section because they address the handling of information required to be reported by physicians who perform abortions on females under the age of 18. Because the open records provisions do not introduce an additional subject into the bill, and because the caption adequately reflects the bill's provisions, the point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject; Increasing the Punishment for a Criminal Offense
85 H.J. Reg. 3354 (Dutton 5/11/17)

CSHB 2908 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of CSHB 2908 pursuant to House Rule 8, Sections 1(a) and (c), on the grounds that the bill caption does not give reasonable notice of the bill's subject and does not

sufficiently describe the multiple criminal penalties created in the bill. The point of order is respectfully overruled.

CSHB 2908 amends Article 42.014(a) of the Code of Criminal Procedure, which deals with a finding that the offense was committed because of bias or prejudice, to increase the penalty for offenses motivated by the victim's "status as a peace officer." The bill's caption reads: "relating to the punishment for a criminal offense committed against a person because of bias or prejudice on the basis of status as a peace officer; increasing a criminal penalty."

Rule 8, Section 1(c), requires bills "that would create a criminal offense, increase the punishment for an existing offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision" to "include a short statement at the end of its title or caption indicating the general effect of the bill on the offense." Representative Dutton asserted that this caption violates Rule 8, Sections 1(a) and (c), because the bill actually involves increasing penalties for multiple offenses against officers. He therefore contends the fact that "increasing a criminal penalty" is singular is fatally insufficient. In this case, use of the plural form would have been better, but the singular form is sufficient to give notice that the bill increases criminal penalties for offenses committed against peace officers. Therefore, the point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject; One-Subject Rule
85 H.J. Reg. 2995 (Cain 5/8/17)

CSHB 748 - POINT OF ORDER

Representative Cain raised a point of order against further consideration of CSHB 748 pursuant to House Rule 8, Section 1(a) and Section 3, on the grounds that the caption does not provide adequate notice and that the bill improperly contains two subjects. Both points of order are respectfully overruled.

The bill contains a single, unified subject: recovery of costs and fees related to animal cruelty cases. It does not contain an impermissible second subject. As to Rule 8, Section 1(a), the caption reads: "relating to certain costs associated with certain court proceedings for cruelly treated animals; authorizing fees and costs." This caption gives reasonable notice of the bill's subject and therefore does not violate the rule.

Captions—Reasonable Notice of Bill's Subject
85 H.J. Reg. 2727-28 (Tinderholt 5/5/17)

HB 2832 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of HB 2832 under House Rule 8, Section 1(a), on the grounds that the caption does not give the legislature and the public reasonable notice of the bill's subject. The point of order is respectfully overruled.

The caption reads "relating to notice by a property owner to a mortgage servicer that the owner intends to enter into a contract with a property tax lender." The bill amends Section 32.06 of the Tax Code to require that mortgage servicers receive notice from owners who enter into agreements with "transferees" for repayment of delinquent property taxes. Section 32.06 of the Tax Code governs property tax loans and transfers of liens. Representative Tinderholt asserts that the bill impacts at least some transferees who are not "lenders" because a subset of transferees are not subject to the Property Tax Lender License Act. Section 32.06 defines a "transferee" as "a person who is licensed under Chapter 351, Finance Code, or is exempt from the application of that chapter under Section 351.051(c), Finance Code."

Section 351.051(c) of the Finance Code requires lenders to be licensed (among other requirements), but it expressly makes these requirements inapplicable to:

(1) any of the following entities or an employee of any of the following entities, if the employee is acting for the benefit of the employer:
   (A) a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank, or savings and loan association; or
   (B) a state or federal credit union, or a subsidiary, affiliate, or credit union service organization of a state or federal credit union; or
(2) an individual who:
   (A) is related to the property owner within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code; or
   (B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.

The fact that some transferees are exempt from the requirements of Chapter 351 of the Finance Code does not preclude them from being lenders within the meaning of the property tax loan and transfer of lien law found in Section 32.06 or under the commonly accepted use of the word "lender." Even Representative Tinderholt agrees that all of the transferees are lienholders who loan money for repayment of property taxes. For these reasons, the chair concludes that the caption provided reasonable notice of the bill's subject and did not violate Rule 8, Section 1(a).

Captions—Reasonable Notice of Bill's Subject
85 H.J. Reg. 2372 (Rinaldi 5/3/17)

CSHB 1102 - POINT OF ORDER

Representative Rinaldi raised a point of order against further consideration of CSHB 1102 pursuant to House Rule 8, Section 1(a), on the grounds that the required caption fails to give reasonable notice of the subject of the bill. The point of order is overruled.

Rule 8, Section 1(a)(1), of the House Rules requires that the bill contain a caption "that gives the legislature and the public reasonable notice of the subject of the proposed measure." CSHB 1102's caption reads: "relating to providing a telephone number for certain governmental purposes." Specifically, Representative Rinaldi argues that "certain governmental purposes" is too broad to give notice of the bill's subject. CSHB 1102 allows an applicant's phone number to be used for a number of purposes including (1) reconstituting a jury wheel, (2) notifying the registrar of the applicant's status, (3) furnishing to the secretary of state a current voter registration list, and (4) being included on jury wheel cards. Additionally, (5) telephone numbers of a federal judge or state judge may not be included nor can (6) the Department of Public Safety charge a fee for furnishing a list of applicant telephone numbers. Each of these six governmental purposes is properly contained in the caption. Having reviewed the bill, the chair concludes that the caption complies with Rule 8, Section 1(a), of the House Rules. The point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject; Tax, Assessment, Surcharge, or Fee
85 H.J. Reg. 1631 (Schaefer 4/19/17)

CSHB 21 - POINT OF ORDER

Representative Schaefer raised a point of order against further consideration of CSHB 21 under Rule 8, Sections 1(a) and (b), on the grounds that the caption fails to give the legislature and the public reasonable notice of the bill's subject and the caption fails to contain a short statement regarding a change to a fee. The point of order is respectfully overruled.

House Rule 8, Section 1(a), requires that captions provide "the legislature and the public reasonable notice of the subject of the proposed measure." Additionally, Section 1(b) requires a house bill "that would impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee" to "include a short statement at the end of its title or caption indicating the general effect of the bill on the tax, assessment, surcharge, or fee."

Representative Schaefer objects that the caption to CSHB 21 is overly broad and that the word "fee" appears twenty times in the bill, yet the caption does not mention the word "fee."

The caption of CSHB 21 is "relating to the public school finance system." Having reviewed the entirety of CSHB 21, which is a very broad public school finance bill, the chair determines that the caption does not run afoul of House Rule 8, Section 1(a). Every appearance of the word "fee" is in Section 1 of the bill, which contains the list of existing fees that a board of trustees may require payment of in Section 11.158(a) of the Education Code. All but two of these instances are in text that is printed for context, but is not actually changed by the bill. In two instances, the word "fee" is contained in sections that are stricken from the bill.

Representative Schaefer contends that in these two instances, the bill is authorizing a fee that was previously not allowed. In the first instance, the bill expands the class of persons to whom an existing fee might apply by removing a fee exemption. In the second instance, the bill removes authorization for certain districts to charge a fee for transportation. Rule 8, Section 1(b), does not apply to a provision removing an exemption to expand the class of persons to whom a fee applies, nor does it apply to removing authorization to charge a fee. *See* 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63; "the rule does not apply to bills that indirectly affect the payment or application of an existing tax, assessment, surcharge, or fee, such as a bill changing a due date, repealing or otherwise eliminating a program or agency that includes fee or assessment authority, modifying or adopting a tax exemption, or modifying a class of persons or transactions subject to an existing tax or fee."). Accordingly, the chair overrules the point of order.

Captions—Reasonable Notice of Bill's Subject; Tax, Assessment, Surcharge, or Fee—Sustained
85 H.J. Reg. 1463-65 (Leach 4/12/17)

HB 486 - POINT OF ORDER

Representative Leach raised a point of order against further consideration of HB 486 pursuant to Rule 8, Section 1, of the House Rules on the grounds that the caption of the bill is defective in several ways, including for the failure to include a short statement acknowledging that the bill changes the rate of a tax.

HB 486 has a long legislative pedigree. The first version was introduced as HB 671 by Representative Ratliff in the 83rd Session and was refiled as HB 964 by Representative Howard in the 84th Session, each time with the caption "relating to the calculation of the rollback tax rate of a school district." Indeed, that caption, under the rules of each respective legislative session, accurately describes what the bill, which passed out of the house in both previous sessions before dying in the Senate Finance Committee, related to when it was introduced.

Currently, school districts must seek voter approval to raise their maintenance and operations (M&O) tax rate above a certain threshold, up to a maximum allowable rate of $1.17 per $100 property valuation. That threshold number, which a school district may not exceed without triggering an election to approve the number, is the "rollback tax rate." The phrase "rollback tax rate" is a misnomer. No Texan is assessed or pays a "rollback tax rate." The legislature uses the phrase to denote a threshold number for calling an election. To say that a "rollback tax rate" is in fact a tax rate that imposes, authorizes, increases, or changes the rate or amount of a tax, assessment, surcharge, or fee solely because it contains the word "tax rate" in the wording is equivalent to saying a lightning bug contains actual lightning because that word appears in the name.

The rollback tax rate can vary by district, but falls between about $1.04 and $1.17. The bill introduced this session by Representative VanDeaver, both in past sessions and in its current incarnation as HB 486, would provide for a method of calculating the rollback tax rate using the highest M&O rate approved by voters for the 2007 tax year or later. Representative VanDeaver explained that the bill's purpose is to allow school boards to lower tax rates when financial conditions are favorable, without the threat of having to hold a costly election to raise M&O tax rates back to a rate previously approved by voters if financial conditions require it at a future point.

Before the bill left the house floor in the 84th Session, an amendment was added to provide for a study to determine the number of districts that lower their tax rates in one year and raise them the following year. That study was included in the bill as it was filed this session. Perhaps to accommodate the addition of the incidental study, the caption of the bill in the 85th Session was broadened from its previous accurate description to its current caption, "relating to school district ad valorem tax rates."

Representative Leach argues that the bill does something to a tax rate, and, as such, the bill's caption should have contained a statement indicating the effect of the bill on the tax. He also asserts that the current caption failed to give fair notice to house members or to the public of what the bill did. Under Rule 8, Section 1(b), "[a] house bill that would impose, authorize, increase, or change the rate or amount of a tax . . . must include a short statement at the end of its title or caption indicating the general effect of the bill on the tax. . . ." As noted above, the bill does not impose or authorize a tax rate; it merely provides for a method of calculation of the trigger point ("rollback tax rate") for calling certain school district elections. No one argues that the bill will always increase the tax rate, although Representative Leach emphasizes that the fiscal note, a third-party analysis that is outside the house's control, mentions that, as a result of the ability to raise the M&O rate without an election, it is possible for the rate for some districts to increase without the currently required ratification election. It should also be noted, as explained below, that in reviewing points of order under Rule 8, Section 1(b), the chair looks only to the "four corners" of the bill (and not other extrinsic documents) for a direct expression (within the four corners of the bill) of the imposition, authorization, or change of the rate or amount of a tax, assessment, surcharge, or fee, as well as to bills that have an equivalent purpose, such as a bill whose primary purpose is to repeal a tax or to extend a temporary fee. *See* 84 H.J. Reg. 1405-06 (2015) (Stickland point of order on CSHB 4); 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63).

Representative Leach does contend, however, that the bill changes the tax rate because if a school district lowers their M&O rate (which is currently permissible under current law), they would then be able to raise the M&O rate (which is also permissible, if ratified by an election), but would not be required to hold an election to do so. The quandary faced by the chair is whether Rule 8, Section 1(b), requires "a short statement . . . indicating the general effect of

the bill on the tax" when the bill might have no effect whatsoever and when the caption, in its entirety, already states that the bill "relat[es] to school district ad valorem tax rates." *See* 83 H.J. Reg. 1615-16. Even the fiscal note Representative Leach relies on concludes that the "instances in which the proposed new rollback rate calculation procedure would result in a higher school district tax rate cannot be predicted" and the probability of a school board lowering the tax rate based on the flexibility to raise it in the future "cannot be estimated." Each of these possibilities is an item that may (or may not) indirectly affect the payment or application of an existing tax, assessment, surcharge, or fee and are not within the contemplation of the rule. *See* 84 H.J. Reg. 1405-1406; 83 H.J. Reg. 1615-16 ("However, the rule does not apply to bills that indirectly affect the payment or application of an existing tax, assessment, surcharge, or fee, such as a bill changing a due date, repealing or otherwise eliminating a program or agency that includes fee or assessment authority, modifying or adopting a tax exemption, or modifying a class of persons or transactions subject to an existing tax or fee.").

While adding a verb to the caption to have it read ". . . affecting (or possibly affecting) school district ad valorem tax rates (in certain circumstances)" or ". . . changing school district ad valorem tax rates," on the basis of some future action not directly required in the four corners of the bill, might be more informative and accurate, consistent with rulings in each of the previous sessions, the addition of warnings of hypothetical possibilities is neither required by the letter or the spirit of Rule 8, Section 1(b).

However, in the time spent reviewing the bill, the history of which appears roughly coextensive with that of Rule 8, Section 1(b), the chair has determined that Representative Leach is correct that the bill's current caption does not provide adequate notice that the bill relates to the calculation of the rollback tax rate of a school district and provides for a related study. Although a caption need not detail every element of a bill, it also may not be so broad as to obscure the subject of the bill. *See* 78 H.J. Reg. 1676 (2003) (Burnam point of order on CSHB 1567); 74 H.J. Reg. 2186 (1995) (Moreno point of order on HB 2646). Accordingly, the point of order is sustained under Rule 8, Section 1(a).

The bill was returned to the Committee on Ways and Means.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))—Sustained
84 H.J. Reg. 4243-44 (Tinderholt 5/23/15)

SB 1173 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of SB 1173 under Rule 8, Section 1; Rule 11, Section 2; and Rule 11, Section 3 of the House Rules on the grounds that the bill caption is inaccurate, the amendment is not germane to the bill, and the amendment would change the original purpose of the bill.

The speaker sustained the point of order and submitted the following statement:

Representative Tinderholt raised a point of order against further consideration of SB 1173 under Rule 8, Section 1; Rule 11, Section 2; and Rule 11, Section 3 of the House Rules arguing that adoption of Amendment No. 3, which was offered and adopted without objection, either impermissibly added a second subject or changed the original purpose of the bill. Amendment No. 3 removed the prohibitions on certain communication by operators of commercial motor vehicles and applied those prohibitions to any operator of a motor vehicle. Alternatively, Representative Tinderholt argued that, on the basis of the representations by both the amendment's author and the bill's sponsor during the discussion of the issues posed by the Rule 11 challenge, that the arguments regarding the amendment disclosed a fatal error in the caption under Rule 8, Section 1. Specifically, both the amendment author and the bill's sponsor argued that the amendment was germane and did not violate the one-subject rule because the bill contained a number of references to the operation of passenger vehicles, specifically citing changes in Section 2 and Section 19 of the bill. In writing, the amendment's author noted "SB 1173 contains multiple subjects dealing with commercial driver license holders, driver license holders, passenger vehicles, fines and fees, offenses and already includes a prohibition on texting." If the bill proponents' statements are correct, Representative Tinderholt argues that the caption of the bill is fatally flawed because it refers only to the operation of commercial motor vehicles and commercial driver's licenses and not to the numerous references of the operations of passenger vehicles or non-commercial driver's licenses. The failure of the caption to include a description means that it failed to convey to the public reasonable notice of the subject of the proposed measure in violation of Rule 8, Section 1. The point of order is sustained under Rule 8, Section 1.

Relying solely on the assertions of the author of the amendment and the bill sponsor, it is clear that if the amendment was germane to be placed on the bill because of the reasons raised by the author and sponsor, then the caption failed to include those subjects of the proposed measure. In this case, without deciding the merits of the issue, assuming the truth of the representations regarding the one-subject issue would necessarily indicate a deficiency in the caption.

The bill is returned to committee. As with all procedural deficiencies, the arguments attached to this incarnation of the bill are stripped away.

SB 1173 was returned to the Committee on Transportation.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))
84 H.J. Reg. 3508-09 (T. King 5/14/15)

HB 3835 - POINT OF ORDER

Representative T. King raised a point of order against further consideration of HB 3835 under Rule 8, Section 1(a)(1) of the House Rules on the grounds that the bill caption is inaccurate.

The chair overruled the point of order and submitted the following statement:

Representative T. King raised a point of order against further consideration of HB 3835 under Rule 8, Section 1 on the grounds that the caption does not accurately give the legislature and the public reasonable notice of the subject of the proposed measure. Rule 8, Section 1(a)(1). The point of order is respectfully overruled.

The caption reads "relating to the use of certain alternative fuels by state agency motor vehicles." Section 1 of the bill states that a state agency may not use "ethanol or ethanol/gasoline blends of 85 percent or greater, biodiesel, or biodiesel/diesel blends of 20 percent or greater," three types of alternative fuels. Section 2 of the bill states, in part, that a state agency may not use a type of alternative fuel in operating a fleet of more than 15 state vehicles and may not obtain equipment or refueling facilities that allow the use of certain alternative fuels. Section 3 of the bill does not allow a state agency to operate a motor vehicle to use certain alternative fuels.

Article III, Section 35(b) of the Texas Constitution requires that "each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject." House Rule 8, Section 1 adds the concept that the expression should be a brief statement. Captions that are succinct, drafted, to the extent possible, in plain language, and that are fair and accurate are sufficient, even if the caption does not itemize every detail contained in the bill. In this case, a layperson picking up this bill and reading the caption alone would be fairly informed the bill deals with the use of alternative fuel in state vehicles, a succinct statement, drafted in plain language, that is fair and accurate. The point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))
83 H.J. Reg. 4059 (Dutton 5/21/13)

SB 11 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of SB 11.

The chair overruled the point of order and submitted the following statement:

Representative Dutton raised a point of order against further consideration of SB 11, asserting that the senate's amendment of the bill's caption violated the House Rules. The point of order is respectfully overruled.

Rule 8, Section 1(a)(1) of the House Rules requires that the bill contain a caption "that gives the legislature and the public reasonable notice of the subject of the proposed measure." SB 11's caption reads: "relating to the drug testing of certain persons seeking financial assistance benefits." Having reviewed the bill, the chair concludes that the caption complies with Rule 8, Section 1(a)(1) of the House Rules. *Compare* 74 H.J. Reg. 2186 (1995) (sustaining a point of order where a narrow bill had an overly broad caption).

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))
81 H.J. Reg. 2624-25 (Burnam 5/6/09)

CSHB 4525 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of CSHB 4525 under Rule 8, Section 1 of the House Rules on the grounds that the caption does not give the legislature and the public reasonable notice of the subject of the bill.

The chair overruled the point of order and submitted the following statement:

Representative Burnam raises a point of order against further consideration of CSHB 4525 under Rule 8, Sec. 1 of the House Rules on the grounds that the caption does not give the Legislature and the public reasonable notice of the subject of the bill.

The bill caption reads "relating to qualified manufacturing project zones." Representative Burnam argues that the caption assumes that the zones are currently existing, and, therefore, does not give reasonable notice of the creation of a new program for qualified manufacturing project zones.

Rule 8, Section 1 requires that the caption of a bill give reasonable notice of the subject of the bill. Under house precedent, it is well-established that the caption of the bill need not detail the elements of the bill. (78th Legislature, Regular Session, House Journal, p. 1676). In the opinion of the chair, the caption is sufficient.

Accordingly, the point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))
80 H.J. Reg. 7191 (Talton 5/28/07)

SB 909 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of SB 909 under Rule 8, Section 1 of the House Rules on the grounds that the caption does not give the legislature and the public reasonable notice of the subject of the proposed measure.

The chair overruled the point of order, and submitted the following statement:

Mr. Talton raised a point of order against further consideration of the conference committee report on SB 909 under Rule 8, Section 1, of the House Rules on the grounds that the caption of the bill does not give the legislature and the public reasonable notice of the subject of the proposed measure.

Representative Talton argues that the inclusion of an amendment to community supervision law authorizing a defendant to make charitable donations in lieu of performing community service is not covered by the caption of the conference committee report, relating to the continuation and functions of the Texas Board of Criminal Justice, the Texas Department of Criminal Justice, and the Correctional Managed Heath Care Committee, and to the functions of the Board of Pardons and Paroles. Multiple provisions relating to the system of community supervision are included in the conference committee report. For example, Section 6 of the conference committee report relates to the discretion of a judge to grant community supervision to certain defendants. Because the system of community supervision is intricately connected with the operation of the Texas Department of Criminal Justice, in that it provides an alternative to confinement in the Department of Criminal Justice, and in that the amendment cited by Representative Talton provides defendants with another means of complying with requirements of community supervision, the net effect of the amendment will lessen the prison population at the Texas Department of Criminal Justice, and accordingly relates to the functions of the Texas Department of Criminal Justice.

Accordingly, the point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))
79 H.J. Reg. 3853 (Y. Davis 5/22/05)

CSSB 408 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSSB 408 under Rule 8, Section 1 of the House Rules on the grounds that the caption does not give reasonable notice of the subject of the proposed measure.

. . .

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of SB 408, on the grounds that it violated Rule 8, Section 1, of the House Rules because the caption of the bill did not provide sufficient notice of penalties contained in the bill. In particular, Ms. Davis refers to administrative penalties that are stipulated in the bill as the substance of the violation.

Rule 8, Section 1 requires that the caption of a bill give reasonable notice of the subject of the bill. Under house precedent, it is well-established that the caption of the bill need not detail the elements of the bill. (78th R.S. H.J. 1676)

Ms. Davis cites as part of her authority the Texas Legislative Council Drafting Manual. The chair notes that while the manual is a useful and persuasive tool for the drafting of legislation, it has never been intended to be binding on the legislature or to supersede House Rules or precedent.

For these reasons, the point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))
78 H.J. Reg. 1676 (Burnam 4/22/03)

CSHB 1567- POINT OF ORDER

Representative Burnam raised a point of order against further consideration of CSHB 1567 under Rule 8, Section 1 of the House Rules on the grounds that the caption does not give the legislature and the public reasonable notice of the subject of the proposed measure.

. . .

The speaker overruled the point of order, speaking as follows:

Mr. Burnam raises a point of order against further consideration of CSHB 1567 under Rule 8, Section 1, in that the caption is insufficient notice of the bill's provisions that allow the disposal of mixed waste with low-level radioactive

waste. The rule requires a caption that gives "reasonable notice of the subject" of the bill. It is well established that a caption need not detail the elements of the bill. In the opinion of the chair, the caption is sufficient.

Accordingly, the point of order is respectfully overruled.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b))—Sustained
74 H.J. Reg. 2186 (Moreno 5/9/95)

HB 2646 - POINT OF ORDER

Representative Moreno raised a point of order against further consideration of HB 2646 on the grounds that HB 2646 violates Rule 8, Section 1, of the House Rules.

The speaker sustained the point of order, speaking as follows:

Representative Moreno raises a point of order against further consideration of HB 2646 under Rule 8, Section 1, in that the bill's caption fails to give reasonable notice of the subject of the bill.

HB 2646 repeals Chapter 52 of the Code of Criminal Procedure, which governs courts of inquiry conducted by district judges. The caption of the bill reads: "relating to the Code of Criminal Procedure."

While the bill's caption is accurate in that the subject of the bill is an element of the Code of Criminal Procedure, it goes without saying that the Code contains many more elements. In the opinion of the chair, the subject of the bill at its broadest reading is courts of inquiry. Nothing in the caption of the bill gives the legislature and the public notice that the bill addresses only this narrow element of the Code of Criminal Procedure. By any reasonable standard, the caption fails to meet the minimal requirements of the rules.

Accordingly, the point of order is well-taken and sustained.

Captions—Reasonable Notice of Bill's Subject (Rule 8, Section 1(a)(1); Article III, Section 35(b)); Original Purpose; Conference Committee Report—Text in Disagreement
73 H.J. Reg. 5366 (Moreno, Maxey 5/30/93)

HB 1776 - POINT OF ORDER

Representative Maxey raised a point of order against further consideration of HB 1776 on the grounds that the conference committee report violates Rule 11, Sections 3 and 9, and Rule 13, Sections 9(a)(l) and 9(a)(2), of the House Rules, and Article III, Section 30, of the Texas Constitution.

Representative Moreno raised a point of order against further consideration of HB 1776 on the grounds that the conference committee report violates Article III, Sections 30 and 35(b), of the Texas Constitution.

. . .

The speaker overruled the Maxey and Moreno points of order and requested the reading clerk to read the following statement:

The chair apologizes to the members for the delay in arriving at the ruling, but there were several points of order raised about which the chair had no advance warning or consultation.

Mr. Maxey and Mr. Moreno raise several points of order against further consideration of the conference committee report on HB 1776. For the following reasons, each of the points is overruled.

The first point of order was raised under Article III, Section 30, of the Texas Constitution and Rule 11, Section 3, of the House Rules. Both those provisions prohibit amendment of a bill during passage so as to change its original purpose. An example of an amendment that changes the original purpose would be for the amendment to represent an exact opposite of the bill under consideration, such as an amendment to validate county education districts offered to a resolution abolishing those districts. Another example would be for an amendment to be offered on a completely unrelated subject. The chair finds that the original purpose of the bill was clearly to authorize the carrying of concealed handguns and that this conference committee report is equally clearly consistent with that original purpose. To hold as Mr. Maxey and Mr. Moreno would have me hold would prevent the house and the senate from amending bills in any substantive way. There is no precedent for such a holding.

The second point of order was raised under Rule 13, Section 9(a)(2), of the House Rules, which imposes limitations on the jurisdiction of a conference committee, in that Section 7 of the house and senate versions of the bill were not in disagreement but yet were omitted. The chair has reviewed those sections of the bill and finds that they were in fact in disagreement. In addition, the chair finds that HR 842, which suspended the limitations on the conference committee, clearly and expressly authorized the conferees to omit the criminal penalty provisions of the house and senate versions of the bill. Section 7 constitutes nothing more than transition language for those criminal penalties, and retaining the language, even if not in disagreement, would serve no purpose. The house has by its resolution authorized the omission of the language of Section 7.

In the final point of order, Mr. Maxey and Mr. Moreno object to the caption of the conference committee report under Article III, Section 35(b) of the Texas Constitution, and Rule 11, Section 9, of the House Rules. Mr. Maxey himself points out in his written point of order that Rule 2, Section 1(a)(11) of the House Rules, authorized the chief clerk to amend the caption of a bill. Of course, Mr. Maxey should be aware that the rule he cites applies only to a bill finally passed by the house. The senate amended HB 1776 and did not adopt a specific caption,

but as is custom in both the house and the senate when amending a bill of the other, adopted a motion to conform the caption to the body of the bill. That motion authorizes the clerk to change the caption on enrollment. It escapes the chair how the chair is supposed to sustain a point of order against the caption when the senate version includes no final caption as this bill has not yet gone to enrollment. The chair finds no merit in any of the points raised, and each is respectfully overruled.

[Note: The language of the 73rd Session's House Rule 2, Section 1(a)(11) is currently found in Rule 2, Section 1(a)(10).]

Captions—Tax, Assessment, Surcharge, or Fee
85 H.J. Reg. 3228 (Tinderholt 5/10/17)

CSHB 2766 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of CSHB 2766 pursuant to House Rule 8, Section 1(b), on the grounds that the required caption fails to include a short statement acknowledging that the bill imposes a fee. The point of order is respectfully overruled.

Under Rule 8, Section 1(b), "[a] house bill that would impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee must include a short statement at the end of its title or caption indicating the general effect of the bill on the tax, assessment, surcharge, or fee . . . ."

The caption for CSHB 2766 reads "relating to the creation and administration of a reinvestment allowance for certain long-term care facilities." Additionally, CSHB 2766 imposes a reinvestment allowance on licensed convalescent and nursing facilities and related institutions. Representative Tinderholt argues that this reinvestment allowance constitutes a "fee, assessment, surcharge, or tax" and should therefore be subject to the requirement of Rule 8, Section 1(b). Alternatively, Representative Tinderholt argues that CSHB 2766 authorizes an administrative penalty and that this penalty should be noted in the bill's caption. Rule 8, Sections 1(b)-(d), do not require the authorization of an administrative penalty to be contained in the bill's caption. Further, the bill does not, within its four corners, create an administrative penalty. The point of order is respectfully overruled. *See* 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63).

Captions—Tax, Assessment, Surcharge, or Fee
85 H.J. Reg. 2616 (Nevárez 5/4/17)

CSHB 1774 - POINT OF ORDER

Representative Nevárez raised a point of order against further consideration of CSHB 1774 pursuant to House Rule 8, Section 1(b), on the grounds that the required caption fails to include a short statement acknowledging that the bill imposes a fee. The point of order is respectfully overruled.

Under Rule 8, Section 1(b), "[a] house bill that would impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee must include a short statement at the end of its title or caption indicating the general effect of the bill on the tax, assessment, surcharge, or fee . . . ."

CSHB 1774 establishes requirements and procedures regarding the handling of legal actions for certain insurance claims, to include those arising from damage to or loss of property by way of hailstorms and other forces of nature. Representative Nevárez argues that including the FAIR Plan Association in the bill's definition of an insurer will result in changed fees as a result of the bill's interaction with existing law. He asserts the change to the existing fees in other state or federal laws should be subject to the requirement of Rule 8, Section 1(b). Assuming that Representative Nevárez is correct about the change to fees that exist outside the bill, the chair nonetheless determines that because the bill does not, within its four corners, change a fee within the meaning of Rule 8, Section 1(b), the point of order is overruled. *See* 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63).

Captions—Tax, Assessment, Surcharge, or Fee
85 H.J. Reg. 2238-39 (Tinderholt & Cain 5/2/17)

CSHB 3276 - POINT OF ORDER

Representatives Tinderholt and Cain raised a point of order against further consideration of CSHB 3276 under House Rule 8, Section 1(b), on the grounds that the bill caption is inaccurate. The point of order is respectfully overruled.

CSHB 3276's caption reads "relating to notice of health benefit plan provider network status provided by certain freestanding emergency medical care facilities." Representatives Tinderholt and Cain assert that this caption violates Rule 8, Section 1(b), which requires bills "that would impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee" to "include a short statement at the end of its title or caption indicating the general effect of the bill on the tax, assessment, surcharge, or fee."

CSHB 3276 requires freestanding emergency medical care facilities to post notice either listing the health benefit plans in which the facility was a participating provider in the plan's provider network or stating that the facility was not a participating provider in any network. Representatives Tinderholt and Cain acknowledge that these notice provisions are the sum total of changes provided in the bill and that there is no fee anywhere to be seen within the four corners of the bill. They nonetheless assert Rule 8, Section 1(b), applies because CSHB 3276 would amend Chapter 241 of the Health and Safety Code, and Section 241.059 of the code allows for administrative penalties against hospitals that violate the chapter.

House Rule 8, Section 1(b), applies only to fees found within the four corners of the bill. *See* 85 H.J. Reg. 1463-65 (2017) (Leach point of order on H.B. 486; "in reviewing points of order under Rule 8, Section 1(b), the chair looks only to the 'four corners' of the bill (and not other extrinsic documents) for a direct expression

(within the four corners of the bill) of the imposition, authorization, or change of the rate or amount of a tax, assessment, surcharge, or fee"); 84 H.J. Reg. 1405-06 (2015) (Stickland point of order on CSHB 4; "In general, the rule applies to bills that expressly (within the four corners of the bill) impose, authorize, or change the rate or amount of a tax, assessment, surcharge, or fee, as well as to bills that have an equivalent purpose, such as a bill whose primary purpose is to repeal a tax or to extend a temporary fee."); 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63; same, quoted in the house precedents following Rule 8, Section 1). Extension of this rule to bills like CSHB 3276, which expands the class of entities subject to an existing fee, "would require subjective judgment and render the rule far less useful due to the large number of bills that would be affected." 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63).

Accordingly, House Rule 8, Section 1(b), does not apply to CSHB 3276.

Captions—Tax, Assessment, Surcharge, or Fee
85 H.J. Reg. 2230-31 (Tinderholt 5/2/17)

CSHB 3997 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of CSHB 3997 pursuant to House Rule 8, Section 1(b), on the grounds that the required caption fails to include a short statement acknowledging that the bill creates an additional fee. The point of order is respectfully overruled.

Under Rule 8, Section 1(b), "[a] house bill that would impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee must include a short statement at the end of its title or caption indicating the general effect of the bill on the tax, assessment, surcharge, or fee . . . ."

CSHB 3997 amends the Transportation Code provisions that address fees imposed by counties for licensing junkyards or automotive wrecking and salvage yards. The original structure of the provision divided counties into three tiers, with fees set at $25, up to $150, and up to $500. CSHB 3997 would carve out a fourth group of counties previously subject to the $25 fee and allow them to charge an amount "necessary to pay for the administration and enforcement of the ordinance, but not more than $150." One way to interpret this change is that it expands the class of counties who may charge existing fees of "up to $150" to include counties in the newly created bracket. More importantly, there is no way to definitively determine whether the amount of the fees charged will in fact change as a result of this new provision.

Representative Tinderholt argues that the bill's current caption is inadequate. The caption reads: "relating to fees imposed by a county for licensing a junkyard or automotive wrecking and salvage yard." Representative Tinderholt urges that the change to the fee for the affected counties should have been reflected with a caption stating that the bill increases or changes a fee. However, because the increase is not a certainty—it is possible for the fee to remain the same, to increase, or even to decrease—such a caption would not necessarily be true. *Cf.* 85 H.J. Reg. 1463-65 (2017) (Leach point of order on H.B. 486; "The quandary

faced by the chair is whether Rule 8, Section 1(b), requires 'a short statement . . . indicating the general effect of the bill on the tax' when the bill might have no effect whatsoever and when the caption, in its entirety, already states that the bill 'relat[es] to school district ad valorem tax rates.'"). Under the circumstances, and after careful consideration, the chair finds that the caption complies with Rule 8, Section 1(b).

Captions—Tax, Assessment, Surcharge, or Fee—Sustained
85 H.J. Reg. 2142-43 (Stickland 5/1/17)

CSHB 1724 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 1724 pursuant to House Rule 8, Section 1(b), on the grounds that the required caption fails to include a short statement acknowledging that the bill imposes a fee in eight separate areas. Under Rule 8, Section 1(b), "[a] house bill that would impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee must include a short statement at the end of its title or caption indicating the general effect of the bill on the tax, assessment, surcharge, or fee . . . ."

CSHB 1724 repeals the Parks and Wildlife Code provisions relating to the shrimp license buyback account and creates the commercial license buyback account. For the most part, the bill's features, including the fee complained of by Representative Stickland, already exist in statute, but they relate to the shrimp license buyback account rather than the new commercial license buyback account. In effect, the features of the repealed shrimp account are transferred, with some changes (including having a percentage of license transfer fees for commercial crab and finfish licenses deposited into the commercial license buyback account), to apply to the commercial account. The consolidation of money into the commercial license buyback account was intended to protect the Texas fishing industry by preventing funding in accounts related to various marine animals from being diverted to purposes other than license buybacks. Representative Stickland argues that the changes made by CSHB 1724, achieved by repealing one account and creating another in its place, amount to imposing a new fee that is not reflected in the caption.

Within the four corners of the bill, the bill's plain language imposes a fee increase: "In addition to the fee increases the department is authorized to make under this code, the department shall increase by 15 percent . . . ." Although an equal existing (but different) fee is repealed by the bill (and would continue to exist under the provisions relating to the shrimp license buyback account even if CSHB 1724 is never passed), the creation of the new account with an identical fee, which applies to identical entities, does in fact violate the black and white letter of Rule 8, Section 1(b). The point of order is sustained.

CSHB 1724 was returned to the Committee on Culture, Recreation, and Tourism.

Captions—Tax, Assessment, Surcharge, or Fee
84 H.J. Reg. 1405-06 (Stickland 4/8/15)

CSHB 4 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 4 under Rule 8, Section 1(b) of the House Rules on the grounds that the bill caption is inaccurate.

. . .

The speaker overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of CSHB 4 under Rule 8, Section 1(b) of the House Rules on the grounds that CSHB 4's caption fails to include a short statement acknowledging that the bill imposes a fee. The point of order is respectfully overruled.

Under Rule 8, Section 1(b), "A house bill that would impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee must include a short statement at the end of its title or caption indicating the general effect of the bill on the tax, assessment, surcharge, or fee . . . ." Rule 8, Section 1(b) of the House Rules. While the bill does not expressly state that it imposes, authorizes, increases or changes the rate or amount of a tax, assessment, surcharge, or fee, Representative Stickland asserts that CSHB 4, by requiring an additional condition on employment, "in effect, would impose a $425 'assessment fee' on any Texan wishing to work as a prekindergarten teacher under the proposed 'high quality' program" and, therefore, requires additional language in the bill caption to notify the members and the public of the fee. Representative Stickland also notes a similar point of order raised in the previous legislative session. *See* 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63).

The purpose of Rule 8, Section 1(b) is to provide clear notice to house members and the public concerning the effect of a house bill on taxes, assessments, surcharges, and fees. By operation of Rule 9, Section 1(a), the caption rule also applies to house joint resolutions proposing constitutional amendments.

The precedent cited by Representative Stickland is dispositive against his position. In general, the rule applies to bills that *expressly* (within the four corners of the bill) impose, authorize, or change the rate or amount of a tax, assessment, surcharge, or fee, as well as to bills that have an equivalent purpose, such as a bill whose primary purpose is to repeal a tax or to extend a temporary fee. However, the rule does not apply to bills that *indirectly* affect the payment or application of an existing tax, assessment, surcharge, or fee, such as a bill changing a due date, repealing or otherwise eliminating a program or agency that includes fee or assessment authority, modifying or adopting a tax exemption, or modifying a class of persons or transactions subject to an existing tax or fee.

The chair has reviewed the seven sections of the bill, the precedent cited by Representative Stickland, and other precedents of the house as determined under Rule 8, Section 1(b). *See* Rule 8, Section 1(b); 83 H.J. Reg. 1615-16 (2013) (Simpson point of order on CSHB 63). Because CSHB 4 does not impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee, the chair, therefore, finds that Rule 8, Section 1(b) cannot apply to CSHB 4.

Captions—Tax, Assessment, Surcharge, or Fee
83 H.J. Reg. 3000 (Morrison 5/9/13)

CSHB 2996 - POINT OF ORDER

Representative Morrison raised a point of order against further consideration of CSHB 2996 under Rule 8, Section 1 of the House Rules on the grounds that the caption does not reflect that the bill imposes a new fee.

The chair overruled the point of order and submitted the following statement:

Representative Morrison raised a point of order against further consideration of CSHB 2996 under Rule 8, Section 1. Specifically, Representative Morrison argues that under Rule 8, Section 1, the bill imposed a new fee that should have been reflected in the caption. Consistent with the previous ruling, 83 H.J. Reg. 1615-16 (2013), the chair determines that no new fee was imposed, authorized, increased, or changed. That point of order is overruled.

[Note: The ruling on Representative Morrison's second point of order on this bill is at 83 H.J. Reg. 3001 (Morrison 5/9/13), *supra* at 144-45 (addressing rulemaking under Rule 4, Section 32(c)(3)).]

Captions—Tax, Assessment, Surcharge, or Fee
83 H.J. Reg. 1615-16 (Simpson 4/17/13)

CSHB 63 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of CSHB 63 under Rule 8, Section 1(b) of the House Rules on the grounds that the caption does not indicate the general effect of the bill on the tax, assessment, surcharge, or fee.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raises a point of order that CSHB 63 violates Rule 8, Section 1(b). Specifically, Representative Simpson argues that CSHB 63 violates Rule 8, Section 1(b) because the caption of the bill does not contain a statement that the bill contains an imposition of a charge in a tax, assessment, surcharge, or fee. Representative Simpson argued that the fine imposed by the bill is in fact

a fee, citing Black's Law Dictionary's definition of fee. The point of order is respectfully overruled.

As noted, CSHB 63 does not impose, authorize, increase, or change the rate or amount of a tax, assessment, surcharge, or fee. Therefore, Rule 8, Section 1(b) cannot apply to CSHB 63. The purpose of the rule is to provide clear notice to house members and the public concerning the effect of a house bill on taxes, assessments, surcharges, and fees. By operation of Rule 9, Section 1(a), the new caption rule also applies to house joint resolutions proposing constitutional amendments.

In general, the rule applies to bills that expressly (within the four corners of the bill) impose, authorize, or change the rate or amount of a tax, assessment, surcharge, or fee, as well as to bills that have an equivalent purpose, such as a bill whose primary purpose is to repeal a tax or to extend a temporary fee. However, the rule does not apply to bills that indirectly affect the payment or application of an existing tax, assessment, surcharge, or fee, such as a bill changing a due date, repealing or otherwise eliminating a program or agency that includes fee or assessment authority, modifying or adopting a tax exemption, or modifying a class of persons or transactions subject to an existing tax or fee. Application of the rule to such bills would require subjective judgment and render the rule far less useful due to the large number of bills that would be affected.

The key exception to the general rule that the bill must expressly refer to a tax, assessment, surcharge, or fee to fall within the new caption requirement is a bill that creates a special purpose district with authority to impose a tax, assessment, surcharge, or fee through a reference to other law or to the authority of other special districts or local governments. The rule applies to such a bill to ensure that the tax, assessment, surcharge, or fee authority created by the bill is apparent to the members of the house and to the public, regardless of whether the bill expressly refers to a tax, assessment, surcharge, or fee. The intent of the rule would be thwarted if new special districts with taxing or fee authority could be enacted without notice of that authority stated in the caption. For these bills, to minimize the risk of technical omissions, a caption is sufficient if it states that the bill authorizes "taxes, assessments, surcharges, or fees" or "taxes, assessments, or fees" as long as at least one of those items is authorized by the bill. While the rule requires notice for any bill that directly imposes or authorizes the imposition of taxes, assessments, surcharges, and fees by state or local governmental entities, bills affecting monetary transfers between governmental bodies and charges imposed by private sector entities, even if nominally referred to as a tax, assessment, surcharge, or fee, do not require the prescribed caption notice. Application of the rule to such matters could mislead the reader into assuming that the bill provides for a fee or assessment to be imposed by government and reduce the usefulness of the rule for its intended purpose.

To avoid hiding the explanation of the bill's effect on a tax, assessment, surcharge, or fee within a caption, the new rule requires the explanatory statement to appear "at the end" of the caption. However, the rule does not

require that a separate redundant statement be added to the end of a brief caption that already provides the intended information. A caption complies with the rule if it is reasonably short and clearly states any direct effect of the bill on a tax, assessment, surcharge, or fee. For example, a caption that reads "relating to authorizing increases in the license fees applicable to dentists" is sufficient to comply with the rule without the addition of a redundant statement at the end such as "authorizing fee increases."

Bills affecting charges other than those specifically referred to as taxes, assessments, surcharges, and fees are not covered by the rule. Application of the rule to these other types of payments, such as civil or criminal penalties or interest on late payments, would water the rule down by covering too many bills that don't have the same impact as a bill authorizing or otherwise affecting a tax or fee imposed on a general class of persons.

Captions—Criminal Offense, Punishment, or Eligibility for Supervision
85 H.J. Reg. 3281 (Cain 5/11/17)

HB 1837 - POINT OF ORDER

Representative Cain raised a point of order against further consideration of HB 1837 pursuant to House Rule 8, Section 1(c), on the grounds that the bill caption is inaccurate. The point of order is respectfully overruled.

Rule 8, Section 1(c), requires "each committee report on a bill must include . . . a statement indicating whether or not the bill or resolution expressly creates a criminal offense, expressly increases the punishment for an existing criminal offense or category of offenses, or expressly changes the eligibility of a person for community supervision, parole, or mandatory supervision."

HB 1837's caption reads "relating to the authority of counties to require a person to notify a local governmental entity before starting an outdoor fire; creating a criminal penalty." Subsection (b) of the bill created a new Class C misdemeanor for knowingly or intentionally violating the requirement to provide notice to a local governmental entity regarding outdoor fires. Because HB 1837's caption explains that the bill creates a criminal penalty, HB 1837's caption complies with Rule 8, Section 1(c). The point of order is respectfully overruled.

Captions—Criminal Offense, Punishment, or Eligibility for Supervision—Sustained
85 H.J. Reg. 3096-98 (Rose 5/9/17)

HB 731 - POINT OF ORDER

Representative Rose raised a point of order against further consideration of HB 731 pursuant to House Rule 8, Section 1(c), on the grounds that the required caption fails to include a complete short statement acknowledging that the bill will create a criminal offense.

Under Rule 8, Section 1(c), "[a] house bill that would create a criminal offense . . . or category of offenses . . . must include a short statement at the end of its title or caption indicating the general effect of the bill on the offense . . . ."

HB 731 punishes members of criminal street gangs who make certain threats against a person with the intent to influence that person's behavior by making intimidation a third degree felony criminal offense. Representative Rose argues that the bill caption is flawed because it does not expressly state that the bill "creates a criminal offense" as reflected in the bill analysis. The caption of HB 731 reads: "relating to creating the offense of intimidation by a member of a criminal street gang." This bill increases the offense of intimidation to a third degree felony and as such the caption should have included the proper classification of "criminal offense." Consequently, this oversight is a clear violation of Rule 8, Section 1(c). *See* 85 H.J. Reg. 2132-33 (2017) (Tinderholt & Bell point of order on HB 1156); 84 H.J. Reg. 3086-87 (2015) (Tinderholt, Rinaldi point of order on CSSB 97); 84 H.J. Reg. 1999-2000 (2015) (Stickland point of order on CSHB 409).

In the first ruling on the same subject matter:

> The chair notes that this defect has the potential to impact 32 house bills that were introduced with the vague phrase "creating an offense" in the caption as well as any other bill the caption for which has been amended to contain this phrase. Most of the introduced house bills creating a criminal offense appear to have a correct caption. For those that do not, members who believe a point of order will be called on their bill may wish to amend their bill's caption in committee or, if a senate companion exists, seek to pass the senate bills, which are not bound by the house's caption rules in Rule 8, Sections 1(b)-(d).

85 H.J. Reg. 2133.

Further, it should be noted that Section 3.03 of the Texas Legislative Council Drafting Manual explains what needs to be included in a bill caption. The Texas Legislative Council notes that provisions regarding costs and fees (along with criminal penalties and occupational fees) are items receiving special attention when drafting captions:

> (g) **Council drafting convention**. In addition to or as part of expressing the bill's subject, the legislative council staff has adopted a drafting convention of giving notice of the following in the caption:
>
> - the imposition of civil, administrative, or criminal penalties . . . .
>
> If the rules of the house or senate require inclusion of specific provisions in the caption (see Subsection (a)), a draft should comply with those rules. In the absence of applicable caption rules, follow the drafting conventions above.

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

A parliamentary inquiry arose after the ruling, citing 84 H.J. Reg. 4687-88 (2015) (Isaac point of order on SB 1135). The Texas Legislative Information System applied a mechanical action and noted that the bill was returned to committee. The net effect of sustaining the point of order was that further consideration of the bill was precluded because of end of session deadlines. However, a different outcome was possible. "Because the bill becomes the work of the body after the body passes it to third reading, most points of order, except those of a constitutional nature, are scrubbed." 84 H.J. Reg. 4687-88. However, improper captions are a constitutional matter. Article III, Section 35(b), of the Texas Constitution states that "[t]he rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject." House members have adopted specific rules delineating what notice they require for this body's bills. In this case, the chair returned the bill to the origin of the error prior to third reading of the bill. The committee had the responsibility, if it chose to do so, with outfitting the bill with an accurate caption that properly conformed to the House Rules.

For these reasons, and after a thorough review of the bill, its caption, and the bill analysis, the point of order is sustained.

HB 731 was returned to the Committee on Criminal Jurisprudence.

Captions—Criminal Offense, Punishment, or Eligibility for Supervision
85 H.J. Reg. 2432 (Stickland 5/3/17)

HB 2334 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of HB 2334 under House Rule 8, Section 1(c), on the grounds that the bill caption is inaccurate. The point of order is overruled.

HB 2334's caption reads "relating to the imposition of a criminal penalty for the violation of a rule adopted or order issued under the Flood Control and Insurance Act." Representative Stickland asserts that this caption violates Rule 8, Section 1(c), which requires bills "that would create a criminal offense, increase the punishment for an existing offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision" to "include a short statement at the end of its title or caption indicating the general effect of the bill on the offense, punishment, or eligibility."

Representative Stickland argues HB 2334's expansion expressly creates a criminal offense. This is incorrect. HB 2334 amends the Water Code by

expanding the application of an already existing penalty to include people who violate rules adopted under the same subchapter. Because HB 2334 only expands the application of an existing penalty and does not create a criminal offense or increase a criminal penalty, HB 2334's caption complies with Rule 8, Section 1(c). The point of order is respectfully overruled.

Captions—Criminal Offense, Punishment, or Eligibility for Supervision—Sustained
85 H.J. Reg. 2132-33 (Tinderholt & Bell 5/1/17)

HB 1156 - POINT OF ORDER

Representatives Tinderholt and Bell raised a point of order against further consideration of HB 1156 under House Rule 8, Section 1(c), on the grounds that the bill caption is inaccurate. The point of order is sustained.

HB 1156's caption reads "relating to the unlawful restraint of a dog; creating an offense." Representatives Bell and Tinderholt assert that this caption violates Rule 8, Section 1(c), which requires bills "that would create a criminal offense, increase the punishment for an existing offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision" to "include a short statement at the end of its title or caption indicating the general effect of the bill on the offense, punishment, or eligibility."

HB 1156 prohibits various forms of "unlawful restraint" of a dog. The bill specifies that "a person commits an offense if the person knowingly violates this subchapter. The restraint of each dog with respect to which there is a violation is a separate offense." Further, the bill makes the offense a Class C misdemeanor, punishable by fine not to exceed $500, with repeat additional offenses a Class B misdemeanor, punishable by a fine not to exceed $2,000, confinement in jail for a term not to exceed 180 days, or both such fine and confinement. Thus, HB 1156 creates a criminal offense, not a civil offense. Therefore, under Rule 8, Section 1(c), HB 1156's caption must include a short statement indicating the general effect of the bill on the criminal offense.

Representative Tinderholt urges that Rule 8, Section 1(c), applies to all offenses, and he identifies the deficiency as failure to specify what type of offense (in this case, criminal) the bill creates. Representative Bell reads the rule as applying to criminal offenses, though he agrees that the caption is deficient, noting that even the example caption language in the House Rules, which was developed in conjunction with the Texas Legislative Council, says "creating a *criminal* offense" (emphasis added), and saying "creating an offense" is inadequate.

When House Rule 8, Section 1(c), was introduced, its proponent was clear that he wanted to create a rule that would allow members to identify bills creating criminal penalties, increasing the punishment for a criminal offense or offenses, or changing eligibility for parole, community supervision, or mandatory supervision. Consistent with this intent, the express language of the rule addresses criminal

offenses, not civil offenses. If the rule had been intended to warn, generally, of the creation of any type of offense, HB 1156's caption might be adequate.

The fact that the rule applies solely to criminal offenses, however, does not save this caption. The term "offense" is not limited to only criminal offenses. *See, e.g.*, Tex. Code Crim. Proc. Art. 103.0031, Tex. Transp. Code §§ 682.002, 682.006-.007 (Texas statutes dealing with civil offenses (The Revisor's Notes to § 682.007 even state that the revised law adds "civil" to "offense" for clarity)). Stating that a bill creates "an offense" fails to comport with the letter and spirit of a rule that seeks to highlight bills that create criminal offenses. The chair notes that this defect has the potential to impact 32 house bills that were introduced with the vague phrase "creating an offense" in the caption as well as any other bill the caption for which has been amended to contain this phrase. Most of the introduced house bills creating a criminal offense appear to have a correct caption. For those that do not, members who believe a point of order will be called on their bill may wish to amend their bill's caption in committee or, if a senate companion exists, seek to pass the senate bills, which are not bound by the house's caption rules in Rule 8, Sections 1(b)-(d).

HB 1156 was returned to the Committee on Public Health.

Other explanations addressing criminal penalty captions:
84 H.J. Reg. 1999-2000 (Stickland 4/27/15), *supra* at 79-80 (discussing criminal penalty caption and bill analysis requirements)
84 H.J. Reg. 3086-87 (Tinderholt, Rinaldi 5/11/15), *supra* at 153-54 (discussing criminal penalty caption and bill analysis requirements)

Captions—License, Certificate, Registration, Permit, or Other Authorization
85 H.J. Reg. 3289 (Canales 5/11/17)

CSHB 2962 - POINT OF ORDER

Representative Canales raised a point of order against further consideration of CSHB 2962 pursuant to House Rule 8, Section 1(d), on the grounds that the bill caption does not give adequate notice of the bill's licensing implications. The point of order is respectfully overruled.

Rule 8, Section 1(d), states that a "house bill that would create a requirement that an individual or an entity obtain a license" and would "expand an existing requirement to additional individuals or entities must include a short statement at the end of its title or caption indicating the general effect of the bill on the occupation or profession . . . ." CSHB 2962 amends the Health and Safety Code to "require each hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides medical care to submit to the Department of State Health Services (DSHS) in the form and manner prescribed by DSHS rule a quarterly report on each abortion complication diagnosed or treated at the facility." Additionally, page 4, Subsection (k) of the bill states

"the third separate violation of this section constitutes cause for the revocation or suspension of a facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the facility by the department." Representative Canales contends that these requirements constitute a licensing requirement, such that CSHB 2962's caption violates Rule 8, Section 1(d).

Nothing within the four corners of the bill requires any individual or entity to obtain a license or any other credential. Instead, the bill allows for revocation of an existing license as a penalty if a facility continuously violates the law's requirements. Because the bill does not create a licensing requirement, Rule 8, Section 1(d), does not apply to the bill's caption. *See* 84 H.J. Reg. 1403-04 (2015) (Stickland point of order on CSHB 4).

Captions—License, Certificate, Registration, Permit, or Other Authorization
85 H.J. Reg. 3169 (Tinderholt 5/10/17)

HB 1009 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of HB 1009 pursuant to House Rule 8, Section 1(d), on the grounds that the bill caption does not give adequate notice of the bill's licensing implications. The point of order is respectfully overruled.

Rule 8, Section 1(d), states that a "house bill that would create a requirement that an individual or an entity obtain a license" and would "expand an existing requirement to additional individuals or entities must include a short statement at the end of its title or caption indicating the general effect of the bill on the occupation or profession . . . ." HB 1009 amends the Government Code to prohibit municipal employees from performing "wildland firefighting" duties, including conducting prescribed burns, unless the employee is a full-time fire department civil service employee regularly assigned to firefighting duties. However, the bill would not preclude a municipal employee who is acting in the capacity of a volunteer firefighter, and not as a municipal employee, from performing a wildland firefighting duty. The bill's caption reads: "relating to the regulation of firefighters and fire departments by the Texas Commission on Fire Protection." Representative Tinderholt argues that this caption does not provide adequate notice that the bill expands a licensing requirement to additional entities.

Although HB 1009 allows municipal employees to conduct wildland firefighting duties in certain circumstances, it does not create a requirement, within the four corners of the bill, for anyone to obtain additional licensing. There is no requirement that these employees obtain a license, certificate, registration, permit, other authorization, or otherwise expand an existing licensing requirement to individuals or entities that are not required to obtain that license under current law. Therefore, the bill is not subject to the caption requirement of Rule 8, Section 1(d). *See* 84 H.J. Reg. 1403, 1403-04 (2015) (Stickland point of order on CSHB 4); 84 H.J. Reg. 1777 (2015) (Stickland point of order on CSHB 2360).

Captions—License, Certificate, Registration, Permit, or Other Authorization
84 H.J. Reg. 2328-29 (Schaefer 5/1/15)

CSHB 930 - POINT OF ORDER

Representative Schaefer raised a point of order against further consideration of CSHB 930 under Rule 8, Section 1(d) of the House Rules on the grounds that the bill caption is inaccurate.

The speaker overruled the point of order and submitted the following statement:

Representative Schaefer raised a point of order against further consideration of CSHB 930 under Rule 8, Section 1(d) of the House Rules on the grounds that the bill would require a license or other type of authorization for apprentice drillers, but the bill does not reflect this in the caption. The point of order is respectfully overruled.

Under Rule 8, Section 1(d) of the House Rules, "[a] house bill that would create a requirement that an individual or entity obtain a license, certificate, registration, permit, or other authorization before engaging in a particular occupation or profession or that would expand an existing requirement to additional individuals or entities must include a short statement at the end of its title or caption indicating the general effect of the bill on the occupation or profession, such as 'requiring an occupational license' or 'expanding the applicability of an occupational license (or permit or certificate)'." CSHB 930 changes the fee submitted by an applicant for a license as a water well driller and changes the frequency with which the Department of Licensing and Regulation must offer examinations for a water well driller license or a water well pump installer. Separately, the bill provides that the Texas Commission on Licensing and Regulation "by rule shall establish an apprentice driller program" and an "apprentice pump installer program." The bill further provides that the commission "may not require a person to hold a license or license specialty endorsement as an apprentice driller or apprentice pump installer . . . before June 1, 2016." No other discussion of a license, certificate, registration, permit, or other authorization is contained within the four corners of the document. Representative Schaefer concedes that the provisions impacting the existing licenses for water well drillers and pump installers do not create a licensing requirement or expand an existing requirement to additional individuals or entities. However, he argues that the creation of the apprentice programs is creation of a license, certificate, registration, permit, or other authorizations. He asserts that adoption of rules to implement these programs will necessarily involve requiring program participants to obtain a license or other authorization. Additionally, he asserts that the prohibition against requiring a license or license specialty endorsement for these apprenticeships before June 1, 2016, evidences an intent to require a license after June 1, 2016, such that the bill should be subject to the requirements of Rule 8, Section 1(d).

The bill, within the four corners of the document, does not require that any individual or entity obtain a license or any other credential in relation to the apprentice programs. And the expiration on June 1, 2016, of the prohibition against any licensing requirement does not necessarily mean that a licensing or other authorization requirement will ever be created. The chair therefore determines that Rule 8, Section 1(d)'s caption requirement does not apply to CSHB 930.

Captions—License, Certificate, Registration, Permit, or Other Authorization
84 H.J. Reg. 1777 (Stickland 4/21/15)

CSHB 2360 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 2360 under Rule 8, Section 1(d) of the House Rules on the grounds that the bill caption is inaccurate.

The speaker overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of CSHB 2360 under Rule 8, Section 1(d) of the House Rules on the grounds that the bill caption does not give adequate notice of the bill's licensing implications. The point of order is respectfully overruled.

Under Rule 8, Section 1(d), "[a] house bill that would . . . expand an existing requirement to additional individuals or entities must include a short statement at the end of its title or caption indicating the general effect of the bill on the occupation or profession . . . ." Rule 8, Section 1(d). CSHB 2360 requires certain residential educational facilities to "comply with the licensing requirements of Subsection (a) [of Section 42.041 of the Human Resources Code] and all department rules and minimum standards . . . ." Tex. Hum. Res. Code Ann. § 42.041 (West 2013). The bill's caption reads: "relating to the licensing and regulation of certain residential educational child-care facilities serving victims of human trafficking." Representative Stickland asserts that this caption does not provide adequate notice that the bill expands a licensing requirement to additional entities.

Although CSHB 2360 requires certain residential educational facilities to "comply with the licensing requirements of Subsection (a)," it does not compel them to obtain a license. Absent a requirement that these facilities obtain a license, certificate, registration, permit, or other authorization, the bill is not subject to the caption requirement of Rule 8, Section 1(d). *See* 84 H.J. Reg. 1403, 1403-04 (2015) (Stickland points of order on CSHB 4).

Captions—License, Certificate, Registration, Permit, or Other Authorization
84 H.J. Reg. 1403-04 (Stickland 4/8/15)

CSHB 4 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 4 under Rule 8, Section 1(d) of the House Rules on the grounds that the bill caption is inaccurate.

. . .

The chair overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of CSHB 4 under Rule 8, Section 1(d) of the House Rules on the grounds that "the caption for CSHB 4 does not contain the required short statement at its end describing the expansion of the occupational certificate to the new program." The point of order is respectfully overruled.

Under Rule 8, Section 1(d), "[a] house bill that would . . . expand an existing requirement to additional individuals or entities must include a short statement at the end of its title or caption indicating the general effect of the bill on the occupation or profession . . . ." Rule 8, Section 1(d). Representative Stickland asserts that under CSHB 4, because "[e]ach teacher for a prekindergarten program class must . . . be certified under Subchapter B, Chapter 21," such a provision "would expand teacher certification requirements to a new class of additional individuals, namely individuals wishing to be employed as a pre-kindergarten teacher under the 'high quality' prekindergarten program." Therefore, Representative Stickland argues CSHB 4 requires additional language in the bill caption to notify the members and the public of the expansion.

In his prior ruling on Mr. Stickland's first point of order, the chair rejected this argument, finding that the plain language of the bill, within the four corners of the bill document, neither expands an existing licensure requirement to additional individuals nor creates a requirement that an individual obtain a license before engaging in a particular occupation.

In general, the rule applies to bills that expressly (within the four corners of the document) (1) create a requirement that an individual or entity obtain a license to engage in an occupation or profession where no such requirement exists in current law, or (2) expand an existing licensing requirement to individuals or entities that are not required to obtain that license under current law.

While many bills are introduced that address some aspect of licensing, Rule 8, Section 1(d) only applies to a small subset of those bills. The licensing requirement must be a new one (which this is not) or the licensing requirement must apply to an individual or entity for the first time (which this does not). A bill would not be subject to this caption requirement, for example, if the bill

only changes the qualifications to obtain a license that exists under current law or imposes a requirement on an individual or entity that is already subject to a licensing requirement. For example, a bill that imposes a duty on a city in a design build contract to only hire an engineer who has specific experience or has built a certain number of buildings is not subject to the caption requirement because the restriction on the employer (the city) neither creates a new license or expands an existing license requirement to a new class of persons.

The chair has reviewed the seven sections of the bill and the language of Rule 8, Section 1(d) of the House Rules. Because CSHB 4 does not expand a licensing requirement of the teaching profession to apply to a new class of people for the first time, the bill caption did not violate Rule 8, Section 1(d).

Captions—License, Certificate, Registration, Permit, or Other Authorization
84 H.J. Reg. 1403 (Stickland 4/8/15)

CSHB 4 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSHB 4 under Rule 8, Section 1(d) of the House Rules on the grounds that the bill caption is inaccurate.

The speaker overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of CSHB 4 under Rule 8, Section 1(d) of the House Rules on the grounds that the bill caption "does not contain the required short statement at its end describing the new occupational credential." The point of order is respectfully overruled.

Under Rule 8, Section 1(d), "[a] house bill that would create a requirement that an individual or entity obtain a license, certificate, registration, permit, or other authorization before engaging in a particular occupation or profession . . . must include a short statement at the end of its title or caption indicating the general effect of the bill on the occupation or profession . . . ." *See* Rule 8, Section 1(d). Representative Stickland asserts that under CSHB 4, because teachers, in order to be employed by a school district "for a prekindergarten program class must . . . have been awarded a Child Development Associate (CDA) credential," the credential is tantamount to a new certificate, registration, permit, or other authorization as contemplated under Rule 8, Section 1(d), triggering the need for additional language in the bill caption. Proponents of CSHB 4 argue that the credential issue is not covered by Rule 8, Section 1(d) because it does not create a requirement that the teachers obtain a license before engaging in teaching, but rather operates as a restriction on the school district as to the type of person that may be employed. Additionally, it does not expand the licensing requirements placed upon the teaching profession, which may require additional language

in the bill caption. Both opponents and proponents of CSHB 4 raised quality arguments as to the parameters of Rule 8, Section 1(d)—a subsection of first impression.

In general, Subsection (d) is intended to apply to bills that either expressly create a licensing requirement for an occupation or profession that does not currently have such a requirement or expand an existing licensing requirement to apply to an individual or entity for the first time.

The chair has reviewed the seven sections of the bill and the language of Rule 8, Section 1(d) of the House Rules. Because CSHB 4 does not create a new licensing requirement for the teaching profession or expand the current licensing requirements placed upon the teaching profession to a new class of people, the bill caption did not violate Rule 8, Section 1(d).

Publishing Acts in Their Entirety (Rule 8, Section 2)

Publishing Entire Amended Section—Sustained
73 H.J. Reg. 2610 (Chisum 5/13/93)

CSHB 2224 - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of CSHB 2224 on the grounds that CSHB 2224 violates Rule 8, Section 2, of the House Rules.

The chair sustained the point of order, speaking as follows:

Representative Chisum raises a point of order against further consideration of CSHB 2224 under Rule 8, Section 2, in that Section 3 of the bill amends a section without publishing the entire section. Upon reviewing the bill, the chair has determined that this is indeed the case. Accordingly, the point of order is sustained.

One-Subject Rule (Rule 8, Section 3; Article III, Section 35)

One-Subject Rule
85 H.J. 1st C.S. 516-17 (Moody 8/14/17)

CSSB 16 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of CSSB 16 on the ground that the bill, as amended by Amendment No. 16 by Representative Faircloth, contains two subjects. The point of order is respectfully overruled.

Under Rule 8, Section 3, "[e]ach bill (except a general appropriations bill . . .) shall contain only one subject." CSSB 16 creates a Texas Commission on Public School Finance. As the bill came to the floor, it contained a wide range of issues related to the public school finance system that the commission was to

study and develop recommendations on. During the course of floor consideration, additional issues related to the public school finance system that the commission was to study and develop recommendations on were added. Representative Faircloth added Amendment 16, which gave the commission two additional charges in studying the school financing system, specifically the financial impact of the required annexation of a neighboring school district on the annexing school district, and the financial impact of the amount of payments required to be made under Chapter 41 on a school district subject to that chapter in which a majority of enrolled students are educationally disadvantaged.

Because the Faircloth amendment on public school finance items to be studied by the commission deals with the same subject of the bill—creating the commission and assigning public school finance items for it to study—it fits within the subject of the bill and does not violate Rule 8, Section 3. The point of order is respectfully overruled.

Germaneness of Amendment; One-Subject Rule
85 H.J. 1st C.S. 515-16 (Turner & Moody 8/14/17)

AMENDMENT NO. 20 (CSSB 16) - POINT OF ORDER

Representative Turner raised a point of order against further consideration of Amendment No. 20 to CSSB 16 under Rule 11, Section 2, arguing that the amendment is not germane to the bill. Representative Moody raised a point of order against the same amendment, asserting that it would impermissibly introduce a second subject into the bill.

CSSB 16 creates a commission to recommend improvements to the public school finance system. It specifies that the commission "shall develop recommendations . . . to address issues related to the public school finance system, including" three specific items with varying impacts on public school finance. Several amendments added items to this list of items that, per the bill's language, must be studied as they relate to the public school finance system. Representative Zedler offered Amendment No. 20 to add "the effect on school districts of deducting or withholding payment of dues, fees, or contributions to a teacher union organization, teacher association, or professional teacher organization" to the list of items to be studied as they relate to public school finance. The direct administrative cost to schools from the program the amendment sought to study is acknowledged in the Section 403.0165(h) of the Government Code, which allows the comptroller to charge an administrative fee to cover the costs incurred as a result of administering payroll deductions. Because the amendment directly relates to public school finance, it is germane to the bill and does not introduce a second subject.

Accordingly, the chair finds that the Zedler amendment was germane to the bill and did not impermissibly introduce a second subject. The points of order are respectfully overruled.

One-Subject Rule; Conference Committees
85 H.J. Reg. 6003 (Gutierrez 5/28/17)

SB 715 - POINT OF ORDER

Representative Gutierrez raised a point of order against further consideration of SB 715 under Article III, Section 35, of the Texas Constitution and House Rule 13, Section 7, on the grounds that the conference committee on SB 715 met without providing proper notice and the bill contains an impermissible second subject.

House Rule 13, Section 7, states that "[h]ouse conferees when meeting with senate conferees to adjust differences shall meet in public and shall give a reasonable amount of notice of the meeting . . . ." Similarly, Rule 13, Section 6, provides: A majority of each committee shall be required to determine the matter in dispute. Reports by conference committees must be signed by a majority of each committee of the conference, but the house rules do not require that a conference committee convene in a meeting. Representative Gutierrez urges that because the bill's sponsor met with each of the other members of the conference committee, sometimes in groups as large as four or five, that Rule 13, Section 7, required notice of these "meetings" to be properly posted. Everyone agrees that no such notice was provided. More importantly, however, no one suggests that a quorum of the conference committee (which would be three or more conference committee members from the house and three or more from the senate) ever met to adjust differences on the bill. Because the conferees never actually had a meeting, they were not required to post notice. Therefore, the point of order under Rule 13, Section 7, is respectfully overruled.

Article III, Section 35, of the Texas Constitution requires bills to contain only one subject. SB 715 is a broad municipal annexation bill. Representative Gutierrez argues that the amendment added by Representative Shine introduces an impermissible second subject into SB 715. Representative Shine amended an amendment by Representative Gutierrez. Both of these amendments related to municipal governance of extraterritorial jurisdictions near military bases. These amendments were adopted in the house version of the bill, but did not survive the conference committee. The conference committee report removed these sections of the bill, consistent with the senate's version of SB 715, so, if a second subject was impermissibly added by Representative Gutierrez and Representative Shine, that second subject was removed, such that the bill remains solely a municipal annexation bill. This point of order is also respectfully overruled.

One-Subject Rule
84 H.J. Reg. 4705-06 (Stickland 5/16/15)

CSSB 19 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of CSSB 19 under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the bill violates the one-subject rule.

The speaker overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of CSSB 19 pursuant to Rule 8, Section 3 of the House Rules on the grounds that the bill violates the one-subject rule under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution. Representative Stickland argues the bill, as it came from the senate, was directed only at the ethics of public officials. This assertion is incorrect.

The bill deals with financial statements by elected officials and candidates, the contents of ethics reporting, personal financial statements filed with the commission, the operation of the Texas Ethics Commission, conflicts of interests and restrictions on the behavior of legislators and those that seek to influence them, drug testing for persons elected to public office, exclusions from lobby registration, limits on expenditures by those who seek to influence or communicate with government officials, restrictions on employment on current or former legislators, and the effect of penal code violations or the vacating of a member's office. In short, of CSSB 19 is an omnibus ethics bill. These provisions, Representative Stickland says, cannot conceivably be described in a single subject.

The provisions can, in fact, be conceivably described in a single subject—the ethics of public officers and employees, the disclosure of political contributions, and related requirements and procedure—the caption and substance of CSSB 19 as it is before the house. Accordingly, there is no violation of Rule 8, Section 3. The point of order is respectfully overruled.

One-Subject Rule
84 H.J. Reg. 3874-75 (Tinderholt 5/20/15)

SB 1389 - POINT OF ORDER

Representative Tinderholt raised a point of order against further consideration of SB 1389 under Rule 8, Section 3 and Rule 11, Section 2 of the House Rules on the grounds that it violates the one-subject rule.

The speaker overruled the point of order and submitted the following statement:

Representative Tinderholt raised a point of order against further consideration of SB 1389 under Rule 8, Section 3 and Rule 11, Section 2 of the House Rules arguing that the portions of the bill related to the border commerce coordinator working with private industry and other appropriate entities to require low-sulfur fuel be sold along highways or to increase the use of the fuel in Mexican states bordering Texas introduces an impermissible second subject into the bill relating to the border commerce coordinator.

Proposed SB 1389 set out new duties for a border commerce coordinator. The new duties are in addition to the wide ranging and expansive list of tasks for the coordinator already embedded in Section 772.010 of the Government Code (allowing the coordinator to examine trade issues between the United States, Mexico, and Canada; act as ombudsman for government agencies in the Texas-Mexico border region; work with federal officials on transportation and border crossing issues; assist in funding issues related to financing of water and wastewater facilities; and explore the issue of certain electrical power sales from Texas to Mexico).

As was noted by a member during the discussion on the point of order, the proposed bill adds a multitude of new duties to the border commerce coordinator that are not in a single specific category, but are in a multitude of categories related to border commerce. (Issues related to the use of low-sulfur fuel in Texas and Mexican states along portions of highways carrying increased traffic related to the flow of commerce are only a portion of the proposed new changes, which also include issues related to the flow of commerce at ports of entry, including the movement of commercial vehicles; border truck inspections; mitigating congestion at ports of entry; working with groups to address the unique planning and capacity needs of the border region; and leading a border mayor task force to work on key trade, security, and transportation-related issues.)

Because the bill contains one subject—the multiple proposed new duties for the border commerce coordinator—neither Rule 8, Section 3 nor Rule 11, Section 2 is violated. The point of order is respectfully overruled.

One-Subject Rule
84 H.J. Reg. 801 (Simpson 3/18/15)

CSHB 11 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of CSHB 11 under Rule 8, Section 3 of the House Rules on the grounds that it violates the one-subject rule.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raised a point of order against further consideration of CSHB 11 under Rule 8, Section 3 of the House Rules on the grounds that it

violates the one-subject rule, asserting that the bill does not contain only one subject. The point of order is respectfully overruled.

Under Rule 8, Section 3, "[e]ach bill (except a general appropriations bill . . .) shall contain only one subject." Representative Simpson asserted that CSHB 11 deals with two separate and distinct subjects: The operation of the Texas Department of Public Safety at the Texas-Mexico border; and the creation of, changes to, or otherwise enhancement of certain criminal offenses, the effects of which are not contained to the border. Representative Simpson also noted that the house has previously sustained similar points of order. *See* 83 H.J. Reg. 1724-25 (2013) (Miles point of order on CSHB 947). Supporters of CSHB 11 argued that the bill pertains to a single subject, addressing the public safety of Texans related to enhanced border security operations. *See generally* Governor Abbott's proclamation on border security (February 19, 2015).

The chair has reviewed the 17 sections of the bill, the precedent cited by Representative Simpson, and other precedents of the house determined under Rule 8, Section 3. *See*, *e.g.*, 83 H.J. Reg. 5150-51 (2013) (Taylor point of order on HB 3793); 81 H.J. Reg. 3760 (2009) (King point of order on HB 2511); 78 H.J. Reg. 5586 (2003) (Burnam point of order on SB 1639); 76 H.J. Reg. 2912 (1999) (Dutton point of order on SB 30). Because CSHB 11 only pertains to one unifying subject (and the two separate subjects proposed by Representative Simpson are contained in that one subject), there was no violation of Rule 8, Section 3.

One-Subject Rule; Germaneness of Conference Committee Report; Original Purpose
83 H.J. Reg. 5150-51 (Taylor 5/26/13)

HB 3793 - POINT OF ORDER

Representative Taylor raised a point of order against further consideration of HB 3793 under Rule 8, Section 3 and Rule 11, Section 2 of the House Rules and under Article III, Section 30 of the Texas Constitution.

The chair overruled the point of order and submitted the following statement:

Representative Taylor raises a point of order against further consideration of the conference committee report on HB 3793 under Rule 8, Section 3 and Rule 11, Section 2 of the House Rules and under Article III, Section 30 of the Texas Constitution. The point of order is respectfully overruled. The chair finds, after examining the conference committee report and all other documents that the conference committee neither violated the one-subject rule or any concepts of germaneness because the elements of the conference committee report embraced a single unifying subject—the powers, duties, and services of entities serving counties and county residents.

One-Subject Rule
83 H.J. Reg. 4180 (Burnam 5/22/13)

SB 347 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of SB 347 under Article III, Section 35 of the Texas Constitution on the grounds that it violates the one-subject rule.

The speaker overruled the point of order and submitted the following statement:

Representative Burnam raised a point of order against further consideration of SB 347 on third reading under Article III, Section 35 of the Texas Constitution, alleging that the bill violates the one-subject requirement as a result of the adoption of Amendment No. 1. The point of order is respectfully overruled.

SB 347 revises the funding mechanism for the operation of the Texas Low-Level Radioactive Waste Disposal Compact Commission ("Compact Commission"). Amendment No. 1 provides additional funding mechanisms and adds conditions for those funding mechanisms. Thus, the amendment is consistent with the bill's subject of funding the operation of the Compact Commission. *See* 83 H.J. Reg. 2008-09 (2013).

[Note: This point of order was raised on third reading, and therefore it invoked the constitutional provision rather than Rule 8, Section 3.]

One-Subject Rule
83 H.J. Reg. 3866 (M. González, Collier 5/20/13)

AMENDMENT NO. 26 (CSSB 7) - POINT OF ORDER

Representatives M. González and Collier raised a point of order against further consideration of Amendment No. 26 under Rule 8, Section 3 of the House Rules on the grounds that it violates the one-subject rule.

The chair overruled the point of order and submitted the following statement:

Representative M. González and Representative Collier raised a point of order that the addition of Amendment No. 26 would cause the bill to violate Rule 8, Section 3's one-subject requirement. These points of order are respectfully overruled.

CSSB 7 relates to delivery and quality of long-term and Acute Care Medicaid services. Because Amendment No. 26 addresses who is eligible to receive the long-term and Acute Care Medicaid services addressed by the bill, the chair determines that the amendment is germane to CSSB 7 and would not add a second subject to the bill.

One-Subject Rule—Sustained
83 H.J. Reg. 1724-25 (Miles 4/22/13)

CSHB 947 - POINT OF ORDER

Representative Miles raised a point of order against further consideration of CSHB 947 under Rule 8, Section 3 of the House Rules on the grounds that it violates the one-subject rule.

The chair sustained the point of order and submitted the following statement:

Representative Miles raised a point of order against further consideration of HB 947 under Rule 8, Section 3 of the House Rules, asserting that the bill does not "contain only one subject." The point of order is sustained.

HB 947 consists of two sections, each a separate subject, the first of which provides that both the Office of the Inspector General of the Health and Human Services Commission and the Office of the Attorney General (OAG) will review how the inspector general works with the OAG to (1) investigate fraud, waste, and abuse in the provision of health and human services, and (2) enforce state laws relating to those services. It also requires the two agencies to report recommendations regarding these issues to the legislature. The second section requires a second actor—only the Office of the Inspector General—to develop strategies to address fraud, waste, and abuse in the administration of a different program, the Supplemental Nutrition Assistance Program (SNAP) and the provision of benefits thereunder.

As such, these sections of the bill require different sets of entities to act on different programs, which gives rise to a one-subject problem under Rule 8, Section 3 of the House Rules.

CSHB 947 was returned to the Committee on Public Health.

One-Subject Rule
81 H.J. Reg. 3760 (S. Miller 5/15/09)

HB 1976 - POINT OF ORDER

Representative S. Miller raised a point of order against further consideration of HB 1976 under Article III, Section 35 of the Texas Constitution on the grounds that the bill violates the one subject rule.

The chair overruled the point of order and submitted the following statement:

Representative S. Miller raises a point of order against further consideration of HB 1976 under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution in that the bill contains more than one subject.

While these provisions clearly require the legislature to be mindful, the standard for finding a violation of the one-subject rule is very high; courts

typically find violations of the one-subject rule only when there is no conceivable single subject that describes all of the elements of the bill. (House Journal, 76th Regular Session (1997), page 2912; House Journal, 77th Regular Session (1999))

The chair has reviewed House rulings on this issue over the last 30 years and has found very few instances in which such a point of order was sustained, a likely result of the very high standard for finding a violation of the rule.

In this instance, the chair believes that HB 1976 is capable of a constitutional construction because each element relates to the management of property owners' associations. The bill is broad in its scope of coverage and as such is a sort of omnibus bill covering property owners' associations. Condominiums are a form of property and thus amendments to the equivalent management associations constitute the same subject as contained in the rest of the bill. In fact, several sections of the bill already apply to condominiums. The changes made in HB 1976 to Chapter 202, Property Code (SECTIONS 3, 4, 5, and 6 of the floor substitute offered by Representative Solomons), apply to condominiums and their management associations, through the definitions contained in Sections 202.001(1) and (2), Property Code. Though Chapter 209, Property Code, and the changes proposed to it in the bill do not apply to condominiums regulated under Chapter 82, Property Code, this does not affect the analysis of whether the bill constitutes a single subject in this case.

Accordingly, the point of order is respectfully overruled.

One-Subject Rule
81 H.J. Reg. 3740 (P. King 5/15/09)

HB 2511 - POINT OF ORDER

Representative P. King raised a point of order against further consideration of HB 2511 under Rule 8, Section 3 of the House Rules on the grounds that the bill violates the one subject rule.

The speaker overruled the point of order and submitted the following statement:

Representative P. King raises a point of order against further consideration of HB 2511 under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution in that the bill contains more than one subject.

While these provisions clearly require the legislature to be mindful, the standard for finding a violation of the one-subject rule is very high; courts typically find violations of the one-subject rule only when there is no conceivable single subject that describes all of the elements of the bill. (House Journal, 76th Regular Session (1997), page 2912; House Journal, 77th Regular Session (1999))

The chair has reviewed house rulings on this issue over the last 30 years and has found very few instances in which such a point of order was sustained, a likely result of the very high standard for finding a violation of the rule.

In this instance, the chair believes that HB 2511 is capable of a constitutional construction because each element relates to political contributions and expenditures and would so be construed by a court. In short, HB 2511 is a very broad, omnibus bill that embraces a variety of issues relating to such. Thus, the amendments that were offered on second reading and passed to engrossment were consistent with the subject matter of the bill and not an expansion of the bill.

Accordingly, the point of order is respectfully overruled.

One-Subject Rule
79 H.J. Reg. 4908 (Burnam 5/27/05)

HB 823 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of HB 823 under Rule 8, Section 3 of the House Rules on the grounds that the bill contains two subjects.

The chair overruled the point of order, speaking as follows:

Representative Burnam raised a point of order against further consideration of HB 823. The chair finds that the subject of the bill is the standards and limitations applicable to the carrying of a handgun. This is sufficient to comply with Rule 8, Section 3 of the House Rules.

One-Subject Rule
76 H.J. Reg. 2911-12 (Dutton Jr. 5/22/99)

SB 30 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of SB 30 under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the bill contains more than one subject.

The speaker overruled the point of order, speaking as follows:

Mr. Dutton has raised a point of order against further consideration of SB 30 under Rule 8, Section 3, House Rules, and Article III, Section 35, Texas Constitution, in that the bill contains more than one subject.

Mr. Dutton argues that Section 33.009, Family Code, as added by the bill, which imposes a duty on physicians to report suspected physical or sexual abuse of a minor, imposes that duty independent of any connection with the minor seeking an abortion.

In considering the constitutionality of laws, courts are under a duty to give a constitutional construction to the law if possible. Although the words of Section 33.009(a), Family Code, do not expressly limit the duty to report to circumstances

in connection with the seeking of an abortion, the chair believes that the context of the duty limits the circumstances in which the physician is obligated to report:

Subsection (b) of the same section, which directs the Department of Regulatory and Protective Services, in responding to the report, to assist the minor in making application to a court for permission to obtain an abortion without parental notice.

The chapter of the Family Code in which duty to report appears is a chapter that otherwise deals exclusively with notice of abortions.

Other law in the same code—Section 261.101, Family Code—already imposes a general duty on physicians to report suspected abuse.

The standard for finding a violation of the one-subject rule is very high; courts typically find violations of the one-subject rule only when there is no conceivable single subject that describes all the elements of the bill. SB 30, which is capable of a constitutional construction, does not meet that standard.

The chair notes that this constitutional issue is a mixed issue of substance and procedure, and that a court may independently determine whether SB 30 violates the constitutional one-subject rule. The parliamentary ruling does not limit the court's authority in that regard.

Having found that the bill may be construed in a constitutional manner, and would be so construed by a court, the point of order is respectfully overruled.

Other explanations addressing the one-subject rule:
81 H.J. Reg. 4138-39 (Dutton 5/20/09), *supra* at 70-71 (alleged violation of one-subject rule, bill analysis, and rulemaking)

Germaneness of Senate Amendment; Original Purpose; Local Bill; One-Subject Rule
85 H.J. Reg. 5067-68 (Gooden 5/25/17)

HB 931 - POINT OF ORDER

Representative Gooden raised a point of order against further consideration of HB 931 under Article III, Sections 30, 35, and 56, of the Texas Constitution and House Rule 11, Sections 2 and 3, on the grounds that the senate amendment is not germane to the bill, impermissibly changes the purpose of the bill, and is an impermissible local bill. The point of order is respectfully overruled.

Article III, Section 35, of the Texas Constitution requires bills to contain only one subject. Rule 11, Section 2, states that "No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." Rule 11, Section 3, prohibits a bill from being "amended in its passage through either house so as to change its original purpose." Article III, Section 35, of the Texas Constitution contains a similar provision.

Article III, Section 56, of the Texas Constitution is a prohibition on local and special laws. HB 931, which did not authorize any of the 30 prohibited acts set out

in Article III, Section 56, was a bill that affected the liability of certain electrical utilities for specific allowable land uses that the electric utility owns, occupies, or leases. It applied to a number of counties in the state. When the bill returned from committee, it was expanded to becoming statewide in nature but it did not change the intended purpose of the bill, which was related to the liability of certain electric utilities for allowable land uses that the electric utility owns, occupies, or leases and did not violate the rules related to germaneness.

Because the bill's subject is broad, and the amendment falls within the bill's subject without altering its prescribed purpose, the amendment is germane to the bill. The point of order is respectfully overruled.

Germaneness of Amendment & Original Purpose; One-Subject Rule
85 H.J. Reg. 4619-20 (Cain 5/24/17)

SB 1698 - POINT OF ORDER

Representative Cain raised a point of order against further consideration of SB 1698 pursuant to House Rule 11, Sections 2 and 3, on the grounds that the S. Thompson amendment is not germane to the bill, impermissibly changes the purpose of the bill, and has an impermissible second subject. The point of order is respectfully overruled.

Rule 11, Section 2, states that "No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." Rule 11, Section 3, prohibits a bill from being "amended in its passage through either house so as to change its original purpose." The bill required the Texas Veterans Commission to perform several new duties in assisting women veterans, including compiling a report on women veterans that would, among other things, recommend policy proposals, and identify unique problems faced by women veterans. It also required the commission to conduct a community outreach campaign on the Veterans Commission's programs and benefits to women veterans. The amendment seeks to have the Sunset Advisory Commission evaluate the availability of services provided to women veterans by the Texas Veterans Commission, including programs described in the original bill, and extends the agency for that purpose. Accordingly, the amendment was germane to the bill. The point of order is respectfully overruled.

Germaneness of Amendment & Original Purpose; One-Subject Rule
85 H.J. Reg. 4396 (Cain 5/23/17)

SB 1781 - POINT OF ORDER

Representative Cain raised a point of order against further consideration of SB 1781 pursuant to House Rule 11, Sections 2 and 3, on the grounds that the Blanco amendment (Amendment No. 3) is not germane to the bill, impermissibly

changes the purpose of the bill, and has an impermissible second subject. The point of order is respectfully overruled.

Rule 11, Section 2, states that "No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." Rule 11, Section 3, prohibits a bill from being "amended in its passage through either house so as to change its original purpose." The amendment seeks to reform current law pertaining to the regulation of degree-granting postsecondary educational institutions. The bill allows the Higher Education Coordinating Board to award transferable college credit for certain military veterans; to operate under certain circumstances; and to maintain an academic records repository. Since the amendment falls within the broad scope of the HECB regulations in this bill, the amendment is germane.

The point of order is respectfully overruled.

One-Subject Rule—Third Reading
85 H.J. Reg. 3895-96 (Turner 5/20/17)

SB 8 - POINT OF ORDER

Representative Turner raises a point of order under two provisions of the Texas Constitution—Article III, Sections 30 and 35. Representative Turner argues that the addition of Amendment No. 2 added a constitutionally impermissible second subject to SB 8. Specifically, Representative Turner asserts that the amendment, which required medical professionals to make reports relating to completed abortion procedures to insure that the procedures did not fall within the classes of prohibited abortions, created an impermissible second subject to a bill dealing with "prohibited abortions and the disposition of human fetal and embryonic remains." 85 H.J. Reg. 3810-11 (2017) (Canales point of order on CSSB 8). The point of order is respectfully overruled.

The chair has examined the bill, the amendment at issue, and the arguments of the proponents including the authority cited. It should be noted that SB 8 as it reached the floor and through subsequent amendment (other than Amendment No. 2), contained multiple provisions related to reporting requirements and disciplinary actions that could be taken against various entities on "prohibited abortions and the disposition of human fetal and embryonic remains." Amendment No. 2 added an additional reporting requirement to ensure compliance with provisions that were within the subject of the bill. As such, the amendment neither introduced an impressible second subject nor changed the original purpose of the bill.

One-Subject Rule
85 H.J. Reg. 3337-38 (Rinaldi 5/11/17)

CSHB 2552 - POINT OF ORDER

Representative Rinaldi raised a point of order against further consideration of CSHB 2552 on the ground that the bill, as amended by Amendment No. 1, contains two subjects. The point of order is respectfully overruled.

Under Rule 8, Section 3, "[e]ach bill (except a general appropriations bill . . .) shall contain only one subject." CSHB 2552 is a broad bill relating to prostitution and trafficking of persons and certain consequences resulting from that conduct. The bill amends the Business & Commerce Code as it relates to deceptive trade practices act claims for unlicensed or noncompliant massage establishments. It amends the Civil Practice and Remedies Code as it relates to admissible evidence in suits to abate certain common nuisances where landowners knowingly tolerate certain activity. It amends the Government Code to include prostitution and promotion of prostitution among offenses for which the Department of Public Safety must collect certain information. It expands conduct that would constitute the offense of promotion of prostitution. It amends the Property Code to allow a landlord to recover possession of leased premises if the tenant is using the premises for certain prohibited activities involving trafficking or prostitution. The list goes on, but in short, the bill is an omnibus bill against human trafficking and prostitution.

Amendment No. 1 would have amended the Occupations Code to require cosmetologists to learn about the signs of human trafficking, to learn how to report human trafficking, and to post notice of services and assistance available to victims of human trafficking. Because this amendment also provides methods for reducing human trafficking, it fits within the broad subject of the bill and does not violate Rule 8, Section 3.

One-Subject Rule
85 H.J. Reg. 2515-16 (Walle 5/4/17)

CSHB 1774 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 1774 under House Rule 8, Section 3, on the grounds that it violates the one-subject rule. The point of order is overruled.

Under Rule 8, Section 3, "[e]ach bill (except a general appropriations bill . . .) shall contain only one subject." Representative Walle argues that CSHB 1774 contains two subjects, (1) procedures for claims under Chapter 542A (created by the bill), and (2) prejudgment interest on claims other than windstorm. Representative Walle asserts that the language "Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law" is introducing a second subject. This is incorrect. Stating that a bill does not

affect some provision of preexisting law does not constitute a second subject. The chair has reviewed the entire bill and finds a single unifying subject. For these reasons, the chair finds the bill does not violate of Rule 8, Section 3.

One-Subject Rule & Germaneness of Senate Amendments
79 H.J. 3rd C.S. 277-78 (Turner 5/10/06)

HB 2 - POINT OF ORDER

Representative Turner raised a point of order against further consideration of HB 2 under Rule 11, Section 2 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the senate amendments are not germane and the bill contains more than one subject.

The speaker overruled the point of order, and submitted the following statement:

Representative Turner raises a point of order against further consideration of HB 2 on the grounds that the senate amendment violates House Rule 8, Section 3, and Article III, Section 30 of the Texas Constitution.

HB 2 requires certain tax revenue generated from the passage of HB 3, HB 4, and HB 5 to be dedicated to the reduction of school property tax rates. The house previously sustained a point of order against a senate amendment to HB 2 because it contained more than a single subject. In short, the senate amendment expanded the subject, authorizing the use of the dedicated funds for a second purpose in the form of an appropriation to the Texas Education Agency to increase funding to schools. This amendment effectively expanded the subject of the bill to include two subjects: dedication of funds to property tax relief and dedication of funds to education. The senate returned the bill, which is before us today, without the offending amendment. This version of HB 2 requires that money in the Property Tax Relief Fund be dedicated to property tax relief. The revised version of the senate amendment allows money to be appropriated only for the purpose of decreasing district enrichment tax rates by equalizing local enrichment tax effort to the extent necessary to limit school districts' reliance on local property taxes which serves as a limitation on the bill to ensure that revenue be dedicated to property tax relief. The chair finds that this amendment reasonably embraces the subject of the bill and is not, therefore, in violation of Article III, Section 30 of the Texas Constitution.

Accordingly, the point of order is respectfully overruled.

One-Subject Rule & Germaneness of Senate Amendments—Sustained
79 H.J. 3rd C.S. 234-36 (Coleman 5/5/06)

HB 2 - POINT OF ORDER

Representative Coleman raised a point of order against further consideration of HB 2 under Rule 11, Section 2 and Rule 8, Section 3 of the House Rules and

Article III, Section 30 of the Texas Constitution on the grounds that the senate amendments are not germane, they change the original purpose of the bill, and the bill contains more than one subject.

. . .

The speaker sustained the point of order, and had read the following statement:

Representative Coleman raises a point of order against further consideration of HB 2 on the following grounds: (1) that the senate amendment contains language that is not germane to the bill and, therefore, violates Rule 11, Section 2, House Rules; and (2) that the senate amendment violates Article III, Section 30, Texas Constitution, and Rule 8, Section 3, House Rules.

Germaneness. Rule 11, Section 2 states that "No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." This rule, known as the rule of germaneness, has consistently been strictly construed by the house over the years. This process has been followed in reviewing amendments to house bills, regardless of whether those amendments are offered in the house or in the senate. As our explanatory note, which has been published in the House Rules for many years, states:

"In recent practice, the chair has closely reviewed the germaneness of senate amendments to house bills. There is nothing in the rules that could possibly prevent a member from raising a point of order against a clear violation of Article III, Section 30 of the constitution and having it sustained. If a point of order is sustained against a non-germane senate amendment, the bill is returned to the senate with a message to that effect. The speaker may refuse to recognize a member for the motion to concur in senate amendments if the speaker considers an amendment to be not germane." (Explanatory Note 3, P. 180).

The subject of HB 2 is clear and narrow. It simply requires certain tax revenue generated from the passage of HB 3, HB 4, and HB 5 be dedicated to the reduction of school property tax rates. The fact that the house adopted a calendar rule to further limit amendments that would divert funds to sources other than directly to property tax relief also supports that narrow interpretation of the bill's subject matter.

The senate amendment violates Rule 11, Section 2, House Rules because it changed the sole dedication of additional revenue from HB 3, HB 4, and HB 5 to property tax relief to allow up to one third of those dedicated funds to be diverted to the Texas Education Agency to increase the basic allotment and the guaranteed level of state and local funds per weighted student. In effect, the amendment added a dedication of funds to schools generally and did so at the expense of providing additional property tax relief. This amendment, the senate amendment, was not germane to the house engrossed version and is contrary to the stated purpose of the bill. There are numerous precedents by the house that support the

proposition that the chair must strictly enforce the House Rules regarding non-germane senate amendments to house bills. In accordance with those precedents, the point of order is well-taken and sustained.

Single-Subject. The chair also sustains Representative Coleman's point of order against HB 2 on the grounds that the bill as amended by the senate contains more than a single subject and, therefore, violates Article III, Section 30, Texas Constitution, and Rule 8, Section 3, House Rules. The chair is well aware of the latitude given by courts in analyzing legislation for violation of Article III, Section 30, Texas Constitution. It is the chair's view that legislation of this importance places a great duty of care upon the legislature to comply with this constitutional requirement and make every effort to ensure that no bill is passed that could reasonably be construed to violate this provision.

The bill as it left the house had only one subject: the dedication of certain tax revenue generated from the passage of HB 3, HB 4, and HB 5 to the reduction of school property tax rates. The senate amendment expanded the subject, authorizing the use of the dedicated funds for a second purpose in the form of an appropriation to the Texas Education Agency to increase funding to schools. This amendment effectively expanded the subject of the bill to include two subjects: dedication of funds to property tax relief and dedication of funds to education. Because this expansion violates both the House Rules and the Texas Constitution, the point of order is well-taken and sustained.

Accordingly, the chair instructs the chief clerk to return HB 2 to the senate with a message to that effect.

One-Subject Rule & Germaneness of Senate Amendments
79 H.J. 3rd C.S. 220 (Thompson 5/4/06)

HB 4 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of HB 4 under Rule 11, Section 2 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the senate amendments are not germane and create more than one subject in the bill.

The speaker overruled the point of order and had read the following statement:

Representative Thompson raises a point of order against further consideration of the senate amendments to HB 4 arguing that the senate amendments violate:

Rule 11, Section 2, and are not germane or are a subject different from the subject under consideration in HB 4; and

Article III, Section 35, Texas Constitution, and contain more than one subject.

The chair has examined the introduced and engrossed versions of HB 4 as well as the senate amendments and find the senate amendment complies with the House Rules and does not violate the rules cited by Representative Thompson

because the bill relates to the presumed value of motor vehicles, which is a subject contained in the amendment as well.

Accordingly, the point of order is respectfully overruled.

One-Subject Rule & Original Purpose—Conference Committee Reports
80 H.J. Reg. 7190 (Herrero 5/28/07)

SB 11 - POINT OF ORDER

Representative Herrero raised a point of order against further consideration of SB 11 under Rule 11, Section 3 of the House Rules on the grounds that the conference committee report changes the original purpose of the bill.

The chair overruled the point of order, and had read the following statement:

Mr. Herrero raised a point of order against further consideration of the conference committee report on SB 11 under Rule 11, Section 3 and Rule 8, Section 3 of the House Rules on the grounds that the conference committee report includes more than one subject and changes the original purpose of the bill.

SB 11, as introduced, is comprehensive legislation relating to public safety and security. Article 17 of the conference committee report authorizes certain local governments to restrict the sale and use of certain fireworks when a local state of disaster has been declared. Use of fireworks during a local disaster can reasonably be considered to create problems affecting public safety and security such as creating a safety hazard, complicating law enforcement efforts, or causing public panic. For that reason Article 17 of the conference committee report is within the subject of the bill and within the original purpose of the bill.

Accordingly, the point of order is respectfully overruled.

Representative Herrero raised a point of order against further consideration of SB 11 under Rule 8, Section 3 of the House Rules on the grounds that the conference committee report violates the one subject rule.

The chair overruled the point of order.

One-Subject Rule—Conference Committee Reports
80 H.J. Reg. 6804 (Martinez 5/27/07)

HB 1251 - POINT OF ORDER

Representative Martinez raised a point of order against further consideration of HB 1251 under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the conference committee report violates the one subject rule.

The chair overruled the point of order, and had read the following statement:

The conference committee report provides for the regulation of solid waste disposal collection and transportation services, including construction waste and wastes collected in grease traps, grit traps, and other traps to collect waste. The contents of the bill fit within the subject of the authority of a public agency (as defined by Chapter 364, Health and Safety Code) to regulate solid waste disposal and transportation services by means of a franchise or contract for such services.

The point of order is respectfully overruled.

. . .

One-Subject Rule—Conference Committee Reports
78 H.J. Reg. 5586 (Burnam 6/1/03)

SB 1639 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of the conference committee report on SB 1639 under Rule 8, Section 3 of the House Rules and Article III, Section 35(a) of the Texas Constitution on the grounds that the conference committee report gives SB 1639 more than one subject.

The chair overruled the point of order, speaking as follows:

Representative Burnam raises a point of order against further consideration of the Conference Committee Report on SB 1639 under Article III, Section 35 of the Texas Constitution and Rule 8, Section 3 of the House Rules, in that the bill contains more than one subject.

The bill includes provisions regulating spacing and production of groundwater as well as provisions relating to the control of instream flows of surface water. Mr. Burnam argues that these are considered two different subjects under current Texas law and cannot properly be considered in the same bill under the Texas Constitution and the rules of the house, which restate the constitutional rule.

As stated in a ruling of May 22, 1999: In considering the constitutionality of laws, courts are under a duty to give a constitutional construction if possible . . . The standard for finding a violation of the one-subject rule is very high; courts typically find violations of the one-subject rule only when there is no conceivable single subject that describes all the elements of the bill. (76 H.J. 2912 (1999))

The chair has reviewed all house rulings on this issue over the last 30 years and failed to find a single instance in which such a point of order was sustained, a likely result of the very high standard for finding a violation of the rule.

The chair believes that SB 1639 can be construed in a constitutional manner in that each element relates to the regulation of the waters of the state and would be so construed by a court. Accordingly, the point of order is respectfully overruled.

Joint Authors (Rule 8, Section 5)

Joint Authors—Names on Official Printings

83 H.J. Reg. 2660-62 (Y. Davis 5/7/13)

CSHB 500 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 500 under Rule 8, Section 5(c) of the House Rules on the grounds that the names of all joint authors are not properly shown on all the official printings of the bill.

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order under Rule 8, Section 5(c) and Rule 12, Section 1(a)(1) of the House Rules. Specifically, Representative Y. Davis argued that Representative Button "signed on" as a joint author on CSHB 500 on April 19, 2013, and, as such, should have been reflected as a joint author on the first printing of the bill (the May 2, 2013, 8:03 a.m. recommitted printing) and on each of the four calendars on which CSHB 500 appears (generated May 2, 7:00 p.m.; May 3, 5:20 p.m.; May 4, 12:33 p.m.; and May 5, 7:12 p.m.). The point of order is respectfully overruled.

Representative Y. Davis also states that the "actions of the Committee on Ways and Means are grossly and egregiously contrary and disrespectful to the rules of the house, 83rd Legislature." For the reasons set out below, the chair believes that the Committee on Ways and Means had no impact on the point of order raised.

A person becomes a co- or joint author if the person is designated as a co- or joint author by the primary author on the appropriate form. Rule 8, Section 5(c). A copy of the forms are set out as attachment "A." The proposed co- or joint author must sign the form and, importantly, "the signatures of all the coauthors or joint authors shall appear in appropriate forms in the chief clerk's office." *See* Rule 8, Section 5(a). The reason for having the forms housed with the chief clerk is important because the chief clerk is responsible for "hav[ing] printed and distributed correct copies of all legislative documents." *See* Rule 2, Section 1(a)(7). The chief clerk enters the forms into a database, and the documents, including the official printings, the calendars, and the electronic legislative information system, all draw on the information in the clerk's database.

The mystery of Representative Button's appearing to "sign on" to the bill on April 19, 2013, is explained by Representative Hilderbran's behavior in gathering joint and coauthors for this bill. The chief clerk's office will provide members with sheets to gather names of joint and coauthors. There is no requirement in the rules that the signatures be reported immediately to the chief clerk. Any house member or member of the public watching from the gallery would recognize the curious behavior of members who circle the floor looking for a potential co- or joint author, who sidle up to a fellow member in idle conversation, and who pull

from a folder a yellow or white sheet and a pen, presenting the member with the opportunity to sign onto a bill in the same manner as a penguin offers a pebble to a potential mate. Members may circle for hours or days until satisfied that they have collected an impressive number of signatures. Then they appear in the chief clerk's office to disgorge these names on the forms to the chief clerk for entry into the chief clerk's database, which allows the information to be added to the official printings, the calendars, and the electronic legislative information system.

Representative Hilderbran filed the original bill on April 8, 2013. He appeared in the chief clerk's office with forms designating eight coauthors over a period of time between April 29, 2013, at 5:32 p.m. and May 2, 2013, at 12:14 p.m. We know this statement is accurate because the chief clerk has a bill authors audit system built into his computer system. The bill authors audit system logs when the author of a bill returns a form and a co- or joint author is added to a bill (see attached audit report for CSHB 500). Further, we know most of the coauthors who signed Representative Hilderbran's bill (all but Representative Villalba) were added into the system before the recommitted house committee report was printed at 8:03 a.m. on May 2, 2013. We know this because the recommitted committee report and each of the four calendars distributed with the bill between May 2 and May 5 show Representative Hilderbran's name and the indication "et al.," which indicates the presence of coauthors on a bill. The audit log also indicates that Representative Hilderbran disgorged a large number of names of co- and joint authors back to the chief clerk's office on May 6, between 4:28 p.m. and 5:48 p.m., including the names of the four joint authors (Representatives Button, Creighton, E. S. Turner, and S. Thompson). The chief clerk also recorded faithfully (because the staff of the house does not modify the writings of a member) the date Representative Button indicated that she joined as a joint author. Because the item was not signed or witnessed by the clerk, the clerk can only faithfully reproduce the information on the sheet. However, Representative Button was not added to the legislative database as a joint author until May 6, 2013, at 4:28 p.m. After each of the four joint authors was added, each of their names appeared on the very next calendar printing at 8:16 p.m. that same evening.

Perhaps Representative Hilderbran should have been forced to present his co- or joint author names as he collected them or to collect signatures only under the watchful eye of the chief clerk or his staff, with the staff time-stamping and immediately entering each action. However, the members have not seen fit to shackle themselves to these types of rules. In fact, the members and the rules appear to have adopted the practice of allowing signatures to be harvested on the floor, be retained by the primary author, and be recorded later in the chief clerk's office, with the knowledge that the records of the chief clerk—which solely govern the official printings, calendars, and electronic legislative data systems—cannot be updated until the forms are returned. In this case, the chief clerk complied with rules to the full extent that the members allowed him to do. The chief clerk accurately reported the information available to him, which

was timely and correctly displayed on the recommitted committee report and the first four calendars. When the information changed, and the chief clerk received the information regarding Representative Button and the other joint authors, the clerk's reporting of the changed information produced an accurate revised calendar, listing all four joint authors. Because each of these printings is a snapshot in time, each printing is correct if, at the time of the printing or other act, the information accurately reflected the information in the hands of the house official charged with the act.

Accordingly, no violation of Rule 8 or Rule 12 of the House Rules was involved. The clerk can only report and print the information members provide to him. However, in light of this issue the house may wish to consider a different method, including an electronic method, to allow faster, more timely, and a more controlled entry of information to the chief clerk's office on co- and joint author matters. Members may wish to visit with the chief clerk's office about such a system.

Joint Authors—Names on Official Printings
83 H.J. Reg. 2441-42 (M. González 5/4/13)

CSHB 972 - POINT OF ORDER

Representative M. González raised a point of order against further consideration of CSHB 972 under Rule 8, Section 5 of the House Rules on the grounds that the names of all joint authors are not properly shown on all the official printings of the bill.

The speaker overruled the point of order and submitted the following statement:

Representative M. González raises a point of order against further consideration of CSHB 972 under Rule 8, Section 5 of the House Rules. Specifically, Representative M. González argues that an appendix to the House Journal in the referral of the CSHB 972 failed to print all joint authors' names immediately following the primary author's name. Representative M. González stated she was unaware of any other error in the reporting of joint author names in the official printing of all measures, on all house calendars, and in the electronic legislative information system. A review of the official printing of all measures, all house calendars, and the electronic legislative information system indicates that the joint authors' names were printed immediately following the primary author's name. The point of order is respectfully overruled.

The purpose of the rule is to ensure that members are aware of joint authors at the time that the matter is being considered. In this case, the purpose of the rule was fulfilled when the information could be ascertained from either the official printing, the house calendar, the journal, or the electronic legislative information system. The rule also reaches only to the journal itself, not to the appendix to

the journal. For instance, messages from the senate, committee reports, and other items printed in the appendix often do not contain any author information. Finally, even if the rule reached to the printing of names in the appendix items, the point of order raised would not reach to the consideration of the bill itself, as the improper listing on a bill of a joint author who in fact had not signed a joint author form, *see* 79 H.J. Reg. 2939 (2005), but rather the compliance with the rule would be that the journal would be instructed to accurately reflect the information required.

Local Bills (Rule 8, Section 10; Article III, Section 56)

Local Bill—Publication of Notice
85 H.J. Reg. 6004 (E. Rodriguez 5/28/17)

SB 715 - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of SB 715 under House Rule 8, Section 10. Specifically, Representative E. Rodriguez argues the amendments by Representative Workman relating to a municipality's right to annex certain municipal utility districts required notice under Article XVI, Section 59, of the Texas Constitution. Representative E. Rodriguez noted that there is no precedent on this issue.

Assuming that Representative E. Rodriguez's statement that Representative Workman's amendments were local laws is true, Rule 8, Section 10, wouldn't apply because this bill did not create a water district. Publication also was not required because the sections did not (1) add additional land to the district, (2) alter the taxing authority of the district, (3) alter the authority of the district to issue bonds, or (4) alter the qualifications of terms of office of members of the governing body of the district. *See* Explanatory Note 4, Rule 8, Section 10. The point of order is respectfully overruled.

Local Bill—Publication of Notice
84 H.J. Reg. 2764-66 (Y. Davis 5/7/15)

CSHB 3405 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of CSHB 3405 under Rule 8, Section 10 of the House Rules and Article XVI, Section 59 of the Texas Constitution on the grounds that notice of intention to apply for the passage of the bill was not properly published.

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised three points of order against further consideration of CSHB 3405 on the grounds that notice was not properly

published, provided, nor attached pursuant to Rule 8, Section 10 of the House Rules; Article XVI, Section 59 of the Texas Constitution; and Chapter 313 of the Government Code. The points of order are respectfully overruled.

Rule 8, Section 10(a) prohibits consideration of a local bill "unless notice of intention to apply for the passage of the bill was published as provided by law and evidence of the publication is attached to the bill." Rule 8, Section 10(a). If notice is not attached to the bill when filed, notice may be filed and distributed to committee members prior to the bill being laid out in committee. Evidence of the notice "shall be attached to the bill on first printing and shall remain with the measure throughout the entire legislative process, including submission to the governor." Rule 8, Section 10(a). While Representative Y. Davis also raised a point of order under Chapter 313 of the Government Code, Rule 8, Section 10 governs compliance with the publication requirements for local bills in the house.

Article XVI, Section 59 of the Texas Constitution "authorizes local laws for various kinds of conservation and reclamation districts." Tex. Const. art. XVI, § 59. Subsection (d) specifically provides that local bills under Section 59 shall not be passed unless notice of intent to introduce the bill has been "published . . . in a newspaper or *newspapers having general circulation* in the county or counties in which [the] said district or any part thereof is or will be located . . . ." Tex. Const. art. XVI, § 59(d) (emphasis added). Subsection (e) provides further that, at the time notice is published pursuant to Section 59(d), a copy of the bill must be "delivered to the commissioners court of each county in which said district or any part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located." *Id*. at § 59(e).

In her first point of order, Representative Y. Davis argues that Rule 8, Section 10 of the House Rules requires that evidence of publication be attached to a local bill throughout the entire legislative process, and that no evidence of publication was attached to the committee report. *See* Rule 8, Section 10. She argues in her second point that Article XVI, Section 59 of the Texas Constitution requires notice of publication to be provided to the commissioners court and governing bodies, and that this action was not taken. *See* Tex. Const. art. XVI, § 59. Finally, in her third point, Representative Y. Davis asserts that the notice itself was deficient because it was not properly published in the county paper.

With regard to the first point of order, the chair has examined the original bill and the committee report and finds that, pursuant to Rule 8, Section 10, the requirement that evidence of publication be attached to the measure throughout the entire process appears to have been complied with. *See* Rule 8, Section 10.

With regard to the second point of order raised under Article XVI, Section 59 of the Texas Constitution, Rule 8, Section 10 governs the notice that must be published, and the chair finds that Rule 8, Section 10 was complied with in this case. To the extent that Representative Y. Davis raises an issue about whether Article XVI, Section 59 requires that the house have effective notice that notice

was given to all commissioners courts and governing bodies, the House Rules do not directly address this issue. In the absence of a statutory or parliamentary procedure for proof that a copy of the notice was delivered, the presiding officer has no basis on which to sustain a point of order that the required copy was not delivered. This may be a matter the house members wish to address in their next opportunity for rules changes.

As to Representative Y. Davis' final point of order, that notice was ineffective because it was not properly published in the county paper, pursuant to Rule 8, Section 10 of the House Rules, such notice—as evidenced by the affidavit attached to the local bill—appears to have been properly given. For these reasons, the three points of order are respectfully overruled.

Local Bill—Publication of Notice
84 H.J. Reg. 2424-25 (G. Bonnen 5/4/15)

CSHB 4168 - POINT OF ORDER

Representative G. Bonnen raised a point of order against further consideration of CSHB 4168 under Rule 8, Section 10(a) of the House Rules on the grounds that notice of intention to apply for the passage of the bill was not properly published.

The chair overruled the point of order and submitted the following statement:

Representative G. Bonnen raised a point of order against further consideration of CSHB 4168 under Rule 8, Section 10(a) of the House Rules on the grounds that the published notice of intention to introduce the bill does not state the substance of the contemplated law. The point of order is respectfully overruled.

Under Rule 8, Section 10(a), "the house may not consider a local bill unless notice of intention to apply for the passage of the bill was published as provided by law. . . ." Rule 8, Section 10(a). A "bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.)" is a local bill. Rule 8, Section 10(c)(1); *see* Tex. Const. art. XVI, § 59(d)(4) (requiring notice for a bill that "alters the qualifications or terms of office of the members of the governing body of the district"). Notice for a law subject to these requirements "shall state the substance of the contemplated law." Tex. Const. art. III, § 57.

CSHB 4168 would (1) authorize the Gulf Coast Water Authority (GCWA) to enter into agreements to purchase or sell electric power to acquire water, and (2) change the composition of the GCWA's board of directors. Representative G. Bonnen asserts that while the notice published for CSHB 4168 indicated the bill's intent to change the composition of the board, it did not mention the bill's intent to authorize GCWA to enter into certain agreements. Thus, he asserts the notice for CSHB 4168 violated Rule 8, Section 10(a) and the Texas Constitution by failing to state the substance of the contemplated law in its entirety. The notice reads as follows:

> This is to give notice of intent to introduce in the 84th Texas Legislature, Regular Session, a bill relating to amending the enabling legislation of the Gulf Coast Water Authority. Specifically, the bill will amend Chapter 712, Acts of the 59th Legislature, Regular Session, 1965 to change the composition of the board of directors of the Gulf Coast Water Authority.

The notice provided states the substance of the portion of CSHB 4168 that is subject to the notice requirement of Article XVI, Section 59(d)(4) of the Texas Constitution. The remainder of the bill, which relates to GCWA's authority to enter into agreements to purchase or sell electric power to acquire water, is not subject to local notice requirements. *See* Tex. Const. art. XVI, § 59. Therefore, the notice was not required to have stated the substance of the remainder of the bill, and the notice does not contravene Rule 8, Section 10(a).

Local Bill—Publication of Notice & Bracket Bills
76 H.J. Reg. 1761 (Maxey 5/5/99)

SB 1272 - POINT OF ORDER

Representative Maxey raised a point of order against further consideration of SB 1272 under Rule 8, Section 10(a) of the House Rules on the grounds that the bill is a local bill for which notice was not published as required by rule.

The chair overruled the point of order, speaking as follows:

The point of order rests on the effect of Section 5(b), which expressly makes the bill apply to the acquisition of land for which a federal permit was issued before September 1, 1999. It is argued that only one political subdivision meets or will ever meet that description.

Regardless of the correctness of the information about the number of political subdivisions made subject to Section 5(b), the bill is not a local bill for purposes of the publication of notice requirement of Rule 8, Section 10(a). Under Rule 8, Section 10(c)(3), local notice is required for a bill relating to the conservation of wildlife resources for "a specified locality." The rule contemplates a named locality. Section 5(b) is a classification scheme, akin to a population bracket, that is by definition a general law rather than a local law.

Notice is not required for a bill that limits its effect through means of a classification scheme. Accordingly, the point of order is respectfully overruled.

Local Bill—Publication of Notice—Sustained
74 H.J. Reg. 4669-70 (Corte Jr. 5/28/95)

HB 2890 - POINT OF ORDER

Representative Corte raised a point of order against further consideration of the conference committee report on HB 2890 on the grounds that the conference committee report on HB 2890 violates Rule 8, Section 10, and Rule 12, Section 2, of the House Rules.

The speaker sustained the point of order, speaking as follows:

Representative Corte raises a point of order against further consideration of the conference committee report on HB 2890 under Rule 8, Section 10, and Rule 12, Section 2, in that the bill is a local bill for purposes of the house rules for which notice has not been published.

Rule 8, Section 10, requires that notice be published on bills for which publication of notice is required under Article 16, Section 59, of the Texas Constitution. That constitutional provision requires the publication of notice on any bill that alters the authority of a water district with respect to the issuance of bonds.

HB 2890 amends the law governing the Edwards Aquifer Authority, adding Section 1.425 to that statute. Section 1.425(b) provides, in applicable part:

(b) The Edwards Underground Water District shall obtain the approval of the board of the authority before the district: . . .

(2) incurs new debt; . . .

Section 13 of the law governing the Edwards Underground Water District, (Chapter 99, Acts of the 56th Legislature, Regular Session, 1956), authorizes the district to issue bonds and levy taxes for the repayment of the debt. It is clear to the chair that requiring the district to get approval of the authority alters the authority of the district with respect to the issuance of bonds. The power to create that debt under existing law is an independent power of the governing board; under HB 2890, that power is dependent on the approval of another board.

The chair finds that this bill alters the power of the governing board with respect to the issuance of bonds, and that the rules of the House and the Texas Constitution require the publication of local notice for such a bill. Such notice was not published on this bill and the bill is therefore not in compliance with the rules.

Accordingly, the point of order is well-taken and sustained.

Representative Corte raises a point of order against further consideration of the conference committee report on HB 2890 under Rule 8, Section 10, in that the bill is a local bill for purposes of the house rules for which notice has not been published.

Local notice is required under the rules for a bill that alters the authority of a water district to issue bonds. Under this bill, the Edwards Underground Water District must receive the approval of the Edwards Aquifer Authority before

incurring debt. The clearly alters the authority of the district with respect to the issuance of bonds. Notice was not published on HB 2890.

Accordingly, the point of order is well-taken and sustained.

Local Bill—Publication of Notice
74 H.J. Reg. 2447-48 (Maxey 5/11/95)

CSHB 3193 - POINT OF ORDER

Representative Maxey raised a point of order against further consideration of CSHB 3193 on the grounds that CSHB 3193 violates Article 16, Section 59(d), and Article 16, Section 59(e), of the Texas Constitution.

The speaker overruled the point of order, speaking as follows:

Representative Maxey raises a point of order against further consideration under Section 59(d), Article 16, Texas Constitution, in that the Texas Natural Resource Conservation Commission has not received notice of the bill or made its recommendations, as required by that provision.

The referenced section of the constitution requires that a copy of a bill creating a conservation and reclamation district be delivered to the governor, and that the governor submit the bill to the agency now known as the conservation commission, the successor to the former Texas Water Commission. Within 30 days, the commission is to give its recommendations on the bill to the governor, the lieutenant governor, and the speaker.

The chair has reviewed the records relating to this bill in the chief clerk's office. Those records indicate that the bill was transmitted to the governor on April 3, the same day the bill was filed, and that the conservation commission filed its recommendations with the chief clerk on May 5.

Because house records show the point of order to be completely without merit, the point of order is overruled.

Representative Maxey raises a point of order against further consideration under Section 59(e), Article 16, Texas Constitution, in that a copy of the proposed bill was not delivered to the affected counties and cities as required by that provision.

The referenced section of the constitution requires that, at the time local notice of the bill is published, a copy of a bill creating a conservation and reclamation district be delivered to the governing body of each county and incorporated city in which part of the district is located. In contrast to the requirement that notice of the bill be published in local newspapers, neither the rules of the house nor the statutes provide for a means of proof that copies of a bill have been delivered to the affected local governments.

For published notice, Section 313.004, Government Code, requires a publisher's affidavit. Rule 8, Section 10, requires that affidavit to be attached to the bill at the time of filing. These requirements provide the chair with official

records that form the basis of the chair's rulings. The absence of the required affidavit provides unequivocal support for the chair sustaining a point of order that against further consideration of a bill for which the publisher's affidavit is not on file.

In the absence of rules and statutes that provide for proof of compliance through official records, the chair has no basis on which to resolve the fact question of whether or not copies of the bill were distributed as required. The proponent of the point of order would, the chair assumes, have the chair conduct an evidentiary hearing with testimony to prove which cities and counties were affected and whether each received or did not receive the required notice. The chair would weight the credibility of witnesses who alleged that a copy of the bill was not received against the credibility of witnesses who alleged that a copy was delivered to a clerk who failed to forward it appropriately.

The chair firmly believes that the proponents of a bill creating a special purpose district should comply with the constitutional notice requirements. However, the chair also believes that it is inappropriate for the chair to conduct an evidentiary hearing to resolve disputed questions of fact about whether or not the required notice was provided. In the absence of statutory procedures or rules of procedure that generate official records on which such a determination may be made, the chair has no basis on which to sustain the point of order.

Accordingly, the point of order is respectfully overruled.

Local Bill Bracket—Limitation by Artificial Device
85 H.J. 1st C.S. 333-34 (Moody 8/11/17)

CSSB 6 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of CSSB 6, asserting that it is an impermissible local law under Article III, Section 56, of the Texas Constitution and House Rule 8, Section 10(b).

Rule 8, Section 10(b), prohibits the house from considering "a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name." This prohibition does not apply if the proposed classification "bears a reasonable relation to the purpose of the proposed legislation . . . ." Article III, Section 56(b), says that "in all other cases where general law can be made applicable, no local or special law shall be enacted . . . ." Courts have read the constitutional provision to allow the legislature "to make classifications for legislative purposes" so long as the "legislation is intended to apply uniformly to all who come within the classification . . . and the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation." *Miller v. El Paso Cnty.*, 150 S.W.2d 1000, 1001-02 (Tex. 1941) (holding unconstitutional

a population bracket determined by the preceding federal census where the court could discern no substantial relation between the bracket and the objects sought to be accomplished by the legislation).

Representative Moody contends Section 10 of CSSB 6 contains an impermissible bracket. That relevant portion of that section reads:

> Sec. 43.017 [~~43.037~~]. PROHIBITION AGAINST ANNEXATION TO SURROUND MUNICIPALITY IN CERTAIN COUNTIES. (a) A municipality with a population of more than 175,000 located in a county that contains an international border and borders the Gulf of Mexico may not annex an area that would cause another municipality to be entirely surrounded by the corporate limits or extraterritorial jurisdiction of the annexing municipality.
>
> (b) A municipality described by Subsection (a) to which Section 42.0235 applies and a neighboring municipality may waive Subsection (a) if the governing body of each municipality adopts, on or after September 1, 2017, a resolution stating that this section is waived.

Representative Moody correctly observes that the only county to contain an international border and the Gulf of Mexico is Cameron County, and suggests, on that basis, that the bracket creates a closed class. The bracket, however, applies to "a municipality with a population of more than 175,000" within that county, and there is no dispute that a municipality within Cameron County could grow into or fall out of the class, meaning that the class is open. Representative Moody further argues that there is no substantial reason to bracket the bill in this manner. In response to that argument, defenders of the bill argued that Cameron County's position on both the international border and the Gulf Coast means that it faces a combination of development and land-use challenges that are found in no other county. For example, Cameron County contains over 30 colonias, which are developments primarily found along the international border and which have unique public health concerns, and a large portion of the county is designated as a catastrophe area (which implicates a range of construction and development concerns) based on its location on the coast. Defenders further argued that the bracket in this bill already exists in current law and should therefore be found to be constitutional. The chair is not willing to find that every bracket contained in current law is per se constitutional and in compliance with house rules. However, in this case, the chair concludes that the open class created for municipalities located both near an international border and the Gulf Coast is based on legitimate and reasonable distinctions from other municipalities for the purposes of annexation. The point of order is respectfully overruled.

Local Bill Bracket—Limitation by Artificial Device—Sustained
85 H.J. 1st C.S. 246-48 (Moody 8/7/17)

CSSB 6 - POINT OF ORDER

Representative Moody raised a point of order against further consideration of CSSB 6, asserting that it is an impermissible local law under Article III, Section 56, of the Texas Constitution and House Rule 8, Section 10(b). The point of order is well-taken and sustained.

Rule 8, Section 10(b), prohibits the house from considering "a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name." This prohibition does not apply if the proposed classification "bears a reasonable relation to the purpose of the proposed legislation . . . ." Article III, Section 56(b), says that "in all other cases where general law can be made applicable, no local or special law shall be enacted . . . ." Courts have read the constitutional provision to allow the legislature "to make classifications for legislative purposes" so long as the "legislation is intended to apply uniformly to all who come within the classification . . . and the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation." *Miller v. El Paso Cnty.*, 150 S.W.2d 1000, 1001-02 (Tex. 1941) (holding unconstitutional a population bracket determined by the preceding federal census where the court could discern no substantial relation between the bracket and the objects sought to be accomplished by the legislation).

Representative Moody contends Section 55 of CSSB 6 contains an impermissible bracket. That section reads:

> SECTION 55. The changes in law made by this Act apply to the annexation of an area subject to a development agreement entered into by a municipality with a population of more than 227,000 and less than 236,000, according to the 2010 federal decennial census, under Section 212.172, Local Government Code, before the effective date of this Act that is initiated on or after the expiration date provided for in the agreement. The annexation of an area subject to the agreement that is initiated before the expiration date of the agreement as the result of a termination of the agreement is governed by the law in effect on January 1, 2017, and the former law is continued in effect for that purpose.

The population bracket in Section 55, "more than 227,000 and less than 236,000," describes one and only one city: Lubbock, while narrowly missing Laredo (with a population of 236,091) and Garland (with a population of 226,876). The additional and unusual limitation of tying the population bracket to the 2010 census means that the bracket will forever apply solely to Lubbock, and never to Laredo, Garland, or any of the other 1,208 cities in Texas. When asked, no

member was able to articulate any (let alone a substantial) reason for a closed class containing only Lubbock. One member asserted that this section merely provided for a different effective date for the law to apply to Lubbock, without explaining why it would be reasonable to single out Lubbock for that purpose. Singling out a specific district or districts without an articulable reason runs afoul of both Rule 8, Section 10(b), and the Texas Constitution. *See* 75 H.J. Reg. 4554-55 (1997) (Maxey point of order on HB 1028); *see also* 83 H.J. Reg. 2828 (2013) (Dutton point of order on Amendment No. 3 to CSHB 1790); 76 H.J. Reg. 3259-60 (1999) (Turner point of order on CSSB 5); 75 H.J. Reg. 1667 (1997) (Maxey point of order on CSHB 2230). This would remain true even if the sole purpose of the bracket were to apply a law to a city at a different time. Like any other arbitrary classification, bracketing the law to one city and at one time to provide a different effective date could be used to give a local law the appearance of a general law. For example, a locality could be effectively exempted from a law if it were permissible for the legislature to provide a separate effective date for a certain locality at some distant point in the future.

The method used in Section 55 is so suspect that it is actually specifically mentioned in the Texas Legislative Council Drafting Manual as an example of what would violate the constitution, complete with supporting case law from the Texas Supreme Court:

> It is clear from the case law that some suspicions are raised about a classification if only one entity is included in the bracket at the time of enactment. *Miller*, 150 S.W.2d 1000; *Tynan*, 97 S.W.2d 467; *Smith*, 426 S.W.2d 827. This suspicion follows naturally from the focus on the intent behind the law.

The Manual further warns:

> In most cases, a bracketing scheme that is based on existing circumstances alone results in a closed bracket that would be considered invalid. For example, a bill using population criteria that are tied to a specific census is likely to violate Section 56, Article III, Texas Constitution. *Bobbitt*, 36 S.W.2d at 471-472 (Tex. 1931) (bracket so drawn to only one city "just as clearly" as if the city had been named).

Texas Legislative Council Drafting Manual 245 (2017). Following house precedent and guidance from the courts, the chair has previously ruled that a "closed class that may never be expanded" effectively creates a special or local law in violation of the rules and constitution. 74 H.J. Reg. 3292-93 (1995) (Saunders point of order on SB 1697, also noting the dangers of brackets "closed at both ends or by reference to a particular census," which are "consistently held invalid"). Without question, Lubbock is a dynamic Texas city, with a world class law school, excellent universities and primary and secondary schools, and Prairie Dog Town. Each of these factors (or perhaps others) could, when properly applied, form the basis of a reasonable bracket on an appropriate bill. That did

not occur here. In the absence of a reason why carving out Lubbock based on its population in 2010 relates to any purpose of CSSB 6, the classification scheme contained in Section 55 violates both Rule 8, Section 10(b), and the constitution.

Local Bill Bracket—Limitation by Artificial Device
84 H.J. Reg. 2779-80 (Schubert 5/7/15)

CSHB 1903 - POINT OF ORDER

Representative Schubert raised a point of order against further consideration of CSHB 1903 under Rule 8, Section 10(b) of the House Rules and Article III, Section 56(b); Article III, Section 56(a)(2); Article III, Section 56(a)(14); and Article III, Section 56(a)(18) of the Texas Constitution on the grounds that the bill is limited to one or more subdivisions by means of artificial devices.

The chair overruled the point of order and submitted the following statement:

Representative Schubert raised five points of order, regarding the prohibition of local or special laws, against further consideration of CSHB 1903 under Rule 8, Section 10(b) of the House Rules and Article III, Sections 56(b), 56(a)(2), 56(a)(14), and 56(a)(18) of the Texas Constitution. The points of order are respectfully overruled.

The Texas Constitution generally prohibits local laws. Tex. Const. art. III, § 56(a) ("The legislature shall not, except as otherwise provided in this Constitution, pass any local or special law . . . ."). Specifically, Subsections (a)(2), (14), and (18) prohibit the passage of local or special laws "regulating the affairs of counties, cities, towns, wards or school districts," "creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts," and "regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes," respectively. *Id*. at § 56(a)(2), (14), (18). Article III, Section 56(b) states that, in addition to Subsection (a), "in all other cases where a general law can be made applicable, no local or special law shall be enacted." *Id*. at § 56(b). Where local bills are permissible, Rule 8, Section 10(b) prohibits the consideration of bills "whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name." Rule 8, Section 10(b).

CSHB 1903 directs the governing board of the Blinn Junior College District to allocate certain funds "to each district campus with a student enrollment of at least 1,000." Representative Schubert asserts in his first point that, because the legislature could have "craft[ed] a law of general applicability that applies this duty to all similarly situated junior college districts . . . . ," the bill violates Article III, Section 56(b) of the Texas Constitution. In his next three points, Representative Schubert's arguments hinge on two assertions: (1) that "a junior college district should be considered to be a school district"; and (2) that "junior

colleges should be considered to be public schools". Assuming the validity of both assertions, Representative Schubert goes on to argue that CSHB 1903 impermissibly "regulat[es] the affairs of school districts," "prescrib[es] the duties of officers of school districts," and "regulat[es] the management of public schools" in violation of the Texas Constitution. *See id.* at § 56(a)(2), (14), (18). In his final point, Representative Schubert asserts that, because CSHB 1903 is limited in its application only to the governing board of the Blinn Junior College District, the bill violates Rule 8, Section 10(b).

While junior colleges and districts may share certain attributes with school districts and public schools, junior colleges and districts are different entities from both school districts and public schools. We can identify no rule or precedent of the house that equates junior colleges with school districts or public schools. Further, CSHB 1903 employs neither population brackets nor artificial devices in violation of Rule 8, Section 10(b) of the House Rules. For these reasons, and having reviewed the bill and arguments and authority cited by Representative Schubert, the chair determines that CSHB 1903 does not violate either Rule 8, Section 10(b) or the Texas Constitution.

Local Bill Bracket—Limitation by Artificial Device
84 H.J. Reg. 2603-05 (Coleman 5/6/15)

HB 1486 - POINT OF ORDER

Representative Coleman raised a point of order against further consideration of HB 1486 under Rule 4, Section 40; Rule 8, Section 10; Rule 11, Section 2 of the House Rules and Article III, Section 56(a) of the Texas Constitution on the grounds that the committee substitute attempts to create a local bill by amendment and is not germane to the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Coleman raised a point of order against further consideration of HB 1486 under Rule 4, Section 40; Rule 8, Section 10 and Article III, Section 56(a) of the Texas Constitution; and Rule 11, Section 2 on the grounds that the committee substitute attempts to create a local bill by amendment and "uses an artificial bracket with no reasonable relationship to the purpose of the proposed legislation." The point of order is respectfully overruled.

A "committee may adopt and report a complete germane committee substitute . . . ." Rule 4, Section 40. However, Rule 8, Section 10(b) prohibits bills limited by population brackets or other artificial devices unless the bill "classifies political subdivisions according to a minimum or maximum population or other criterion that bears a reasonable relation to the purpose of the proposed legislation . . . ." Rule 8, Section 10(b). The Texas Constitution generally prohibits local laws, with some exceptions that are subject to public notice requirements. Tex. Const. art. III, § 56(a) ("The legislature shall not, except as otherwise

provided in this Constitution, pass any local or special law. . . ."). Finally, Rule 11, Section 2 bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or substitute for a measure under debate. Rule 11, Section 2.

Representative Coleman notes that HB 1486 originally applied to all school districts in the state. He asserts that the committee substitute impermissibly added an artificial population bracket to Section 1 of the bill. The bracket in the committee substitute makes the bill apply "only to an independent school district any part of which is located in a county with a population of more than 1.5 million in which more than 75 percent of the population lives in a single municipality." Representative Coleman argues that HB 1486, which everyone agrees is a general law, was transformed by the bracket contained in the committee substitute into a local bill in violation of House Rules 4, 8, and 10 and the Texas Constitution. *See* Rule 4, Section 40; Rule 8, Section 10(b); Rule 11, Section 2; Tex. Const. art. III, § 56(a). He further asserts that this bracket bears no reasonable relation to the purpose of the bill.

HB 1486 would prohibit communication in certain circumstances between members of the board of trustees of an applicable independent school district and "an actual or prospective bidder or offeror relating to a request for proposals or an advertisement for bids . . . ." Although the bracket contained in the committee substitute was not included in the bill as originally filed, the bracket's classification scheme applies uniformly, is broad enough to include a substantial class or geographic area and the membership of the class may expand or contract over time, and is based on characteristics that legitimately distinguish, in relation to the public purpose to be served, the class or area from other classes or areas. *See* 83 H.J. Reg. 2065 (2013) (Stickland point of order on HB 127); *cf.* 83 H.J. Reg. 2828 (2013) (Dutton point of order on Amendment No. 3 to CSHB 1790). Having reviewed the bill and the committee substitute, the chair determines that CSHB 1486 is germane to the bill as filed, is not a local bill, and is not limited in its application by an impermissible artificial device. *See* Rule 4, Section 40; Rule 8, Section 10(b); Rule 11, Section 2; Tex. Const. art. III, § 56(a).

Local Bill Bracket—Limitation by Artificial Device—Sustained
83 H.J. Reg. 2828 (Dutton 5/8/13)

AMENDMENT NO. 3 (CSHB 1790) - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of Amendment No. 3 under Rule 8, Section 10 of the House Rules on the grounds that the bill is limited to one or more subdivisions by means of artificial devices.

The chair sustained the point of order and submitted the following statement:

Representative Dutton raised a point of order against further consideration of Amendment No. 3 to CSHB 1790 under Rule 8, Section 10 alleging the

amendment's "application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name." The prohibition against such measures does not apply if the proposed classification "bears a reasonable relation to the purpose of the proposed legislation . . . ." Rule 8, Section 10(b).

In this case, the proposed amendment would have limited the availability of certain modification procedures for defendants who successfully complete a period of state jail felony community supervision to only a county or a municipality in a county that (1) borders the United Mexican States, and (2) has a population of at least 400,000, and (3) is within 200 miles of the Gulf of Mexico.

For the sake of argument, even if the bracket of the bill was determined not to be an artificial bracket, the limitation proposed in the amendment would fail under the rule because the proposed classification bears no reasonable relation to the purpose of the proposed legislation. Because no argument was advanced on a reasonable relationship between the proposed bracket and the purpose of the bill, the chair finds that whether a county or municipality is "within 200 miles of the Gulf of Mexico" bears no relationship to limiting the availability of certain modification procedures for defendants who successfully complete a period of state jail felony community supervision as outlined in this bill. Accordingly, the point of order is sustained.

Local Bill Bracket—Limitation by Artificial Device
83 H.J. Reg. 2065 (Stickland 4/30/13)

HB 127 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of HB 127 under Rule 8, Section 10 of the House Rules and Article III, Section 56 and Article III, Section 57 of the Texas Constitution on the grounds that the bill is limited to one or more subdivisions by means of artificial devices.

The chair overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of HB 127 under Article III, Section 56 and Article III, Section 57 of the Texas Constitution and Rule 8, Section 10 of the House Rules. Representative Stickland asserts that because the bill's provisions limit its application to one county by means of an artificial device, a population bracket, it is an impermissible bracket bill that functions as a local bill in violation of the Texas Constitution and House Rules. The point of order is respectfully overruled.

The chair in reviewing the bill finds that this classification scheme applies uniformly, is broad enough to include a substantial class or geographic area and that the membership of the class may expand or contract over time, and is based on characteristics that legitimately distinguish, in relation to the public purpose to be served, the class or area from other classes or areas. Therefore, the bill complies with the requirements of the Texas Constitution and Rule 8, Section 10.

Local Bill Bracket—Limitation by Artificial Device—Sustained
80 H.J. Reg. 3162-63 (Thompson 5/4/07)

CSHB 1819 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of CSHB 1819 under Article III, Section 56 of the Texas Constitution

The chair sustained the point of order, and submitted the following statement:

Representative Thompson raises a point of order against further consideration of HB 1819 on the grounds that it contains an artificial classification scheme. The chair sustains the point of order on the grounds that the provisions of the bill relating to the appointment or election of officers for emergency services districts bear no reasonable or rationale relationship to the location of the Sabine river and the population figures described in the bill.

Accordingly, the point of order is well-taken and sustained.

Local Bill Bracket—Limitation by Artificial Device
80 H.J. Reg. 3046-47 (Burnam 5/3/07)

SB 1463 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of SB 1463 under Rule 8, Section 10(b) of the House Rules and Article III, Section 56 of the Texas Constitution on the grounds that the bill is limited to one or more political subdivisions by means of artificial devices.

The speaker overruled the point of order, and submitted the following statement:

Representative Burnam raises a point of order against further consideration of SB 1463 under Rule 8, Section 10(b), House Rules, in that portions of the bill are limited in its application by means of an artificial device. SB 1463 allows the commissioners courts in counties with an airport that is essential to the economy to impose a hotel occupancy tax. The bill then goes on to list or describe factors to be used to determine whether or not an airport is essential to an economy: "For the purposes of this subsection, an airport is considered to be essential to the economy of a county only if the airport is a commercial-service international airport within Class C airspace and is located in a county and owned by a municipality each having a population of less than 125,000."

The test for a classification scheme is one of reasonableness—whether there is a reasonable relationship between the purpose of the law and the classification criteria employed and whether it is reasonable to expect that other entities could fall into the scheme. Under this test, the chair believes that there is a reasonable connection between the criteria described in the bill and the purpose of the law. It is clear that commercial-service international airports have a great deal of

passenger and commercial traffic and that such traffic brings businesspeople, commerce, and tourists to the cities and counties in which they are located. It is also obvious that businesspeople and tourists who land at the airport and visit those places stay in hotels.

Consequently, individuals who stay in those hotels are assessed taxes and other fees (as authorized by counties) and those taxes and fees are a source of revenue to the counties in which the hotel and the airports are located. In short, the classification device proscribed by the bill is reasonable because it relates to the need for a county to get revenue from people who use the airport to travel to the area to conduct business or to visit, and who in doing so stay in hotels in the area. And it is reasonable to assume that other small or midsized counties would eventually want to avail themselves of this tax.

The chair also finds that the population of the city as defined in the bill is reasonable. Both the courts and the presiding officers of the house have held that population as a limiting device does not violate the rule or the constitution if the criteria are open such that the class members and potential class members change over time. In this instance, the bill contains a bracket that is designed to enable smaller to mid-sized counties that are developing and who have an international airport to impose the tax. It is reasonable to assume that counties in addition to those described by the bill would benefit from the tax as the increase in airport traffic increased their need for hotels.

Accordingly, the point of order is overruled.

Local Bill Bracket—Limitation by Artificial Device
78 H.J. Reg. 1707 (Burnam 4/22/03)

CSHB 1567 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of CSHB 1567 under Rule 8, Section 10(b) of the House Rules and Article III, Section 56 of the Texas Constitution, on the grounds that the bill is improperly limited to one or more political subdivisions by means of an artificial device.

The speaker overruled the point of order, speaking as follows:

Representative Burnam raises a point of order against further consideration of CSHB 1567 under Rule 8, Section 10(b), and Article III, Section 56, Texas Constitution, in that the bill is improperly limited to one or more political subdivisions by means of an artificial device.

Section 401.271, Health & Safety Code, as added by Section 4 of the bill, limits the permissible locations of a waste facility, specifically prohibiting the issuance of a license for a site that meets one of five specified criteria. Rule 8, Section 10(b), expressly permits consideration of a bill with such a classification scheme if the classification criteria bears a reasonable relationship to the purpose of the proposed bill.

The point of order challenges the third criteria, excluding from the possible locations for the site counties adjoining specified river segments, which are Devil's River and the Upper and Lower Pecos Rivers. After consultation with the committee chair, the chair finds that those rivers are excluded as the only rivers feeding into the Rio Grande, which is covered by the La Paz Treaty. Exclusion of those counties is reasonable considering the international implications of the possibility of the waste site affecting that river.

Accordingly, the point of order is respectfully overruled.

Local Bill Bracket—Limitation by Artificial Device—Sustained
76 H.J. Reg. 3259-60 (S. Turner 5/25/99)

CSSB 5 - POINT OF ORDER

Representative S. Turner raised a point of order against further consideration of CSSB 5 under Rule 8, Section 10(b) of the House Rules on the grounds that portions of the bill are limited to one or more political subdivisions by means of an artificial device in lieu of identifying the political subdivisions by name.

The speaker sustained the point of order, speaking as follows:

The bill provides a variety of franchise tax credits, including a credit for research and development activities. That credit is doubled for certain activities conducted in a "strategic investment area," which is defined by proposed Section 171.721(2), Tax Code. Section 171.721(D) includes as a strategic investment area a county that meets all of multiple criteria:

> [1] is contiguous on at least three sides to a county with above state average unemployment and below state average per capita income, [2] has a population of less than 750 according to the most recent decennial census, [3] borders the Gulf of Mexico, and [4] has been designated as the site for a spaceport pursuant to the relevant provisions of the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

It is apparent from any reading of the multiple criteria that the classification scheme is designed to target without naming a single or small group of counties. The chair is advised that a single county meets all of the criteria. Rule 8, Section 10(b), permits classification criteria that bear a reasonable relationship to the purpose of the proposed legislation. To find this classification scheme reasonable, the chair would be required to find a distinction between the fact that the county borders another county on three sides—as opposed to merely one or two sides—and find that the distinction is reasonable in relation to qualifying as a strategic investment area.

The chair can find no reasonable basis for the classification criteria employed in this section of the bill. Accordingly, the point of order is well-taken and sustained.

Local Bill Bracket—Limitation by Artificial Device—Sustained
75 H.J. Reg. 4554-55 (Maxey 5/31/97)

HB 1028 - POINT OF ORDER

Representative Maxey raised a point of order against further consideration of the conference committee report on HB 1028 under Rule 8, Section 10(b) of the House Rules on the grounds that the bill employs an artificial device that limits the application of the bill to specific political subdivisions.

The speaker sustained the point of order, speaking as follows:

Representative Maxey raises a point of order against further consideration of HB 1028 under Rule 8, Section 10(b), House Rules, in that the bill contains an artifical classification scheme that limits its application to specific political subdivisions in lieu of identifying those subdivisions by name.

HB 1028 as engrossed extends an existing two-year moratorium on certain annexations. In addition, it expands the class of districts and municipalities subject to the moratorium. Under current law, that class is defined by districts and municipalities with a consent agreement as of the effective date of the law authorizing strategic partnership agreements. HB 1028 moves that date forward nineteen days, from August 27, 1979 to September 15, 1979. The reliance on the date in current law, while creating a closed class, was reasonable in the context of the effective date of new authority for strategic partnership agreements. The only apparent reason for the classification created by HB 1028 is to include within that class specific, identifiable districts that are not named and do not share in the reasonableness of the original classification.

Accordingly, the point of order is well-taken and sustained.

The ruling precluded further consideration of the bill.

Local Bill Bracket—Limitation by Artificial Device—Sustained
75 H.J. Reg. 1667 (Maxey 4/29/97)

CSHB 2230 - POINT OF ORDER

Representative Maxey raised a point of order against further consideration of CSHB 2230 under Rule 8, Section 10(b) of the House Rules on the grounds that the bill employs an artificial device that limits the application of the bill to a single political subdivision.

The speaker sustained the point of order, speaking as follows:

Representative Maxey raises a point of order against further consideration of CSHB 2230 under Rule 8, Section 10(b), in that the bill employs an artificial device that limits the application of the bill to a single political subdivision.

The bill, which provides for a referendum on the MTA tax rate, limits its effect to MTAs confirmed before July 1, 1985 in which the principal municipality has a population of less than 750,000. The July 1 confirmation date excludes the Corpus Christi Metro from the bill, and the population bracket excludes Houston's and San Antonio's MTAs. The bill is thereby limited in application to Austin's Capitol Metro.

Although the rule makes an exception for a classification scheme that bears a reasonable relationship to the purpose of the bill, the chair is unaware of any reasonable relationship between the confirmation date of the MTA and the need for a referendum on the authority's tax rate.

Accordingly, the point of order is well-taken and sustained.

The bill was returned to the Committee on Ways and Means.

Local Bill Bracket—Limitation by Artificial Device—Sustained
74 H.J. Reg. 3292-93 (Saunders 5/23/95)

SB 1697 - POINT OF ORDER

Representative Saunders raised a point of order against further consideration of SB 1697 on the grounds that SB 1697 violates Rule 8, Section 10(b), of the House Rules, and Article III, Section 56, of the Texas Constitution.

The speaker ruled on the point of order, speaking as follows:

Representative Saunders raises a point of order against further consideration of SB 1697 under Rule 8, Section 10(b), and Article III, Section 56, of the Texas Constitution, in that the bill is limited in application by artificial devices.

Following argument from both sides, the chair finds that the classification based on population and annual rainfall is reasonable in relation to the purpose of the bill. Accordingly, that part of Mr. Saunders point of order is respectfully overruled.

However, the bill's additional limiting device, which limits the bill to an existing group of permit holders, creates a closed class that may never be expanded. The chair finds this to effectively make the bill a special or local law in violation of the rules and the constitution.

Accordingly, this part of the Saunders point of order is well-taken and sustained.

Further explanation of this ruling will be entered in the journal, as follows:

The bill is limited in its application to counties with a population of less than 25,000 and an average annual rainfall of less than 18 inches. The chair is advised that there are approximately 19 counties that qualify under that classification scheme. The bill adds a further limiting device by providing that the license may be issued only to a private entity that held a commercial hazardous waste landfill permit on January 1, 1995.

Rule 8, Section 10(b), expressly permits consideration a bill with such a classification scheme if the classification criteria bear a reasonable relation to the purpose of the proposed bill. This standard mirrors that adopted by the courts in applying Article 3, Section 56. The population and rainfall devices arguably serve the reasonable purpose of ensuring that such hazardous waste is disposed of in a scarcely populated area, with low annual rainfall, to protect persons and natural resources.

However, the additional limiting device that the license be issued only to a private entity that already holds a commercial hazardous waste permit limits the application of the bill to one or more current operators. In effect, the group of eligible entities is closed and always will be; no change in situations will allow other permit holders in other counties to qualify. Unless a change in circumstances would permit additional counties and permit holders to qualify, the bill is not general in nature but is in fact a local or special law.

The effect is the same as a bill employing a closed population bracket in which, because the bracket is closed at both ends or by reference to a particular census, no change in population will enable a different political subdivision or group of subdivisions to qualify under the law. The courts and presiding officers have consistently held invalid such closed classifications shemes.

Accordingly, the chair finds that the bill employs an artificial limiting device in violation of Rule 8, Section 10, and Article 3, Section 56, of the Texas Constitution. Accordingly, the point of order is well-taken and sustained.

Delivery of Bills Prior to Consideration

Bills—Delivery Prior to Consideration; Companions
85 H.J. Reg. 3295-97 (Y. Davis 5/11/17)

CSSB 1289 - POINT OF ORDER

Representative Davis of Dallas raised a point of order against further consideration of CSSB 1289 pursuant to House Rule 8, Section 14, on the grounds that a copy of the bill had not been sent to the member at least 36 hours in regular session before the bill can be considered in the house on second reading. The point of order is respectfully overruled.

CSSB 1289 was the senate companion to HB 2780. In fact, it was identical to HB 2780. This is not an uncommon process in the Texas House. In fact, the house bill had been distributed almost two weeks before consideration of the senate companion. The proponent has pointed to no precedent or practice of the house which indicates that the 36-hour time period for a senate companion is not satisfied by the original distribution of the house bill. Further, the proponent has acknowledged that the practice was of long standing.

The proponent also failed to discuss the impact of Rule 6, Section 10, of the House Rules, which requires “the speaker to give the place on the calendar of the

house bill to any senate bill containing the same subject that has been referred to and reported from a committee of the house." *See* 84 H.J. Reg. 2445-46 (2015) (Rinaldi point of order to HB 170).

The point of order is respectfully overruled. Consistent with longstanding house practice and Rule 6, Section 10, the consideration of a senate "companion" to a house bill need not undergo a separate 36-hour layout, regardless of whether the senate bill is identical or merely containing the same subject as described in Rule 6, Section 10, and prior notice of the house bill under Rule 8, Section 14, satisfies the requirement.

Bills Involving State Funds

Calendar Rule—Take-and-Put Provision—Sustained
83 H.J. Reg. 1256 (Y. Davis 4/4/13)

AMENDMENT NO. 21 (CSSB 1) - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of Amendment No. 21 on the grounds that the amendment violates the Committee on Calendars rule.

The chair sustained the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of Amendment No. 21 to CSSB 1, asserting that Amendment No. 21 violates the take-and-put provision of the calendar rule adopted for consideration of the bill. The point of order is sustained. The amendment purported to strike Strategy A.1.4., Film and Marketing, from the bill and then provide over $13 million to Strategy D.2.3, the Texas Women's Health Program. However, Strategy A.1.4 only had about $4.2 million available that could be shifted to another program. Because the amendment attempted to increase an item of appropriation without correspondingly reducing one or more items of appropriation in the bill from the fund or funds against which the appropriation was to be certified, the amendment violated the calendar rule and was out of order. *See* 83 H.J. Reg. 969 (2013) (containing the text of the calendar rule).

The ruling precluded further consideration of Amendment No. 21.

[Note: *See* Rule 6, Section 16(f) regarding adoption of proposed rule for floor consideration. The effect of a rule adopted for floor consideration can be similar to a rule on germaneness; it is possible under Section 16(f) that rules for floor consideration could apply to bills other than appropriations bills.]

Calendar Rule—Take-and-Put Provision—Sustained
80 H.J. Reg. 1271 (Dunnam 3/29/07)

AMENDMENT NO. 1 (CSHB 1) - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of Amendment No. 1 under the Committee on Calendars rule adopted on March 21 on the grounds that the amendment is not revenue neutral.

The speaker sustained the point of order.

The ruling precluded further consideration of Amendment No. 1.

STATEMENT BY SPEAKER CRADDICK

The speaker submitted and had read the following statement regarding pre-filed Texas Enterprise Fund amendments to CSHB 1:

Before we begin, several amendments have been drafted that include reductions to the Texas Enterprise Fund. I wanted to give some background on that fund and its current method of funding.

Prior to the 79th Legislature, funding for the Texas Enterprise Fund consisted of undedicated general revenue funds. However, last session, HB 2421 changed the method of funding of the Enterprise Fund. That bill, authored by Representative Chavez, Representative Villarreal, Representative Castro, and Representative Leibowitz, and which passed the house 141-1, added Subchapter G, Chapter 204, Labor Code, and created an employment and training investment assessment on certain employers of one-tenth of one percent of wages paid by the employer. This assessment is placed in the employment and training investment holding fund, which is a special trust fund outside of the state treasury in the custody of the comptroller, separate and apart from all public money or funds of this state. In this year, 75 percent to the holding fund was transferred to the Texas Enterprise Fund created under Section 481.078, Government Code. I have discussed this matter with LBB and LBB indicates to me that all the funds in this appropriations bill relating to the Enterprise Fund have been transferred by law to special trust funds outside the state treasury and, as such, are not funds against on which the appropriation can be certified.

Therefore, an amendment that used Texas Enterprise Funds to offset an increase in appropriations would not be in order because it would violate that portion of the calendar rule which requires that "any amendment that adds or increases an item of appropriation in Articles I-X is not in order unless the amendment contains an equal or greater reduction in one or more other items of appropriation in one of those articles from the fund or funds against which the appropriation is to be certified." In short, to allow such an amendment would allow an appropriation from general revenue without an offsetting certifiable reduction in general revenue, which is in direct conflict with the calendar rule.

Under this analysis and LBB's view that the Enterprise Fund is a fund outside of the state treasury, the chair rules that the following amendments are out of order: Amendments on Pages 4, 42, 44, 95, 96, 102, 109, 114, 115, 154, 156, 158, 160, and 176 of the prefiled amendments packet.

The chair has also determined that a large portion of the Fund 06 funds are either constitutionally dedicated funds or monies that are statutorily dedicated and not general revenue. As such, the following amendments are out of order: Pages 112, 118, and 206 of the prefiled amendments packet.

Germaneness/One-Subject of Appropriations Bill (Article III, Section 35(a))
83 H.J. Reg. 2008-09 (S. Turner 4/29/13)

AMENDMENT NO. 1 (CSHB 11) - POINT OF ORDER

Representative S. Turner raised a point of order against further consideration of Amendment No. 1 under Rule 8, Section 3 of the House Rules on the grounds that Amendment No. 1 violates the one-subject rule.

The chair overruled the point of order and submitted the following statement:

Representative S. Turner raised a point of order against further consideration of Amendment No. 1 to CSHB 11 under Rule 8, Section 3 of the House Rules. Because Representative Turner's complaint goes not to the bill, but rather to the amendment offered, it is presumed that he was also arguing under Rule 11, Section 2. Representative S. Turner argued that CSHB 11 is a narrow one-subject bill that appropriates money from the economic stabilization fund to fund water. Because the bill has a single subject, the point of order under Rule 8, Section 3 is overruled. He asserts that Amendment No. 1 violates Rule 8, Section 3 and Rule 11, Section 2 by allowing an option to fund water using general revenue. That point of order is also respectfully overruled.

The amendment's provision that water could be funded from general revenue on the condition that the bill did not receive the requisite votes to use economic stabilization funds was incidental to carrying out CSHB 11's purpose of funding water. Because the amendment was consistent with this single subject and did not impermissibly expand the bill by providing an alternative funding source, other than the economic stabilization fund, that was incidental to the main proposition of the bill, it would not have introduced a distinct subject into the bill and, therefore, was not out of order. *See* 45 H.J. Reg. 458 (1937).

Appropriations Bill May Not Change General Law—Sustained
85 H.J. Reg. 1270 (Anchia 4/6/17)

AMENDMENT NO. 150 (CSSB 1) - POINT OF ORDER

Representative Anchia raised a point of order against further consideration of Amendment No. 150 under House Rule 8, Section 4, on the grounds that the amendment attempts to change general law in the appropriations bill. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." A rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law. A provision that "imposes certain reporting requirements or accounting requirements in connection with an appropriation" does not by itself create general law. 80 H.J. Reg. 6907-09 (2007) (Talton point of order on HB 1). However, if the law forbids or does not allow a certain type of reporting, then an amendment requiring that type of reporting would create general law. *See* 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

Representative Anchia asserts the amendment by Representative Stickland creates general law in two ways. First, the amendment would obligate institutions of higher education to collect data on certain students who attend the institution and who are not authorized by federal law to be present in the United States. Second, the amendment would require the Legislative Budget Board to annually calculate the amount of formula funding awarded to institutions of higher education for students who attend the institution of higher education not authorized to be present in the United States. Nothing in general law requires institutions of higher education to collect this data. *See* Tex. Educ. Code Ann. § 54.052 (West 2012 & Supp.). Nor does the Legislative Budget Board have authorization to collect or access to the data in order to make the required calculation, or to make the required calculation. *See* 85 H.J. Reg. 1248 (2017) (S. Davis point of order on Amendment No. 120). Having examined the amendment and the general law, the chair finds that the amendment's new requirements on institutions of higher education and the Legislative Budget Board impermissibly effect a change in general law. *See* 85 H.J. Reg. 1241-42 (2017) (Schofield point of order on Amendment No. 115 to CSSB 1).

Appropriations Bill May Not Change General Law—Sustained
85 H.J. Reg. 1248 (Davis of Harris 4/6/17)

AMENDMENT NO. 120 (CSSB 1) - POINT OF ORDER

Representative Davis of Harris raised a point of order against further consideration of Amendment No. 120 under House Rule 8, Section 4, on the grounds that the amendment attempts to change general law in the appropriations bill. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." A rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law. A provision that "imposes certain reporting requirements or accounting requirements in connection with an appropriation" does not by itself create general law. 80 H.J. Reg. 6907-09 (2007) (Talton point of order on HB 1). However, if the law forbids or does not allow a certain type of reporting, then an amendment requiring that type of reporting would create general law. *See* 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

Representative Davis of Harris asserts that the amendment by Representative Walle creates general law. The amendment in Subsection (c) requires the Department of Family and Protective Services to use the results of a study "to determine the funding level for the department that is appropriate to reduce caseloads." The provision further restricts the Legislative Budget Board's authority to determine the funding level for the department by allowing it to only use the results of the study and the study's recommendation in setting a funding level "appropriate to reduce caseloads." There is no statutory authority that allows such a restriction in Chapter 322 of the Government Code. Additionally, the requirement of the LBB to jointly (rather than independently) determine with another agency that other agency's funding level enacts or amends general law. Having examined the amendment and the general law, the chair finds that the amendment's new requirements on the Legislative Budget Board impermissibly effect a change in general law under Rule 8, Section 4.

Appropriations Bill May Not Change General Law—Sustained
85 H.J. Reg. 1246 (Stickland 4/6/17)

AMENDMENT NO. 119 (CSSB 1) - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of Amendment No. 119 to CSSB 1 under Rule 8, Section 4, of the House Rules on the grounds that the amendment would change general law. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4, states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." While the main amendment did not violate Rule 8, Section 4, the amendment to the amendment did. The amendment to the amendment specifically directed the Health and Human Services Commission to support specific provisions relating to the Affordable Care Act, including pursuing mandatory expansion of health care coverage to certain individuals. Having examined the amendment and the general law, the chair finds that in this case the amendment to the amendment became more than a permissible intent rider and would have effected a change in general law. Accordingly, the point of order is sustained.

Appropriations Bill May Not Change General Law
85 H.J. Reg. 1244-45 (Cain 4/6/17)

AMENDMENT NO. 117 (CSSB 1) - POINT OF ORDER

Representative Cain raised a point of order against further consideration of Amendment No. 117 by Representative Walle under Rule 8, Section 4, of the House Rules on the grounds that the amendment would change general law. The point of order is respectfully overruled.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4, further explains that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law."

The amendment by Representative Walle asks the Health and Human Services Commission to "pursue flexibility from the federal government to reduce the cost of providing Medicaid services" without negatively impacting access to care. The Health and Human Services Commission has wide authority to administer federal Medicaid funds, including the ability to pursue flexibility from the federal government. *See, e.g.*, Tex. Gov't Code Ann. §§ 531.021-531.998 (West 2012 & 2016 Supp.) (Subchapter B. Powers and Duties). The commission has applied for at least 17 examples of flexibility, including waivers and demonstrations. *See* Medicaid State Waiver Website, https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers_faceted.html

After examining the amendment and the portion of general law giving the commission the right to pursue Medicaid flexibility, the chair finds that the amendment does not enact or amend general law. Accordingly, the point of order is respectfully overruled.

Appropriations Bill May Not Change General Law
85 H.J. Reg. 1241-42 (Schofield 4/6/17)

AMENDMENT NO. 115 (CSSB 1) - POINT OF ORDER

Representative Schofield raised a point of order against further consideration of Amendment No. 115 by Representative Howard under Rule 8, Section 4, of the House Rules on the grounds that the amendment would change general law. The point of order is respectfully overruled.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." A rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law. A provision that "imposes certain reporting requirements or accounting requirements in connection with an appropriation" does not by itself create general law. 80 H.J. Reg. 6907-09 (2007) (Talton point of order on HB 1). However, if the law forbids or does not allow a certain type of reporting, then an

amendment requiring that type of reporting would create general law. *See* 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

The amendment by Representative Howard would require the Department of Family and Protective Services to issue a report regarding faith-based partnerships to the legislature, the governor, and the Legislative Budget Board. This reporting requirement does not appear to contradict existing law. Therefore, after examining the amendment and general law, the chair finds that the amendment would not effect a change in current law.

Appropriations Bill May Not Change General Law—Sustained
85 H.J. Reg. 1193-94 (S. Davis 4/6/17)

AMENDMENT NO. 46 (CSSB 1) - POINT OF ORDER

Representative Davis of Harris raised a point of order against further consideration of Amendment No. 46 by Representative Swanson under Rule 8, Section 4, of the House Rules on the grounds that the amendment to the appropriations bill would impermissibly change general law. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." A rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend an existing law and may not impose or conflict with a general law requirement. 79 H.J. Reg. 1437-38 (2005) (Kolkhorst point of order on Amendment No. 8 to CSHB 10). The amendment by Representative Swanson directed the Department of Family and Protective Services to reimburse the payment of automobile liability insurance to former foster children under the age of 21, including former foster children no longer under state care. Foster care payments are regulated in general law, *see* Tex. Fam. Code Ann. §§ 264.101-126 (West 2014) (Subchapter B. Foster Care), which does not address the issue of payment of automobile liability insurance for former foster children. The chair has not been pointed to any other general law that would have allowed such payments. Additionally, Article XVI, Section 6, of the Texas Constitution notes that "[n]o appropriation for private or individual purposes shall be made, unless authorized by this Constitution." After examining the amendment and general law, the chair finds that the amendment would have impermissibly imposed or conflicted with a general law requirement. Accordingly, the point of order is sustained. *See* Rule 8, Section 4.

Appropriations Bill May Not Change General Law—Sustained
85 H.J. Reg. 1192 (Moody 4/6/17)

AMENDMENT NO. 45 (CSSB 1) - POINT OF ORDER

Representative Moody raised a point of order against further consideration of Amendment No. 45 by Representative Swanson to CSSB 1 on the grounds

that the amendment violated Rule 8, Section 4, House Rules. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." A rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not repeal, modify, or amend an existing law nor impose or conflict with a general law requirement. The amendment by Representative Swanson is similar to two bills filed this session, HB 3555 and HB 3558, and would have: 1) required the Department of Family and Protective Services to establish a new grant program, 2) set out specific eligibility requirements, 3) directed new duties for employees of the department, 4) directed the initial duration of the grant, and 5) allowed those grants to be renewed outside of the biennium affected by this bill. Taken together these provisions, at a minimum, amend general law.

The chair has not been directed to any statutory authority allowing creation of the new grant program. Having examined the amendment and general law, the chair finds that the general law would be changed by the amendment. Accordingly, the point of order is sustained.

Appropriations Bill May Not Change General Law—Sustained
85 H.J. Reg. 1182 (Geren 4/6/17)

AMENDMENT NO. 33 (CSSB 1) - POINT OF ORDER

Representative Geren raised a point of order against further consideration of Amendment No. 33 by Representative Hinojosa under Rule 8, Section 4, of the House Rules on the grounds that the amendment would change general law. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4, further states that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." Amendment No. 33 would have imposed a new requirement on the state to reimburse any law enforcement agency, county, or municipality that provides security to a court or court official for certain costs, under certain conditions. Currently, no general law allows for such reimbursement. The amendment further provided for a two-year deadline for requesting reimbursement, which could have fallen outside of the biennium covered by CSSB 1. In light of these features of the amendment, and having examined the amendment and general law, the chair finds that the amendment would have impermissibly effected a change in current law. *See* 84 H.J. Reg. 1138-39 (2015) (Geren point of order on Amendment No. 97 to CSHB 1); 78 H.J. Reg. 1520 (2003) (Thompson point of order on Amendment No. 146 to CSHB 1).

Appropriations Bill May Not Change General Law
85 H.J. Reg. 1146 (Villalba 4/6/17)

AMENDMENT NO. 8 (CSSB 1) - POINT OF ORDER

Representative Villalba raised a point of order against further consideration of Representative Herrero's amendment to CSSB 1 on the grounds that the amendment violated Rule 8, Section 4, House Rules, by changing general law. The point of order is respectfully overruled.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4, states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." The amendment would have prohibited use of appropriated money to pay for or support certain types of programs that would allow a child to use state money for nonpublic primary or secondary education. Representative Villalba contends that the amendment would bind the hands of future legislatures who might want to enact such programs. Representative Herrero responds that since the budget act only affects this legislature, and expires at the end of the biennium, by its terms, it cannot bind the hand of future legislatures, but merely directs the use of funds for the term of the budget proposed in CSSB 1. Having further examined the amendment and general law, the chair finds that the amendment did not change or conflict with general law, but merely details, limits, or restricts the expenditure of funds. *See* 81 H.J. Reg. 1517-18 (2009) (Hartnett point of order on Amendment No. 225 to CSSB 1). Accordingly, the point of order is respectfully overruled.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)
84 H.J. Reg. 1330 (C. Turner 3/31/15)

AMENDMENT NO. 421 (CSHB 1) - POINT OF ORDER

Representative C. Turner raised a point of order against further consideration of Amendment No. 421 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The chair overruled the point of order and submitted the following statement:

A point of order was raised against further consideration of Amendment No. 421 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is respectfully overruled.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4 states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." Having examined the amendment and the general law, the chair finds that the general law is not changed by a provision in the appropriations bill. Accordingly,

the point of order is respectfully overruled. *See* Rule 8, Section 4; 83 H.J. Reg. 1351-52 (2013) (Cortez point of order on Amendment No. 158); 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

Appropriations Bill May Not Change General Law (Rule 8, Section 4)
84 H.J. Reg. 1235 (Phillips 3/31/15)

AMENDMENT NO. 243 (CSHB 1) - POINT OF ORDER

Representative Phillips raised a point of order against further consideration of Amendment No. 243 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The speaker overruled the point of order and submitted the following statement:

A point of order was raised against further consideration of Amendment No. 243 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is respectfully overruled.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4 states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." Having examined the amendment and the general law, the chair finds that the general law is not changed by a provision in the appropriations bill. Accordingly, the point of order is respectfully overruled. *See* Rule 8, Section 4; 83 H.J. Reg. 1351-52 (2013) (Cortez point of order on Amendment No. 158); 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

Appropriations Bill May Not Change General Law (Rule 8, Section 4)
84 H.J. Reg. 1234 (Phillips 3/31/15)

AMENDMENT NO. 242 (CSHB 1) - POINT OF ORDER

Representative Phillips raised a point of order against further consideration of Amendment No. 242 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The speaker overruled the point of order and submitted the following statement:

A point of order was raised against further consideration of Amendment No. 242 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is respectfully overruled.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4 states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law."

Having examined the amendment and the general law, the chair finds that the general law is not changed by a provision in the appropriations bill. Accordingly, the point of order is respectfully overruled. *See* Rule 8, Section 4; 83 H.J. Reg. 1351-52 (2013) (Cortez point of order on Amendment No. 158); 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

Appropriations Bill May Not Change General Law (Rule 8, Section 4)
84 H.J. Reg. 1233 (E. Rodriguez 3/31/15)

AMENDMENT NO. 241 (CSHB 1) - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of Amendment No. 241 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The chair overruled the point of order and submitted the following statement:

A point of order was raised against further consideration of Amendment No. 241 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is respectfully overruled.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4 states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." Having examined the amendment and the general law, the chair finds that the general law is not changed by a provision in the appropriations bill. Accordingly, the point of order is respectfully overruled. *See* Rule 8, Section 4; 83 H.J. Reg. 1351-52 (2013) (Cortez point of order on Amendment No. 158); 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

Appropriations Bill May Not Change General Law (Rule 8, Section 4)—Sustained
84 H.J. Reg. 1232-33 (Phillips 3/31/15)

AMENDMENT NO. 240 (CSHB 1) - POINT OF ORDER

Representative Phillips raised a point of order against further consideration of Amendment No. 240 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The chair sustained the point of order and submitted the following statement:

A point of order was raised against further consideration of Amendment No. 240 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4

states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." The amendment by Representative Leach would have disallowed the Department of Transportation or a local toll project entity from using funds appropriated "for a project to convert a high occupancy vehicle lane to a toll lane, unless a design or construction contract for the project was entered into before September 1, 2015." Having examined the amendment and the general law, the chair finds that the amendment's limitation placed upon local toll project entities would have impermissibly effected a change in general law. Accordingly, the point of order is sustained. *See* Rule 8, Section 4; 83 H.J. Reg. 1351-52 (2013) (Cortez point of order on Amendment No. 158); 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

The ruling precluded further consideration of Amendment No. 240.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)—Sustained
84 H.J. Reg. 1231-32 (Phillips 3/31/15)

AMENDMENT NO. 239 (CSHB 1) - POINT OF ORDER

Representative Phillips raised a point of order against further consideration of Amendment No. 239 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The chair sustained the point of order and submitted the following statement:

A point of order was raised against further consideration of Amendment No. 239 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4 states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." The amendment by Representative Leach would have disallowed the Department of Transportation from using funds appropriated for "the planning or construction of a tolled highway for which a design or construction contract was not entered into before September 1, 2015," or for "the conversion of a non-tolled highway to a tolled highway for which a design or construction contract was not entered into before September 1, 2015," unless the governor and a majority of each house of the legislature approve the expenditure. Having examined the amendment and the general law, the chair finds that the amendment's grant of such authority to the governor would have impermissibly effected a change in general law. Accordingly, the point of order is sustained. *See* Rule 8, Section 4; 83 H.J. Reg. 1351-52 (2013) (Cortez point of order on Amendment No. 158); 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

The ruling precluded further consideration of Amendment No. 239.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)—Sustained
84 H.J. Reg. 1138-39 (Geren 3/31/15)

AMENDMENT NO. 97 (CSHB 1) - POINT OF ORDER

Representative Geren raised a point of order against further consideration of Amendment No. 97 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The chair sustained the point of order and submitted the following statement:

Representative Geren raised a point of order against further consideration of Amendment No. 97 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is sustained.

Under Rule 8, Section 4, "[a] general law may not be changed by the provisions in an appropriations bill." Explanatory Note 2 to Rule 8, Section 4 states further that "a rider to an appropriations bill may detail, restrict, or limit the expenditure of appropriated funds, but may not enact or amend general law." The amendment by Representative Coleman would have required the Legislative Budget Board's approval before "an agency may use funds appropriated to implement management actions which defund or alter programs in a manner inconsistent with the funding considerations, when the funds were appropriated without the enactment of specific legislation by the Eighty-Fourth Legislature, Regular Session . . . ." In this instance, the amendment would have given ambiguous and unspecified actors within a Health and Human Services agency the authority to use appropriated funds in order to implement management actions under certain circumstances. Furthermore, this amendment's provision regarding the limitation of appropriated funds without prior approval under authority already granted under Chapter 531 of the Government Code is in violation of general law. *See* Tex. Gov't Code Ann. §§ 531.005, .0055(e)(1) (West 2003). Because the amendment would have impermissibly effected a change in general law, the point of order is sustained. *See id.*; Rule 8, Section 4; 83 H.J. Reg. 1351-52 (2013) (Cortez point of order on Amendment No. 158); 83 H.J. Reg. 1360-61 (2013) (C. Turner point of order on Amendment No. 175).

The ruling precluded further consideration of Amendment No. 97.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)—Sustained
83 H.J. Reg. 1360-61 (C. Turner 4/4/13)

AMENDMENT NO. 175 (CSSB 1) - POINT OF ORDER

Representative C. Turner raised a point of order against further consideration of Amendment No. 175 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The speaker sustained the point of order and submitted the following statement:

Representative C. Turner raised a point of order against further consideration of Amendment No. 175 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law. The point of order is sustained. The amendment by Representative Perry provided for a study on unfunded liabilities by the state auditor's office (SAO), and required the SAO to determine the unfunded retirement obligations of several retirement systems, including the Texas Municipal Retirement System and the Texas County and District Retirement System. Because the SAO currently lacks the authority to audit these two retirement systems, *see* Tex. Gov't. Code § 321.013 (listing powers and duties of the state auditor), the amendment would have impermissibly effected a change in general law. *See* Rule 8, Section 4 ("A general law may not be changed by the provisions in an appropriations bill"); 43 H.J. Reg. 1090 (1933) (sustaining a point of order because the amendment attempted to amend a statute through an appropriations bill). Representative Perry noted that he had an amendment to the amendment which would have cured the defect, but because the point of order was raised before the defect was cured, the point of order was sustained. *See* Rule 1, Section 9(c) (prohibiting further consideration of any matter that is the subject of a question of order or any other matter while the question of order is pending).

Appropriations Bill May Not Change General Law (Rule 8, Section 4)—Sustained
83 H.J. Reg. 1351-52 (Cortez 4/4/13)

AMENDMENT NO. 158 (CSSB 1) - POINT OF ORDER

Representative Cortez raised a point of order against further consideration of Amendment No. 158 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The chair sustained the point of order and submitted the following statement:

Representative Cortez raised a point of order against further consideration of Amendment No. 158 under Rule 8, Section 4 of the House Rules on the grounds

that the amendment would change general law. The point of order is sustained. The amendment would have required a state agency, when purchasing any goods or services, to give first preference to individuals or entities that use the E-verify program, which verifies the work authorization status of a newly hired employee. However, provisions of existing law already specify factors that governmental agencies must consider in awarding contracts. *See, e.g.*, Tex. Gov't. Code § 2156.125 (stating that a "state agency shall make a written award of a contract to the offeror whose proposal offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and the evaluation factors in the request for proposals"). Requiring state agencies to give a "first preference" to those using the E-verify program instead of or in addition to considering the factors provided by existing law would have impermissibly effected a change in general law. Therefore, the amendment was out of order. *See* Rule 8, Section 4 ("A general law may not be changed by the provisions in an appropriations bill"); 43 H.J. Reg. 1090 (1933) (sustaining a point of order because the amendment attempted to amend a statute through an appropriations bill).

Appropriations Bill May Not Change General Law (Rule 8, Section 4)
81 H.J. Reg. 1517-18 (Hartnett 4/17/09)

AMENDMENT NO. 225 (CSSB 1) - POINT OF ORDER

Representative Hartnett raised a point of order against further consideration of Amendment No. 225 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The speaker overruled the point of order and submitted the following statement:

Representative Hartnett raised a point of order against further consideration of Amendment No. 225 in that the amendment would change general law in violation of Rule 8, Section 4 of the House Rules. Amendment No. 225 would add the following rider to Article X of SB 1:

Condition for Certain Salaries. The appropriation made herein for the salary for an executive director shall not be paid to an executive director who is not an attorney licensed to practice law in this state.

While Section 323.005(b), Government Code, does allow the legislative council to "determine the salaries of its assistants and employees," no mention is made in general law of an executive director of the staff of the council, and no qualifications are provided in general law for any assistant or employee of the council. Accordingly, the rider does not conflict with general law. The rider is permissible if the rider details, limits, or restricts the expenditure of funds. See Texas Attorney General Opinion No. 1254 (1951).

The Texas House has previously found that a proposed amendment that would add a rider to an appropriation to the Treasury Department that limited payment

to clerks who were related to the treasurer was germane to the bill because the amendment "is a condition attached to an appropriation, upon failure to comply with which the appropriation will cease to be effective." The clerks were not statutory officers, "but merely employees filling places created by the biennial appropriation bill." House Journal, 29th Legislature, First Called Session (1905), page 94 (1905)

Because the rider does not conflict with general law and the similarity with the prior house precedent, the chair finds the rider does not violate Rule 8, Section 4 of the House Rules.

The point of order is respectfully overruled.

Appropriations Bill May Not Change General Law (Rule 8, Section 4); Enrolled Bill Doctrine
80 H.J. Reg. 6907-09 (Talton 5/27/07)

HB 1 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of HB 1 under Rule 8, Section 4 of the House Rules on the grounds that the bill would change general law.

. . .

The speaker overruled the point of order, and had read the following statement:

Representative Talton raises a point of order against further consideration of the conference committee report for HB 1 (the General Appropriations Bill) on the grounds that the bill violates Rule 8, Section 4, of the House Rules. Specifically, the point of order claims that the bill makes changes in general law. Rule 8, Section 4, states that general law may not be changed by a provision in an appropriations bill.

Under the enrolled bill doctrine almost all procedural requirements of the House Rules and even many constitutional procedural requirements applicable to the house of representatives may be effectively enforced only by the house. However, Rule 8, Section 4, is different. It is a substantive requirement on what may be contained in a general appropriations bill and furthermore it is a requirement that may also be enforced by the Texas courts and the attorney general. The duty to enforce this substantive requirement is a shared duty. This is because Rule 8, Section 4, is in its practical effect identical to Article III, Section 35a, of the Texas Constitution (the constitutional "one-subject" or "unity of subject" rule). Article III, Section 35a, reads as follows:

> (a) No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

As applied to a general appropriations bill, the Texas courts and attorney

general opinions based on court opinions have long made clear that under Article III, Section 35a, the subject of a general appropriations bill is the appropriation of state funds. Only an appropriation or a provision incident to an appropriation, such as a provision that details, limits, or restricts how appropriated money may be spent or that imposes certain reporting or accounting requirements in connection with an appropriation, fit within the bill's one subject of appropriations. A provision of a general appropriations bill that actually changes general law, for example by directly setting the amount of a fee or transferring money from a dedicated fund to an undedicated fund, is not within the bill's one subject of appropriations and therefore violates Article III, Section 35a. Therefore Rule 8, Section 4, of the House Rules and Article III, Section 35a of the Texas Constitution are identical in their effect.

The precedents readily available to the chair indicate that Rule 8, Section 4, has been applied to strike an amendment to a general appropriations bill and to strike from an amendable version of a bill a provision that changes general law in violation of Rule 8, Section 4, and Article III, Section 35a. There are many examples of attorney general opinions and court cases that likewise invalidate a provision of a General Appropriations Act without invalidating the entire Act. However, though it is probable that a point of order under Rule 8, Section 4, and Article III, Section 35a, could have been raised against some previous conference committee reports for a general appropriations bill, the chair is not aware of a circumstance in which a point of order under Rule 8, Section 4, against further consideration of an entire conference committee report for a general appropriations bill has been made and sustained.

Under Rule 8, Section 4, the chair in response to a proper point of order may effectively invalidate a portion of an amendable general appropriations bill or substitute bill that is in violation of that rule and Article III, Section 35a. Under Article III, Section 35a, the courts in a proper case and the attorney general in response to a proper request for an opinion may effectively invalidate a portion of a General Appropriations Act without invalidating the entire Act.

However, under Rule 13, Section 12, a conference committee report is not subject to amendment but must be accepted or rejected in its entirety. Based on long practice in this house and by the attorney general and the courts, the chair does not believe it is the intent of Rule 8, Section 4, and Article III, Section 35a, considered together, to invalidate a general appropriations bill or General Appropriations Act in its entirety.

Additionally, as a general matter given the time available to deal with a bill as large and complex as the conference committee report for the general appropriations bill at the end of a session, there will not be time to properly determine whether a provision in a general appropriations bill makes a change in general law. What appears to be an invalid imposition on a state official of a general law duty may be a valid condition precedent to spending appropriated money, or a valid though non-binding expression of legislative intent, or a valid reporting or accounting requirement incident to an appropriation. For example,

the provision cited in Mr. Talton's point of order regarding the fees set by the Residential Construction Commission may be construed as an expression of legislative intent that the fees be set at the maximum amounts allowed by statute. In addition, a provision that is indeed general law may not make a change in general law because it is surplusage, it repeats a provision that already exists in law. There is more time to properly deal with these matters in the house of representatives when the general appropriations bill is at an earlier stage in the legislative process.

Accordingly, the chair declines to sustain a point of order under Rule 8, Section 4, against further consideration of an entire general appropriations bill that is before the house in the form of a conference committee report that may not be amended when the courts in a proper case of the attorney general in response to a proper request for an opinion may under Article III, Section 35a, invalidate any individual provision of the bill that is in violation of Rule 8, Section 4, and Article III, Section 35a.

Accordingly, the point of order is respectfully overruled.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)
80 H.J. Reg. 1300 (Dunnam 3/29/07)

AMENDMENT NO. 43 (CSHB 1) - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of Amendment No. 43 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The chair overruled the point of order and submitted the following statement:

Amendment No. 43 would require the prior approval by the Legislative Budget Board and the governor of certain expenditures of funds by the Health and Human Services Commission related to immunization against human papillomavirus for admission to school. Such prior approval of the expenditure of state funds through a rider to a general appropriations act is specifically authorized by Section 69, Article XVI, Texas Constitution. In addition, the imposition of a requirement for administrative approval of the expenditure of funds is within the subject of the general appropriations act and does not change general law.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)
80 H.J. Reg. 1269 (Talton 3/29/07)

AMENDMENT NO. 1 (CSHB 1) - POINT OF ORDER

Representative Talton raised a point of order against further consideration of Amendment No. 1 under Rule 8, Section 4 of the House Rules on the grounds that the amendment would change general law.

The speaker overruled the point of order, and had read the following statement:

The chair respectfully overrules the point of order because the rider is only effective to the "extent allowed by state and federal law." Therefore, if the rider conflicts with the statute, it has no effect.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)—Sustained
79 H.J. Reg. 1437-38 (Kolkhorst 4/6/05)

AMENDMENT NO. 8 (CSHB 10) - POINT OF ORDER

Representative Kolkhorst raised a point of order against further consideration of Amendment No. 8 under Rule 8, Section 4 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the amendment changes general law.

The speaker sustained the point of order and submitted the following ruling:

Representative Kolkhorst raised a point of order against further consideration of Representative Gallego's amendment to CSHB 10 on the grounds that the amendment violated Article III, Section 35 of the Texas Constitution and Rule 8, Section 4, House Rules. Both the constitutional provision and the house rule states that a general law "may not be changed by the provisions in an appropriations bill."

CSHB 10 provides supplemental appropriations for higher education in the current biennium. The Gallego amendment, in its pertinent section, contains a restriction that an institution of higher education may not expend any revenue appropriated to the institution during the next biennium "if the total amount of tuition under Section 54.0513, Education Code, and mandatory fees charged to a student by the institution" exceed certain percentages compared to previous academic years. Representative Kolkhorst noted, and the chair agrees, that the net effect of the Gallego amendment would have been to impound money raised over a certain dollar amount and that those impounded funds could not be available for use in the General Appropriation Act, in effect reducing the sum of money available for the general appropriations.

First, it should be noted that the amendment dealt with a higher education appropriations in the next biennium and that CSHB 10 only dealt with the higher education appropriations in the current biennium, the amendment would not have been germane.

Additionally, the setting of and collection of tuition is a unique and complicated area of state law. The general law specifically designates to the governing body of institutions of higher education the ability to charge an amount of tuition considered "necessary for the effective operation of the institution."

Further, there are unique and complicated provisions in general law relating to the accounting and use of tuition funds collected.

As a general rule, an amendment or rider to an appropriations bill may not repeal, modify, or amend an existing law and may not impose or conflict with a general law requirement. *State v. Steele*, 57 Tex. 203 (1882); *Moore v. Shepard*, 192 S.W.2d 559 (Tex. 1946).

It has been pointed out, as early as 1882, that the majority of riders that have been stricken to appropriations acts are those that attempt to modify or amend a general statute. Each decision on whether an amendment violates the constitutional provision and house rule turns on the nature of the amendment and the nature of the general law restriction. See *State v. Steele*, 57 Tex. 203 (1882).

Under Article III, Section 35, of the Texas Constitution, an appropriations bill may only appropriate money and direct, limit, or control the expenditures of money appropriated by that bill. See Attorney General's Opinion V-1254 (1951). Because the amendment purports to control the expenditure of funds that were not appropriated by CSHB 10, the amendment effectively constitutes a general law restriction on the use of funds and therefore was not in order.

Also, there is a general law requirement affected by Mr. Gallego's amendment. Section 54.0513, Education Code, is a unique provision of state law. Subsection (c) describes tuition collected by institutions of higher education are "institutional funds" and are accounted for as "designated funds." "These funds shall not be accounted for in a general appropriations act in such a way as to reduce the general appropriations."

It is the opinion of the chair that Representative Gallego's amendment conflicted with the general law requirement contained in the provisions of Section 54.0513, Education Code, so that the amendment would have the effect of accounting for the funds "in such a way as to reduce the general appropriations."

Because the amendment was not germane and violated Rule 8, Section 4, the point of order is well taken and sustained; Attorney General Opinion M-1199; Attorney General Opinion DM-81 (1992).

The ruling precluded further consideration of Amendment No. 8.

Appropriations Bill May Not Change General Law (Rule 8, Section 4)—Sustained
78 H.J. Reg. 1520 (Thompson 4/15/03)

AMENDMENT NO. 146 (CSHB 1) - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of Amendment No. 146 under Rule 8, Section 4 of the House Rules and Article III, Section 35(a) of the Texas Constitution on the grounds that the amendment would change general law in the appropriations bill.

The chair sustained the point of order, speaking as follows:

Ms. Thompson raises a point of order against further consideration of the Howard Amendment on the grounds that it violates both the Texas Constitution and the House Rules by attempting to change general law in the appropriations bill.

Ms. Thompson correctly states that the rule that a general law may not be changed in the appropriations bill is both well established in House Precedent (See Explanatory Note 2 and House Precedents following Rule 8, Section 4, House Rules). Ms. Thompson is also correct in noting that, in order to comply with this rule, a rider may only detail, limit, or restrict the use of appropriated funds.

The chair finds that the Howard Amendment violates Rule 8, Section 4 of the House Rules because it imposes a general law requirement by requiring the Department of Health to establish a new program. Representative Howard's Amendment authorizes the appropriation of state funds for "a program for alternative pregnancy options." Under the House Rules, this requirement must be imposed by general law. The chair can find no such general law, nor does the chair find any language in the amendment that makes its enactment contingent upon the passage of any legislation.

Therefore, Ms. Thompson's point of order is sustained.

Consideration of Bills Involving State Funds (Rule 8, Section 21)—Sustained
85 H.J. Reg. 2664-65 (Cain 5/5/17)

CSHB 3772 - POINT OF ORDER

Representative Cain raised a point of order against further consideration of CSHB 3772 pursuant to Rule 8, Section 21(a), on the grounds that the bill diverts funds from the state treasury from the general revenue fund to another fund.

House Rule 8, Section 21(a), provides:

> In order to assure the continuation of financial support of existing state services through the passage of the general appropriations bill, it shall not be in order during the first 118 days of the regular session for the speaker to lay before the house, prior to the consideration, passage, and certification by the comptroller of the general appropriations bill, any bill that directly or indirectly prevents from being available for purposes of funding state government generally any money that under existing law would otherwise be available for that purpose, including a bill that transfers or diverts money in the state treasury from the general revenue fund to another fund.

CSHB 3772 would create the Texas Leverage Fund and move the current Leverage Fund outside the treasury. Representative Cain correctly observes that the bill is on the floor prior to the 119th day of the legislative session and that the general appropriations bill has not yet been passed and certified by the

comptroller. As a result, the transfer of money from the current fund, which currently operates out of a General Revenue-Dedicated account, into the new fund outside the treasury held in trust by the comptroller, runs afoul of Rule 8, Section 21(a). *See* 83 H.J. Reg. 2019 (2013) (S. Turner point of order on CSHB 11). The point of order is sustained.

CSHB 3772 was returned to the Committee on Economic and Small Business Development.

Consideration of Bills Involving State Funds (Rule 8, Section 21)
83 H.J. Reg. 5112-13 (Simpson 5/26/13)

HB 1025 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of HB 1025 under Rule 8, Section 21(b) of the House Rules on the grounds that the general appropriations bill has not yet been certified by the comptroller.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raises a point of order against further consideration of HB 1025 under Rule 8, Section 21(b) of the House Rules. Rule 8, Section 21(b) states:

> (b) In order to assure compliance with the limitation on appropriations of state tax revenue not dedicated by the constitution as provided by Article VIII, Section 22 of the Texas Constitution, it is not in order for the speaker to lay before the house, prior to the time that the general appropriations bill has been finally passed and sent to the comptroller, any bill that appropriates funds from the state treasury that are not dedicated by the constitution.

The point of order is overruled. HB 1025 (like HB 10 and SB 1) is a general appropriations bill. Under the terms of Rule 8, Section 21(b), the rule does not apply to a general appropriations bill.

Consideration of Bills Involving State Funds (Rule 8, Section 21)—Sustained
83 H.J. Reg. 2019 (S. Turner 4/29/13)

CSHB 11 - POINT OF ORDER

Representative S. Turner raised a point of order against further consideration of CSHB 11 under Rule 8, Section 21 of the House Rules on the grounds that the general appropriations bill has not yet been certified by the comptroller.

The speaker sustained the point of order and submitted the following statement:

Representative S. Turner raised a point of order against further consideration of CSHB 11 and the amendment under consideration pursuant to Rule 8, Section 21 of the House Rules. The point of order is sustained.

Representative S. Turner has directed the chair to house precedent in which a point of order under Rule 8, Section 21(a) was sustained. The chair also reviewed house precedent in which a point of order under Rule 8, Section 21(a) was overruled. *See* 80 H.J. Reg. 1475-76 (2007). Having reviewed the specific facts surrounding this bill and amendment and the rule, the chair agrees that the point of order should be sustained and CSHB 11 should be returned to the Committee on Appropriations.

CSHB 11 was returned to the Committee on Appropriations.

Consideration of Bills Involving State Funds (Rule 8, Section 21)
81 H.J. Reg. 2383-84 (S. Turner 5/4/09)

CSHB 469 - POINT OF ORDER

Representative S. Turner raised a point of order against further consideration of CSHB 469 under Rule 8, Section 21 of the House Rules on the grounds that the general appropriations bill has not yet been certified by the comptroller.

The speaker overruled the point of order and submitted the following statement:

Representative S. Turner raised a point of order against further consideration of CSHB 469 on the grounds that it diverts state revenue in violation of Rule 8, Section 21 of the House Rules. Mr. Turner specifically argues that the reduction of the oil production tax rate in the franchise tax from 4.6 percent to 1.15 percent for certain producers and the costs associated with this reduction is a diversion of funds in direct violation of the rule.

Explanation of Rule 8, Section 21. Rule 8, Section 21 is intended to allow biennial appropriations bills that are essential for the operation of state government to pass both houses before other legislation is adopted that would prematurely redirect state money. (*See e.g.*, the explanatory note from the 1983 House Rules noting that this provision was strictly construed by presiding offers to "bar consideration of bills which appropriated, re-appropriated, or transferred funds until after the general appropriations bill has been passed.").

Rule 8, Section 21 is not intended to presumptively delay consideration of every bill that has a cost or a fiscal note since much of that legislation will eventually be funded in the General Appropriations Act ("GAA"). Rather, Rule 8, Sections 21(a) and (b) are intended to substantially delay consideration of the narrow class of bills that could pre-empt the GAA by: (1) moving funds outside of the state treasury; or (2) making a dedicated appropriations in a bill other than in a supplemental or general appropriations bill.

In addition to its limited applicability, the rule specifically exempts four types of bills from its provisions, even if they divert money from general government

purposes, and those exceptions have existed in the rules since at least 1983. The current rules state:

> (e) Subsections (a)-(d) of this section shall not apply to any bills providing for:
>
> (1) the payment of expenses of the legislature;
>
> (2) the payment of judgments against the state;
>
> (3) any emergency matter when requested by the governor in a formal message to the legislature; or
>
> (4) the reduction of taxes.

See Rule 8, Section 21(e) of the House Rules.

Application of the Rule to CSHB 469. CSHB 469 authorizes a franchise tax credit for businesses that implement clean energy projects in Texas. Under the bill, the credit is only issued after the business complies with certain conditions and the total amount of the credit is capped at the lesser of 10 percent of the capital cost of the project, or $100 million. In addition, the bill provides that the franchise tax credit is a credit against any franchise taxes that may be assessed against the income generated by a clean energy project.

CSHB 469 neither transfers revenue nor appropriates money to cover the cost of the franchise tax credit that is authorized under the bill. It simply reduces the amount of currently available state revenue by reducing the tax liabilities of businesses that develop clean energy projects in the state. This reduction does not constitute an appropriation in violation of the rule. (See e.g., 56th Legislature, Regular Session (1959), House Journal, page 561, in which the chair overruled a point of order against a violation of the rule on the grounds that the bill neither used the term "appropriated" nor by its terms actually set aside funds for a particular purpose.)

Secondly, CSHB 469 is protected by Subsection (e) of the rule because the tax credit that is authorized by the bill constitutes a "reduction of taxes." While the chair can find no precedent that directly construes Rule 8, Section 21(e)(4) or that defines the term "reduction of taxes" as used in the rule, it is clear from the plain meaning of the words that a reduction in taxes, regardless of the method, has the effect of reducing tax liability (i.e., the amount of taxes that a party must pay the state). By its own terms, an authorized tax credit also reduces the amount of money that a party must pay the state. The chair finds that CSHB 469 is not captured by the rule, and overrules the point of order. This finding is based only on the meaning of the term "reduction of taxes" as contained in the rule.

Accordingly, the point of order is respectfully overruled.

Consideration of Bills Involving State Funds (Rule 8, Section 21)—Sustained
80 H.J. Reg. 1475-76 (Talton 4/2/07)

HB 551 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of HB 551 under Rule 8, Section 21(a) of the House Rules on the grounds that the general appropriations bill has not yet been certified by the comptroller.

The speaker sustained the point of order, and submitted the following statement:

Representative Talton raises a point of order against further consideration of HB 551 (by Representative Turner) on the grounds that the bill violates Rule 8, Section 21(a), House Rules. The chair finds that HB 551 is captured by Rule 8, Section 21(a) and thereby sustains the point of order.

This is not a new rule or restriction of legislative consideration of bills affecting the appropriations bill. While the chair could find no prior ruling regarding Rule 8, Section 21(a), it is clear that the rule has existed in some form since 1963 (then as a joint house and senate rule). In explaining the purpose of the rule, Joint Rule 9-a from the 58th Legislature (1963) stated: This rule is intended to assure prior consideration and passage of the biennial appropriation bills required for the support of the several departments of the state government and shall be strictly adhered to, and no appropriation bill for any other purpose shall be considered until the biennial appropriations bills . . . have been passed by both houses.

An explanatory note from the 1983 House Rules indicates that this rule was strictly construed by speakers to "bar consideration of bills which appropriated, re-appropriated, or transferred funds until after the general appropriation bill has been passed . . . ." This history indicates that rule was designed to prevent premature consideration of bills that would "directly or indirectly" divert state money to a particular purpose that would otherwise be available to fund state government generally.

The chair notes that the intent of the rule is not to presumptively delay the consideration of every bill simply because it has a fiscal note. In fact, much of that legislation will eventually be funded in the appropriations bill should the legislature choose to do so. Rather, the rule is intended to impact only the narrow class of bills that could preempt the appropriations bill by moving funds outside of the treasury (as is the case with HB 551) or by making a specific or dedicated appropriation in a bill other than in a supplemental or general appropriations bill. This, in effect, is why the rule prohibits consideration of those bills "during the first 118 days of the session."

HB 551 takes money out of general revenue that has been used, at least in part, to fund state government generally and diverts it to a trust fund outside of the state treasury. As the author of the bill has indicated, the purpose of the bill is to prevent money generated by the system benefit fund from being "swept" into general revenue or used for any other government purpose. (The chair notes that such an act has the additional effect of taking funds away from certification of the general appropriations bill). The purpose that HB 551 seeks to achieve is exactly what the rule is intended to prevent.

Like its 1963 and 1983 predecessors, Rule 8, Section 21(a) is a harsh rule. Regretfully, the chair can find no exception under Rule 8, Section 21(a) that would give relief to HB 551. The result of the rule is that a bill that violates Rule 8, Section 21(a) and that is not otherwise exempt from the rule would be in order no earlier than May 7, 2007. Because of the harshness of the rule and in order to ensure that each bill receives due consideration by the house, the chair believes that each bill that is the subject of a point of order under Rule 8, Section 21(a) must be substantively analyzed by the terms of its own language. Accordingly, the point of order is well-taken and sustained.

HB 551 was returned to the Committee on Regulated Industries.

Other explanations addressing consideration of bills involving state funds:
80 H.J. Reg. 521-22 (Dunnam 2/20/07), *supra* at 176-77 (discussing a resolution to exceed the constitutional spending limit)
80 H.J. Reg. 520-21 (Y. Davis 2/20/07), *supra* at 177-78 (discussing a resolution to exceed the constitutional spending limit)

Timely Filing of Amendment to General Appropriations Bill—Sustained
85 H.J. Reg. 1239-40 (S. Davis 4/6/17)

AMENDMENT NO. 114 (CSSB 1) - POINT OF ORDER

Representative S. Davis raised a point of order against further consideration of Amendment No. 114 to CSSB 1 pursuant to the adopted calendar rule for CSSB 1 on the grounds that the amendment was untimely filed. The point of order is sustained.

House Rule 11, Section 6(h), requires that ten copies of an amendment be provided to the chief clerk and made available in the chief clerk's office at least 72 hours prior to the time the calendar on which the general appropriations bill appears for second reading is first eligible for consideration. The calendar on which CSSB 1 appeared was first eligible for consideration on April 6, 2017, at 10:00 a.m., meaning that, under the house rules, amendments to CSSB 1 were due by 10:00 a.m. on Monday, April 3, 2017.

Similarly, the body adopted a calendar rule providing that "All original amendments that will be offered during second reading consideration of the bill must be filed with the chief clerk by 10:00 a.m. on Monday, April 3rd, 2017." On the same day the members adopted this calendar rule, a motion was made to suspend both the house rules and the calendar rule and to extend the time for members to file amendments to 5:00 p.m. on April 3. The motion failed. The chair announced that the chief clerk's office would be open to accept amendments during regular business hours, for a three-hour block on Sunday evening, and on Monday, April 3, beginning at 7:30 a.m.

Indeed, the chief clerk's office was open at all of the times specified by the chair. As amendments were filed, the chief clerk's staff, in order to give the people who filed the amendments some record that the amendments had been received by the chief clerk's office for inclusion in the amendment packet, stamped four copies of each amendment with the one hand-held time stamp the chief clerk's office owns.

On Monday, April 3, 2017, the chief clerk, his staff, and members of the parliamentarian's office were in the chamber before 10:00 a.m. as house members and staff came into the house chamber to file amendments. By 9:00 a.m. on Monday, the chief clerk's office had received, stamped, and scanned approximately 75 amendments. About 325 of the 402 amendments that were filed for CSSB 1 were brought to the office between 9:00 a.m. and 10:00 a.m. on April 3, and each of these was also received, stamped, and scanned into the floor amendment system. However, moments before 10:00 a.m., when the last person arrived to file an amendment, there were still over a dozen people in line waiting for the chief clerk's staff to accept and process their amendments. The house staff in attendance identified the last person in line (in a similar manner to an election judge who marks a voter who arrives before the polls close and who does not actually cast a vote until after the polls close) and observed that the last person to arrive before 10:00 a.m. did not have his amendment stamped by the chief clerk's office until 10:05 a.m.

The chief clerk's office timely, efficiently, and professionally handled the largest set of amendments for any bill of the session and overcame limitations of staff size, equipment provided to the clerk, and the volume of filings that occurred in the last hour, handling and placing over 1,200 impressions on over 300 bills in one hour.

Subsequently, some members who observed that several of the amendments in the amendment packet bore a time stamp reflecting a time later than 10:00 a.m. on April 3, 2017, raised a series of parliamentary inquiries in which the chair explained that the chief clerk accepted amendments from everyone who submitted them, stamped them to reflect that his office had received them, and had noted who had been in line before the deadline to file amendments, such that the last timely filed amendment was stamped at 10:05 a.m.

Amendment No. 114 was time-stamped by the chief clerk's office at 11:06 a.m. on Monday, April 3. The amendment's author acknowledged that his amendment was not submitted until over an hour after the deadline set by House Rules and the calendar rule and is therefore untimely.

Scope of Call for a Special Session (Article III, Section 40)

83 H.J. 1st C.S. 1050 (Dutton 6/21/13)

AMENDMENT NO. 1 (SB 23) - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of Amendment No. 1 under Article III, Section 40 of the Texas Constitution on the grounds that the subject is not designated in the proclamation by the governor.

The chair overruled the point of order and submitted the following statement:

Representative Dutton raised a point of order against further consideration of Amendment No. 1, as amended by Amendment No. 2, to SB 23 asserting that it violates Article III, Section 40 of the Texas Constitution because it is outside the scope of the governor's call. The point of order is respectfully overruled.

The call adds "legislation relating to establishing a mandatory sentence of life with parole for a capital felony committed by a 17-year-old offender." Currently, Texas law provides that 17-year-olds who commit a capital felony may be sentenced to the death penalty or to life without parole. SB 23 provides that 17-year-olds who commit a capital felony will receive a sentence of life with the possibility of parole. The amendment at issue retains the existing sentence of life without parole as an option for punishing these offenders in addition to SB 23's new option of life with parole. Because the amendment relates to establishing a mandatory sentence of life without parole for 17-year-olds who commit a capital felony, it does not violate Article III, Section 40. *See* House Rules pp. 146-149 (containing explanatory notes and house precedents regarding legislation that may be considered in a special session).

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Acceptable Motions to Amend

Third Reading; Defeated Measures

85 H.J. 1st C.S. 217-19 (Stickland 8/4/17)

AMENDMENT NO. 1 (HB 25) - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of Amendment No. 1 to HB 25 on third reading on the grounds that the amendment was not permissible under the House Rules and was not germane to the bill.

As it came to the floor on second reading, HB 25 would restore funding and reverse rate reductions to certain therapy services administered through Medicaid for delivery of acute care therapy services for Texas children with disabilities by making a supplemental appropriation from the economic stabilization fund. Representative Krause offered an amendment to the bill to change the source of the funding: instead of appropriating new money to pay acute care therapy services for children, the money would be taken from money that the legislature had, during the regular session, appropriated from the economic stabilization fund to the governor's fund for relief of statewide disasters. The bill's author moved to table the amendment, the motion failed, and the amendment was subsequently adopted without objection.

On third reading, Representative Cook offered Amendment No. 1, which sought to strike the section of the bill added by the Krause Amendment on second reading. Representative Stickland objects that striking a second reading amendment is impermissible and that such an amendment violates "germaneness."

Representative Stickland raises two specific objections. First, he argues that this situation is analogous to a situation that occurred when CSSB 1, the general appropriations act, was debated during the regular session. In that instance, the house adopted an amendment that zeroed out the enterprise fund by spending 100% of the 43 million dollars in that fund on services for children in need. After that amendment was adopted, the chair declined to lay before the house several other amendments seeking to use the money from the enterprise fund because a calendar rule had been adopted that would require any amendment seeking to spend money to use money from somewhere else in the existing budget. Once the enterprise fund was empty, these amendments were attempting to draw from nonexistent funds, thereby violating the take-and-put provision of the calendar rule. Unlike the situation with the enterprise fund, the Cook Amendment, like the original bill, sought to spend roughly 70 million dollars from the economic stabilization fund, which contains around ten billion dollars, and which would still contain around ten billion dollars even if 70 million were spent from it. Spending less than one percent of the balance of an account would not result in a negative account balance, so the precedent of refusing to lay out an amendment that violates a calendar rule would not apply here even if there had been a calendar rule on HB 25 similar to the take-and-put rule adopted for the regular session's general appropriations bill.

Second, Representative Stickland argues that amending a bill on third reading to strike an amendment added on second reading is not germane, and, although he could not direct the chair to a specific rule or precedent disallowing this somewhat common practice, he urged that a point of order should nonetheless be sustained. It was suggested by Representative Cain and other supporters of the point of order that striking the amendment was the equivalent of impermissibly voting on a measure identical to one that had already been voted on by the body. As far as the chair can tell, these members may be referring to Rule 8, Section 20: "**Bills Containing Same Substance as Defeated Bill** — After a bill or resolution has been considered and defeated by either house of the legislature, no bill or resolution containing the same substance shall be passed into law during the same session." A substantially similar provision exists in Article III, Section 34, of the constitution. Both the house rule and the constitutional provision speak expressly to bills and resolutions, not amendments. To apply the defeated-measures concept to this scenario, the chair would have to assume that (1) a similar prohibition applies to amendments and (2) that the Cook Amendment contains the same substance as a measure the body already defeated. The bar for what is considered the "same substance" is high—a measure that is similar, even containing apparently the same substance, may be so different as to not come within the rule. When the Cook Amendment was offered, the body had not previously considered and defeated a measure, in any form, that would have drawn money from the economic stabilization fund without taking away from the disaster relief fund; the body instead amended that portion of the bill before passing HB 25, as amended, by a record vote of 138 Yeas, 0 Nays. Thus, the Cook Amendment's substance was not previously defeated, and there was no violation of the rules or constitution on this basis.

For these reasons, the points of order are respectfully overruled.

Identical or Similar Amendments
85 H.J. 1st C.S. 264-65 (Cain 8/8/17)

AMENDMENT NO. 7 (HB 214) - POINT OF ORDER

Representative Cain raised a point of order against further consideration of Amendment No. 7, asserting that it violates a house rule prohibiting identical amendments. The point of order is respectfully overruled.

Seven amendments were offered on second reading to HB 214, which was a bill that prohibits certain insurers from providing coverage for "elective abortions." Each of these seven amendments were tabled on a motion by the bill's author.

Representative Cain, citing "a common house practice of disallowing amendments that are identical or contain the same substance of a previously defeated

amendment," objects that the Amendment No. 7 by Dutton is impermissibly similar to Amendment No. 2 by Hinojosa. The issue does not have to be reached because the amendments are not similar. The Hinojosa amendment would have redefined "elective abortion" and would have excepted abortions (1) performed due to a medical emergency or (2) to terminate a severe fetal abnormality as determined in good faith by a physician if it was medically indicated. The Dutton amendment would have defined "elective abortion" in the same manner as the Hinojosa amendment, but would except from the definition of "elective abortion" an abortion (1) performed due to a medical emergency or (2) to terminate a severe fetal abnormality as determined in good faith by a physician **if the pregnancy resulted from incest or sexual assault** and was medically indicated (emphasis added). As Representative Cain noted, Representative Dutton's amendment, while containing components of the Hinojosa amendment, was in fact different because "all it does is add a rape exception." Representative Cain further observed that a different amendment, Amendment No. 4 by Representative Turner, among other provisions, contained language allowing for abortion coverage in cases of incest or rape. He seems to assert that defeating these elements in other amendments, however different, should prohibit Representative Dutton from offering this amendment, which does not contain the same substance as any of the other six amendments the house considered and tabled. The Turner amendment would have provided a different definition of "elective abortion" from the Dutton and Hinojosa amendments and would have allowed for coverage for abortions (1) performed due to a medical emergency or (2) to terminate a pregnancy that resulted from an act of incest or sexual assault. The chair finds that the Dutton amendment substantially differs from each of the amendments mentioned by Representative Cain, as well as each of the other amendments offered on HB 214, such that any prohibition on offering duplicative or similar amendments does not apply here.

Amending a Committee Substitute & Original Purpose
79 H.J. Reg. 1807-08 (Van Arsdale 4/18/05)

CSHB 3016 - POINT OF ORDER

Representative Van Arsdale raised a point of order against further consideration of CSHB 3016 under Rule 11, Sections 1 and 3 of the House Rules on the grounds that it violates the order of adoption of amendments.

. . .

A point of order against further consideration of CSHB 3016 was pending prior to lunch recess.

The speaker overruled the point of order, and had read the following statement:

Representative Van Arsdale raises two points of order against HB 3160. First, Representative Van Arsdale argues that the bill violates Rule 11, Section 1, in that the several committee amendments were adopted before the committee substitute to the bill was adopted. Second, Representative Van Arsdale argues that the committee substitute that was adopted by the committee changed the original purpose of the bill. The chair overrules both points of order for the following reasons.

The March 31, 2005, minutes indicate that the House Committee on Local Government Ways and Means laid out the committee substitute to HB 3160 and took an amendment before the committee substitute was adopted.

A committee substitute that is laid out functions as an amendment for purposes of the House Rules. Under our procedures, it is an acceptable, though unusual, practice to take amendments to a substitute prior to adopting the substitute and passing it out of committee. This process is similar to the process that is followed on the house floor in which amendments are taken, followed by amendments to the amendments, and then the original amendment subsequently adopted.

A similar issue arose in 1995 in which a point of order was raised against HB 1711, and it was argued that amendments to a bill were adopted during the first committee hearing on the bill and that a complete substitute was adopted during a subsequent committee hearing on the bill. The chair overruled the point of order finding that, in effect, the committee's action in adopting the substitute had overridden the committee's action in adopting the amendment. (See 75 H. J. Regular Session 2519).

Representative Van Arsdale also argues that the changes to HB 3016 made in committee changed the original purpose of the bill in violation of Rule 11, Section 3, House Rules.

In this instance, the purpose of HB 3016 is to limit tax liability. Under current law, property that is in the state temporarily is not subject to taxation. The bill as filed extended this tax exemption to drug supplies maintained for less than 60 days. The committee substitute narrowed the exemption to instances where the drugs were needed for "public health demands, emergency treatment, or similar health care needs" and restricted the classes of wholesalers who would be entitled to the exemption. Although the substitute limited the entities that could take advantage of the exemption, it did not change the original purpose of the bill.

Therefore, the points of order are respectfully overruled.

Other explanations addressing amendment of committee substitutes:
81 H.J. Reg. 3249-50 (Merritt 5/12/09), *supra* at 3-4 (discussing committee substitute and subsequent amendments)

Order of Offering Motions to Amend

Motion to Amend—Main Author Usually Recognized First
78 H.J. Reg. 859 (Dunnam 3/26/03)

AMENDMENT NO. 25 (CSHB 4) - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of Amendment No. 25 under Rule 11, Section 7 of the House Rules on the grounds that it violates the Order of Offering Rule.

. . .

The speaker overruled the point of order, speaking as follows:

Mr. Dunnam raises a point of order under Rule 11, Section 7, and the adopted prefiling rule for amendments, in that it was not proper for the Rose amendment to be considered as an author's amendment in that Mr. Nixon added his name after the amendment was prefiled.

The chair believes that the prefiling rule did not change the practice of the house to allow an author to perfect the bill by being the first to offer original amendments.

Accordingly, the point of order is respectfully overruled.

Germaneness (Rule 11, Section 2; Rule 4, Section 41)

For explanations addressing germaneness of amendments to appropriations bills, see explanations on Bills Involving State Funds, *supra* at 268-95.

Germaneness of Committee Substitute
85 H.J. Reg. 2265 (Villalba 5/2/17)

AMENDMENT NO. 5 (CSHB 2950) - POINT OF ORDER

Representative Villalba raised a point of order against further consideration of CSHB 2950, Amendment No. 5, pursuant to House Rule 11, Section 2, on the grounds that the amendment is not germane to the bill.

CSHB 2950 relates to the continuation and functions of the Texas Board of Nursing and to the regulation of the practice of nursing. Under Rule 11, Section 2, "[n]o motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." For sunset bills, the rule further provides, "[a]mendments pertaining to the organization, powers, regulation, and management of the agency, commission, or advisory committee under consideration are germane." House Rule 11, Section 2.

Representative Villalba argues that Amendment No. 5 would grant powers and privileges to nurses that they currently do not possess, thereby impermissibly expanding the scope of practice for all nurses. He explains that nurses are not authorized to have the same designation as doctors or "independent practitioners," and he asserts that providing this authorization is not germane to CSHB 2950.

Each of the changes made in the 25 pages of the amendment are tied to the powers and regulations of the agency to regulate the practice of nursing. See provisions of the bill allowing the board to "authorize an advanced practice registered nurse . . . to prescribe and order drugs and devices," and "[a]n advanced practice registered nurse shall practice as a licensed independent practitioner in accordance with standards established and recognized by the board." The amendment also consists of conforming changes relating to these provisions. Having reviewed the amendment, the bill, and the House Rules, the chair determines that Amendment No. 5 does not violate Rule 11, Section 2. The point of order is respectfully overruled.

Germaneness of Committee Substitute
85 H.J. Reg. 1893 (Turner 4/26/17)

CSSB 4 - POINT OF ORDER

Representative Turner raised a point of order against further consideration of CSSB 4 pursuant to Rule 4, Section 41, and Rule 11, Section 2, on the grounds that the committee substitute amends the bill with provisions that are not germane to the senate engrossment.

Representative Turner asserts that Section 4.01 of CSSB 4, which deals with the use of surety bonds on individuals who are subject to federal immigration detainer requests, is not germane to the engrossed senate bill. Rule 4, Section 41, requires a committee substitute to be germane to the original bill. Rule 11, Section 2, provides that "an amendment to a committee substitute laid before the house in lieu of an original bill is germane if each subject of the amendment is the subject that is included in the committee substitute or was included in the original bill."

CSSB 4 deals broadly with the enforcement of immigration laws by local governmental entities. Specifically, the bill requires local governments and law enforcement agencies to honor detainer requests from the federal government. The surety bond provision in CSSB 4 provides that a surety is not relieved of its undertaking if the accused is in federal custody to determine whether the accused is lawfully present in the United States. The surety bond provision directly relates to the provisions requiring law enforcement to honor detainer requests, which result in the accused being held in federal custody to determine whether the accused is lawfully present in the country. Thus, this portion of the committee substitute complies with the House Rules on germaneness.

Germaneness of Committee Substitute & Original Purpose
84 H.J. Reg. 3948-49 (Walle 5/21/15)

SB 735 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of SB 735 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the committee substitute is not germane to the bill and the committee substitute would change the original purpose of the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of SB 735 under three provisions: Article III, Section 30 of the Texas Constitution and Rule 11, Sections 2 and 3 of the House Rules, arguing that the senate committee substitute to the bill is not germane to the bill as introduced, such that the committee substitute impermissibly changed the original purpose of the bill. The point of order is respectfully overruled.

The chair recently sustained a point of order on HB 969, a bill which had identical language changes. 84 H.J. Reg. 3025 (2015) (Walle point of order on HB 969). In that case, the original purpose of the introduced version of the house bill was impermissibly changed by a house committee substitute. Because this was a violation of the House Rules, the point of order was sustained and the bill was returned to committee. Representative Walle argues that the logic behind the ruling on HB 969 should apply equally to the issue raised in SB 735.

Proponents of SB 735 agree that the language of SB 735, which initially was identical to the introduced version of HB 969, was amended in the senate such that it has now come to the house with the same language as the version of HB 969 that was determined to have impermissibly changed the original purpose of the bill. However, they emphasize that the impermissible change was done by senate substitute and passed by the senate. They rely on an earlier ruling of the chair, 83 H.J. Reg. 3109-10 (2013) (Stickland point of order on SB 346), in which the chair declined to construe and compare the original purpose of an introduced version of a senate bill to the version that reached the house. In that point of order, a member argued that the bill violated the original purpose provision of Article III, Section 30 of the Texas Constitution. But there, as here, the senate bill had not changed since reaching the house. The chair explained that the point of order "invites the chair to construe the intended purpose of a senate bill and determine whether the senate's amendment to its own bill impermissibly changed the bill's purpose prior to its arrival in the house. The chair believes this function is best left to the senate's presiding officer, its members, and its parliamentarian." The ruling also expressed that the chair's determination not to rule was based on "the spirit of comity" between the chambers and that this restraint would be exercised

only so long as the senate extends to the house the same courtesy. On the basis of this ruling, the chair respectfully overrules the point of order.

It is important to note that the chair's declining to rule on senate policy does not end the issue. A crucial part of the chair's rationale is that the passage of the bill through both chambers does not foreclose review of this bill's possible constitutional flaws by any party at any time in the courts. Recognizing that the enrolled bill doctrine does not apply to this constitutional question (because the matter is resolved simply by looking at the introduced version of the bill and the enrolled version) is paramount to understanding the limitation of this ruling. By contrast, determinations regarding whether a caption complies with the Texas Constitution are finally disposed of within this body. As a result, the chair, knowing there is no backstop, would likely rule on the sufficiency of captions on senate bills under the constitutional provision or house rules, but would not determine compliance with senate rules. Further, if the senate acted in violation of the Texas Constitution (such as attempting the first hearing of a bill in the last three days of session in violation of Article III, Section 37), the house would view this as a possibly unreviewable constitutional procedural issue and would rule on the issue. However, the constitutional issues on which the chair will rule are procedural and extremely limited in scope. As for more substantive constitutional questions, the chair will continue to exercise restraint and will rely on the availability of redress in the courts to remedy other constitutional infirmities.

Germaneness of Committee Substitute & Original Purpose—Sustained
84 H.J. Reg. 3025 (Walle 5/11/15)

CSHB 969 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 969 under Rule 4, Section 41; Rule 11, Section 2; and Rule 11, Section 3 of the House Rules on the grounds that the committee substitute is not germane to the bill and the committee substitute would change the original purpose of the bill.

The chair sustained the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSHB 969 under Rule 4, Section 41 and Rule 11, Sections 2 and 3 of the House Rules on the grounds that the committee substitute is not germane to the bill as introduced and seeks to change the bill's original purpose. The point of order is sustained.

No "motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate," nor shall a bill "be amended in its passage through either house so as to change its original purpose." Rule 11, Sections 2 & 3. If a point of order is sustained because a committee substitute is not germane, "the

committee substitute shall be returned to the Committee on Calendars . . . ." Rule 4, Section 41. CSHB 969 as introduced removes a defendant's net worth from a list of factors a trier of fact must consider in determining the amount of exemplary damages. It further states that evidence of net worth or financial condition of a party is not relevant to a claim for exemplary damages, thus rendering any evidence as to a defendant's financial status not only inadmissible, but also as having no "tendency to make a fact more or less probable" and "of no consequence in determining" an action. Tex. R. Evid. 401. The committee substitute seeks to define "net worth" in the Civil Practice and Remedies Code, and it also provides methods for parties to discover evidence of a defendant's net worth prior to trial. Representative Walle argues that the committee substitute is neither germane to the bill as introduced, nor does it share the bill's original purpose.

CSHB 969 as introduced completely bars a trier of fact's ability to consider evidence relating to a defendant's net worth and financial condition during the course of a trial when there is any claim for exemplary damages. In contrast, the committee substitute deals with an entirely different subject: the permissibility and authorization of pretrial discovery of a party's net worth. Because the substitute seeks to address a subject different from that of CSHB 969 as introduced, the substitute is not germane to the original bill, and the substitute should be returned to the Committee on Calendars. *See* Rule 4, Section 41; Rule 11, Sections 2 & 3; 83 H.J. Reg. 2984 (2013) (Dutton point of order on CSHB 34).

CSHB 969 was returned to the Committee on Calendars.

Germaneness of Committee Substitute—Sustained
84 H.J. Reg. 3016-17 (Dale 5/11/15)

CSHB 1189 - POINT OF ORDER

Representative Dale raised a point of order against further consideration of CSHB 1189 under Rule 4, Section 32 and Rule 11, Section 2 of the House Rules on the grounds that the bill analysis is incorrect and the committee substitute is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

Representative Dale raised two points of order against further consideration of CSHB 1189 under Rule 11, Section 2 and Rule 4, Section 32 of the House Rules on the grounds that the committee substitute is not germane to the bill as originally filed and that the bill analysis is incorrect. The point of order as to germaneness is sustained.

Rule 11, Section 2 bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or substitute for a measure under debate. Rule 11, Section 2. CSHB 1189 as

originally filed addresses the management of a buyback program for commercial oyster boat licenses. The bill seeks to establish the program itself and the parameters of the program, including the criteria for which licenses are to be bought back, the retirement of purchased licenses, and certain other funding and reporting requirements. Section 3 of the committee substitute retains all of the language of the original bill. However, in distinct contrast to the scope of the original bill, Section 1 of the substitute adds Section 76.112 of the Texas Parks and Wildlife Code to a list of provisions subject to a criminal penalty, which places a limit upon the amount of undersized oysters permitted as cargo. *See* Tex. Parks & Wild. Code Ann. § 76.112 (West 1997) ("A cargo of undersized oysters shall be determined by taking at random five percent of the total cargo of oysters as a sample, of which not more than five percent may measure less than three inches along an imaginary straight line through the long axis of the shell."). The original bill addressed neither penalties under the Texas Parks and Wildlife Code nor limitations placed upon undersized oysters; CSHB 1189 dealt strictly with the establishment of a program to buy back commercial oyster boat licenses. Because the committee substitute seeks to impermissibly expand the scope of the bill, it is not germane to CSHB 1189 as introduced. *See* Rule 11, Section 2; 79 H.J. Reg. 618-19 (2005) (Representative Chisum point of order on Amendment No. 51 to CSHB 2) ("Amendments which expand the scope of the bill are not germane."). Having determined that the committee substitute is not germane to the bill, the chair is compelled to return the committee substitute to the Committee on Calendars. *See* Rule 4, Section 41.

CSHB 1189 was returned to the Committee on Calendars.

Germaneness of Committee Substitute
84 H.J. Reg. 2771 (E. Rodriguez 5/7/15)

CSHB 1096 - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of CSHB 1096 under Rule 4, Section 41 and Rule 11, Section 2 of the House Rules on the grounds that the committee substitute is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative E. Rodriguez raised a point of order against further consideration of CSHB 1096 under Rule 4, Section 41 and Rule 11, Section 2 of the House Rules on the grounds that "the committee substitute is not germane to the bill as introduced." The point of order is respectfully overruled.

Rule 11, Section 2 of the House Rules states that "[n]o motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." Rule 11, Section 2. If a point of order is sustained because a committee substitute

is not germane, "the committee substitute shall be returned to the Committee on Calendars . . . ." Rule 4, Section 41. CSHB 1096 as introduced created a hierarchy to establish the residence of a registered voter. The bill delineates six possible qualifying residences and provides for certain exceptions. The committee substitute seeks to narrow the class of registered voters for whom the residence must be established to only those who receive a confirmation notice from the registrar. In other words, the substitute addresses qualifying residences for the purposes of voter registration as does the original bill, but it does so only in relation to the requisite response to a confirmation notice.

Having reviewed the original bill, committee substitute, and applicable house rules and precedent, the chair, therefore, determines that, because the subset carved out by the committee substitute is germane to the larger group to which the original bill applied, the committee substitute does not violate the House Rules. *See* Rule 4, Section 41; Rule 11, Section 2; 83 H.J. Reg. 2984 (2013) (Dutton point of order on CSHB 34).

Germaneness of Committee Substitute
83 H.J. Reg. 2984 (Dutton 5/9/13)

CSHB 34 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of CSHB 34 under Rule 4, Section 41 and Rule 11, Section 2 of the House Rules on the grounds that the committee substitute is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Dutton raised a point of order against further consideration of CSHB 34 under Rule 4, Section 41 and Rule 11, Section 2 of the House Rules claiming that the original bill and the substitute are not germane to each other. Specifically, Representative Dutton asserts that the regulatory scheme and criminal penalty added by the committee substitute are not germane to the original bill. The point of order is respectfully overruled.

The original bill required operators of certain commercial establishments to obtain permits allowing for the consumption of alcoholic beverages on the permitted premises. The provisions of which Representative Dutton complains in the committee substitute are those that added regulatory provisions detailing who would issue the permit; the grounds for which the permit could be refused, canceled, or suspended; a requirement for a surety bond for the permit application; and a provision that applied the existing criminal penalty under Section 46.02(c), Penal Code, to persons who intentionally, knowingly, or recklessly carry a handgun onto premises for which a permit was obtained under the provisions of the bill. The regulatory scheme for how the permits required by the original bill could be obtained and application of the criminal penalty that already applies to other types of premises requiring permits under the Alcoholic Beverage

Code are all related to regulating consumption of alcohol on certain premises. Accordingly, the chair, after reviewing both versions, holds that the original bill and the substitute comply with Rule 4, Section 41 and Rule 11, Section 2 of the House Rules.

Germaneness of Committee Substitute
81 H.J. Reg. 2333-35 (Flores 5/2/09)

CSHB 1320 - POINT OF ORDER

Representative Flores raised a point of order against further consideration of CSHB 1320.

. . .

The chair overruled the point of order and submitted the following statements:

Mr. Flores raises a point of order against further consideration of CSHB 1320 on the grounds that the committee substitute is not germane to the original bill. The original bill defines six separate items of conduct as a new criminal offense of cockfighting. Four of the items are punishable as a state jail felony, one item is punishable as a Class A misdemeanor, and one item is punishable as a Class C misdemeanor. The committee substitute changed the penalty for the item punishable as a Class C misdemeanor to a Class A misdemeanor. Because multiple tiers of penalties for different conduct constituting cockfighting are contained in the filed bill, a committee substitute that reassigns the conduct to a different tier is in order.

The point of order is respectfully overruled.

Representative Flores raises a point of order against further consideration of CSHB 1320 in that the minutes associated with CSHB 1320 violate Rule 4, Section 18, and that the witness affirmation forms associated with CSHB 1320 violate Rule 4, Section 20. In particular it is alleged that both the witness list attached to the minutes and the witness forms do not accurately reflect that the witnesses testified on the committee substitute after it was laid out.

The March 17, 2009, minutes of the Subcommittee on Violent Crimes reflect that both the filed bill and the committee substitute were before the committee at the time testimony was taken. After a recess the filed bill and the substitute were again brought before the committee for further testimony. The witness affirmation forms state that all persons testified on CSHB 1320 and the witness list attached to the minutes reflects this. Since both the filed bill and a committee substitute were before the committee at the same time, a witness was free to offer testimony on either one.

Based on the fact that both the filed version of HB 1320 and the committee substitute were before the committee at the time testimony was taken, the point of order is respectfully overruled.

Germaneness of Committee Substitute
79 H.J. Reg. 3908-09 (Thompson 5/22/05)

CSSB 1863 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of CSSB 1863 under Rule 4, Section 41 of the House Rules on the grounds that the committee substitute is not germane.

The speaker overruled the point of order, speaking as follows:

Representative Thompson raised a point of order against further consideration of CSSB 1863 on the grounds that the substitute was not germane to the Senate engrossed version of the bill. (Rule 4, Section 41) Ms. Thompson argues that a provision that was added in House committee which provided that tamper-evident packaging for the return of unused drugs was not required to be in the manufacturer's original packaging unless required by federal law was not germane because it did not generate revenue. (SECTION 7.07 of the bill, amending Section 562.1085(f), Occupations Code).

The chair has reviewed the provision that Ms. Thompson referenced in her point of order and has determined that it is part of a larger provision that was amended, specifically, SECTION 7.07 of the bill, amending Section 562.1085(a), Occupations Code, and adding Subsection (f). Read together, these provisions allow a pharmacist who practices in a health care facility to return to a pharmacy certain unused drugs at a cost savings to the state. A pharmacist who does so does not have to return the drugs in the manufacturer's original packaging. (Subsection (f)).

Because the provisions generate revenue, the point of order is respectfully overruled.

Germaneness of Committee Substitute
78 H.J. Reg. 982-83 (Rodriguez 3/27/03)

CSHB 4 - POINT OF ORDER

Representative Rodriguez raised a point of order against further consideration of CSHB 4 under Rule 4, Section 40; Rule 11, Section 2; and Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the committee substitute is not germane to the introduced bill.

. . .

The chair overruled the point of order, speaking as follows:

Mr. Rodriguez raises a point of order against further consideration of CSHB 4 under Rule 11, Section 2; Rule 11, Section 3 and Article III, Section 30, Texas Constitution in that the substitute is not germane to the introduced bill. The chair has reviewed the introduced version of HB 4 and finds that it contained a wide variety of civil practice and civil liability issues. Accordingly, HB 4 as introduced is an "omnibus bill" to which almost any amendment relating to civil practice and civil liability issues is germane. The committee substitute contains six articles of material not found in the introduced bill, including provisions relating to medical malpractice, but all of the added material is within the broad subject of the introduced bill.

Accordingly, the point of order is respectfully overruled.

Germaneness of Committee Substitute & Original Purpose
75 H.J. Reg. 1331 (Talton 4/23/97)

CSHJR 4 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of CSHJR 4 under Rule 11, Sections 2 and 3 of the House Rules on the grounds that the committee substitute is not germane to the introduced resolution and the committee substitute changes the original purpose of the resolution.

The speaker overruled the point of order, speaking as follows:

Under Rule 9, Section 1(b), a joint resolution is expressly made not subject to Rule 11, Section 3, prohibiting an amendment or substitute from changing the original purpose of the measure. Accordingly, the point of order under Rule 11, Section 3, is respectfully overruled.

As introduced, HJR 4:

(1) created the Texas School Trust Fund to replace lost local school property tax revenue with state funds derived from a business activities tax, a one-half cent sales tax, interest, and other revenue;

(2) provided for a $20,000 residence homestead exemption from school taxes for maintenance and operations;

(3) provided for an exemption of business inventories from school district taxes for maintenance and operations; and

(4) provided for a business activities tax.

Although each of these provisions could be a single subject in itself, the rules require the chair to determine the single subject of the entire measure. The subject of HJR 4 must be state and local revenue for public education.

Although the committee substitute takes a different approach—eliminating the business activity tax in favor of other revenue measures, adding a constitutional dedication of lottery revenues, restricting the local tax base of school districts to residential property—each of the elements of the committee substitute fall within the subject of state and local revenue for public education.

The rule does not prohibit consideration of a substitute that is different from the introduced measure; the rule prohibits consideration of a substitute on a different subject. The committee substitute for HJR 4 is the same subject as the introduced resolution. Accordingly, the point of order under Rule 11, Section 2, is respectfully overruled.

Other explanations addressing germaneness of committee substitutes:
83 H.J. Reg. 3450-51 (Y. Davis 5/16/13), *supra* at 83-84 (bill analysis and germaneness of committee sub)
84 H.J. Reg. 3462-63 (Walle 5/14/15), *supra* at 90-91 (bill analysis and germaneness of committee sub)

Germaneness of Amendment & Original Purpose
85 H.J. 1st C.S. 373-74 (Stickland 8/12/17)

AMENDMENT NO. 2 (CSSB 1) - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of Amendment No. 2 by Representative Hinojosa to CSSB 1 pursuant to House Rule 11, Sections 2 and 3, on the grounds that the amendment is not germane to and changes the purpose of the bill. The point of order is respectfully overruled.

The house committee report for CSSB 1 contains 20 substantive provisions related to calculation of an ad valorem rollback tax rate and voter approval of a tax rate that exceeds the tax rollback rate. One of the items that was the subject of several amendments was what the percentage increase that triggered a rollback election was. CSSB 1 suggested the rate was 6%, decreasing it from the current 8% rate. Several representatives suggested dropping it to 4%. Amendment 2 by Hinojosa offered restoring the rate to the current level. Representative Stickland raised a point of order that the amendment was not germane and would change the purpose of the bill. Various theories were offered including that the purpose of the bill was solely for a tax reduction and therefore, the rollback rate could only downward depart.

Assuming that was correct, the argument would not explain how the inclusion of the original language in the presence of other sections (for example Section 1 of the bill) that have the potential to achieve rate reduction would not again work to achieve that purpose. No other precedent was cited for that argument. Others argued that the amendment was not germane because an amendment cannot change back the amended text to the original text. We are unaware of precedent relating to either point.

In this case, the rollback rate calculation requirements were in CSSB 1. Amendment No. 2 was consistent with the bill's purpose of defining how to calculate the rollback rate and attempted to raise it (like other amendments that sought to lower it). *See* 85 H.J. Reg. 3292-93 (2017) (Turner point of order on CSSB 2962); 85 H.J. Reg. 518-19 (2017) (Herrero point of order on HB 4); 81 H.J. Reg. 1996-97 (2009) (Chisum point of order on CSHB 2259). The amendment

did not have a different purpose and was not on a subject different from that under consideration. Rule 11, Sections 2 and 3, were not violated. For these reasons, the point of order is respectfully overruled.

Germaneness of Amendment & Original Purpose
85 H.J. 1st C.S. 285-86 (Uresti 8/9/17)

AMENDMENT NO. 5 (SB 5) - POINT OF ORDER

Representative Uresti raises a point of order against further consideration of Amendment No. 5, a complete floor substitute to SB 5 under Rule 11, Section 2 and Section 3, in that the amendment impermissibly changes the original purpose of the bill and is not germane. The point of order is respectfully overruled.

The subject of SB 5 was the proper conduct of casting mail-in ballots for the purpose of detecting and protecting against mail-in ballot voting fraud. The subject and purpose of Amendment No. 5 were the same, comprising 18 separate sections dealing with ballot by mail provisions. The main complaint by Representative Uresti is that Section 18 of Amendment No. 5 repealed Chapter 107, Election Code, which dealt with proper conduct of casting mail-in ballots at residential care facilities. Chapter 107 was passed during the first 140 days of the 85th Legislative Session. The representative argues that deletion of Chapter 107 changes the purpose of and is not germane to SB 5. This assertion is incorrect.

Chapter 107, Election Code (the deleted provisions), in almost 10 pages of text outlines how early voting using mail-in ballots is accomplished in residential care facilities. Representative Goldman's repeal and replacement of Chapter 107 with other provisions designed to protect against fraudulent voting using mail-in ballots does not change the purpose of SB 5 and does not violate the prohibition on nongermane amendments; the point of order is respectfully overruled.

Germaneness of Amendment & Original Purpose
85 H.J. 1st C.S. 262-63 (Rinaldi 8/8/17)

AMENDMENT NO. 6 (HB 214) - POINT OF ORDER

Representative Rinaldi raised a point of order against further consideration of Amendment No. 6, asserting that it violates House Rule 11, Sections 2 and 3. The point of order is respectfully overruled.

HB 214 would prohibit certain health insurance plans from covering an "elective abortion," as defined in the bill. Among the abortions not covered by the bill would be those where a pregnant female is diagnosed with cancer, where the fetus has a severe fetal abnormality, and where a female is impregnated as a result of rape or incest. The bill outlines the requirements of a separate additional premium to be paid for coverage for elective abortions, if this option is provided at all, and specifies how it must be calculated. The bill puts out restrictions on health benefit plans, not only for the severed non-abortion coverage, but also for the

newly created abortion coverage. The bill also specifically outlines calculation of premiums for the newly created coverage (added Section 1218.005) and restriction on premiums for the severed non-abortion coverage (added Section 1218.004). The bill also required issuers to provide notice to persons in the plan of the changes in law, but did not require either the issuer or the plan participant to be made aware of the premium calculations of the cost savings, if any, that resulted from the changes to the non-severed abortion coverage. The bill's supporters, including its author, explained that the bill would make it so that no one, other than the pregnant female or her parent or guardian, would have to pay for or "subsidize" an elective abortion. Representative Neave offered Amendment No. 6, which sought to capture "any cost savings achieved" by the health benefit plan issuer severing their existing polices into two parts and remit it to the comptroller to be deposited into an account to fund the testing of rape kits. A supporter of the point of order observed that it might be difficult or impossible to implement this provision. But that does not determine the propriety of an amendment under Rule 11, Sections 2 and 3.

Specifying how to dispose of any "savings achieved" by the bill that result from severing existing policies into two parts and properly accounting for insurance premiums is germane to a bill designed to sever existing policies into two parts to properly account for insurance premiums and to avoid "subsidizing" elective abortions. Further this amendment to the bill would not have prevented the bill from achieving its purpose of requiring an insured to elect and pay separately for coverage of elective abortions. The amendment therefore did not run afoul of Rule 11, Section 2 or Section 3. *See* 85 H.J. Reg. 518 (2017) (Herrero point of order on Amendment No. 11 to HB 4).

Germaneness of Amendment & Original Purpose
85 H.J. Reg. 4425 (E. Rodriguez 5/23/17)

AMENDMENT NO. 2 (SB 762) - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of Representative Tinderholt's Amendment No. 2 to SB 762 under House Rule 11, Sections 2 and 3, on the grounds that the amendment is not germane and changes the original purpose of the bill. The point of order is respectfully overruled.

Amendment No. 2 by Representative Tinderholt would have struck lines 14 through 16 of SB 762, making an offense involving cruelty to animals "a felony of the third degree, except that the offense is a felony of the second degree if the person has previously been convicted," and replaced it with "state jail felony." Representative E. Rodriguez and others argue that this amendment is not germane and changes the original purpose of the bill.

SB 762 would "amend the Penal Code to increase from a state jail felony to a third-degree felony the penalty for cruelty to a non-livestock animal offense that involves torturing an animal, in a cruel manner killing or causing serious

bodily injury to an animal. . . .” Amendment No. 2 by Tinderholt is germane to the bill because it deals with the same offense of the original bill. Additionally, Amendment No. 2 does not change the original purpose of the bill. The enhancement provisions of Section 1 of the bill, Section 42.092 of the Penal Code, still remain. Because Amendment No. 2 is germane and does not change the original purpose of the bill, the point of order is respectfully overruled.

Germaneness of Amendment & Original Purpose
85 H.J. Reg. 4398-99 (Allen 5/23/17)

AMENDMENT NO. 16 (SB 2065) - POINT OF ORDER

Representative Allen raised a point of order against further consideration of Amendment No. 16 to SB 2065 under Article III, Sections 30, 35, and 56, of the Texas Constitution and House Rule 11, Sections 2 and 3, on the grounds that the amendment is not germane to the bill, impermissibly changes the purpose of the bill, and is an impermissible local bill. The point of order is respectfully overruled.

Rule 11, Section 2, states that “No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate.” Rule 11, Section 3, prohibits a bill from being “amended in its passage through either house so as to change its original purpose.”

As the chair previously discussed in Representative Stickland’s point of order on the same bill, SB 2065 is an omnibus occupational regulation bill that provides for certain consumer protection measures and regulates licensed trades. The long list of occupations and activities addressed by the bill includes:

- business & commerce—general
- vehicle protection products, including the regulation of persons engaged in the sale of a financial transaction of a vehicle protection product
- for-profit legal service contracts, including regulating the form of the legal service contract marketed and sold
- temporary common workers
- barbers
- cosmetologists
- tow companies & towing of vehicles
- vehicle protection products & warrantors
- licensing & regulation, Texas

Additionally, SB 2065 was amended a total of 13 different times to include additional industries, including:

- regulation of car boots
- registrable marks in the Business & Commerce Code

- volunteer security services at religious worship centers within the Occupations Code
- regulating industrialized housing
- regulating barber facilities and equipment
- regulating charitable raffles
- regulating school credit hours

Amendment No. 16 falls under the vehicles and traffic subject: it regulates transportation services within Dallas County. The amendment regulates Dallas County's transportation services. The omnibus bill before the house was, in effect, a licensing and regulation of mechanical occupations and activities (such as the offer and sale of bus transportation). Because the bill's subject is extremely broad, and the amendment falls within one of the bill's subjects, the amendment is germane to the bill. The point of order is respectfully overruled.

Germaneness of Amendment
85 H.J. Reg. 4282-83 (Stickland 5/22/17)

AMENDMENT NO. 13 (CSSB 2065) - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of Amendment No. 13 to CSSB 2065 under House Rule 11, Section 2, on the grounds that the amendment is not germane to the bill. The point of order is respectfully overruled.

Rule 11, Section 2, states that "No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate."

Amendment No. 13 by Representative Craddick (which was later withdrawn) was an attempt to change the licensing and regulation of the occupation of certain forms of short-term lending or activities directly arising from short-term lending. Representative Stickland asserts that Amendment No. 13 is not germane to CSSB 2065. However, CSSB 2065 is an omnibus occupational regulation bill that relates to the licensing and regulation of certain occupations and activities and provides for certain consumer protection measures and regulates licensed trades. The long list of occupations and activities initially addressed by the bill includes:

- business & commerce—general
- vehicle protection products, including the regulation of persons engaged in the sale of a financial transaction of a vehicle protection product
- for-profit legal service contracts, including regulating the form of the legal service contract marketed and sold
- temporary common workers
- barbers
- cosmetologists

- tow companies & towing of vehicles
- vehicle protection products & warrantors
- licensing & regulation, Texas

The omnibus bill before the house was, in effect, a mechanical trades and money lending Christmas tree on which many members could place amendments related to the licensing and regulation of occupations and activities, including financial-service-related occupations and activities (such as the offer and sale of vehicle protection products and warranties and for-profit legal service contracts.)

The amendment, which adds another financial-service-related occupation and activity, falls squarely with the subject of the other portions of the bill. There is no violation of Rule 11, Section 2. The point of order is respectfully overruled.

Germaneness of Amendment
85 H.J. Reg. 4079-80 (Moody 5/21/17)

AMENDMENT NO. 2 (SB 2078) - POINT OF ORDER

Representative Moody raised a point of order against further consideration of Amendment No. 2 to SB 2078 on the grounds that the offered amendment relating to "Restroom, Locker Room, and Changing Facility Privacy and Safety" was not germane to SB 2078, which dealt with duties of school districts, open-enrollment charter schools, the Texas Education Agency, and the Texas School Safety Center regarding multihazard emergency operations plans and other school safety measures. The point of order is respectfully overruled.

SB 2078 allowed school districts and the governing body of open-enrollment charter schools to adopt a number of safety measures. Among those measures was a broad safety review contained in Section 37.108, Education Code, which covered a wide range of safety measures from multihazard emergency operations, medical events, train derailments, and additionally required each affected institution to carry out "a safety and security audit of the district's facilities." Responsibility for these audits, including the required reporting requirements and the composition and oversight and guidance by other state agencies, including the Texas School Safety Commission and the TEA, was also addressed in the bill. Amendment No. 2 asked the entities covered by SB 2078 (independent school districts and open-enrollment charter schools) to accommodate the safety (as well as privacy and dignity) of students in certain changing facilities. SB 2078 also called out specific safety measures for other areas of a school. For instance, in SB 2078, school safety plans had to take into account the safety of children in portable classrooms.

Because the subject of both the amendment and the bill are the same—duties of certain school entities to provide safety planning for students—the point of order is respectfully overruled.

Germaneness of Amendment
85 H.J. Reg. 3292-93 (Turner 5/11/17)

AMENDMENT NO. 3 (CSHB 2962) - POINT OF ORDER

Representative Turner raised a point of order against further consideration of Amendment No. 3 by Representative Schaefer to CSHB 2962 pursuant to House Rule 11, Section 2, on the grounds that the amendment is not germane to the bill. The point of order is respectfully overruled.

CSHB 2962 defined the term "abortion complications" to include certain outcomes that were "diagnosed or treated by a health care practitioner or at a health care facility . . ." and required reporting of those complications diagnosed or treated by the practitioner or facility. The bill as it came to the floor required only the facility to report "complications diagnosed or treated by the practitioner or facility." Amendment No. 3 added an additional provision that required a health care practitioner who diagnosed or treated a patient who had complications at the facility to file a report as well as the facility. The proponent argued that the bill was only about facilities and there was not any requirement regarding physicians and other health care providers. However, the definition of "abortion complications" in Section 1 of the bill made it clear that the reporting of those complications impacted complications diagnosed or treated either by a health care practitioner or at a health care facility. The remaining reporting requirements within the bill stem from the reporting of this defined event. *See* 85 H.J. Reg. 518-19 (2017) (Herrero point of order on HB 4); 81 H.J. Reg. 1996-97 (2009) (Chisum point of order on CSHB 2259). The amendment was not on a subject different from that under consideration. Rule 11, Section 2, was not violated. For these reasons, the point of order is respectfully overruled.

Germaneness of Amendment—Sustained
85 H.J. Reg. 2223 (Stickland 5/2/17)

AMENDMENT NO. 3 (SB 16) - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of Amendment No. 3 to SB 16 under House Rule 11, Section 2, asserting that the amendment is not germane to the bill. The point of order is sustained.

SB 16 would reduce various existing fees associated with obtaining and renewing handgun licenses. Amendment No. 3 would have waived any fee required for the issuance of an original or renewed license if the applicant for the license provided proof that a secure gun device has been purchased. Because exempting a certain class of persons from fees is not germane to reducing the fee for an original or renewed license to carry a handgun, the amendment was out of order.

The ruling precluded further consideration of Amendment No. 3.

Germaneness of Amendment—Sustained
85 H.J. Reg. 2222 (Stickland 5/2/17)

AMENDMENT NO. 2 (SB 16) - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of Amendment No. 2 pursuant to House Rule 11, Section 2, on the grounds that the amendment is not germane to the bill.

SB 16 would reduce various existing fees associated with obtaining and renewing handgun licenses. Amendment No. 2 deals with gun safety. Amendment No. 2 would require handgun-license applicants to include in the required affidavit a statement that the applicant owns a "secure gun storage device," such as a gun safe. Because requiring the affidavit to include a statement about gun safety is not germane to reducing fees for obtaining or renewing a handgun license, the point of order is sustained.

The ruling precluded further consideration of Amendment No. 2.

Germaneness of Amendment—Sustained
85 H.J. Reg. 1927-28 (Farrar 4/26/17)

AMENDMENT NO. 75 (CSSB 4) - POINT OF ORDER

Representative Farrar raised a point of order against further consideration of Amendment No. 75 by Representative Rinaldi (an amendment to Amendment No. 74) under Rule 11, Section 2, on the grounds that the amendment to the amendment was not germane to the original amendment. The point of order is sustained.

Rule 11, Section 2, bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or "substitute for a measure under debate." CSSB 4 created a civil penalty and used funds collected under that section for the compensation to victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure. Victim outreach was contemplated under CSSB 4. Amendment No. 74 proposed that the civil penalty be used to fund defense costs for persons impacted by CSSB 4. Amendment No. 75 struck the use of funds for defense costs and directed the funds to alternatives for abortion.

The committee substitute and the original amendment directed the use of funds collected to an item the subject of the bill. The amendment to the amendment did not. The chair was not directed to any portion of CSSB 4 that touched on either alternatives to abortion, or even larger subjects such as pregnancy or birth. The chair has examined the text of CSSB 4 and can find no reference to the proposed topic independently. Because the amendment was not related to the subject under consideration and did not have the same subject as the original bill, the point of order is sustained. *See* 83 Reg. H.J. 2984 (2013) (Dutton point of order on CSHB 34); 75 Reg. H.J. 1331 (1997) (Talton point of order on CSHJR 4).

The ruling precluded further consideration of Amendment No. 75.

Germaneness of Amendment
85 H.J. Reg. 1919-20 (Blanco 4/26/17)

AMENDMENT NO. 9 (CSSB 4) - POINT OF ORDER

Representative Blanco raised a point of order against further consideration of CSSB 4 under Rule 11, Section 2, on the grounds that the Schaefer amendment (Amendment No. 9) was not germane to the bill and would change the original purpose of the bill. The point of order is respectfully overruled.

Rule 11, Section 2, bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or "substitute for a measure under debate." Additionally, Rule 11, Section 3, states that "no bill shall be amended in its passage through either house so as to change its original purpose."

Representative Blanco argued that the Schaefer amendment was out of order because it impermissibly expanded the scope of SB 4 beyond the original class of affected persons who may be asked their immigration status by including a new class of persons—persons who are detained. The bill as it came to the house and that was substituted in committee applied to a larger class: "persons under a lawful detention or under arrest." So, the subject of the Schaefer amendment was within the initial scope of the bill as it was first received by the house.

A similar point of order was raised by Representative Lucio earlier this evening. Representative Blanco's point fails for the same reason. The bill as it came over from the senate and as it exited the house committee was a multipage, multisection, multiple-topic bill related to enforcement of state and federal laws governing immigration by certain state and local governmental entities. The disputed amendment related to enforcement of state and federal law governing immigration by certain state and local governmental entities. Because the amendment, in the determination of the chair, is on the subject under consideration and has the same subject and same purpose as the original bill, the point of order is respectfully overruled. *See* 83 Reg. H.J. 2984 (2013) (Dutton point of order on CSHB 34); 75 Reg. H.J. 1331 (1997) (Talton point of order on CSHJR 4).

Germaneness of Amendment & Original Purpose
85 H.J. Reg. 1874-75 (Lucio 4/26/17)

AMENDMENT NO. 9 (CSSB 4) - POINT OF ORDER

Representative Lucio raised a point of order against further consideration of Amendment No. 9 under Rule 11, Sections 2 and 3, on the grounds that the amendment is not germane to the bill and would change the original purpose of the bill. The point of order is respectfully overruled.

Rule 11, Section 2, bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or "substitute for a measure under debate." Additionally, Rule 11, Section 3, states that "no bill shall be amended in its passage through either house so as to change its original purpose."

The bill as it came over from the senate and as it exited the house committee was a multipage, multisection, multiple-topic bill related to enforcement of state and federal laws governing immigration by certain state and local governmental entities. The disputed amendment related to enforcement of state and federal law governing immigration by certain state and local governmental entities. Because the amendment, in the determination of the chair, is on the subject under consideration and is the same subject as the original purpose, the point of order is respectfully overruled. *See* 83 Reg. H.J. 2984 (2013) (Dutton point of order on CSHB 34); 75 Reg. H.J. 1331 (1997) (Talton point of order on CSHJR 4).

Germaneness of Amendment & Original Purpose—Sustained
85 H.J. Reg. 1263 (Stickland 4/6/17)

AMENDMENT NO. 138 (CSSB 1) - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of Representative Springer's Amendment No. 138 to CSSB 1 under Rule 11, Sections 2 and 3. The point of order is sustained.

Amendment No. 137 by Representative Stickland would have struck the Feral Hog Abatement Program from appropriations. Representative Springer offered Amendment No. 138 as an amendment to Amendment No. 137. Representative Springer's amendment to the amendment would have struck all the language from Amendment No. 137 and reduced by $450,000 the appropriations from the general revenue fund to the strategy that funds transportation maintenance for the City of Bedford. The amendment to the amendment would have left funding for the Feral Hog Abatement Program intact.

Rule 11, Section 2, bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or "substitute for a measure under debate." Rule 11, Section 3, disallows amending a bill so as to change its original purpose. Representative Springer's amendment to the amendment sought to reduce appropriations for the purpose of maintenance in the City of Bedford, rather than reducing appropriations to the Feral Hog Abatement Program. Proponents of the point of order assert that the amendment to the amendment was completely unrelated to the Feral Hog Abatement Program and that reducing the appropriation for transportation maintenance of the City of Bedford would achieve a completely different purpose. The point of order is well taken and sustained.

Germaneness of Amendment & Original Purpose
85 H.J. Reg. 518-19 (Herrero 3/1/17)

AMENDMENT NO. 11 (HB 4) - POINT OF ORDER

Representative Herrero raised a point of order against further consideration of Amendment No. 11 pursuant to Rule 11, Sections 2 and 3, of the House Rules on the grounds that the amendment is not germane to the bill. The point of order is respectfully overruled.

HB 4 provides for needs-based cash assistance to relative or other caregivers who enter into caregiver assistance agreements with the Department of Family and Protective Services. The bill categorizes caregivers based on income. For caregivers in the lowest income bracket, the bill replaces assistance in the form of a one-time cash payment with ongoing payments. Caregivers who fall into a more moderate income bracket continue to receive one-time integrative payments. Caregivers in a third category, who have income above a certain threshold, are ineligible for assistance.

Amendment No. 11 seeks to prohibit the payment of cash assistance to any caregiver "who is not lawfully present in the United States." Representative Herrero argues that Amendment No. 11 contravenes the purpose of HB 4 such that it is neither germane to nor consistent with the purpose of HB 4. Specifically, he asserts that creating a category based on citizenship falls outside the scope of the bill, which categorizes caregivers based on income alone. He argues that the bill's intended purpose is to increase the number of children who are placed in care with relatives, and that the amendment would decrease the number of available placements. He further urges that the bill provides levels of support for the benefit of children and does not intend to deprive children of that care or support based on an additional attribute of the caregiver who actually receives the money.

HB 4 divides caregivers into categories of persons excluded from receiving payments and persons who are eligible to receive payments. Amendment No. 11 would create another category of persons excluded from receiving assistance based on the caregiver's legal status. Although it may be the case that the amendment would decrease the number of caregivers receiving payments, the bill would nonetheless provide assistance to caregivers who are lawfully present in the United States. Adding the fourth category of caregivers to the bill, and thereby making assistance unavailable to the caregivers who fall into that category, and, correspondingly, unavailable to the children whose caregivers fall into that category, would not impermissibly change the bill's purpose. *See* 83 H.J. Reg. 2829 (2013) (Nevárez point of order on Amendment No. 4 to CSHB 1790).

Germaneness of Amendment & Original Purpose—Sustained
84 H.J. Reg. 4568-69 (Martinez Fischer 5/25/15)

SB 759 - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of SB 759 under Rule 8, Section 1; Rule 11, Section 2; and Rule 11, Section 3 of the House Rules and Article III, Section 30 and Article III, Section 35 of the Texas Constitution on the grounds that the bill caption is inaccurate, the amendment is not germane to the bill, and the amendment would change the original purpose of the bill.

The speaker sustained the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of SB 759 on the grounds that it violates Rule 8, Section 1; Rule 11, Sections 2 and 3, and Article III, Sections 30 and 35 of the Texas Constitution. The point of order is sustained.

SB 759 was a simple bill that contained two subjects: the repeal of a bingo hall rental tax and a repeal of and exemption from certain liquefied gas taxes. The bill was neither an omnibus tax bill, nor an omnibus repeal-of-tax bill, nor an omnibus bill of any kind. It was a potentially flawed bill containing two subjects. During the course of the day, the bill was amended to include an exemption from certain taxes for an attorney who provides only pro bono legal services and a prize tax on cash bingo prizes in excess of $5. A further amendment which was pending would have included a refund or credit for health insurance provider fees due under the Affordable Care Act. Proponents of the point of order explain that the bill was intended only to eradicate taxes that raised less revenue than the cost of collecting the tax, but they assert that instead, SB 759 has become a "tax bill piñata" with members interested in altering various taxes attempting to take a whack. Proponents also suggest that under the rules, the sustained swats at the initially defective tax piñata have caused it to collapse and have caused the life force of the bill to spill like candy to the floor. *See* Rule 11, Sections 2 (germaneness) & 3 (change of original purpose). The point of order is well taken. Unlike eager children who are able to swallow their ill-gotten gains, a failed tax bill piñata leaves only the useless papier-mâché remains of SB 759.

SB 759 was returned to the Committee on Ways and Means.

Germaneness of Amendment & Original Purpose
84 H.J. Reg. 3260 (Martinez Fischer 5/12/15)

AMENDMENT NO. 4 (HB 3787) - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of Amendment No. 4 under Rule 11, Section 2 and Rule 11, Section

3 of the House Rules on the grounds that the amendment is not germane to the bill and the amendment would change the original purpose of the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised two points of order against further consideration of HB 3787 pursuant to Rule 11, Section 2 and Rule 11, Section 3 on the grounds that the amendment by Representative D. Bonnen on Amendment No. 4 is either not germane or changes the original purpose of the bill. The points of order are respectfully overruled.

An amendment to a bill must be germane to the bill and must not change the bill's original purpose. Rule 11, Sections 2 and 3. HB 3787 provides for a deadline by which first-party claims must be filed by allowing commercial and residential property insurance carriers to provide for a contractual limitations period for filing suit for these claims under an insurance policy. Amendment No. 4 would allow for an extension of that contractual limitations period for up to 120 days upon a showing of good cause. Because both the bill and the amendment relate to and have the purpose of defining a contractual deadline by which first-party claims under commercial and residential property insurance policies must be filed, the amendment is germane and does not change the bill's purpose. Therefore, having reviewed the amendment, the bill, and the House Rules, the chair determines that Amendment No. 4 does not violate Rule 11, Section 2 or Rule 11, Section 3.

Germaneness of Amendment
84 H.J. Reg. 3063 (Leach 5/11/15)

AMENDMENT NO. 1 (CSHB 3404) - POINT OF ORDER

Representative Leach raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Leach raised a point of order against further consideration of Amendment No. 1 to CSHB 3404 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill. The point of order is respectfully overruled.

Rule 11, Section 2 bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or "substitute for a measure under debate." Rule 11, Section 2. CSHB 3404 directs the Health and Human Services Commission to "conduct a study on the benefits of providing integrated care to veterans with post-traumatic stress disorder" (PTSD). CSHB 3404 also stipulates specifically that the study must evaluate the benefits of (1) certain standardized PTSD assessment in the identification of

treatment; and (2) family members' involvement in treatment. Amendment No. 1 seeks to add a third required area of evaluation within the study: the benefits of using marihuana as a treatment for PTSD. Representative Leach asserts that this amendment is not germane to the bill as the bill seeks to conduct a study on legal methods of treatment and assessment, whereas the amendment seeks to study currently illegal treatment methods. This distinction does not render the amendment non-germane. Further, Representative Simpson made clear his intention that the study would focus on scholarly research and the documented impact of marihuana on PTSD; it does not allow or encourage participation in illegal activity. Having reviewed the bill, the amendment, and the applicable house rule and precedent, the chair finds that, because the subject matter of the amendment is squarely within the scope of CSHB 3404—a study to evaluate various methods of assessment and possible treatment of veterans with PTSD—the amendment is germane and complies with Rule 11, Section 2. *See* Rule 11, Section 2; *cf.* 79 H.J. Reg. 618-19 (2005) (Representative Chisum point of order on Amendment No. 51 to CSHB 2).

Germaneness of Amendment
84 H.J. Reg. 3019 (Rose 5/11/15)

AMENDMENT NO. 1 (CSSB 733) - POINT OF ORDER

Representative Rose raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Rose raised a point of order against further consideration of Amendment No. 1 to CSSB 733 under Rule 11, Section 2 on the grounds that the amendment is not germane to the bill. The point of order is respectfully overruled.

Rule 11, Section 2 of the House Rules bars any "motion or proposition on a subject different from the subject under consideration" from being admitted as an amendment or "substitute for a measure under debate." Rule 11, Section 2. CSSB 733 deals with the authority of certain political subdivisions to change the date on which general elections are held. Amendment No. 1 to CSSB 733 seeks to clarify the election requirements of certain school districts—a subset within the broader category of political subdivisions in the bill as introduced. Having reviewed the bill, the amendment, and the arguments and authority cited by Representative Rose, the chair finds that, because Amendment No. 1 properly deals with the election date of a political subdivision, and because it would not expand the scope of the bill, Amendment No. 1 is germane to CSSB 733. *See* Rule 11, Section 2; *cf.* 79 H.J. Reg. 618-19 (2005) (Representative Chisum point of order on Amendment No. 51 to CSHB 2).

Germaneness of Amendment & Original Purpose
84 H.J. Reg. 1927-28 (González and Farrar 4/23/15)

AMENDMENT NO. 18 (CSHB 2510) - POINT OF ORDER

Representatives González and Farrar raised a point of order against further consideration of Amendment No. 18 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules on the grounds that the amendment is not germane to the bill and the amendment would change the original purpose of the bill.

. . .

The speaker overruled the point of order and submitted the following statement:

Representatives González and Farrar raised a point of order against further consideration of Amendment No. 18 to CSHB 2510 under Rule 11, Sections 2 and 3 of the House Rules on the grounds that "the amendment is not germane to the bill and further attempts to change the original intent of the bill." The point of order is respectfully overruled.

Rule 11, Section 2 states that "[a]mendments pertaining to the organization, powers, regulation, and management of the agency, commission, or advisory committee under consideration are germane to bills extending state agencies, commissions, or advisory committees under the provisions of the Texas Sunset Act." Rule 11, Section 3 prohibits a bill from being amended in its passage through either house so as to change its original purpose.

Amendment No. 18 required the Department of State Health Services (the Department) to adopt a new minimum standard for the medical treatment and medical services provided at an abortion facility in the State of Texas that would have prohibited an abortion from being performed at that "facility on the basis that the fetus has a severe and irreversible abnormality." Representative Farrar argues that the amendment violates a number of federal and state laws relating to the regulation of abortion and imposes a new duty on persons seeking an abortion, compelling them to declare the reasons why they are having an abortion. Further, she argues that the amendment's references to the Department alone are not sufficient to make this amendment germane to this sunset bill, when the primary purpose of the amendment dealt with persons or agencies not under the sunset bill. Representative González argues that the amendment is not germane because its primary purpose is not related to the "organization, powers, regulation, and management of the agency" but rather is a direct restriction on the individual seeking the abortion or on the doctor performing the procedure, who is regulated by the Texas Medical Board and not the Department. In defense of his amendment, Representative Schaefer argues that the restriction affects a license holder of the agency subject to the sunset bill and, as such, is a matter affecting the duties related to the "organization, powers, regulation and management of the agency" and is appropriate under Rule 11, Section 2.

The mere inclusion of a reference to an agency in an amendment to a sunset bill is not enough to make the amendment germane to a sunset bill under Rule 11, Section 2 if the purpose of the amendment deals with the organization, powers, regulation, and management of any agency or other entity that is not the subject of the sunset bill. In this case, Amendment No. 18 expressly obligates the Department (the subject of the sunset bill) to adopt minimum standards (a power of the Department that is the subject of the sunset bill) disallowing abortions from being performed at certain licensed facilities (a regulated entity under the sunset bill) for one prohibited reason. Because the amendment relates solely to the "organization, powers, regulation, and management of the agency," the subject of the sunset bill, and because the amendment does not change the bill's original purpose of continuing the Department, the chair finds that Amendment No. 18 does not violate Rule 11, Sections 2 and 3.

Germaneness of Amendment—Condition on Effective Date
83 H.J. 2nd C.S. 39 (Simpson 7/9/13)

AMENDMENT NO. 22 (HB 2) - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of Amendment No. 22 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raised a point of order against further consideration of Amendment No. 22 to HB 2 under Rule 11, Sections 2 and 3 of the House Rules. The point of order is respectfully overruled.

Representative Simpson asserts that the amendment was not germane to the bill and would impermissibly change the purpose of the bill because the amendment affects Texas's death penalty, but the bill does not relate to the death penalty. The amendment provides that Sections 2 through 10 of the bill would not take effect until "60 days after publication in the Texas Register of a finding of fact . . . that the state has abolished the use of the death penalty . . . ." Because the amendment merely places a condition on when the bill's provisions take effect, without separately compelling any action, it does not violate Rule 11's requirements that amendments be germane and consistent with a bill's original purpose. *See* Rule 11, Sections 2 & 3; *see also* HB 866, 83rd Legislature (taking effect "on any date not later than September 1, 2015, on which the commissioner of education obtains a specified waiver from the application of federal law or regulation or receives written notification that a waiver is not required"); SB 1386, 83rd Legislature (failing to take effect because certain other legislation failed to pass); HB 1112, 82nd Legislature ("Section 13 has no effect if the attorney general issues an opinion prohibiting a member of the governing body of a municipality from serving as a director of an authority."); SB 1436, 80th

Legislature (transferring responsibilities to an agency contingent upon legislation appropriating $6.1 million to that agency).

Germaneness of Amendment
83 H.J. 1st C.S. 1051-52 (Moody 6/21/13)

AMENDMENT NO. 3 (SB 23) - POINT OF ORDER

Representative Moody raised a point of order against further consideration of Amendment No. 3 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Moody raised a point of order against further consideration of Amendment No. 3 to SB 23 under Rule 11, Section 2 of the House Rules. The point of order is respectfully overruled.

SB 23 provided for the option of a sentence of life with parole for offenders under the age of 18 who are convicted of a capital felony. Amendment No. 3 would have made SB 23's sentencing provisions inapplicable to certain persons under 18 by prohibiting them from being charged with a capital felony if the capital felony in question was committed by a conspirator. Because the amendment relates to the punishments applicable to juveniles who commit a capital felony, it was germane to SB 23.

Germaneness of Amendment & Original Purpose
83 H.J. Reg. 4018-19 (Burnam 5/21/13)

AMENDMENT NO. 1 (SB 347) - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules on the grounds that the amendment is not germane to the bill and would change the original purpose of the bill.

The chair overruled the point of order and submitted the following statement:

Representative Burnam raised a point of order against further consideration of Amendment No. 1 to SB 347 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules. The point of order is respectfully overruled.

SB 347 revises the funding mechanism for the operation of the Texas Low-Level Radioactive Waste Disposal Compact Commission ("Compact Commission"). Amendment No. 1 provides additional funding mechanisms and adds conditions for those funding mechanisms. Because the amendment relates to funding for the operations of the Compact Commission, the amendment is germane and achieves the same purpose of funding the Compact Commission

as the original bill. Thus, the amendment does not violate the germaneness requirement of Rule 11, Section 2, nor the requirement of Rule 11, Section 3, which prohibits amending a bill so as to change its original purpose. *See* Rule 11, Sections 2, 3, & explanatory notes and house precedents.

Germaneness of Amendment
83 H.J. Reg. 3866 (Burnam 5/20/13)

AMENDMENT NO. 26 (CSSB 7) - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of Amendment No. 26 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Burnam raised a point of order against further consideration of Amendment No. 26 to CSSB 7 asserting the amendment was not germane. *See* Rule 11, Section 2. CSSB 7 relates to delivery and quality of long-term and Acute Care Medicaid services. Because Amendment No. 26 addresses who is eligible to receive the long-term and Acute Care Medicaid services addressed by the bill, the chair determines that the amendment is germane to CSSB 7.

Germaneness of Amendment—Sustained
83 H.J. Reg. 3626-27 (Taylor 5/17/13)

AMENDMENT NO. 2 (SB 1729) - POINT OF ORDER

Representative Taylor raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair sustained the point of order and submitted the following statement:

Representative Taylor raised a point of order against further consideration of Amendment No. 2 to SB 1729 under Rule 11, Section 2 of the House Rules, asserting that the amendment is not germane to the bill. The point of order is sustained.

SB 1729 creates a pilot program in "not more than three counties" meeting certain criteria. The pilot program relates to providing renewal and duplicate driver's licenses and other identification certificates. Amendment No. 2 would have provided for issuance of Texas resident driver's permits statewide to persons meeting certain requirements. Because statewide issuance of resident driver's permits is not germane to a limited pilot program for issuance of duplicate driver's licenses or other identification certificates, the amendment was out of order.

The ruling precluded further consideration of Amendment No. 2.

Germaneness of Amendment—Sustained
83 H.J. Reg. 3435-36 (Taylor 5/16/13)

AMENDMENT NO. 1 (SB 1156) - POINT OF ORDER

Representative Taylor raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

Representative Taylor raised a point of order against further consideration of Amendment No. 1 to SB 1156 under Rule 11, Section 2, asserting that the amendment is not germane to the bill. The point of order is sustained.

SB 1156 regulates land reclamation projects using scrap tires. Amendment No. 1 requires a person to store scrap tires in a secure manner if they are either stored outdoors or if the person is a scrap or used tire generator who stores the tires outdoors on its business premises. Because storage of used or scrap tires on the business premises of a scrap or used tire generator is not germane to the regulation of land reclamation projects using scrap tires, the amendment was out of order.

The ruling precluded further consideration of Amendment No. 1.

Germaneness of Amendment—Sunset
83 H.J. Reg. 3345 (S. Thompson, Miles 5/15/13)

AMENDMENT NO. 31 (SB 215) - POINT OF ORDER

Representatives S. Thompson and Miles raised a point of order against further consideration of Amendment No. 31 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representatives S. Thompson and Miles raised a point of order against further consideration of Amendment No. 31 to SB 215, asserting that the amendment is not germane to the bill. The point of order is respectfully overruled.

The bill relates to the continuation and functions of the Higher Education Coordinating Board under the Texas Sunset Act. Amendment No. 31 directs the board to work with governing boards, system administrations, and institutions to "ensure that each institution does not implement a policy or otherwise engage in a practice that requires a student organization, including a religious student organization, to accept for membership in the organization [certain students]." By conferring this additional duty on the board, the amendment affects the board's organization, powers, regulation, and management, and is therefore germane to the bill. *See* Rule 11, Section 2.

Germaneness of Amendment
83 H.J. Reg. 2710-11 (Herrero 5/7/13)

AMENDMENT NO. 2 (CSHB 3153) - POINT OF ORDER

Representative Herrero raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Herrero raises a point of order under Rule 11, Section 2 of the House Rules, contending the P. King amendment to CSHB 3153 is not germane. Representative P. King's amendment, which was later withdrawn, related to the jurisdiction of the Travis County district attorney, including the transfer of a portion of that district attorney's jurisdiction under certain conditions. Representative Herrero argues that the amendment is not germane because CSHB 3153 does not deal with the jurisdiction of any district attorney. The point of order is respectfully overruled.

CSHB 3153, in Article 1 of the bill entitled "ARTICLE 1. DISTRICT COURTS AND DISTRICT ATTORNEYS," creates or amends the jurisdiction of several district attorneys. For instance, as noted in the bill analysis, the bill provides for the election of a district attorney by the voters of the 452nd Judicial District and includes the district attorney for the 452nd Judicial District among the state prosecutors who are subject to statutory provisions governing professional prosecutors. In addition, the change in the jurisdiction of the 216th, 198th, and 452nd Judicial District Courts also affected the jurisdiction of the district attorneys for each of those courts. *See* Tex. Gov't Code § 43.166 (District Attorney for the 216th District); Tex. Gov't Code § 43.165 (District Attorney for the 198th District); Tex. Gov't Code § 43.184 (District Attorney for the 452nd District as added by CSHB 3153).

In addition to these changes, the bill expands the authority of the Travis County district attorney. In Section 1.04 of CSHB 3153, the bill specifically created the 450th Judicial District Court. The section states:

> Sec. 24.594. 450TH JUDICIAL DISTRICT (TRAVIS COUNTY). (a) The 450th Judicial District is composed of Travis County.
>
> (b) The 450th District Court shall give preference to criminal matters.

Under Government Code Section 43.132(a), the voters of Travis County elect the Travis County district attorney, who "[i]n addition to performing the other duties provided by law for district attorneys, . . . represents the state in all criminal cases before all the district courts of Travis County." This would include the newly created 450th Judicial District Court.

In this case, not only did the bill create, modify, or change the jurisdictions and duties of a number of district attorneys, including limiting or expanding their

jurisdictions and awarding benefits to them under the Professional Prosecutors Act, but it also specifically expanded the jurisdiction of the Travis County district attorney by creating the 450th District Court to hear criminal matters and expanding the jurisdiction of the Travis County district attorney to prosecute criminal matters.

Germaneness of Amendment—Sustained
83 H.J. Reg. 2438 (Pickett 5/4/13)

AMENDMENT NO. 4 (CSHB 485) - POINT OF ORDER

Representative Pickett raised a point of order against further consideration of Amendment No. 4 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair sustained the point of order and submitted the following statement:

Representative Pickett raised a point of order against further consideration of Amendment No. 4 to CSHB 485 under Rule 11, Section 2 of the House Rules on the ground that the amendment is not germane to the bill. The point of order is sustained.

CSHB 485 provides for a discounted fee to be charged to veterans and certain peace officers who apply for, renew, or modify a concealed handgun license. The amendment would have capped, at a different rate than the fees outlined in CSHB 485, the fees that can be charged to all applicants for renewal and application for a concealed handgun license. Because the amendment sought to establish a different type of discount than the original bill to a broader class of persons than that to which the original bill applied, the amendment was not germane. *See* Rule 11, Section 2.

The ruling precluded further consideration of Amendment No. 4.

Germaneness of Amendment
83 H.J. Reg. 2126 (S. Turner 5/1/13)

AMENDMENT NO. 7 (HB 7) - POINT OF ORDER

Representative S. Turner raised a point of order against further consideration of Amendment No. 7 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative S. Turner raised a point of order against further consideration of Amendment No. 7 to HB 7 under Rule 11, Section 2 of the House Rules. The point of order is respectfully overruled.

HB 7 directs the Legislative Budget Board to develop recommendations

to reduce state government reliance on dedicated revenue for the purpose of budget certification. The bill further directs the board to incorporate into its recommendations measures to reduce state government reliance on dedicated revenue for the purpose of budget certification. Amendment No. 7 provides, for the purpose of reducing reliance on dedicated revenue for budget certification, that the board shall not set the rate of growth of appropriation above the lesser of three alternate caps and provides direction on how to calculate those caps. Because the amendment relates to the board's development of measures to reduce reliance on dedicated revenue to certify the budget, the amendment is germane. *See* Rule 11, Section 2.

Germaneness of Amendment
83 H.J. Reg. 1164 (Martinez Fischer 3/27/13)

AMENDMENT NO. 38 (CSHB 4) - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of Amendment No. 38 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order under Rule 11, Section 2 of the House Rules that Amendment No. 38 was not germane to CSHB 4 because it amends the Local Government Code and does not mention the state water implementation fund for Texas or the state water implementation revenue fund for Texas. The point of order is respectfully overruled.

The amendment, which allows the Texas Water Development Board (TWDB) to provide funds to certain entities for certain water-related projects, is germane to the bill, which relates to TWDB's funding of those and other water-related projects. *See* Rule 11, Section 2, explanatory notes and house precedents.

Germaneness of Amendment—Sustained
83 H.J. Reg. 1162 (Geren 3/27/13)

AMENDMENT NO. 36 (CSHB 4) - POINT OF ORDER

Representative Geren raised a point of order against further consideration of Amendment No. 36 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

Representative Geren raised a point of order under Rule 11, Section 2 of the House Rules that Amendment No. 36, offered by Representative Taylor, was not germane to the proposition under consideration (CSHB 4). The point of order

is sustained. In this case, the amendment, which would have increased the size of the governing body of the Texas Water Development Board and created an additional governance structure within the board, was not germane to CSHB 4, which dealt with funding of certain water projects and did not deal with the Texas Water Development Board's size or governance structure. *See* Rule 11, Section 2, explanatory notes and house precedents note 3.

The ruling precluded further consideration of Amendment No. 36.

Germaneness of Amendment
81 H.J. Reg. 4274 (Veasey 5/21/09)

AMENDMENT NO. 12 (CSSB 1569) - POINT OF ORDER

Representative Veasey raised a point of order against further consideration of Amendment No. 12 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order and submitted the following statement:

Representative Veasey raises a point of order against further consideration of the Legler amendment to CSSB 1569 in that the amendment is not germane and is in violation of Rule 11, Section 2 of the House Rules.

The chair is of the opinion that the amendment is germane because it places an additional restriction on the recipient or class of individuals that are already covered by the bill. The chair notes that the bill already contains restrictions for those recipients. This decision would be reached whether or not the bill is deemed an omnibus bill.

Accordingly, the point of order is respectfully overruled.

Germaneness of Amendment & Original Purpose—Sustained
81 H.J. Reg. 3252-53 (Merritt 5/12/09)

AMENDMENT NO. 5 (HB 2154) - POINT OF ORDER

Representative Merritt raised a point of order against further consideration of Amendment No. 5 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules and under Article III, Section 30 of the Texas Constitution on the grounds that the amendment is not germane to the bill and would change the original purpose of the bill.

The speaker sustained the point of order and had read the following statement:

Representative Merritt raises a point of order against further consideration of the S. Turner amendment to HB 2154 in that the amendment is not germane and is in violation of Rule 11, Section 2 of the House Rules.

The amendment proposes a revised tax on certain tobacco products as a manner of funding the physician education loan program account created by the bill in Subchapter J, Chapter 61, Education Code. In changing the method by which the tax on tobacco is calculated, certain conforming amendments were apparently made to Section 155.2415, Tax Code, to ensure that the same amount of revenue would go to property tax relief as under current law. Of the additional revenue raised by the amendment, 75 percent of the proceeds is deposited to the loan program account established in the bill.

Even though the amendment is silent as to the disposition of the remaining 25 percent, Section 155.241, Tax Code, provides that all revenue collected under Chapter 155 is deposited in the general revenue fund. Section 155.2145 provides an exemption from this general rule for certain amounts reserved for property tax relief, and under the amendment, the physician loan account. The remaining 25 percent of increased revenue brought in by the amendment is not covered by the exemption and is therefore deposited in general revenue.

In the original bill, the entire amount of the proposed increase in the surcharge on physicians' licenses was dedicated to the physician loan account. A conforming change was made to the language disposing of the surcharge on physicians' licenses that increased the amount deposited to the school foundation fund and decreased the amount deposited to the general revenue fund to allow the entire increase in surcharge proposed by the bill to be deposited in the physician loan account.

However, in the amendment, only 75 percent of the proposed increase is to go to the physician loan account. The remaining 25 percent is deposited in general revenue and this deposit is not necessary to maximize the amount deposited in the physician loan account. Thus, the amendment adds another purpose for which the increase in funding is to be used that is not in the original bill. Because of this, the amendment is not germane to the bill.

This ruling does not preclude a revised amendment that is germane to the bill from being offered on second or third reading.

Accordingly, the point of order is sustained.

The ruling precluded further consideration of Amendment No. 5.

Germaneness of Amendment & Original Purpose—Sustained
81 H.J. Reg. 3250-51 (Merritt 5/12/09)

AMENDMENT NO. 4 (HB 2154) - POINT OF ORDER

Representative Merritt raised a point of order against further consideration of Amendment No. 4 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules and under Article III, Section 30 of the Texas Constitution on the grounds that the amendment is not germane to the bill and would change the original purpose of the bill.

The speaker sustained the point of order and submitted the following statement:

Representative Geren raised a point of order on May 8, 2009, against further consideration of an amendment to HB 2154 by Representative Chisum in that the amendment is not germane to the bill in violation of Rule 11, Section 2 of the House Rules. The point of order was withdrawn and the bill postponed. Mr. Merritt renewed the point of order when the bill was brought before the house again on May 12, 2009.

As the chair previously discussed in ruling on another point of order on an amendment offered by Mr. Chisum to this bill, the subject of HB 2154 is narrow—a program that charges a surcharge on medical licenses to provide funds for a physician education loan repayment program under Subchapter J, Chapter 61, Education Code.

The amendment proposes changing the funding mechanism from a surcharge on medical licenses to an increase in the tax on certain tobacco products. SECTION 2 of the amendment makes conforming changes to Section 155.2415, Tax Code, to allow for the new funding mechanism, and places the increased revenue in the "health care access fund under Section 403.1056, Government Code." While this fund was proposed to be created in the previous Chisum amendment to this bill, this amendment does not include a provision creating the fund nor is there any current statutory authorization for this fund. As such, it is impossible to determine what purposes money in the fund may be used for and whether the amendment is within the scope of the bill. Because the chair cannot find that money in the fund is required to be spent in a manner that furthers the purposes of the bill, the amendment is not germane.

The point of order is sustained.

The ruling precluded further consideration of Amendment No. 4.

Germaneness of Amendment—Sustained
81 H.J. Reg. 3012-14 (Geren 5/8/09)

AMENDMENT NO. 3 (HB 2154) - POINT OF ORDER

Representative Geren raised a point of order against further consideration of Amendment No. 3 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

On May 8, 2009, Representative Geren raised a point of order against further consideration of an amendment to HB 2154 that was offered by Representative Chisum on the grounds that it violated Rule 11, Section 2 (germaneness) and Rule 8, Section 3 of the House Rules (limiting a bill to a single subject).

Subject and Purpose of HB 2154. HB 2154 creates a physician education loan repayment program account in the general revenue fund. The funding mechanism for HB 2154 is a $25 surcharge to medical licenses in order to

expand the program's ability to encourage primary care physicians to practice in medically underserved areas of the state. Money in the account "may be appropriated only for the physician education loan repayment program under this subchapter." The subchapter that is referenced in the bill is Subchapter J, Chapter 61, Education Code, which creates a framework for the repayment of education loans for physicians, and it is clear from the language referenced below that these statutory provisions are narrow in scope and therefore not intended to apply to any other class of health care professionals:

SUBCHAPTER J. REPAYMENT OF CERTAIN
PHYSICIAN EDUCATION LOANS

Sec. 61.531. REPAYMENT AUTHORIZED. (a) The coordinating board may provide, using funds appropriated for that purpose and in accordance with this subchapter and rules of the board, assistance in the repayment of student loans for physicians who apply and qualify for the assistance. (Chapter 61, Education Code).

Subject and Purpose of the Chisum Amendment. The Chisum amendment, which is a substantial floor substitute for HB 2154, creates a new program under Subchapter FF, Chapter 61, Education Code, to repay loans for healthcare providers. The program is funded using the proceeds of a "healthcare access fund" which exists outside of the general revenue fund. The class of individuals covered by the amendment's definition of a "healthcare provider" is substantially broader than the single group that is the subject of HB 2154 (i.e. physicians):

(2) "Health care provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a dentist licensed under Subtitle D, Title 3, Occupations Code;

(C) a physician assistant licensed under Chapter 204, Occupations Code;

(D) an advanced practice nurse licensed under Chapter 301, Occupations Code;

(E) a dental hygienist licensed under Chapter 256, Occupations Code;

(F) a psychologist licensed under Chapter 501, Occupations Code;

(G) a licensed master social worker, as defined by Section 505.002, Occupations Code;

(H) a licensed professional counselor, as defined by Section 503.002, Occupations Code; and

(I) a licensed marriage and family therapist, as defined by Section 502.002, Occupations Code.

The subject of the amendment is different because it is broader in application and because it would substantially expand the class of persons eligible to participate in a student loan repayment program beyond those covered by the original bill. Under longstanding house precedent, amendments that have expanded the scope of a bill beyond a narrow class contained in the bill have been held not to be germane. See House Journal, 77th Legislature, Regular Session, (2001), page 1525; House Journal, 73rd Regular Session, (1993), page 1537. Accordingly, the amendment is not germane.

The point of order is sustained.

The ruling precluded further consideration of Amendment No. 3.

Germaneness of Amendment
81 H.J. Reg. 1996-97 (Chisum 4/28/09)

AMENDMENT NO. 2 (CSHB 2259) - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker overruled the point of order and submitted the following statement:

Mr. Chisum raises a point of order against further consideration of the Gallego amendment to CSHB 2259 in that the amendment is not germane to the bill in violation of Rule 11, Section 2 of the House Rules.

The subject of CSHB 2259 is the plugging of inactive wells. The bill establishes procedures in Chapter 89, Natural Resources Code, for proving that an operator's well is plugged and conditions renewal of an operator's certificate for active wells on the plugging of inactive wells or the granting of an extension to plug the inactive well by the commission. The bill also makes provisions for electric lines that feed inactive wells.

The amendment also amends Chapter 89 in a manner that encourages the plugging of inactive wells, albeit by another method (i.e. holding the former operator of the well responsible for plugging the well). The amendment also has provisions involving electrical lines that feed wells and requires that an operator ensure that those lines are properly connected. These provisions are clearly related to the subject or purpose of the bill, which is to encourage the plugging of inactive oil wells.

As such, the amendment is related to the purpose of the bill and is germane. See House Journal, 76th Legislature, Regular Session (1999), page 3709, in which the chair ruled that an amendment to a bill relating to procedures for summary judgement that added provisions relating to such was related to the purpose of the bill. The point of order is respectfully overruled.

Germaneness of Amendment—Sustained
80 H.J. Reg. 1551 (Hartnett 4/3/07)

AMENDMENT NO. 1 (HB 842) - POINT OF ORDER

Representative Hartnett raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

HB 842 applies solely to personal financial statements filed with the Texas Ethics Commission by a judge or justice. Amendment No. 1 would require the ethics commission to post all financial statements filed with the commission on the Internet within certain specified times. The amendment would apply to financial statements filed by state officers other than judges and justices, as well as to statements filed by certain candidates for office and certain political party officials. The application of the amendment to financial statements other than those filed by a judge or justice is not germane to the bill.

The ruling precluded further consideration of Amendment No. 1.

Germaneness of Amendment—Sustained
80 H.J. Reg. 1074-75 (Delisi 3/21/07)

AMENDMENT NO. 7 (HB 590) - POINT OF ORDER

Representative Delisi raised a point of order against further consideration of Amendment No. 7 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

HB 590 requires state agencies to adopt policies to enforce the existing general standards of conduct applicable to state officers and employees. Amendment No. 7 would add to those existing standards a prohibition on the acceptance of monetary gifts, and would also require a state agency to prohibit former officers and employees of the agency from representing others before the agency after leaving state service. The creation of new standards of conduct for state officials and the regulation of conduct of former state officials are not germane to the bill.

The ruling precluded further consideration of Amendment No. 7.

Germaneness of Amendment—Sustained
80 H.J. Reg. 1074 (Delisi 3/21/07)

AMENDMENT NO. 6 (HB 590) - POINT OF ORDER

Representative Delisi raised a point of order against further consideration of Amendment No. 6 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

HB 590 requires state agencies to adopt policies to enforce the existing general standards of conduct applicable to state officers and employees. Amendment No. 6 would add new standards of conduct to those already existing in law. The new standards would prohibit certain activity that requires registration as a lobbyist under Chapter 305, Government Code. The creation of new standards of conduct for state officials is not germane to the bill.

The ruling precluded further consideration of Amendment No. 6.

Germaneness of Amendment
79 H.J. Reg. 4325-36 (Gallego, Turner 5/24/05)

AMENDMENT NO. 2 (SB 89) - POINT OF ORDER

Representative Gallego raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

The speaker overruled the point of order and had read the following statement:

Representatives Gallego and Turner raised a point of order against further consideration of the Denny amendment to SB 89 on the grounds that the amendment violates Rule 11, Section 2 in that it is not germane.

SB 89 contains provisions relating to Chapter 63, Election Code, which relates to the acceptance of voters who wish to participate in elections by voting. The Denny amendment also amends provisions in Chapter 63, Election Code, and because it does such, is germane to the bill.

Therefore, the point of order is respectfully overruled.

Germaneness of Amendment—Sustained
79 H.J. Reg. 1195 (Keel 3/23/05)

AMENDMENT NO. 1 (CSHB 544) - POINT OF ORDER

Representative Keel raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order and submitted the following statement:

The subject matter of the amendment, requiring a health care facility providing a forensic medical examination to provide six enumerated services, was on a subject different from the bill under consideration; a bill giving the victim of a sexual assault the right to have a forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault.

The ruling precluded further consideration of Amendment No. 1.

Germaneness of Amendment—Sustained
79 H.J. Reg. 618-19 (Chisum 3/8/05)

AMENDMENT NO. 51 (CSHB 2) - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of Amendment No. 51 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

. . .

The speaker sustained the point of order, speaking as follows:

Representative Chisum raises a point of order against further consideration of Representative Dunnam's amendment on the grounds that a portion of the amendment, which would increase the homestead property tax exemption from $15,000 to $45,000 is not germane to CSHB 2.

I thank the members for their arguments and direction to authority.

Under Rule 11, Section 2, a proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate. Additionally, under the House Rules "an amendment to a committee substitute laid before the house in lieu of an original bill is germane if each subject of the amendment is a subject that is included in the committee substitute or was included in the original bill."

The house journals contain a number of examples of amendments which bear some relation to the subject of the bill. Although amendments are often well-cloaked as matters bearing some relation to the primary subject, the chair must examine the primary purpose of the amendment and seek if they expand the scope of the bill. See House Journal, page 1147 (75th Legislature). The test is whether the subject of the amendment is also the subject of the bill. Amendments which expand the scope of bill are not germane.

In this case, the chair is of the opinion that the bill before us was narrowly limited and the subject of the bill is the funding and operation of public schools. It is the chair's opinion that issues related to valuation of property for ad valorem

taxation, which is the section of Mr. Dunnam's amendment that is complained of, is not within the subject of CSHB 2. Because the amendment would expand the scope of the bill, which as reported from committee was narrowly limited, and because they are different subjects, the point of order is sustained.

Germaneness of Amendment—Sustained
78 H.J. Reg. 1697-98 (Elkins 4/22/03)

AMENDMENT NO. 2 (HB 1637) - POINT OF ORDER

Representative Elkins raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

. . .

The speaker sustained the point of order, speaking as follows:

Representative Elkins raises a point of order against further consideration of the Dunnam amendment under Rule 11, Section 2, in that the amendment is not germane to HB 1637.

HB 1637 relates to the formation, governance, and internal affairs of limited liability companies. The clear subject of the Dunnam amendment is the application of the franchise tax and how that tax is computed for a particular type of business entity. Therefore, the question presented by the point of order is whether the subject of the amendment is within the subject of HB 1637.

Rule 11, Section 2 provides that "no motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment . . ." The Dunnam amendment relates to the imposition and computation of the franchise tax on certain business entities under Chapter 171, Tax Code and is, therefore, a different subject than that contained in HB 1637.

Accordingly, the point of order is sustained.

The ruling precluded further consideration of Amendment No. 2.

Germaneness of Amendment—Sustained
78 H.J. Reg. 1694-95 (Elkins 4/22/03)

AMENDMENT NO. 2 (HB 1156) - POINT OF ORDER

Representative Elkins raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order, speaking as follows:

Representative Elkins raises a point of order against further consideration of the Dunnam amendment under Rule 11, Section 2, in that the amendment is not germane to HB 1156.

HB 1156 is a recodification of the laws governing the formation, governance, and internal affairs of business entities such as corporations, associations, and partnerships. The bill analysis expressly notes that "some substantive changes have been made," but the bill is nonetheless "generally a nonsubstantive recodification." A revisor's report has been available to the legislature and the public identifying numerous substantive changes. HB 1156 is clearly "omnibus" in regards to amendments concerning the formation, governance, and internal affairs of business organizations.

The Dunnam amendment would impose the Texas franchise tax on certain described business entities that are not corporations for purposes of Chapter 171, Tax Code, the statute generally imposing the franchise tax. The amendment provides rules for the computation of the net taxable capital and net taxable earned surplus of the entity, as well as provisions for the treatment of business losses. For corporations subject to the franchise tax, those computations and related provisions are all provided by Chapter 171, Tax Code. The clear subject of the amendment is the application of the franchise tax and how that tax is computed in regard to a particular type of business entity. The question presented by the point of order is whether that subject is within the broad subject of HB 1156; that is, whether imposition of the franchise tax is part of the "formation, governance, and internal affairs" of business entities.

The text of the Business Organizations Code as proposed by HB 1156 makes it clear that tax liability is beyond the scope of the code, and the provisions of the code accordingly make numerous cross-references to the relationship between tax liability and termination of an entity (e.g., Sec. 3.003), tax forfeiture (e.g., 9.104, 11.254), or withdrawal (9.011). For example, Section 11.254 provides "A filing entity whose certificate of formation has been forfeited under the provisions of the Tax Code must follow the procedures in the Tax Code to reinstate its certificate of formation," clearly establishing that both the tax forfeiture and the procedures related to forfeiture and reinstatement are governed by a body of law different from the Business Organizations Code.

The attention of the chair has been directed to Sections 23.106 and 251.451 of the Business Organizations Code, which provide respectively that certain special purpose corporations or cooperative associations are "not subject to or required to pay a franchise tax," except that such an entity "is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if" exempt under that chapter. As with other references to the Tax Code, the provision establishes the proposition that the franchise tax referred to by the Dunnam amendment is imposed by and governed by a different body of law.

The mere reference to another body of law in HB 1156 does not bring amendments to that body of law within the subject of the formation, governance,

and internal affairs of business organizations. The imposition of the franchise tax on business organizations is a separate and distinct subject from that presented in HB 1156.

Accordingly, the point of order is sustained.

The ruling precluded further consideration of Amendment No. 2.

Germaneness of Amendment—Sustained
76 H.J. Reg. 1384 (Luna 4/26/99)

AMENDMENT NO. 2 (CSHB 3778) - POINT OF ORDER

Representative Luna raised a point of order against further consideration of Amendment No. 2 by Talton under Rule 11, Section 2 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that it is not germane to the bill.

The speaker sustained the point of order, speaking as follows:

The subject of the bill is the creation of the position of "investigations coordinator" for each region served by child protective services and the duties of that position.

The amendment, while couched in terms of the duties of the new position would prohibit the placement of children for whom the state is managing conservator in homes in which homosexual conduct occurs or is likely to occur. That prohibition is clearly the primary subject of the amendment. While evaluating investigations of children placed in such homes would be consistent with the subject of the bill, the subject of the bill does not raise the substantive issue of which homes are eligible under law to serve as foster homes.

Because the primary subject of the amendment is different from that of the bill, the amendment is not germane. Accordingly, the point of order is well-taken and sustained.

The ruling precluded further consideration of the amendment.

Germaneness of Amendment—Sustained
75 H.J. Reg. 3307 (Danburg, Torres 5/22/97)

AMENDMENT NO. 33 (CSSB 1) - POINT OF ORDER

Representatives Torres and Danburg raised a point of order against further consideration of Amendment No. 33 under Rule 11, Section 2 of the House Rules and Article III, Section 30, of the Texas Constitution on the grounds that the amendment is not germane to and changes the original purpose of the bill.

. . .

The chair sustained the point of order, speaking as follows.

Representatives Danburg and Torres raised a point of order against further consideration of the Culberson amendment under Rule 11, Section 2 of the House Rules, and Article III, Section 30, of the Texas Constitution, in that the amendment is not germane.

The amendment states as its purpose allowing water districts to provide for the orderly development, management, and conservation of water resources, and to that end requires voter approval of actions by a political subdivision that may impact a water district's comprehensive water plan. The amendment defines such an action to mean, "the institution of a proceeding having the purpose of or effect of imposing a tax or fee." In other words, the amendment prohibits annexation or other actions instituting a tax or fee without regard to whether or not there is a genuine effect on the district's water plan.

Although well-cloaked as a water matter, the subject of the amendment is annexation by municipalities. Accordingly, the point of order is well-taken and sustained.

The ruling precluded further consideration of the amendment.

Germaneness of Amendment—Sustained
75 H.J. Reg. 1147 (Berlanga 4/16/97)

AMENDMENT NO. 1 (CSHB 723) - POINT OF ORDER

Representative Berlanga raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair sustained the point of order, speaking as follows:

Representative Berlanga raised a point of order against further consideration of the Wohlgemuth amendment under Rule 11, Section 2, in that the amendment is not germane.

The bill has as its subject the requirement of informed consent before the performance of a hysterectomy. No provision of the bill as reported from committee addresses a medical procedure other than a hysterectomy.

The amendment would add a requirement for informed consent before the performance of a medical procedure that leads to a hysterectomy. The clear effect of the amendment is to expand the bill to cover medical procedures other than hysterectomies, whatever those procedures may be, although with the limitation that the additional covered medical procedures lead to a hysterectomy. The scope and number of procedures meeting that standard are unknown, but are clearly broader than the narrower concept of the hysterectomy procedure itself.

Because the amendment would expand the scope of the bill, which as reported from committee is narrowly limited, the point of order is well-taken and sustained.

The ruling on the point of order precluded further consideration of Amendment No. 1.

Germaneness of Senate Amendments & Original Purpose
85 H.J. 1st C.S. 548 (González & Ortega 8/15/17)

HB 21 - POINT OF ORDER

Representative González raised a point of order against further consideration of HB 21 under House Rule 11, Section 2, on the ground that the amendments added by the senate are not germane. Representative Ortega raised a further point of order that the senate amendments violate House Rule 11, Section 3, by impermissibly changing the original purpose of the bill. The points of order are respectfully overruled.

Representative González urges that the senate amendments are not germane to HB 21, a broad public school finance bill, because one of the amendments transfers $212 million from the Health and Human Services Commission into the Teacher Retirement System of Texas. She argues that this transfer is not germane because it impacts provisions of the Insurance Code, while the remainder of the bill addresses the Education Code, and the subject of teacher retirement is not tied to funding education. Similarly, Representative Ortega argues that adding teacher retirement funding to HB 21 is impermissible because teacher retirement funding is distinct from public school finance.

Germaneness is determined by comparing the substance of the bill to the substance of the amendment, not by looking at the bill's caption nor by looking solely at the code being amended. HB 21 is an omnibus public school finance bill. The complained-of amendment transfers money to the Teacher Retirement System for the purpose of recruiting and retaining school teachers and decreasing certain premiums and other costs for participants in the Texas Public School Employees Group Insurance Program. Section 1575.302 of the Insurance Code requires, among other things, that contributions from active employees and the state be paid into the retired school employees group insurance fund. Section 1575.202 requires the state to contribute an amount equal to one percent of the salary of each active employee to the fund each fiscal year. In other words, funding the Texas Public School Employees Group Insurance Fund, which is the subject of the complained-of amendment, is directly tied to teacher pay, which proponents of the points of order agree is a component of public school finance. Accordingly, the amendment is germane and does not introduce a second subject into HB 21.

Germaneness of Senate Amendments—Sustained
85 H.J. Reg. 5512-13 (Romero 5/26/17)

HB 1595 - POINT OF ORDER

Representative Romero raised a point of order against further consideration of HB 1595 under Article III, Sections 30 and 35, of the Texas Constitution on the grounds that the amendment is not germane to the bill and impermissibly changes the purpose of the bill. The point of order is sustained.

Article III, Section 35, of the constitution requires bills to contain only one subject. Article III, Section 30, provides that "no bill shall be so amended in its passage through either House, as to change its original purpose."

HB 1595's sole purpose and subject was to change the deadline by which balloting materials for voting by mail must be mailed. The senate amendments added provisions relating to the contents of the application form for an early voting ballot, cancellation of an application to vote by mail, updates to certain voters' addresses and registrations, signature verifications, and procedures for correcting defects in an application. These amendments did not relate to, and went well beyond, changing the deadline for mailing balloting materials. Thus, the senate amendments violated Article III, Sections 30 and 35, of the constitution.

Germaneness of Senate Amendments & Original Purpose—Sustained
85 H.J. Reg. 5501-02 (Herrero 5/26/17)

AMENDMENT NO. 1 (HB 2305) - POINT OF ORDER

Representative Herrero raised a point of order against further consideration of HB 2305 under Article III, Sections 30 and 35, of the Texas Constitution and House Rule 11, Sections 2 and 3, on the grounds that the amendment is not germane to the bill and impermissibly changes the purpose of the bill. The point of order is sustained.

Article III, Section 35, of the Texas Constitution requires bills to contain only one subject. Rule 11, Section 2, states that "[n]o motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." Rule 11, Section 3, prohibits a bill from being "amended in its passage through either house so as to change its original purpose." Article III, Section 35, of the Texas Constitution contains a similar provision.

Representative Herrero argues that as HB 2305 left the house the sole subject of the bill was state agency electronic records, reports, and publications. Specifically, the house engrossment version did not include provisions related to the substantive statutory authority of state agencies to regulate other state agencies. As Representative Herrero pointed out, the Senate added ten amendments to HB 2305. Amendment No. 3 was germane; however, the rest of the amendments were not germane.

Amendment No. 1 is not germane because it is not related to state electronic records, reports, and publications, but instead is related to the repeal of the management-to-staff ratio requirement for state agencies. Amendment No. 2 is not germane because it is not related to state electronic records, reports, and publications, but instead is the Texas Emissions Reduction Plan (or "TERP Plan"). Amendment No. 4 is not germane because it is not related to the narrow subject of the bill but rather deals with regulatory authority to the Texas Higher Education Coordinating Board. Amendment No. 5 is not germane because it is not related to any state reporting action, but instead is related to the use by a political subdivision of public money for lobbying activities. Amendment No. 8 is not germane because it is related to the internet broadcast of certain open meetings. Amendment No. 9 is not germane because it is not related to state electronic records, reports, and publications, but instead is related to the creation of a statewide alert system for missing military members. Amendment No. 10 is not germane because it is related to the allocation of money associated with delays of transportation projects, and not the subject of the bill.

HB 2305 as it left the house was not an omnibus bill to which any provision relating to the operation of state or local government would be germane. The senate amendments are not germane to HB 2305 and create an impermissible second subject. The point of order is sustained.

Germaneness of Senate Amendments—Sustained
85 H.J. Reg. 4330-31 (Blanco 5/22/17)

HB 1779 - POINT OF ORDER

Representative Blanco raises a point of order under Article III, Sections 30 and 35, of the Texas Constitution. The point of order is sustained and HB 1779 is returned to the senate for further consideration for the following reason.

As HB 1779 left the house, the sole subject of the bill was the authority of the Department of Public Safety to obtain and use criminal history information for the purpose of performing certain departmental functions. DPS was authorized to obtain and use criminal history on five classes of persons holding state licenses. One of the license holders for whom DPS is able to obtain and use criminal history information is a holder of a private security license under Chapter 1702 of the Occupations Code.

The senate adds two pages of text that are not germane to the original house bill and that also added an impermissible second subject. Specifically, the senate amendments sought to directly regulate persons regulated by Chapter 1702 of the Occupations Code, including changing the qualifications of owning or possessing a firearm by a private security license holder, the applications date for security officer applicants, and the expiration date of a security officer commission. All of these added nongermane and foreign separate subjects to the original house bill in violation of the Texas Constitution.

Germaneness of Senate Amendment—Sustained
84 H.J. Reg. 5562-63 (Pickett 5/29/15)

HB 13 - POINT OF ORDER

Representative Pickett raised a point of order against further consideration of HB 13 under Rule 11, Section 2 of the House Rules and under Article III, Section 35 of the Texas Constitution on the grounds that the senate amendments are not germane to the bill.

The chair sustained the point of order and submitted the following statement:

"My faith in the Constitution is whole, it is complete, it is total." The words of Barbara Jordan, a former Texas state senator, are a stark reminder of the duties of an elected official who takes an oath to uphold the federal and state constitutions. Former State Senator Jordan's full-length painting hangs in the senate chamber today.

Legislative chambers are not walled vessels into which the constitution cannot enter. They are not extra constitutional. Nor is there a provision of the Texas (or federal) Constitution which says that a legislative chamber can disregard a substantive procedural constitutional provision because they don't want to follow the restriction or they believe their practice is better than the ideas propounded by the framers of the state and federal constitutions or adopted by the people. Protection of these constitutional provisions is a proper role for those who interpret parliamentary rules in their chambers. More important than any staffer who might be called upon to assert an opinion, the preserving of the authority of these constitutional mandates and the binding force of the constitution is as much the duty of each member of the legislative chamber as it is the duty of the presiding officer.

Article III, Section 35 of the Texas Constitution requires bills to contain only one subject. This provision prevents "log-rolling," the inclusion in a bill of multiple subjects having no connection to each other create sufficient support from the varied interests to support the whole bill. It also stops "the last train out of town" or "bill dump" in which members from one chamber of the legislature gleefully pack a bill full of non-related bills.

Neither a body's rules nor practice can be an excuse to modify these constitutional provisions. A member's oath demands the officeholder acts to uphold the rule of law at all times—not just when it is convenient and everyone approves.

HB 13 related to categories of and funding allocation for transportation projects by the Texas Department of Transportation and local transportation entities. In the senate's floor Amendment No. 1, Senator Hall added and the senate approved the addition of prohibitions on red light cameras by local governments. This item had nothing to do with the concept of categories of and funding

allocation for transportation projects by the Texas Department of Transportation and local transportation entities. It is hard to measure what is more shocking or brazen, the wide variance between the items (TxDOT road funding v. abolishing the ability of the local government to operate red light cameras) or the fact that, at no part in the process, was there any attempt to question or slow the amendment.

Regardless of whether the purpose of the amendment was a noble but deliberate attempt to inject a second subject into the bill, or somewhere else on the legislative spectrum, the amendment laid out by the lieutenant governor, offered by Senator Hall, and adopted by the senate was not germane and introduced a second subject. The point of order is sustained.

HB 13 was returned to the senate.

Germaneness of Senate Amendment—Sustained
84 H.J. Reg. 5561 (Walle 5/29/15)

HB 2187 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of HB 2187 under Rule 11, Section 2 of the House Rules on the grounds that the senate amendments are not germane to the bill.

The chair sustained the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of HB 2187 pursuant to Rule 11, Section 2 of the House Rules on the grounds that the amendment added by the senate is not germane to the bill. The point of order is sustained.

HB 2187 left the house as a bill that would have regulated metal recycling entities by restricting the methods of payment for purchasing regulated materials, expanding the information required in records of purchase of regulated material, authorizing penalties for a person who violates certain requirements for metal recycling entities, increasing the number of members on the committee on matters related to regulation of medical recycling entities, and changing the definition of regulated material to include batteries containing lead, while exempting purchases of regulated material from telecommunications, cable, or video service providers. In sum, the bill deals with metal recycling entities' transactions involving regulated metal material and their tracking of those transactions.

The senate added an amendment that would have: (1) defined "explosive component" and "explosive weapon" and would have required metal recycling entities to report the attempted sale of these explosive items, (2) required the Department of Public Safety to use the reporting system traditionally used to track the sale of regulated metal to track the sale or attempted sale of an explosive weapon or explosive component, (3) made it a criminal offense for anyone to sell an explosive component or explosive weapon to a metal recycling entity

or for a metal recycling entity to purchase or store an explosive component or explosive weapon, and (4) provided for a court to order a defendant guilty of the criminal offenses created to order restitution for costs incurred by the state or a political subdivision in responding to the offense and to the owner of any property damaged as a result of the offense. Rather than dealing with regulated material, the senate amendment attempts to introduce two entirely new types of items (explosive component and explosive weapon) not included in the definition of regulated material and would subject them to an entirely separate set of requirements, some of which are required for persons other than metal recycling entities. More plainly spoken, the senate by amendment put a nongermane bill (SB 1194) onto a house bill. Having successfully introduced a second subject and a nongermane amendment, the senate's actions subjected the house bill to a point of order. Because HB 2187 deals with recycling entities and their treatment of regulated material, but the senate amendment deals with the criminalization of the sale or purchase of an explosive component or an explosive weapon, the amendment is not germane to the bill and the bill is out of order.

HB 2187 was returned to the senate.

Germaneness of Senate Amendment
84 H.J. Reg. 4937-38 (González 5/27/15)

HB 3405 - POINT OF ORDER

Representative González raised a point of order against further consideration of HB 3405 under Rule 11, Section 2 of the House Rules on the grounds that the senate amendments are not germane to the bill.

The chair sustained the point of order and submitted the following statement:

Representative Isaac had a local water district bill, HB 3405. It appeared on the items eligible calendar. When the bill was laid out, Representative González raised a point of order on multiple grounds to further consideration of the bill. The parliamentarian was provided written materials and asked for time to research the matter. The matter was temporarily put aside.

On Wednesday, May 27, 2015, the chair laid the matter before the house and on the advice of the parliamentarian, determined that one amendment to HB 3405 was not germane. Specifically, that the provision relating to SOAH contested cases in the senate committee substitute was not germane to the provisions of the house engrossment of HB 3405. Based on this evidence, the chair sustained the point of order. Pursuant to Rule 14, Section 5, the parliamentarian is required to submit the rationale for a ruling in writing to the journal and to the body not later than 24 hours after the ruling.

Yesterday afternoon, the parliamentarian, in preparing the written ruling, discovered an error in legal reasoning in the basis of the written ruling. The house engrossment contained sufficient provisions to allow considerations of

an alternate method of resolving cases by SOAH. The parliamentarian advised the speaker of the error. In the discussion, the parliamentarian suggested to the speaker that, as with all points of order, an error is corrected by sending the item back to the place where the point of error occurred. In this case, the error was the incorrect ruling by the speaker based on the error in advice given by the parliamentarian. Accordingly, a motion was made to recall the bill from the senate (as the chair would recall any matter sent to the senate in error) and to return the item to the body for consideration. Absent the passage of time, the matter will be in the identical position as it was when the parliamentarian incorrectly advised the speaker. The Isaac item eligible will be before the membership, Representative González will have her remaining points of order standing in the way of further consideration and the chair, properly advised, will have the choice to correctly rule. The duty of the parliamentarian is to advise the speaker of the house. Rule 2, Section 9. However, his duty is to not only the speaker, but all members and the institution.

While the aspirational goal of an arbiter should be to be completely error free, that goal is unlikely to be achieved. Every day on the house floor, the parliamentarian makes errors that can have serious consequences. The chair can move too fast, miss a timely (or untimely) request for a record vote, take a matter up out of order, or improperly calculate a vote total. The body is aware of these mistakes, which is why the second most common phrase in the Texas House after "Mr. Speaker, members" is "Back up, members."

Under the rules of the house, the parliamentarian has a duty to advise and assist the presiding officer and the members of the house on matters of procedure. Rule 2, Section 9. This house has also required the speaker to instruct the parliamentarian to provide each member a written explanation of any final ruling on a point of order within 24 hours after the final ruling was announced before the house. As *Mason's* Section 584, Paragraph 16 points out, "The parliamentarian should unobtrusively call the attention of the presiding officer to serious errors in procedure." In addition, as an advisor to the presiding officer and the body, while the parliamentarian's job "at its best often consists of recommending a course of action in the face of conflicting recommendations. . . ," that advice must be competent and correct. Tex. Disciplinary R. Prof'l Conduct 2.01, cmt. 4. The Texas House properly should demand and expect that a person is directly accountable for each action and each decision they make.

The parliamentarian has written a letter apologizing for this error to the presiding officer, Representative Isaac, and Representative González.

Germaneness of Senate Amendment—Sustained
80 H.J. Reg. 6444 (Talton 5/25/07)

HB 2265 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of HB 2265 under Rule 11, Section 2 of the House Rules on the grounds that the senate amendments are not germane to the bill.

. . .

The chair sustained the point of order, speaking as follows:

Representative Talton raised a point of order against further consideration of senate amendments to HB 2265 under Rule 11, Section 2 of the House Rules on the grounds that Senate Amendment No. 2 is not germane to the house engrossment. The subject of HB 2265 as passed by the house is the conduct of progressive bingo games and amounts of prizes awarded in those games by organizations authorized by current law to conduct charitable bingo games. The house version did not expand the types of entities authorized to conduct charitable bingo games. Senate Amendment No. 2 has the effect of authorizing a new class of entities to conduct charitable bingo games. The subject of the amendment is different from the subject of the house bill, and is therefore not germane.

Germaneness of Senate Amendment—Sustained
74 H.J. Reg. 4288 (Saunders 5/26/95)

HB 325 - POINT OF ORDER

Representative Saunders raised a point of order against further consideration of HB 325 on the grounds that HB 325 violates Rule 11, Section 2 of the House Rules and Article III, Section 30 of the Texas Constitution.

The speaker sustained the point of order, speaking as follows:

Representative Saunders raises a point of order against further consideration of HB 325 with senate amendments under Rule 11, Section 2, of the House Rules and Article III, Section 30, of the Texas Constitution. The chair has reviewed a brief submitted in advance by Mr. Walker on this issue.

For reasons noted in detail in a ruling to be printed in the journal, the chair finds that the senate amendments, which appear to make major change in the statutory regulatory scheme for the handling of hazardous waste, are not germane to the subject of HB 325, which provided for local notice of certain radioactive waste permits. In addition, the senate amendments clearly change the original purpose of the bill.

Accordingly, the point of order is well-taken and sustained.

Other explanations addressing germaneness of senate amendments:
79 H.J. 3rd C.S. 277-78 (Turner 5/10/06), *supra* at 240 (also discussing one-subject rule)
79 H.J. 3rd C.S. 234-36 (Coleman 5/5/06), *supra* at 240-42 (also discussing one-subject rule)

Germaneness of Conference Committee Report—Appropriations
83 H.J. Reg. 5113 (Simpson 5/26/13)

HB 1025 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of HB 1025 under Rule 11, Section 2 of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raises a point of order against further consideration of HB 1025 under Rule 11, Section 2 of the House Rules or under the Texas Constitution. Specifically, Representative Simpson argues that the changes made in the conference committee report were either not germane or violated the one-subject rule. Representative Simpson argues that HB 1025, a supplemental general appropriations bill, was limited to appropriations for the 2012-13 biennium and that subsequently it was amended to appropriate funds in another biennium. This point of order is respectfully overruled.

As noted in the chair's previous ruling under Rule 11, Section 3, in its house, senate, and conference committee report version, HB 1025 was, at all times, a general appropriations bill (along with HB 10). In the house engrossed version, HB 1025 had various references to appropriations for the "two-year period beginning on the effective date of this Act." The two-year period of this act will clearly be beyond the current biennium ending August 31, 2013, and any subsequent senate amendments or other changes were germane to the same purpose of the bill. Accordingly, neither the provisions of Rule 11, Section 3 of the House Rules, nor the Texas Constitution were violated.

[Note: *See* 83 H.J. Reg. 5112 (Simpson 5/26/13) under Original Purpose for the previous ruling referenced in this explanation.]

Other explanations addressing germaneness of conference committee reports:
83 H.J. Reg. 5150-51 (Taylor 5/26/13), *supra* at 231 (also discussing one-subject rule and original purpose)

Original Purpose (Rule 11, Section 3; Article III, Section 30)

Original Purpose—Appropriations; Conference Committee
83 H.J. Reg. 5112 (Simpson 5/26/13)

HB 1025 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of HB 1025 under Rule 11, Section 3 of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raises a point of order against further consideration of HB 1025. He argues that the conference committee report changed the original purpose of the bill and thus violates Rule 11, Section 3 of the House Rules. Specifically, Representative Simpson argues that it was represented that the bill would only expend funds in the current biennium and that it spends funds in two different bienniums and therefore must violate the original purpose rule. The point of order is overruled.

In its house, senate, and conference committee report versions, HB 1025 was, at all times, a general appropriations bill (along with HB 10) for the current biennium and appropriated funds in the current biennium. Accordingly, there was no change in purpose and the provisions of Rule 11, Section 3 of the House Rules were not violated.

[Note: *See* 83 H.J. Reg. 5113 (Simpson 5/26/13) under Germaneness of Conference Committee Report for a subsequent point of order raised against HB 1025.]

Original Purpose—Appropriations
83 H.J. Reg. 2019 (Giddings 4/29/13)

AMENDMENT NO. 1 (CSHB 11) - POINT OF ORDER

Representative Giddings raised a point of order against further consideration of Amendment No. 1 under Article III, Section 30 of the Texas Constitution on the grounds that the amendment would change the original purpose of the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Giddings raised a point of order against further consideration of CSHB 11 pursuant to Article III, Section 30 of the Texas Constitution, asserting that adding Amendment No. 1 to the bill would change its original purpose. The point of order is respectfully overruled.

CSHB 11 appropriates money from the economic stabilization fund to fund water. Amendment No. 1 would fund water using general revenue if the bill did not receive the requisite votes to use money from the economic stabilization

fund. The chair notes that Amendment No. 1 had not been adopted at the time when Representative Giddings raised her point of order. However, assuming the point had been raised after adoption of the amendment, the chair finds that Amendment No. 1's provision of an alternate method to fund water would not have constituted a change in purpose in violation of Article III, Section 30. Instead, this alternate funding was consistent with the bill's purpose of funding the state water implementation fund for Texas.

Original Purpose
84 H.J. Reg. 1922-23 (Moody 4/23/15)

AMENDMENT NO. 17 (CSHB 2510) - POINT OF ORDER

Representative Moody raised a point of order against further consideration of Amendment No. 17 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules on the grounds that the amendment is not germane to the bill and the amendment would change the original purpose of the bill.

. . .

The speaker overruled the point of order and submitted the following statement:

Representative Moody raised a point of order against further consideration of Amendment No. 17 to CSHB 2510 under Rule 11, Sections 2 and 3 of the House Rules on the grounds that the amendment is not germane to the bill and further attempts to change the original intent of the bill. The point of order is respectfully overruled.

Rule 11, Section 2 states that "[a]mendments pertaining to the organization, powers, regulation, and management of the agency, commission, or advisory committee under consideration are germane to bills extending state agencies, commissions, or advisory committees under the provisions of the Texas Sunset Act." Rule 11, Section 3 prohibits a bill from being "amended in its passage through either house so as to change its original purpose."

Amendment No. 17 obligates the Department of State Health Services (the Department) to ensure that a named individual on behalf of the licensee is responsible for compliance by the licensee with the requirements of this chapter. The amendment further requires that the individual responsible for compliance submit a particular report monthly, rather than annually.

Representative Moody asserts that through these changes, Amendment No. 17 impermissibly changes the purpose of CSHB 2510, because it would transfer reporting requirements from abortion facilities to individual physicians, and it would substantially increase the regulatory burden on these facilities by requiring them to report more frequently and to create an electronic reporting system. Representative Moody argues that Amendment No. 17 would have the effect of authorizing the Department to directly regulate physicians who are currently

under the jurisdiction of the Texas Medical Board, which is an entity distinct from the Department. *See* Tex. Occ. Code Ann. § 152.001 (West 2005).

Rather than placing a burden on physicians, Amendment No. 17 expressly obligates the Department to identify an individual who represents the licensee; such an individual is merely a representative of the facility, not necessarily a physician and not a representative of individual physicians. *See* Tex. Health & Safety Code Ann. § 245.003 (West 1989) (requiring licensure of each abortion facility). As such, this portion of the amendment is properly limited in scope to regulating the Department's oversight of licensees under the Department's jurisdiction.

Representative Moody asserts that the monthly reporting requirement contravenes the purpose of the bill because, he asserts, the purpose of the bill is to decrease the regulatory burden on the Department. He supports that contention by citing other parts of the bill that reduce the frequency of reports that must be submitted to the agency. After reviewing the bill and accompanying committee report, it does not appear that the bill's purpose is to decrease the regulatory burden on the Department in every respect. Moreover, even if that were the case, it is not evident that requiring more frequent publishing of a report and requiring that report to be made in a more modern format—via a website—would have the effect of increasing the regulatory burden on the Department. Because the amendment relates to the organization, powers, regulation, and management of the Department and does not change the bill's original purpose of continuing the Department, the chair finds that Amendment No. 17 does not violate Rule 11, Sections 2 and 3.

Original Purpose
84 H.J. Reg. 1680-81 (Martinez Fischer 4/17/15)

AMENDMENT NO. 11 (CSHB 910) - POINT OF ORDER

Representative Martinez Fischer raised a point of order against further consideration of Amendment No. 11 under Rule 11, Section 3 of the House Rules on the grounds that the amendment would change the original purpose of the bill.

The chair overruled the point of order and submitted the following statement:

Representative Martinez Fischer raised a point of order against further consideration of Amendment No. 11 by Representative Fletcher under Rule 11, Section 3 of the House Rules asserting the amendment, which proposed to allow the carrying of concealed handguns on public and private institutions of higher education by licensed permit holders, changed the bill's original purpose, which it is alleged dealt with only the ability of license holders to "open carry" and was not meant to be an expansion of additional areas that the license holder could carry concealed handguns. The point of order is respectfully overruled.

CSHB 910 dealt with the authority of a person who is licensed to carry a handgun and altered the conditions of the license, including places where a license holder could and could not openly display a handgun. Amendment No. 11 would have added additional alteration to the conditions of the license. Because both the bill and the amendment would have achieved the same purpose, the amendment did not run afoul of Rule 11, Section 3 of the House Rules. *See* 83 H.J. Reg. 2442-43 (2013) (point of order by Representative Walle on CSHB 972).

Original Purpose—Narrower Scope With Same Purpose
83 H.J. Reg. 2829 (Nevárez 5/8/13)

AMENDMENT NO. 4 (CSHB 1790) - POINT OF ORDER

Representative Nevárez raised a point of order against further consideration of Amendment No. 4 under Rule 11, Section 3 of the House Rules on the grounds that the amendment would change the original purpose of the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Nevárez raised a point of order against further consideration of Amendment No. 4 to CSHB 1790 under Rule 11, Section 3 of the House Rules, asserting that the amendment would narrow the scope of the bill to the point of impermissibly changing the bill's original purpose, which was to ameliorate overcrowding of prisons and integrate lower-level offenders back into communities. The point of order is respectfully overruled.

CSHB 1790 provides for a procedure whereby defendants could modify the record of conviction for most state jail felonies under certain circumstances. Amendment No. 4 would have made the bill apply only to the state jail felony for credit card or debit card abuse under Section 32.31 of the Penal Code, and it would have caused the provisions added by CSHB 1790 to expire on September 1, 2014. Although Representative Nevárez is correct that the amendment would have narrowed the bill's scope, the amendment would nonetheless have been aimed at achieving the same purpose of ameliorating overcrowding and reintegrating certain offenders, albeit on a smaller scale. Thus, the amendment would not have changed the bill's original purpose. *See* Rule 11, Section 3; *compare* 75 H.J. Reg. 3773 (1997) (sustaining a point of order where an amendment would have changed a bill establishing a process by which municipal acts could have been validated into a bill establishing a process by which municipal acts could be invalidated); 52 H.J. Reg. 519 (1951) (sustaining a point of order where an amendment sought to permit what the bill sought to prohibit).

Original Purpose
83 H.J. Reg. 2442-43 (Walle 5/4/13)

CSHB 972 - POINT OF ORDER

Representative Walle raised a point of order against further consideration of CSHB 972 under Rule 11, Section 3 of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Walle raised a point of order against further consideration of CSHB 972 under Rule 11, Section 3 of the House Rules and argued that the original purpose of the bill has been changed from its introduction in the house through its passage in committee. Specifically, Representative Walle argued that a provision in the introduced bill stated that an institution of higher education "may not" adopt regulations prohibiting license holders from carrying handguns on campus but the committee substitute would allow campuses to adopt the regulations. Representative Walle argues that the change from "may not" to "may" constitutes a change in the original purpose. The point of order is respectfully overruled.

The chair has examined both the introduced version of the bill and the substitute. The section in the introduced version of the bill, which Representative Walle argued barred the institution from adopting regulations, is set out below:

> (a) Except as provided by Subsection (d) or (e), an institution of higher education or private or independent institution of higher education in this state may not adopt any rule, regulation, or other provision prohibiting license holders from carrying handguns on the campus of the institution.
>
> (b) An institution of higher education or private or independent institution of higher education in this state may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution.
>
> (c) A private or independent institution of higher education in this state, after consulting with students, staff, and faculty of the institution, may establish rules, regulations, or other provisions prohibiting license holders from carrying handguns on premises that are owned or leased and operated by the institution and located on the campus of the institution.

The provisions cited by Representative Walle in the introduced version of the bill did not completely restrict institutions of higher education from adopting rules relating to prohibiting license holders from carrying handguns; rather, the provisions in Subsections (d) and (e) expressly allowed the institutions to adopt similar rules—a position also adopted in the committee substitute. *See* Section 1

of CSHB 972 ("An institution of higher education in this state, after consulting with students, staff, and faculty of the institution, may adopt written rules or regulations prohibiting license holders from carrying handguns on premises . . . .").

Original Purpose
81 H.J. Reg. 4988-89 (Deshotel 5/26/09)

AMENDMENT NO. 16 (CSSB 1569) - POINT OF ORDER

Representative Deshotel raised a point of order against further consideration of Amendment No. 16 under Rule 11, Section 3 of the House Rules on the grounds that the amendment would change the original purpose of the bill.

The chair overruled the point of order and had read the following statement:

Representative Deshotel raises a point of order against further consideration of the P. King amendment to CSSB 1569 in that the amendment violates Rule 11, Section 3 of the House Rules.

Rule 11, Section 3 mirrors Article III, Section 30, known as the "constitutional germaneness rule." That rule provides that no bill shall be amended in its passage so as to change its original purpose, calling for a consideration of what constitutes the purpose of a bill in its original condition.

House precedent indicates that a point of order under Article III, Section 30 and Rule 11, Section 3 should be sustained only when the amendment to the bill would do the direct opposite of its original purpose or when it has changed so much the original purpose cannot be said to remain.

The purpose of CSSB 1569 is to allow the state to qualify for additional federal funding for unemployment compensation. In determining whether the original purpose has been changed, it is necessary for the chair to examine federal law. The chair can find no rule or house precedent that restricts the chair's ability to examine federal law to determine the legal effect of an amendment and whether it violates the House Rules. By analogy, the chair notes that House Rule 14, Section 1 allows for the consideration of congressional precedents where the rules are silent or unclear on questions of order or parliamentary practice.

In examining the federal law that the chair understands is applicable to the awarding of money for the purposes sought in CSSB 1569, the chair notes that the secretary of labor must find whether the state law provisions, "any state law provisions which are subject to discontinuation" meet the requirements of federal law to receive the additional funding. See Section 2003(a), P.L. No. 111-5, Feb. 2009 (making a change to Section 903 of the Social Security Act in 42 U.S.C. 1103).

The language makes it discretionary with the federal secretary of labor as to which state law provisions qualify under federal law for additional funding. Moreover, the law is only a few months old. As such, the chair finds itself unable at this time to make a determination as to whether the amendment frustrates the original purpose of the bill. It is possible that at some time in the future a

sufficient body of rulings at the federal level will exist as to provide the chair with more guidance on this issue, but at this time the chair cannot find with certainty if the amendment changes the original purpose of CSSB 1569.

Accordingly, the point of order is respectfully overruled.

Original Purpose
80 H.J. Reg. 1664-65 (Krusee 4/10/07)

AMENDMENT NO. 1 (CSHB 1892) - POINT OF ORDER

Representative Krusee raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 3 of the House Rules on the grounds that the amendment would change the original purpose of the bill.

. . .

The speaker overruled the point of order, and submitted the following statement:

The chair overrules the point of order. The chair has consistently stated that the threshold for sustaining a point of order for a violation of the original purpose clause is very high.

The amendment at issue modifies the procedures implementing toll road projects and does not change the purpose of the bill, which by its intent proscribes additional restrictions for using comprehensive development agreements. The point of order is respectfully overruled.

Original Purpose
76 H.J. Reg. 3229-30 (Wohlgemuth 5/25/99)

CSSB 1468 - POINT OF ORDER

Representative Wohlgemuth raised a point of order against further consideration of CSSB 1468 under Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution, known as the "constitutional germaneness rule," on the grounds that the committee substitute changes the original purpose of the bill.

The speaker overruled the point of order, speaking as follows:

The cited sections of rules and the constitution provide that an amendment may not change the original purpose of the bill.

For that purpose of determining whether amendments in the second house change the purpose of the bill, precedent indicates the chair should consider the amendments against the engrossment from the first house (often known as the "engrossed bill rule"). In this case, a review of the bill file shows that the change in purpose—if it can properly be characterized as such—occurred in the senate

between introduction and engrossment. The house committee substitute does not change the purpose evidenced by the senate engrossment.

Accordingly, the point of order is respectfully overruled.

Original Purpose—Sustained
76 H.J. Reg. 1608 (Chisum 4/30/99)

AMENDMENT NO. 1 (HB 1910) - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of Amendment No. 1 by Walker under Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the amendment changes the original purpose of the bill.

The speaker sustained the point of order, speaking as follows:

A primary purpose on the face of HB 1910 is to prohibit the licensing of private entities for disposal of low level waste; the primary purpose of the amendment is to expressly permit the licensing of a private entity. The purpose of the amendment is therefore a direct opposite of the original purpose of the bill, which violates Article III, Section 30, Texas Constitution. (See 75 H.J. Reg. 3773 (1997).)

Accordingly, the point of order is well-taken and sustained.

The ruling on the point of order precluded further consideration of the amendment.

Original Purpose—Sustained
76 H.J. Reg. 1603 (Danburg 4/30/99)

AMENDMENT NO. 3 (CSHB 485) - POINT OF ORDER

Representative Danburg raised a point of order against further consideration of Amendment No. 3 by Crabb and Keel under Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the amendment changes the original purpose of the bill.

The speaker sustained the point of order, speaking as follows:

CSHB 485 is a general validating act for municipal actions that occurred before a certain date. The amendment would establish a process by which certain municipal actions may be invalidated by a local vote. As a result, the purpose of the amendment is opposite to the purpose of the bill and would change the bill's original purpose.

Accordingly, the point of order is well-taken and sustained.

The ruling on the point of order precluded further consideration of the amendment.

Original Purpose—Sustained
75 H.J. Reg. 3773-74 (Danburg 5/26/97)

AMENDMENT NO. 1 (CSSB 1454) - POINT OF ORDER

Representative Danburg raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the amendment changes the orginal purpose of the bill.

The chair sustained the point of order, speaking as follows:

Representative Danburg raises a point of order against further consideration of the amendment to CSSB 1454 under Rule 11, Section 3, and Article III, Section 30, Texas Constitution, in that the amendment changes the original purpose of the bill.

CSSB 1454 is the general validation act for municipal actions that have occurred since the 74th Legislature. The amendment would establish a process by which certain municipal acts may be invalidated by a local vote. As a result, the purpose of the amendment is opposite to the purpose of the bill, and would change the bill's original purpose.

Accordingly, the point of order is well-taken and sustained.

The ruling precluded further consideration of the amendment.

Original Purpose—Senate Amendments
84 H.J. Reg. 5686 (Sanford 5/30/15)

HB 2398 - POINT OF ORDER

Representative Sanford raised a point of order against further consideration of HB 2398 under Rule 11, Section 3 of the House Rules on the grounds that the senate amendments would change the original purpose of the bill.

The chair overruled the point of order and submitted the following statement:

Representative Sanford raised a point of order against further consideration of HB 2398 pursuant to Rule 11, Section 3 on the grounds that the lengthy amendment added by the senate changes the original purpose of the bill. The point of order was respectfully overruled.

HB 2398 left the house with four sections that addressed truancy. Among other things, the bill permitted the governing body of a municipality or the commissioners court of a county to establish a trust fund to be used to assist needy children in accordance with the bill's provisions, required the governing body of a municipality or the commissioners court to set eligibility requirements for disbursement of money to assist needy children or families who appear in court for criminal offenses by providing money for resources that eliminate

barriers to school attendance, provided for dismissal of a charge against a parent contributing to nonattendance or failure to attend school, and provided for expunction of truancy records. In short, HB 2398 was an omnibus bill aimed at addressing truancy. The conference committee report added a variety of other provisions, including some that changed truancy from a criminal to a civil offense, all of which related to how to address truancy. Because the amendments to HB 2398 were all aimed at addressing the issue of truancy, the amendments did not impermissibly change the original purpose of the bill. *See* 83 H.J. Reg. 2442-43 (2013) (Walle point of order on CSHB 972).

Original Purpose—Senate Amendments
83 H.J. Reg. 3109-10 (Stickland 5/13/13)

SB 346 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of SB 346 under Article III, Section 30 of the Texas Constitution on the grounds that the bill, as amended in its passage through either house, changes its original purpose.

The speaker overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of SB 346 on the ground that the bill violates Article III, Section 30 of the Texas Constitution, which prohibits a bill from being "amended in its passage through either house, as to change its original purpose." The point of order is respectfully overruled.

The chair notes, as Representative Stickland acknowledged, that SB 346 has not changed since reaching the house. As a result, the point of order invites the chair to construe the intended purpose of a senate bill and determine whether the senate's amendments to its own bill impermissibly changed the bill's purpose prior to its arrival in the house. The chair believes that this function is best left to the senate's presiding officer, its members, and its parliamentarian.

Having reviewed house precedents, the chair has not identified an instance where it has sustained a point of order on a similar basis. *See* 76 H.J. Reg. 3229-30 (1999) (discussing the engrossed bill rule and overruling a point of order under Article III, Section 30 of the Texas Constitution, noting that any change in the bill's purpose, if it occurred, happened "in the senate between introduction and engrossment" such that "the house committee substitute did not change the purpose as evidenced by the senate engrossment"). In the spirit of comity, the chair would decline the invitation to review changes in purpose between introduced and engrossed senate bills so long as the senate extended to the house the same courtesy. On this basis alone, the point of order would be respectfully overruled. Moreover, even if the chair were to evaluate the changes between the introduced bill and the senate engrossment, the chair would find

that, in this case, the purpose has not changed within the meaning of Article III, Section 30 of the Texas Constitution. *See* 83 H.J. Reg. 2829 (2013) (point of order by Representative Nevárez on HB 1790). Because both versions of the bill would have achieved the same purpose of requiring organizations engaged in political campaign activities to provide disclosures, the engrossment did not run afoul of Article III, Section 30.

Original Purpose—Conference Committee Reports
80 H.J. Reg. 6804-05 (Martinez 5/27/07)

HB 1251 - POINT OF ORDER

. . .

Representative Martinez raised a point of order against further consideration of HB 1251 under Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the conference committee report changes the original purpose of the bill.

The chair overruled the point of order, and had read the following statement:

While Section 1 of the house engrossment involved matters under Chapter 363, Health and Safety Code, concerning the regulation of services to collect and remove wastes from grease traps, grit traps, and other traps to collect waste, Sections 2 and 3 of the engrossment concern solid waste disposal and transportation services under Chapter 364, Health and Safety Code, which provisions must be included in assessing the original purpose of the bill. The proposed amendment by Section 3 of the engrossment would have bracketed its treatment of the regulation of solid waste collection and transportation services, including by franchise in unincorporated areas of the bracketed counties, but the treatment of broad categories of waste is clear, and duplicates for purposes of the bracketed area, substantially, the provisions in Section 364.034, Health and Safety Code, which are applicable statewide. The conference committee report for HB 1251 treats that purpose in a statewide manner.

The point of order is respectfully overruled.

Other explanations addressing original purpose:
73 H.J. Reg. 5366 (Moreno, Maxey 5/30/93), *supra* at 207-09 (also addressing the bill's caption and text in disagreement in a conference committee report)
83 H.J. Reg. 5150-51 (Taylor 5/26/13), *supra* at 231 (also discussing one-subject rule and germaneness of conference committee report)
80 H.J. Reg. 7190 (Herrero 5/28/07), *supra* at 243 (also discussing one-subject rule as it relates to a conference committee report)
84 H.J. Reg. 3948-49 (Walle 5/21/15), *supra* at 303-04 (also discussing germaneness of amendment)

84 H.J. Reg. 3025 (Walle 5/11/15), *supra* at 304-05 (also discussing germaneness of amendment)
75 H.J. Reg. 1331 (Talton 4/23/97), *supra* at 310-11 (also discussing germaneness of committee sub)
84 H.J. Reg. 4568-69 (Martinez Fischer 5/25/15), *supra* at 322 (also discussing germaneness of amendment)
84 H.J. Reg. 3260 (Martinez Fischer 5/12/15), *supra* at 322-23 (also discussing germaneness of amendment)
84 H.J. Reg. 1927-28 (González and Farrar 4/23/15), *supra* at 325-26 (also discussing germaneness of amendment)
83 H.J. Reg. 4018-19 (Burnam 5/21/13), *supra* at 327-28 (also discussing germaneness of amendment)
81 H.J. Reg. 3252-53 (Merritt 5/12/09), *supra* at 333-34 (also discussing germaneness of amendment)
81 H.J. Reg. 3250-51 (Merritt 5/12/09), *supra* at 334-35 (also discussing germaneness of amendment)

Copies of Amendments (Rule 11, Section 6)

Copies of Amendments—Layout for Sunset-Bill Amendments—Sustained

85 H.J. Reg. 3617-18 (Huberty 5/17/17)

AMENDMENT NO. 1 (SB 312) - POINT OF ORDER

Representative Huberty raised a point of order against further consideration of Amendment No. 1 to SB 312 under Rule 11, Section 6(g), on the grounds that the amendment was not laid out 24 hours prior to the time the bill was eligible for consideration in accordance with Rule 11, Section 6(g). The point of order is sustained.

SB 312 is a sunset bill that would extend the Department of Transportation. Sunset-bill amendments are subject to Rule 11, Section 6(g), which requires 10 copies of any amendment to be provided to the chief clerk and be "available in the chief clerk's office at least 24 hours prior to the time the calendar on which the bill or resolution to be amended is eligible for consideration." Rule 11, Section 6(i), requires the Committee on House Administration to ensure that "members of the public using the system available on the Internet may view any amendment required to be provided to the chief clerk under Rule 11, Sections 6(e), (g), and (h) at least 10 hours prior to the time the calendar on which the bill or resolution to be amended is eligible for consideration." Amendment No. 1 was not filed 24 hours prior to the time the calendar on which SB 312 was eligible for consideration.

Because the house considers bills on third reading the day after those bills are passed on second reading, the calendar for third reading of the sunset bill

will almost always fall before a full 24 hours after the second reading. This makes it nearly impossible for timely notice to be given for the third-reading amendment. "Under strict enforcement of the rule, members would be required to file amendments for third reading before a measure passes second reading, and the chief clerk would be required to post all amendments to which Section 6(i)(3) applies to the internet at least 10 hours before a calendar containing the measure to be amended is eligible for consideration." 84 H.J. Reg. 3713-15 (2015) (Moody point of order on SB 206).

The chair, out of respect for the members, must enforce the rules the body adopts. The body, having been made aware of the impact of the rules on third-reading sunset amendments as recently as last session, nonetheless adopted the same rules governing requirements for sunset amendments. The chair is once again compelled to sustain the point of order. *See* House Rule 1, Section 9; 84 H.J. Reg. 3713-15 (2015) (Moody point of order on SB 206); *see also* 75 H.J. Reg. 3809-10 (1997) (Wohlgemuth point of order on SB 1500). If in future sessions the body wishes to preserve the option of amending sunset bills on third reading, the membership may wish to consider amending the requirements of Rule 11, Sections 6(g) and (i)(3).

Copies of Amendments—Layout for Sunset-Bill Amendments—Sustained
84 H.J. Reg. 3713-15 (Moody 5/18/15)

AMENDMENT NO. 4 (SB 206) - POINT OF ORDER

Representative Moody raised a point of order against further consideration of Amendment No. 4 under Rule 11, Section 6(g) and Rule 11, Section 6(i)(3) of the House Rules on the grounds that the amendment was improperly filed.

The chair sustained the point of order and submitted the following statement:

Representative Moody raised a point of order against further consideration of Amendment No. 4 to SB 206 under Rule 11, Section 6(i)(3) on the grounds that the amendment offered on third reading by Representative Sanford ("the Sanford amendment") was not posted on the internet in accordance with Rule 11, Section 6(i)(3). The point of order is sustained, and, because an amendment offending Rule 11, Section 6(i)(3) had already been added to the bill, the bill is also out of order.

Rule 11, Section 6(i)(3) requires the Committee on House Administration to ensure that "members of the public using the system available on the internet may view any amendment required to be provided to the chief clerk under Rule 11, Section 6(e), (g), and (h) at least 10 hours prior to the time the calendar on which

the bill or resolution to be amended is eligible for consideration." SB 206 would extend the Department of Family and Protective Services; as such, it is a sunset bill, the amendments to which are subject to Rule 11, Section 6(g), which requires 10 copies of any amendment to be provided to the chief clerk and be "available in the chief clerk's office at least 24 hours prior to the time the calendar on which the bill or resolution to be amended is eligible for consideration." Because SB 206 is a sunset bill, the Sanford amendment was subject to the 24-hour layout rule under Section 6(g) and the internet posting requirement of Section 6(i)(3). Representative Moody correctly observes that the Sanford amendment was not posted on the internet before it was laid before the house. House members also pointed out that the amendment that had been offered by Representative Hughes and adopted immediately prior to consideration of the Sanford amendment also was not posted on the internet. Nor were either of these amendments filed 24 hours prior to the time the calendar on which SB 206 was eligible for consideration.

Notably, this point of order had the potential to impact every third-reading amendment offered on any sunset bill since the adoption of Rule 11, Section 6 in its current form. The house's typical practice is to consider bills on third reading the day after those bills are passed on second reading. As a result, the calendar on which a measure on third reading is eligible for consideration will almost always fall within 24 hours of when the measure has passed second reading. This means that usually there are not 24 hours between readings during which a third reading amendment could lay out. Under strict enforcement of the rule, members would be required to file amendments for third reading before a measure passes second reading, and the chief clerk would be required to post all amendments to which Section 6(i)(3) applies to the internet at least 10 hours before a calendar containing the measure to be amended is eligible for consideration. Whether out of consideration for fellow members or recognition of the reality that important measures may require adjustment after second reading or some other reason entirely, no member in this session or past sessions has raised a point of order against consideration of sunset-bill amendments on third reading under Rule 11, Section 6(g) or Section (i)(3). But having been presented with the point, the chair, out of respect for the membership, which has repeatedly adopted this rule, is compelled to sustain the point of order as to both the Sanford amendment and the infected bill. *See* Rule 1, Section 9 of the House Rules; *see also* 75 H.J. Reg. 3809-10 (1997) (Wohlgemuth point of order on SB 1500). The timing issues raised by Rule 11, Section 6, and particularly Subsections (g) and (i)(3), are matters the membership may wish to revisit in considering future versions of the rules.

SB 206 was returned to the Committee on Human Services.

Copies of Amendments—Layout for Sunset-Bill Amendments
84 H.J. Reg. 1918-19 (E. Rodriguez 4/23/15)

AMENDMENT NO. 17 (CSHB 2510) - POINT OF ORDER

Representative E. Rodriguez raised a point of order against further consideration of Amendment No. 17 under Rule 11, Section 6(g) of the House Rules on the grounds that the amendment was improperly filed.

The speaker overruled the point of order and submitted the following statement:

Representative E. Rodriguez raised a point of order against further consideration of Amendment No. 17 to CSHB 2510 under Rule 11, Section 6(g) of the House Rules on the grounds that the amendments are ineligible for consideration because the timestamp on the amendment shows that they were not filed at least 24 hours prior to the time the calendar on which the bill to be amended was eligible for consideration. The point of order is respectfully overruled.

Rule 11, Section 6(g) states that "an original amendment to a bill extending an agency, commission, or advisory committee under the Texas Sunset Act . . . [must] have been provided to the chief clerk and . . . available in the chief clerk's office at least 24 hours prior to the time the calendar on which the bill or resolution to be amended is eligible for consideration." Rule 11, Section 6(g) of the House Rules. CSHB 2510 first appeared on a daily house calendar for Tuesday, April 21, at 10 a.m. As a result, the amendments to the bill were due 24 hours earlier, by 10 a.m. on April 20. When the bill was laid out on April 21, however, the bill's author successfully moved to postpone consideration of CSHB 2510 until 9 a.m. on Thursday, April 23. Several house members filed additional amendments to CSHB 2510 after it was postponed, apparently assuming that the deadline to file amendments had been extended until 9 a.m. on April 22, which would have been 24 hours before the bill was next eligible to be heard on the floor. Representative E. Rodriguez asserts that any amendments filed after 10 a.m. on April 20 were untimely and therefore out of order, because postponing a bill on the floor does not automatically postpone the deadline for filing amendments to that bill. Specifically, Representative E. Rodriguez argues that the supplemental calendar for April 23, on which CSHB 2510 was listed, is not "the calendar on which the bill to be amended was eligible for consideration" for purposes of filing additional amendments. Rule 11, Section 6(g). Rather, he asserts that the initial daily house calendar on which the bill appears is the only calendar that can set the deadline for filing amendments under Rule 11, Section 6(g).

No one questions that setting a sunset bill on a daily house calendar creates an amendment-filing deadline 24 hours in advance of when that calendar is eligible for consideration. Notably, however, nothing in the language of Rule 11, Section 6(g) limits the "calendar on which the bill . . . is eligible for consideration" to a daily house calendar. Indeed, at least twice in the recent past, house practice has been to postpone the deadline for filing amendments to 24 hours before the bill is next eligible for consideration, which is listed on a supplemental calendar for the day to which the bill has been postponed. *E.g.*, Tex. H.B. 3426, 80th Leg., R.S. (2007); Tex. H.B. 1779, 79th Leg., R.S. (2005). Although it may be the case that the supplemental calendar on which a postponed bill appears is not available until less than 24 hours before the calendar will be considered on the floor, members nonetheless have notice of the new time at which a postponed bill is eligible for consideration (and therefore notice of the time when the corresponding supplemental calendar on which the bill appears becomes eligible for consideration), because of the practice of postponing bills to a day and time certain. *See* Rule 7, Section 14. In light of the fact that members have adequate notice of a new time at which a calendar containing a sunset bill will be eligible for consideration, and in light of the fact that house practice has been to permit a corresponding extension of the amendment-filing deadline, the chair finds that Amendment No. 17 to CSHB 2510 was timely filed and in compliance with Rule 11, Section 6(g).

The members of the house may wish to consider, in future rule changes, tying the "cutoff" date of filing sunset amendments to a specific time and date (as is the practice for a number of calendar rules); clarifying that "calendar" referred to in Rule 11, Section 6 is only the original calendar on which the bill is eligible for consideration (and no other later supplemental calendar); or abandoning the rule altogether.

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Printing of Bills and Joint Resolutions (Rule 12)

First Printing of a Bill—Amendments Requiring Brackets or Strike-Through

84 H.J. Reg. 4744 (Nevárez 5/26/15)

SB 11 - POINT OF ORDER

Representative Nevárez raised a point of order against further consideration of SB 11 under Rule 12, Section 1(b) of the House Rules on the grounds that the copies of the bill analysis, committee action, or witness list are incomplete.

. . .

The speaker overruled the point of order and submitted the following statement:

Representative Nevárez raised a point of order against further consideration of SB 11 under Rule 12, Section 1(b) asserting an error in the printing of the bill. The point of order is respectfully overruled.

Rule 12, Section 1(b): "In any section of the first printing of a bill or joint resolution that proposes to amend an existing statute or constitutional provision, language sought to be deleted must be bracketed and stricken through, and language sought to be added must be underlined. . . ." Representative Nevárez points to two sections of SB 11 amending Section 46.035 of the Penal Code as provision (a-1) in Section 4 of the bill, and a provision amending the same section of the Penal Code in Section 6 of the bill, adding new Subsection (a-2). Representative Nevárez indicates that these are incorrect statements. Rather than being a publication error, they instead are an action by the senate to deal with two separate amendments within the same section of the Penal Code that deals with two different concepts capable of harmonization. Legislative drafting, under tight deadlines and difficult conditions, can lack the Prussian efficiency dictated by Bryan Garner's *The Elements of Legal Style*. However, in this case, because the changes deal with two unique concepts, they do not present an error under Rule 12, Section 1(b) nor any rule regarding the printing of bills.

First Printing of a Bill—Amendments Requiring Brackets or Strike-Through—Sustained

73 H.J. Reg. 2449 (Chisum 5/11/93)

CSHB 1894 - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of CSHB 1894 on the grounds that CSHB 1894 violates Rule 12, Section 1(b) of the House Rules.

The chair sustained the point of order, speaking as follows:

Representative Chisum raises a point of order against further consideration of CSHB 1894, under Rule 12, Section l(b), in that language sought to be added is not underlined and language sought to be deleted is not bracketed and stricken through. The chair has examined the bill and finds that Section 11, amending Section 171.110(e), Tax Code, changes "shall" to "may" without properly denoting that change. Accordingly, the point of order is well-taken and sustained.

First Printing of a Bill—Amendments Requiring Brackets or Strike-Through—Sustained
73 H.J. Reg. 2449 (Chisum 5/11/93)

CSHB 1893 - POINT OF ORDER

Representative Chisum raised a point of order against further consideration of CSHB 1893 on the grounds that CSHB 1893 violates Rule 12, Section 1(b), of the House Rules.

The chair sustained the point of order, speaking as follows:

Representative Chisum raised a point of order against further consideration of CSHB 1893, under Rule 12, Section l(b), in that language sought to be deleted is not bracketed and stricken through. The chair has examined the bill and finds that Section 8 omits the last sentence of Section 171.106(c), Tax Code, but does not bracket and strike through it. Accordingly, the point of order is well-taken and sustained.

Other explanations addressing printing of bills or joint resolutions:
78 H.J. Reg. 944, 956 (Wolens 3/27/03), *supra* at 50-51 (addressing effect of recommittal or return to committee on printing requirements)

Conference Committee Reports (Rule 13)

Meetings (Rule 13, Section 7)—Rule 4 Inapplicable to Conference Committees

78 H.J. 3rd C.S. 588-89 (Mabry 10/12/03)

HB 7 - POINT OF ORDER

Representative Mabry raised a point of order against further consideration of the conference committee report on HB 7 under Rule 4, Section 10 and Rule 13, Section 7 of the House Rules on the grounds that the conferees met in a formal meeting and took testimony from resource witnesses.

The speaker overruled the point of order, speaking as follows:

Mr. Mabry raises a point of order under Rule 4, Sections 10 and 19, against further consideration of the conference committee report on HB 7 in that the conferees met in a formal meeting and took testimony.

As a general matter, the provisions of Rule 4 have no application to conference committee proceedings. On the face of the rules, Rule 13 governs the membership, operations, meetings, and jurisdiction of conference committees in addition to providing for the printing and distribution of the conference committee reports and an analysis of the reports; each of those issues for standing committees is governed by Rule 4. Where application of Rule 4 is extended to committees other than standing committees, the rules expressly so provide. For example, Rule 4, Section 59, expressly provides that the rules "governing standing committees shall be observed by an interim study committee, to the extent that they are applicable." No similar provision exists in Rule 13.

That Rule 4 does not govern conference committees is seen in prior rulings of the chair. For example, the chair has held that conference committees are not required to keep minutes, as required for standing committees under Rule 4, Section 18. See 74 H. J. Reg. 4444 (1995). In fact, the chair has stated more than once that, since the rules do not require a conference committee to keep minutes of its proceedings, there is no official record of whether the conferees in fact convened in a meeting or where or when they did so. Id.; 74 H. J. Reg. 4349 (1995).

Accordingly, the point of order is respectfully overruled.

Meetings (Rule 13, Section 7)—Conferees Not Required to Meet

78 H.J. 3rd C.S. 422-23 (Mabry 10/10/03)

HB 3 - POINT OF ORDER

Representative Mabry raised a point of order against further consideration of the conference committee report on HB 3 under Rule 13, Section 7 of the House Rules on the grounds that the conference committee report was adopted in private.

The speaker overruled the point of order and submitted the following statement to the journal clerk:

Mr. Mabry raised a point of order against further consideration of HB 3 on the grounds that it violated Rule 13, Section 7. Mr. Mabry argues that because the conference committee members did not sign the conference committee report in public that the report was "adopted in private" and is therefore ineligible for consideration by the house under Rule 13, Section 7.

There is well-established house precedent that the rules do not require a meeting of conferees to act on a conference committee report and that the signatures of three of the five members are adequate to report a measure. (See Explanatory Note, Rule 13, Section 7, *House Rules*, 78th Legislature.)

To hold that the conferees must execute the signature sheet in public would effectively require a meeting of the conferees and would be contrary to consistent prior holdings and to the long-standing practice of the house.

Accordingly, the point of order is respectfully overruled.

Meetings (Rule 13, Section 7)—Conferees Not Required to Meet
74 H.J. Reg. 4444-46 (Price 5/27/95)

SB 14 - POINT OF ORDER

Representative Price raised a point of order against further consideration of the conference committee report on SB 14 on the grounds that the conference committee report on SB 14 violates Rule 13, Section 7, of the House Rules.

The speaker overruled the points of order, speaking as follows:

. . .

Representative Price raises a point of order against further consideration of the conference committee report on SB 14 under Rule 13, Section 7, in that no notice was posted for the meeting of the conferees. Also for reasons to be entered into the journal, the chair finds that the conferees acted properly.

Accordingly, Mr. Price's point of order is respectfully overruled.

. . .

Representative Price raises a point of order against further consideration of the conference committee report on SB 14 under Rule 13, Section 7, in that no notice was posted for the meeting of the conferees.

Rule 13, Section 7, says in applicable part:

> House conferees when meeting with senate conferees to adjust differences shall meet in public and shall give a reasonable amount of notice of the meeting. . . .

Similarly, Rule 13, Section 6, provides in applicable part, under the heading "Membership and Operation:"

> A majority of each committee shall be required to determine the matter in dispute. Reports by conference committees must be signed by a majority of each committee of the conference.

As seen from these rules, the house rules do not require that a conference committee convene in a meeting. The basic requirement, under Rule 13, Section 6, is that the report be signed by a majority of each committee. If the conferees choose to meet as committees, the conference committee must give reasonable notice.

In addition, since the rules do not require a conference committee to keep minutes of its proceedings, there is no official record of whether the conferees in fact convened in a meeting or where or when they did so. The signatures on a conference committee report standard form, which asserts that the conferees "met," is not in and of itself an official record that such a meeting took place.

Accordingly, the point of order is respectfully overrruled.

Outside-the-Bounds Resolution—Availability of Fiscal Note
83 H.J. Reg. 5116-17 (Simpson 5/26/13)

HR 2700 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of HR 2700 under Rule 13, Section 9(h)(4) of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raised a point of order against further consideration of HR 2700 under Rule 13, Section 9(h)(4) of the House Rules which requires that, for an appropriations bill, the accompanying resolution to suspend limitations imposed on conference committee reports must "be available in its entirety on the electronic legislative information system that is accessible by the general public." The point of order is respectfully overruled.

Representative Simpson asserts that because a fiscal note must be distributed along with this resolution pursuant to Rule 13, Section 9(g)(5) of the House Rules, the fiscal note must necessarily be available online to the public in order for the resolution to be available "in its entirety" under Section 9(h)(4). Although four of the five requirements for resolutions under Section 9(g)(5) pertain to the content of the resolution itself, the fifth requirement calls for distribution of a fiscal note with the resolution, rather than as part of the resolution. Because the fiscal note is not one of the items that composes the resolution, failure to post the fiscal note to the electronic legislative information system that is accessible by the general public does not contravene Section 9(h)(4).

Outside-the-Bounds Resolution—Availability of Fiscal Note
83 H.J. Reg. 5116 (Simpson 5/26/13)

HR 2700 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of HR 2700 under Rule 13, Section 9(g)(5) of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raised a point of order against further consideration of HR 2700 under Rule 13, Section 9(g)(5) of the House Rules, which requires "a fiscal note distributed with the resolution" to suspend limitations imposed on conference committee reports. The point of order is respectfully overruled.

Representative Simpson urges that the fiscal-note requirement was violated because the fiscal note was not attached to the resolution itself and was instead distributed as a separate document. As such, he contends the fiscal note was not distributed "with" the resolution. Fiscal notes, which are prepared by the Legislative Budget Board, are uploaded online by the LBB and automatically made available to members through the Floor Amendment System; this is how the requirement for distributing fiscal notes with resolutions under Rule 13, Section 9(g)(5) of the House Rules, has been satisfied since the addition of this requirement in 2007. In this instance, the chief clerk's records show that the fiscal note was available in the Floor Amendment System as of May 24, 2013 at 8:41 a.m., two days before the resolution was laid before the house. Under the circumstances, the chair concludes that distribution of the fiscal note through the Floor Amendment System satisfied the distribution requirement under Rule 13, Section 9(g)(5) of the House Rules.

Outside-the-Bounds Resolution—Text in Disagreement
84 H.J. Reg. 5219-20 (Simpson 5/29/15)

Conference Committee Report—Text in Disagreement
84 H.J. Reg. 5221 (Simpson 5/29/15)

HR 3315 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of HR 3315 under Rule 13, Section 9 of the House Rules on the grounds that text of the bill that was not in disagreement between the two houses was changed.

The speaker overruled the point of order and submitted the following statement:

. . .

HB 1 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of HB 1 under Rule 13, Section 9 of the House Rules on the grounds that text of the bill that was not in disagreement between the two houses was changed.

The speaker overruled the point of order and submitted the following statement:

Representative Simpson raised a point of order under Rule 13, Section 9 against further consideration of the out-of-bounds resolution for the budget, HR 3315, as well as the budget bill, HB 1.

At the heart of the matter is Representative Simpson's belief that conference committees, once appointed, should never take any action that is not specifically authorized in Rule 13, Section 9(b) unless the conference committee returns to the house before working on the item and receives approval to proceed with the change.

This matter has been discussed at some length by Representative Simpson. *See* 84 H.J. Reg. 160 (2015) (Amendment No. 23, a proposed rule change to conform House Rules to Representative Simpson's line of reasoning); 84 H.J. 1821 (2015) (Simpson motion to instruct budget conferees to be bound by his interpretation of Rule 13, Section 9); 84 H.J. Reg. 4439 (2015) (discussion of Representative Simpson's interpretation of Rule 13, Section 9). Neither Mr. Simpson's motion to amend the rules nor to instruct budget conferees to be bound by his interpretation of the conference committee restrictions was adopted.

The central problem with Representative Simpson's argument is that he seeks to construe Rule 13, Section 9 and, at the same time, ignore Subsection (f) of the rule that allows limitations to be "suspended in part by permission of the house to allow consideration of and action on a specific matter or matters which would be prohibited." As Representative Simpson candidly admitted, he is unaware of any time when a house conference committee has acted in the manner that he says the rule requires.

The House Conference Committee on HB 1 acted properly under the House Rules. The points of order on HR 3315 and HB 1 are respectfully overruled. Representative Simpson's comment should be considered in working with the senate to adopt a joint rule to deal with conference committees.

[Note: The ruling on this point of order is printed twice in the journal, once for the resolution and once for the bill itself, with citations and headings provided for each of the separate journal entries.]

Outside-the-Bounds Resolution—Text in Disagreement
83 H.J. Reg. 5117 (Y. Davis 5/26/13)

HR 2700 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of HR 2700 under Rule 13, Section 9 of the House Rules on the grounds that text of the bill that was not in disagreement between the two houses was changed.

The speaker overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of HR 2700, asserting "multiple defects with the mandates found in various parts" of Rule 13, Section 9 of the House Rules. Representative Y. Davis specifically alleges that "all of the text contained with the resolution is in both the final House and Senate versions of SB 1," and concludes that, therefore, "the only rule available for HR 2700 to suspend is Rule 13, Section 9, Subsection (b), Subdivision 3." She further appears to assert that not all of the provisions of Rule 13, Section 9(h)(3) of the House Rules were properly satisfied. Having reviewed Representative Y. Davis's written point of order and reviewed HR 2700 and relevant portions of SB 1, the chair respectfully overrules the point of order.

Conference Committee Report—Text in Disagreement
85 H.J. Reg. 5707-08 (Turner & Walle 5/28/17)

SB 5 - POINT OF ORDER

Representatives Turner and Walle raise points of order against further consideration of SB 5 under House Rule 13, Sections 9 and 11(a), on the grounds that the conference committee exceeded the limits of its jurisdiction and the conference report is flawed. The points of order are respectfully overruled.

House Rule 13, Section 9 (in relevant part) states "A conference committee shall have no authority with respect to any bill . . . to add text on any matter not in disagreement." Representative Turner argues that the conference committee report adds text to the caption of SB 5, when the caption of the bill was not in disagreement between the two chambers. The proponents acknowledged, however, that the text of the house and senate bills relating to criminal penalties were different and the text of the conference committee adjusted those differences.

House Rule 13, Section 11(a), states "all reports of conference committees shall include an analysis showing wherein the report differs from the house and senate versions of the bill, resolution, or other matter in disagreement." Similar to Representative Turner's point of order, Representative Walle argues that the conference committee report adds text to the caption of SB 5, when the caption was not in disagreement between the two chambers. Specifically, Representative Walle argues that the side-by-side analysis for the conference committee report fails to note the caption change that is made to the bill. Because the content of

the conference committee version of the bill differs from the house and senate versions, the analysis should have correctly noted the distinction. The argument ignores the interconnection between the text of the bill and the caption (the purpose of which is to provide notice of the text). For example, assume the house and senate versions of the bill shared an identical caption "relating to Longhorns and Aggies" but the conference committee within the rules deleted all references to Longhorns. The caption, which is not text of the bill, would necessarily need to be changed. Taking the argument further, a house bill that was submitted in senate committee would bear two different identifiers "H.B." and "C.S.H.B."; under the proponent's theory, this also would be "text in disagreement" and would require separate column acknowledgement. In this case, the technical changes in the body of the bill were accurately reflected in the report. The point of order is overruled.

Conference Committee Report—Text in Disagreement
84 H.J. Reg. 5772-73 (Raymond 5/31/15)

HB 483 - POINT OF ORDER

Representative Raymond raised a point of order against further consideration of HB 483 under Rule 13, Section 9 of the House Rules on the grounds that text of the bill that was not in disagreement between the two houses was changed.

The chair overruled the point of order and submitted the following statement:

Representative Raymond raised a point of order against further consideration of HB 483 under Rule 13, Section 9 arguing that, as suggested by previous points of order by Representative Simpson, 84 H.J. Reg. 5219-20 (2015) and 84 H.J. Reg. 5221 (2015), the text of the conference committee report is improperly before the body because the conference committee report was created before the adoption of the out-of-bounds resolutions in both the house and the senate, that the conference committee report was filed in the senate before the resolution to go outside the bounds was adopted by the house, and that there is some evidence that both the house and the senate conferees had in fact come to a resolution of the difference before the filing or adoption of a resolution to go outside the bounds in either house. Proponents of the legislation, including Representative Simpson, urge that the house only consider house documents as they relate to the joint house-senate conference committee report. For the reasons stated in earlier points of order, this point of order is also respectfully overruled.

Representative Raymond's point of order, however, highlights several practical obstacles to Representative Simpson's desired approach to Rule 13, Section 9. First, as evidenced by their practice over multiple sessions and by the actions taken on this bill, neither legislative body interprets this rule as Representative Simpson does. In this case, the senate did not seek permission of the senate before amending its conference committee report. In fact, the out-of-bounds resolution was adopted by the senate only moments before the

conference committee report was—just as both houses' rules and practice allow. Second, even though the house adopted the conference committee out-of-bounds resolution before filing a conference committee report, the senate did not. In examining whether this differing timing is relevant, it is important to note that a conference committee report is a joint report—signed by both houses—and must represent agreed-on language. If house members knew, as posited by certain members, that the senate was signing the conference committee report for HB 483 without express authority to make the changes, that surely would impact the validity and spirit of the conference committee report. Finally, Representative Raymond observes that the house resolution and the senate resolution suspending limitations are identical. The identical nature of the resolutions, including the identical nature of the added and deleted text, indicates that before the resolutions were passed, the parties had reached a specific "meeting of the minds" and agreed to go outside the bounds. Some members have suggested that this early agreement demonstrates that by the time the out-of-bounds resolution reached the house and senate, the conferees were seeking forgiveness rather than permission to alter text that had previously been approved by both chambers.

Whether it was shenanigans or not, it appears clear that the out-of-bounds resolutions had been prepared well in advance of the senate vote, there was general agreement of the parties, and the changes described were of a highly specific nature. This, however, is not a departure from House Rules or precedent. It is also of no moment that the out-of-bounds resolution was passed shortly before the conference committee report was adopted. It does bring home, in graphic detail, that the operation of conference committees and how they report are matters of joint concern and that neither chamber can expect to change the rules in these areas without impacting the other.

Conference Committee Report—Text in Disagreement
84 H.J. Reg. 5719-20 (Canales 5/31/15)

SB 11 - POINT OF ORDER

Representative Canales raised a point of order against further consideration of SB 11 under Rule 13, Section 9 of the House Rules on the grounds that text of the bill that was not in disagreement between the two houses was changed.

The speaker overruled the point of order and submitted the following statement:

Representative Canales raised a point of order against further consideration of SB 11 under Rule 13, Section 9 arguing that the text of Section 8 of the conference committee report (a transition provision relating to the date institutions of higher education, both public and private, must take certain actions related to a "campus carry" law) required a resolution to go outside the bounds. The point of order is respectfully overruled.

The senate version of the provision had: (1) an effective date of September 1, 2015; and (2) required all institutions of higher education to take action by that date. The house version of the provision (1) had an effective date of September 1, 2016; and (2) allowed institutions of higher education, both public and private, time to take action to adopt rules related to the act. The conference committee report: (1) had an effective date of August 1, 2016 (a matter resolving the disagreement in the text between the house and senate version); and (2) allowed certain institutions the ability to act to adopt rules and gave public junior colleges additional time to act (adjusting the difference between the senate view of "no discretion" and the house view giving all institutions the ability to act).

Because Section 8 of the conference committee report reflects that the conferees properly limited their discussion and their actions to solely matters in disagreement between the two houses, there was no rule violation and the point of order under Rule 13, Section 9(a) is respectfully overruled.

Conference Committee Report—Text in Disagreement
74 H.J. Reg. 4349-51 (Turner 5/27/95)

SB 1 - POINT OF ORDER

Representative S. Turner raised a point of order against further consideration of the conference committee report on SB 1 on the grounds that the conference committee report on SB 1 violates Rule 13, Section 9(a)(4), and Rule 13, Sections 6 and 7, of the House Rules.

The speaker overruled the point of order, speaking as follows:

Representative S. Turner raises a point of order against further consideration of the conference committee report on SB 1, under Rule 13, Section 9(a)(4), in that the conference committee report includes subject matter not included in either version of the bill.

In adjusting the differences, the conferees must compare the senate engrossment with the house amendments to determine the limits of their jurisdiction. If either house addresses a subject matter on which the other house is silent, that subject matter is properly before the conference committee and the conferees may change the text before them as necessary to make the matter agreeable to the house that did not address that subject matter. Similarly, if the subject matter is in both versions of the bill, but the text is in disagreement, the conferees may adjust those differences.

Having reviewed the written points submitted by Representative S. Turner, the chair finds that each of the provisions listed addresses matters within the jurisdiction of the conference committee, and a point by point response will be attached to this ruling for entry in the journal.

Accordingly, the point of order is respectfully overruled.

The following table notes the basis for the chair's determination, listed in the order presented in the Turner written point of order.

Page 3: Subject matter (Objectives) in House version; Senate silent

Page 5: House and Senate Text (Agency powers) in disagreement

Page 89: Subject matter (definitions) in House version; Senate silent

Page 91: House and Senate Text (campus charters) in disagreement

Page 150: House and Senate Text (probationary contracts) in disagreement

Page 163: Subject matter (superintendent contracts) in Senate version; House silent

Page 333: House and Senate Text (textbooks) in disagreement

Page 340: House and Senate Text (textbooks) in disagreement

Page 430: House and Senate Text (migratory children) in disagreement

Page 694: Subject matter (alcohol-free zones) in House version; Senate silent

Page 136: Subject matter (board for educator certification) in Senate version; House silent

Page 141: Subject matter (board for educator certification) in Senate version; House silent

Page 141: Subject matter in Senate version (board for educator certification); House silent

Page 156: House and Senate text (teacher contracts) in disagreement

Page 160: House and Senate text (teacher contracts) in disagreement

Page 160: House and Senate text (teacher contracts) in disagreement

Page 161: House and Senate text (teacher contracts) in disagreement

Page 180: House and Senate text (counselor appraisal) in disagreement

Page 182: House and Senate text (teacher salaries) in disagreement

Page 237: Section 33.003 in House version; moved to Section 28.003

Page 278: Section 39.154 in House version; moved to Section 29.083

Page 695: Subject matter (alcohol free zones) in House version; Senate silent

Page 740: Subject matter (weapon-free zones) in Section 37 of House Version; Senate silent

Conference Committee Report—Text in Disagreement
74 H.J. Reg. 4444-45 (Maxey 5/27/95)

SB 14 - POINT OF ORDER

Representative Maxey raised a point of order against further consideration of the conference committee report on SB 14 on the grounds that the conference committee report on SB 14 violates Rule 13, Section 9, of the House Rules.

. . .

The speaker overruled the points of order, speaking as follows:

Representative Maxey raises four points of order against further consideration of the conference committee report on SB 14 under Rule 13, Section 9, in that the conference committee report exceeded the jurisdiction of the conference committee. The chair finds, for reasons to be entered into the journal in detail, that the conference committee acted within its jurisdiction.

Accordingly, Mr. Maxey's point of order is respectfully overruled.

. . .

Mr. Maxey raises a point of order against further consideration of SB 14 under Rule 13, Section 9, in that the conference committee report, in four identified particulars, exceeds the jurisdiction of the conference committee by including text on a matter not included in either the house or senate version of the rule.

(1) The conference committee added language to Section 2007.025 of the bill to provide that, when a governmental entity appeals an adverse decision on a "takings" claim, the governmental entity is enjoined from invoking the governmental action pending the appeal.

The house version and senate version of the bill differ substantially in the manner in which takings issues are resolved. The house version provided for both a contested case process and a litigation process for resolving the issues. (Subchapter B, Chapter 2007, house version.) The senate version provided only for a litigation process. (Subchapter B, Chapter 2007, senate version.) As to contested cases, the house version expressly provided for the appeal by the landowner (Sec. 2007.026). Both versions provided for a stay pending payment of all compensation. (Section 2007.023, and 2007.026, house version; Section 2007.024, senate version.)

Because the senate and house versions of the bill were in such wide disagreement on the subject matter of resolving takings issues, and because the issue of appeals and stays pending appeal is presented as part of the overall context, the chair determines that the conference committee acted within their jurisdiction.

(2) In Section 2007.024(b), the conference committee provides that the judgment or order on a takings claim must have a fact-finding regarding monetary damages. For the same reasons applicable to consideration of the first point, the chair determines that the conferees acted within their jurisdiction on this issue, also.

(3) The conference committee includes provisions that a governmental entity is liable only for the invalidation of a governmental action (Section 2007.023). For the same reasons applicable to consideration of the first point, the chair determines that the conferees acted within their jurisdiction on this issue, also.

(4) The conference committee report includes Section 2007.003(e), exempting actions under Chapter 61, Natural Resources Code (the "open beaches" law). The chair finds that this is an appropriate narrowing of a much broader

provision contained in the house version of the bill (Section 2007.003(c)), which contained an exception for enforcement or implementation of any statute.

Accordingly, the points of order are respectfully overrruled.

Conference Committee Reports—Analysis
85 H.J. Reg. 6003-04 (J. Rodriguez 5/28/17)

SB 715 - POINT OF ORDER

Representative J. Rodriguez raised a point of order against further consideration of SB 715 under House Rule 13, Section 11(a), on the grounds that page 59 of the three-column analysis comparing the house, senate, and conference versions of the bill is inaccurate. The senate version of the portion of the report at issue had a provision entitled "Section 35" that is thirteen lines long in the three-column analysis. The house column says "No equivalent provision." The conference column is left blank for that provision, since there is also no equivalent provision contained in the conference version of SB 715. Representative J. Rodriguez asserts that the blank conference column should instead have said "Same as House version," and that the blank space is misleading and inaccurate. The chair has reviewed the side-by-side and the House Rules, and finds that the blank portion of the column adequately reflects that there is no provision in the conference version of the bill that is equivalent to the senate's Section 35. Accordingly, the point of order is respectfully overruled.

Analysis of Conference Committee Reports (Rule 13, Section 11)
83 H.J. Reg. 5378-79 (Miles, Y. Davis 5/26/13)

HB 500 - POINT OF ORDER

Representative Miles raised a point of order against further consideration of HB 500 under Rule 13, Section 11(a) of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Miles raised a point of order against further consideration of HB 500 under Rule 13, Section 11(a) of the House Rules, asserting that Section 7 of the analysis accompanying the conference committee report fails to provide the text that will be contained within the final conference committee report. The point of order is respectfully overruled.

The analysis of Section 7 shows three columns. The first column shows the house version of the bill, the middle shows the senate version, and the last column shows the differences, either by noting where it is "same as" the house or senate versions or by showing the text that is not identical to either the house or senate version of the bill. Having reviewed Section 7 of the section-by-section analysis and the conference committee report, the chair determines that the analysis

accurately reflects the content of Section 7 of the conference committee report. Shortly after this point of order was overruled, Representative Y. Davis raised this same point of order again. It is respectfully overruled for the same reasons.

HB 500 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of HB 500.

The speaker overruled the point of order.

Conference Committee Reports—When Report Not Acceptable (Rule 13, Section 13)—Sustained
80 H.J. Reg. 7383-85 (Dunnam 5/28/07)

SB 482 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of SB 482 under Rule 13, Section 13 of the House Rules on the grounds that the conference committee report was neither recommitted nor was a new conference committee appointed.

. . .

The chair sustained the point of order, and had read the following statement:

Mr. Dunnam raised a point of order against further consideration of the conference committee report on SB 482 on the grounds that following the sustaining of the point of order on the previous conference committee report on the bill, the conference committee adopted a new conference committee report, which was filed in the House on May 27, 2007, as indicated by the official time stamp of the chief clerk. When the point was sustained, the bill was still before the house and no motion to re-refer the bill to conference committee was made.

Accordingly, the conference committee was without authority to adopt and file a new conference committee report. For that reason, the point of order is sustained.

[Note: The point of order referenced in this ruling is 80 H.J. Reg. 6665 (Dunnam 5/27/07), which was sustained under Rule 8, Section 4 without commentary submitted by the chair.]

Conference Committee Reports—Printing & Distribution of Reports (Rule 13, Section 10)
80 H.J. Reg. 7382-83 (Dunnam 5/28/07)

SB 482 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of SB 482 under Rule 13, Section 10 of the House Rules on the grounds that the conference committee report was filed less than 24 hours before it was taken up for consideration.

. . .

The speaker overruled the point of order, and submitted the following statement:

Mr. Dunnam raised a point of order against further consideration of the conference committee report on SB 482 on the grounds that the report was not adopted after the point of order on the previous conference committee report on the bill was sustained on May 26. The conference committee report was filed in the house on May 27, 2007, as indicated by the official time stamp of the chief clerk. That filing was subsequent to the time at which the point of order was sustained on the previous report, and the new conference committee report contains the signatures of the appropriate number of members of each house. The presence of the date of May 26, 2007, on the signature sheet does not appear to be an official time-stamp date. Moreover, the House Rules do not expressly require a date other than the official time-stamped date to appear on the conference committee report. Accordingly, the point of order is respectfully overruled.

Other explanations addressing conference committee reports:
78 H.J. 3rd C.S. 419 (Mabry Jr. 10/10/03), *supra* at 157-58 (addressing attachment of fiscal note to conference committee report)
73 H.J. Reg. 5366 (Moreno, Maxey 5/30/93), *supra* at 207-09 (addressing the bill's caption, original purpose, and text in disagreement in a conference committee report)
80 H.J. Reg. 7190 (Herrero 5/28/07), *supra* at 243 (discussing germaneness and original purpose of conference committee report)

Technical Correction Resolutions (Rule 10, Section 8)

Technical Correction Resolutions (Rule 10, Section 8)
83 H.J. Reg. 5432 (Herrero 5/27/13)

HCR 224 - POINT OF ORDER

Representative Herrero raised a point of order against further consideration of HCR 224 under Rule 10, Section 8 of the House Rules.

The speaker overruled the point of order and submitted the following statement:

Representative Herrero raised a point of order against further consideration of HCR 224 under Rule 10, Section 8, asserting that the amendments proposed by the corrective resolution are not technical corrections. *See also* Rule 8, Section 13(f) (prohibiting consideration of measures other than for the purpose of making corrections). Specifically, Representative Herrero argues that the addition of Subsection (f) in Section 77 of the bill is a substantive addition to HB 5 rather than a correction. The point of order is respectfully overruled.

HCR 224 rewrites Subsection (f), which, in the bill, provided that "a student described by Subsection (a) may enroll in not more than three courses each school year offered as provided by this section." Rather than referring to Subsection (a), the rewrite provided in HCR 224 describes the students eligible for enrollment and includes an exception allowing that a student enrolled at an early college high school can enroll in more than three courses to the extent approved by the commissioner of education. These changes clarify the meaning and intent of Subsection (f) without changing its purpose. Accordingly, the resolution does not violate Rule 10, Section 8 or Rule 8, Section 13(f).

Technical Correction Resolutions (Rule 10, Section 8)—Sustained
83 H.J. Reg. 5430-31 (Simpson 5/27/13)

SCR 48 - POINT OF ORDER

Representative Simpson raised a point of order against further consideration of SCR 48 under Rule 8, Section 13(f) and Rule 10, Section 8 of the House Rules.

. . .

The chair sustained the point of order and submitted the following statement:

Representative Simpson raised a point of order against further consideration of SCR 48 under Rule 8, Section 13(f) and Rule 10, Section 8. Representative Simpson asserts that the resolution is not a corrective resolution because it would add substantive provisions to SB 1678 and is, therefore, not in order. The point of order is sustained.

SB 1678 contains provisions governing events and expenses related to the Major Events Trust Fund; it does not contain provisions that alter the definition of a "site selection organization." SCR 48 provides for the addition of a new section of text in the bill that would add "ESPN or an affiliate" and "the National Association for Stock Car Auto Racing (NASCAR)" to the definition of a "site selection organization." Rule 8, Section 13(f) provides: "No vote shall be taken upon the passage of any bill or resolution within 24 hours of the final adjournment of a regular session unless it be to reconsider the bill or resolution to make corrections, or to adopt a corrective resolution." The corrections permitted by this provision, and referenced in Rule 10, Section 8, include corrections such as remedying accidental deletion of text or typographical errors usually caused by the rush of activity that occurs as drafters and others are meeting end of session deadlines.

Although these technical corrections can sometimes impact the substance of a bill, the rule does not permit the wholesale addition of a new section of text that was never in disagreement, unless it is uncontroverted that the addition of such text is essential to the purpose of the bill. Representative Simpson argues that the addition of this text is not essential to the bill's purpose of changing the requirements for eligible events to be funded, prohibiting certain disbursements, and providing for the comptroller to gather information about funded events. The chair notes that the changes proposed in the corrective resolution did not appear in any version of the bill, from the time it was filed on March 8 through when it was adopted. Nor did anyone introduce an amendment in committee or on the floor of either chamber to add the language proposed by the resolution. Then, when the bill was sent to conference committee, the conferees, who were appointed in the senate on May 22 and in the house on May 23, did not seek to add the text proposed by the resolution, and instead, the conferees were discharged on May 25, and the bill was adopted without evidence that adding ESPN and NASCAR to the definition of a site selection organization was vital to the purpose of the bill. Thus, the proponents of SCR 48 did not take advantage of prior opportunities to remedy the omission of the amendment the resolution proposes. Because SCR 48 sought to add an entirely new substantive provision to the bill, it was not a technical correction within the meaning of Rule 8, Section 13(f) and Rule 10, Section 8, and was, therefore, out of order.

The ruling precluded further consideration of SCR 48.

Technical Correction Resolutions (Rule 10, Section 8)
81 H.J. Reg. 6945-47 (Y. Davis 6/1/09)

HCR 291 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of HCR 291 under Rule 10, Section 8 of the House Rules on the grounds that the resolution changes the effective date of the bill.

The speaker overruled the point of order and submitted the following statement:

Representative Y. Davis raises a point of order against further consideration of HCR 291 (authorizing changes to be made to HB 4583) in that the resolution violates Rule 10, Sections 8 and 9 of the House Rules. The chair understands the point of order to be a challenge on whether the resolution is truly a corrective resolution that is authorized by Rule 10, Section 8, and eligible for consideration during the last 24 hours of a regular session under Rule 8, Section 13(f).

Arguments were made that the resolution is not in order because it changes law in violation of the rules and the constitution. A previous ruling was cited for this proposition (see House Journal, 41st First Called Session (1929), page 601). In examining the precedent, the chair finds that in a special session the legislature was considering a resolution that would change the effective date of a bill that had been enacted into law in the previous regular session. In that case a point of order was sustained on the grounds that a law could not be suspended by a concurrent resolution. The ruling is consistent with case law providing that a statute may not be amended by resolution. *See Humble Oil & Refining Co. v. State* (Tex. Civ. App. 1936), 104 S.W. 2d 174, error refused.

HCR 291 does not seek to make changes to a statute. It instructs the enrolling clerk to make changes in a bill before finally enrolling it. The bill has not been presented to the governor for approval and is therefore not enacted legislation. The concurrent resolution would serve as a special type of floor amendment to the bill, adopted by both houses. The adoption of corrective resolutions instructing changes to be made to a bill before it is finally enrolled is recognized in congressional precedents (see 33 Deschler's Precedents Secs. 17.1 and 17.6) and in the state legislative practice (see Mason's Manual of Legislative Procedure, 2000 ed., Sec. 738(3)). As mentioned above, corrective resolutions are considered in the Texas House Rules in Rule 8, Section 13(f), and Rule 10, Section 8.

The chair was provided with a statement with a portion of a comment in the 1959 edition of the Texas House rules on the use of corrective resolutions. The comment, which was likely authored by the House Parliamentarian at the time, Read Granberry, cautioned that corrective resolutions:

> should be strictly of that character, in not being allowable under the Rules to make changes in substance. To allow such would set a dangerous precedent, because there would be no way of drawing a line as to what could and what could not be changed by such a resolution. 56 Texas Legislative Manual 294 (1959).

No precedents or specific rules were cited in this portion of the commentary. As the comment continues it notes that in recent years both houses have adopted concurrent resolutions authorizing "many and various types of corrections in the General Appropriations Act after adoption," and questions whether these changes were truly "corrections." Nevertheless, the commentary concludes that "[s]uch course of action has been deemed preferable to recommitting the bill to conference. . ."

While the chair finds the commentary a thoughtful analysis of the situation at that time, the chair finds that the specific changes to the House Rules since then limit the value of the commentary. Specifically, at the time of the commentary, Rule 23, Section 12, waived the 24-hour layout rule for conference committee reports during the last 72 hours of a session. Thus a conference committee report could be adopted, reconsidered, changed, and readopted on the last day of session without having to layout. Under current rules, the 24-hour layout rule for conference committee reports (Rule 13, Section 10), applies throughout the session. Also under Rule 8, Section 13(f), conference committee reports are not authorized to be considered on the last day of the regular session. These changes mean that the only way to change a conference committee report on the final day of a regular session under the current rules is through a corrective resolution unless the rules are suspended. This was not the case at the time of the commentary. Therefore the chair finds that the ruling in this case must focus on whether HCR 291 constitutes a corrective resolution authorized by Rule 8, Section 13(f) and Rule 10, Section 8.

One of the purposes of HB 4583 was to ensure that the state could qualify for, spend, and properly oversee the expenditure of federal stimulus money. In doing so, it was presumed that the agencies the legislature had not made a conscious effort to abolish would still be in existence to perform these activities to qualify for and oversee the expenditure of the stimulus money. For many sessions now, it has been the practice to include any agency for which there is some disagreement on the specific terms of its reauthorization under the sunset act in a "safety net bill" that extends the life of the agency for several more so that the agency is not unintentionally abolished if an agreement can not be reached within the time available for legislative action in a session. It is within the context of the necessity that state agencies be in existence and available to apply for, receive, or monitor the expenditure of federal stimulus funds combined with the unexpected failure of both the agency-specific sunset bills and the safety net bill to be enacted, that the chair determines the changes made to HB 4583 by the resolution are corrective in nature.

The point of order is respectfully overruled.

Suspending the Rules

Notice of Pending Motion to Suspend Rules (Rule 14, Section 4)
85 H.J. Reg. 3303-04 (Tinderholt 5/11/17)

MOTION TO SUSPEND THE RULES - POINT OF ORDER

Representative Tinderholt raised a point of order on the motion by Representative S. Thompson to call a Local and Consent Calendars meeting on the grounds that the motion did not satisfy House Rule 14, Section 4.

Rule 14, Section 4, requires the speaker in making an announcement to the house to "advise the house of the member's name and the bill number, and this information, together with the time that the announcement was made, shall be entered in the journal."

The chair gave at least one hour's notice of Chairwoman Thompson's intent to suspend the rules to set a Local and Consent Calendar. Representative Tinderholt argues that he would be unable to learn or know which bills Chairwoman Thompson's Local and Consent Calendars Committee might consider. Under the house rules, only measures for which the committee report had been sent to the Local and Consent Calendars Committee were eligible to be considered for placement on the Local and Consent Calendar. These bills could have been identified almost instantaneously using the Texas Legislative Information System. For example, a search of TLIS revealed, within a matter of seconds, that 133 bills and two resolutions were pending in the Local and Consent Calendars Committee on the date the motion was made. Some of these measures had been pending in the committee for over a week, during which time any interested member or member of the public could have reviewed the measure's history and text; the text and history of every measure is available online for anyone to review starting from when the measure is introduced. Even members who might have previously completely overlooked the work of the Local and Consent Calendars Committee to date had at least an hour after notice of the motion was given in order to review the measures that would potentially be on the calendar, most of which appear to have been limited in their effects to a single district, and some of which were as simple as attempting to name portions of roads in honor of fallen heroes. Under the circumstances, the chair finds that the notice provided and the motion made by Chairwoman Thompson satisfied each provision of Rule 14, Section 4. The point of order is respectfully overruled.

Notice of Pending Motion to Suspend Rules (Rule 14, Section 4)
85 H.J. Reg. 3054-55 (Stickland 5/9/17)

MOTION TO SUSPEND THE RULES - POINT OF ORDER

Representative Stickland raised a point of order that the notice given by Representative S. Thompson for her motion to suspend the rules did not satisfy House Rule 14, Section 4.

Rule 14, Section 4, requires the speaker in making an announcement to the house to "advise the house of the member's name and the bill number, and this information, together with the time that the announcement was made, shall be entered in the journal."

On May 9, 2017, at 12:19 p.m., the chair made the following announcement: "Pursuant to Rule 14, Section 4 of the House Rules, the Chair is providing one hour's notice that the Speaker will recognize Representative Thompson of Harris for a motion to suspend all necessary rules regarding today's Local and Consent Calendar. The motion affects all bills currently pending on today's Local and Consent Second Reading Calendar, the Calendar's addendum, as well as any bill withdrawn or removed from today's Local and Consent Calendar and addendum." The language of the announcement advised the house of the name of the proponent of the motion, Representative Thompson of Harris, as well as the bill numbers of all of the measures potentially affected: the bills subject to the motion were listed on the Local and Consent Calendar and addendum, which were e-mailed to members and their staff, distributed to members' desks, and available online to members and the public. Representative Stickland further seemed to suggest that the names of the bill authors were required to be included in the notice. Although the authors' names were not required in the notice, those names were also readily available on the Local and Consent Calendar and addendum. The announcement, along with the time the announcement was made, was entered into the journal. Under the circumstances, the chair finds that the notice of the motion complied with Rule 14, Section 4. The point of order is respectfully overruled.

Notice of Pending Motion to Suspend Rules (Rule 14, Section 4)
77 H.J. Reg. 3045 (Dutton Jr. 5/10/01)

CONSTITUTIONAL RULE SUSPENSION - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of any bills on third reading on the grounds that the order of the calendar required under the rules was not being followed in that some bills were being skipped, thereby resulting in bills being taken out of order. The chair overruled the point of order.

Representative Dutton raised a point of order under Rule 14, Section 4, in that notice to take bills out of their regular order had not been given. The chair overruled the point of order, stating that earlier in the day, the speaker had given notice to the house of his intent, upon completion of the calendar or at midnight, whichever occurred first, to recognize members to suspend the constitutional three day rule on house bills passed on second reading. Futhermore, as the house had completed consideration of the calendar for Thursday, there was no order of business to suspend, and if the house failed or the author did not seek to be recognized to suspend the constitutional three day rule on a particular bill, the chair stated it was in order to proceed to the next bill.

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