February 8, 1990

Number 156

MAJOR ISSUES OF THE 71st LEGISLATURE IN 1989

The 71st Texas Legislature enacted 1,317 bills and approved 22 joint resolutions during its regular session, plus another 46 bills during its first and second called sessions in 1989. This report summarizes many of the significant measures considered during the legislative sessions last year. It includes legislation that failed to pass along with bills and proposed constitutional amendments that were approved. Also included are arguments for and against each measure and a brief legislative history. Unless otherwise noted, all dates refer to 1989.

The purpose of the report is to provide an overview of the issues faced by the 71st Legislature last year and to anticipate some issues that might be considered in the future. The measures included are used to illustrate many of the important issues considered.


Anita Hill
Chairman

Larry Evans
Vice Chairman

Steering Committee:
Anita Hill, Chairman
Larry Evans, Vice Chairman

Tom Craddick
Henry Cuellar
Betty Denton
Bruce Gibson
Ernestine Glossbrenner
Juan Hinojosa
Al Luna
Jim McWilliams

Al Price
Jim Rudd
Ashley Smith
Terral Smith
Jack Vowell
71st LEGISLATURE, REGULAR SESSION

<table>
<thead>
<tr>
<th></th>
<th>Introduced</th>
<th>Enacted*</th>
<th>Percent enacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>House bills</td>
<td>3,210</td>
<td>718</td>
<td>22%</td>
</tr>
<tr>
<td>Senate bills</td>
<td>1,859</td>
<td>599</td>
<td>32%</td>
</tr>
<tr>
<td>TOTAL bills</td>
<td>5,069</td>
<td>1,317</td>
<td>26%</td>
</tr>
</tbody>
</table>

(* includes vetoed bills -- 29 House bills, 24 Senate bills)

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>HJRs</td>
<td>111</td>
<td>11</td>
<td>10%</td>
</tr>
<tr>
<td>SJRs</td>
<td>75</td>
<td>11</td>
<td>15%</td>
</tr>
<tr>
<td>TOTAL joint res.</td>
<td>186</td>
<td>22</td>
<td>12%</td>
</tr>
</tbody>
</table>

COMPARISON OF 1987 and 1989 REGULAR SESSIONS

<table>
<thead>
<tr>
<th></th>
<th>1987</th>
<th>1989</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bills Filed</td>
<td>4,179</td>
<td>5,069</td>
<td>+21%</td>
</tr>
<tr>
<td>Bills Enacted</td>
<td>1,186</td>
<td>1,317</td>
<td>+11%</td>
</tr>
<tr>
<td>Bills Vetoed</td>
<td>51</td>
<td>53</td>
<td>+ 4%</td>
</tr>
<tr>
<td>Joint Resolutions Filed</td>
<td>171</td>
<td>177</td>
<td>+ 4%</td>
</tr>
<tr>
<td>Joint Resolutions Adopted</td>
<td>23</td>
<td>22</td>
<td>- 4%</td>
</tr>
<tr>
<td>Measures sent or transferred to Calendars Committee</td>
<td>1,137</td>
<td>1,173</td>
<td>+ 3%</td>
</tr>
<tr>
<td>Measures Sent to Local and Consent Calendars Committee</td>
<td>786</td>
<td>996</td>
<td>+27%</td>
</tr>
</tbody>
</table>

House Research Organization
## CONTENTS

<table>
<thead>
<tr>
<th>Enacted</th>
<th>Vetoed</th>
</tr>
</thead>
<tbody>
<tr>
<td>** **</td>
<td>(1) first called session</td>
</tr>
</tbody>
</table>

### BUSINESS REGULATION

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 15</td>
<td>Seidlits</td>
<td>Products liability limits</td>
<td>1</td>
</tr>
<tr>
<td>* HB 116 (1)</td>
<td>Berlanga</td>
<td>Medicare-supplement insurance</td>
<td>2</td>
</tr>
<tr>
<td>* HB 174</td>
<td>Cavazos</td>
<td>Regulating telephone services</td>
<td>4</td>
</tr>
<tr>
<td>* HB 504</td>
<td>Horn</td>
<td>Gasohol labeling</td>
<td>6</td>
</tr>
<tr>
<td>HB 914</td>
<td>Larry</td>
<td>Interest rate on cash loans</td>
<td>7</td>
</tr>
<tr>
<td>* HB 976</td>
<td>Danburg</td>
<td>Real estate immunity on AIDS</td>
<td>8</td>
</tr>
<tr>
<td>* SB 75</td>
<td>Johnson</td>
<td>Texas Fair Housing Act</td>
<td>10</td>
</tr>
<tr>
<td>SB 86</td>
<td>Henderson</td>
<td>Homestead deed of trust</td>
<td>12</td>
</tr>
<tr>
<td>* SB 191</td>
<td>Green</td>
<td>Car rental collision waivers</td>
<td>13</td>
</tr>
<tr>
<td>SB 255</td>
<td>Montford</td>
<td>Insurance regulation revisions</td>
<td>14</td>
</tr>
<tr>
<td>* SB 413</td>
<td>Harris</td>
<td>Written agreements for loans</td>
<td>16</td>
</tr>
<tr>
<td>SB 415</td>
<td>Caperton</td>
<td>Public insurance counsel</td>
<td>17</td>
</tr>
<tr>
<td>* SB 437</td>
<td>Montford</td>
<td>Deceptive Trade Practices change</td>
<td>18</td>
</tr>
<tr>
<td>* SB 442</td>
<td>Johnson</td>
<td>Real estate timesharing</td>
<td>20</td>
</tr>
<tr>
<td>**SB 452</td>
<td>Krier</td>
<td>Foreclosure debt deficiencies</td>
<td>21</td>
</tr>
<tr>
<td>* SB 1695</td>
<td>Haley</td>
<td>Regulating contest promotions</td>
<td>23</td>
</tr>
</tbody>
</table>

### CORRECTIONS

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>* HB 1477</td>
<td>Hightower</td>
<td>New prison facilities</td>
<td>24</td>
</tr>
<tr>
<td>* HB 1779</td>
<td>Evans</td>
<td>Misdemeanor sentencing options</td>
<td>25</td>
</tr>
<tr>
<td>* HB 2335</td>
<td>Hightower</td>
<td>Criminal justice revision</td>
<td>26</td>
</tr>
<tr>
<td>* HJR 101</td>
<td>Hightower</td>
<td>Criminal justice consolidation</td>
<td>29</td>
</tr>
<tr>
<td>* SB 192</td>
<td>Glasgow</td>
<td>Pre-parole transfers</td>
<td>30</td>
</tr>
<tr>
<td>* SJR 4/SB 54</td>
<td>Brown</td>
<td>Jury instruction on parole time</td>
<td>32</td>
</tr>
</tbody>
</table>

### COURTS

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>* HB 101</td>
<td>Hinojosa</td>
<td>Judicial salary increase</td>
<td>34</td>
</tr>
<tr>
<td>* HB 347</td>
<td>Crawford</td>
<td>Adding drivers to jury lists</td>
<td>35</td>
</tr>
<tr>
<td>HB 520</td>
<td>A. Smith</td>
<td>Exemplary damages to the state</td>
<td>36</td>
</tr>
<tr>
<td>HB 698</td>
<td>Wolens</td>
<td>Concealment of public hazards</td>
<td>37</td>
</tr>
<tr>
<td>HB 1513</td>
<td>P. Hill</td>
<td>Reorganizing county courts</td>
<td>38</td>
</tr>
<tr>
<td>HJR 52/HB 1116</td>
<td>Gibson/Sherman</td>
<td>Judicial selection</td>
<td>39</td>
</tr>
<tr>
<td>SJR 22/SB 407</td>
<td>Caperton</td>
<td>Grand jury revisions</td>
<td>40</td>
</tr>
<tr>
<td>* SB 208</td>
<td>Glasgow</td>
<td>Creation of new district courts</td>
<td>42</td>
</tr>
</tbody>
</table>
### CRIMINAL LAW

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 5</td>
<td>Morales</td>
<td>Revision of organized crime law</td>
<td>43</td>
</tr>
<tr>
<td>HB 65</td>
<td>Morales</td>
<td>Property forfeiture</td>
<td>44</td>
</tr>
<tr>
<td>HB 164</td>
<td>Rudd</td>
<td>Probating DWI license suspension</td>
<td>45</td>
</tr>
<tr>
<td>HB 507</td>
<td>J. Harris</td>
<td>Interfering with a public servant</td>
<td>46</td>
</tr>
<tr>
<td>HB 1777</td>
<td>Wolens</td>
<td>Criminal mischief law expansion</td>
<td>47</td>
</tr>
<tr>
<td>HJR 19</td>
<td>Richardson</td>
<td>Rights of crime victims</td>
<td>48</td>
</tr>
<tr>
<td>SB 12</td>
<td>Brown</td>
<td>Capital murder of child</td>
<td>50</td>
</tr>
<tr>
<td>SB 55</td>
<td>Brown</td>
<td>Recorded oral confessions</td>
<td>51</td>
</tr>
<tr>
<td>SB 80</td>
<td>Farmer</td>
<td>Prohibiting destruction of flags</td>
<td>52</td>
</tr>
<tr>
<td>SB 276</td>
<td>Parker</td>
<td>Boating while intoxicated offense</td>
<td>53</td>
</tr>
<tr>
<td>SB 916</td>
<td>Tejeda</td>
<td>Penalty for evading peace officer</td>
<td>54</td>
</tr>
<tr>
<td>SB 1154</td>
<td>Tejeda</td>
<td>Injury to child, invalid, elders</td>
<td>55</td>
</tr>
</tbody>
</table>

### ECONOMIC DEVELOPMENT

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 362</td>
<td>Williamson</td>
<td>State fund for new products</td>
<td>56</td>
</tr>
<tr>
<td>HB 369</td>
<td>H. Cuellar</td>
<td>Guarantee fund for exporter loans</td>
<td>57</td>
</tr>
<tr>
<td>HB 613</td>
<td>Waterfield</td>
<td>Rural Economic Development Fund</td>
<td>58</td>
</tr>
<tr>
<td>HB 1111</td>
<td>Harrison</td>
<td>Agricultural development aid</td>
<td>59</td>
</tr>
<tr>
<td>HB 2803</td>
<td>Connelly</td>
<td>Guarantees of business loans</td>
<td>60</td>
</tr>
<tr>
<td>HJR 51</td>
<td>Harrison</td>
<td>Bonds for business assistance</td>
<td>61</td>
</tr>
<tr>
<td>SB 193</td>
<td>Ratliff</td>
<td>Work force development incentives</td>
<td>62</td>
</tr>
</tbody>
</table>

### ELECTIONS

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 1665</td>
<td>Hammond</td>
<td>Single location party primary</td>
<td>63</td>
</tr>
<tr>
<td>HB 2178</td>
<td>Hammond</td>
<td>Political finance revisions</td>
<td>64</td>
</tr>
<tr>
<td>SB 443</td>
<td>Johnson</td>
<td>Temporary absentee polling places</td>
<td>65</td>
</tr>
<tr>
<td>SB 1551</td>
<td>Edwards</td>
<td>Voter registration at agencies</td>
<td>66</td>
</tr>
</tbody>
</table>

### ENVIRONMENT, WATER

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 183</td>
<td>Robnett</td>
<td>Underground storage tanks</td>
<td>67</td>
</tr>
<tr>
<td>HB 1458</td>
<td>Guerrero</td>
<td>Groundwater protection</td>
<td>68</td>
</tr>
<tr>
<td>HB 1546</td>
<td>T. Smith</td>
<td>Water pollution abatement</td>
<td>69</td>
</tr>
<tr>
<td>HB 1588</td>
<td>Schlueuter</td>
<td>Petroleum tank cleanup fee</td>
<td>70</td>
</tr>
<tr>
<td>HB 1862</td>
<td>Cuellar</td>
<td>Rio Grande wastewater projects</td>
<td>72</td>
</tr>
<tr>
<td>HB 2979</td>
<td>Saunders</td>
<td>City hazardous waste disposal</td>
<td>73</td>
</tr>
<tr>
<td>SB 2</td>
<td>Santiesteban</td>
<td>Aid to colonias</td>
<td>74</td>
</tr>
<tr>
<td>SB 5</td>
<td>Brown</td>
<td>Artificial reefs program</td>
<td>76</td>
</tr>
<tr>
<td>SB 370</td>
<td>Santiesteban</td>
<td>Rivers Protection System</td>
<td>77</td>
</tr>
<tr>
<td>SB 444</td>
<td>Armbrister</td>
<td>Recycling plastic containers</td>
<td>78</td>
</tr>
</tbody>
</table>
**ENVIRONMENT, WATER (cont.)**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>* SB 631</td>
<td>Montford</td>
<td>River authority review</td>
</tr>
<tr>
<td>* SB 769</td>
<td>Caperton</td>
<td>Conversion to natural gas</td>
</tr>
<tr>
<td>* SB 1212</td>
<td>Santiesteban</td>
<td>Underground-water districts</td>
</tr>
<tr>
<td>* SB 1461</td>
<td>Brown</td>
<td>Endangered species protection</td>
</tr>
<tr>
<td>* SB 1519</td>
<td>Brooks</td>
<td>Solid waste management</td>
</tr>
<tr>
<td>* SJR 5/SB 61</td>
<td>Montford</td>
<td>Water development bonds</td>
</tr>
<tr>
<td>* SJR 44/SB 1117</td>
<td>Montford</td>
<td>Agricultural water bonds</td>
</tr>
</tbody>
</table>

**FAMILY**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>* HB 1806</td>
<td>Collazo</td>
<td>Postadoption services</td>
</tr>
<tr>
<td>* SB 67 (1)</td>
<td>Krier</td>
<td>Child-support revisions</td>
</tr>
<tr>
<td>* SB 171</td>
<td>Krier</td>
<td>Family violence orders</td>
</tr>
<tr>
<td>* SB 188</td>
<td>Brown</td>
<td>Child support and visitation</td>
</tr>
<tr>
<td>* SB 307</td>
<td>Glasgow/</td>
<td>Common-law marriage limitation</td>
</tr>
<tr>
<td>HB 588</td>
<td>P. Hill</td>
<td>Post-divorce spousal maintenance</td>
</tr>
<tr>
<td>SB 330</td>
<td>Caperton</td>
<td>Services for runaways</td>
</tr>
</tbody>
</table>

**GAMING**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 33</td>
<td>Wilson</td>
<td>State lottery referendum</td>
</tr>
<tr>
<td>* HB 141</td>
<td>Hury</td>
<td>Gambling on cruise ships</td>
</tr>
<tr>
<td>HB 1232</td>
<td>Berlanga</td>
<td>Revision of Racing Act</td>
</tr>
<tr>
<td>* HB 2260</td>
<td>Wilson</td>
<td>Bingo regulation by ABC</td>
</tr>
<tr>
<td>* HJR 32/HB 240</td>
<td>T. Smith</td>
<td>Raffles by nonprofit groups</td>
</tr>
</tbody>
</table>

**HEALTH AND HUMAN SERVICES**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>* HB 18</td>
<td>McKinney</td>
<td>Rural health care</td>
</tr>
<tr>
<td>* HB 318</td>
<td>Denton</td>
<td>Nursing home aid eligibility</td>
</tr>
<tr>
<td>* HB 791</td>
<td>McKinney</td>
<td>Emergency medical services</td>
</tr>
<tr>
<td>HB 987</td>
<td>Shelley</td>
<td>Parental consent for abortion</td>
</tr>
<tr>
<td>* HB 1345</td>
<td>Wright</td>
<td>Medicaid program revision</td>
</tr>
<tr>
<td>* HB 2098</td>
<td>McDonald</td>
<td>Medical power of attorney</td>
</tr>
<tr>
<td>**HB 2434</td>
<td>Wallace</td>
<td>Disposal of human remains</td>
</tr>
<tr>
<td>* HB 2608</td>
<td>McKinney</td>
<td>AIDS victim insurance</td>
</tr>
<tr>
<td>* SB 1</td>
<td>Parmer</td>
<td>Repeal of Medicaid-lien law</td>
</tr>
<tr>
<td>SB 35</td>
<td>Uribe</td>
<td>Indoor air quality</td>
</tr>
<tr>
<td>* SB 115</td>
<td>Krier</td>
<td>Sale of tobacco to youths</td>
</tr>
<tr>
<td>SB 120</td>
<td>Brooks</td>
<td>Smoking in public places</td>
</tr>
<tr>
<td>* SB 482</td>
<td>Carriker</td>
<td>Options for the elderly</td>
</tr>
<tr>
<td>* SB 487</td>
<td>Brooks</td>
<td>Health care for the elderly</td>
</tr>
<tr>
<td>* SB 832</td>
<td>Montford</td>
<td>Health insurance risk pool</td>
</tr>
</tbody>
</table>

- iv -

House Research Organization
HEALTH AND HUMAN SERVICES (cont.)

| * SB 911 | McFarland | Chemical dependency coverage | 119 |
| * SB 959 | Brooks    | AIDS testing, treatment      | 120 |
| SB 1416  | Parmer    | Affordable housing program   | 123 |
| * SB 1509 | Brooks    | Grants to the disabled       | 124 |
| * SB 1678 | Brooks    | Health care in pregnancy     | 125 |

HIGHER EDUCATION

| * HB 3   | G. Lewis  | College financial aid programs | 126 |
| * HB 42  | (1) Cain  | UT-Dallas four-year status     | 127 |
| * HB 558 | Delco     | Nonresident tuition, grants   | 129 |
| HB 1039  | D. Hudson | Junior college districts      | 130 |
| HB 2385  | Glossbrenner/ |                |      |
| HB 2565  | A. Luna   | Scholarship program           | 131 |
| * HB 2853/|          |                              |      |
| * HB 67  | (1) Schlueter | Central Texas University   | 132 |
| * SB 47  | Uribé     | Pan-Am/UT merger             | 134 |
| * SB 64  | (1) Bivins | West Texas/A&M merger        | 135 |
| * SB 122 | Truan     | South Texas/A&M merger       | 136 |
| * SB 253 | Barrientos| Student employee insurance   | 137 |
| * SB 429 | Glasgow   | Gifts to student athletes    | 138 |
| * SB 457 | Parker    | Coordinating Board continuation | 139 |
| * SB 647 | Tran      | Corpus Christi State status  | 141 |
| * SJR 74 | Edwards/  | Bonds for college savings, loans | 142 |
| * SB 90  | Henderson |                                |      |

LABOR

| HB 291  | Criss    | Workplace drug testing        | 144 |
| **HB 430| Stiles   | Wages for public contracts    | 146 |
| HB 574  | Stiles   | Drug tests and unemployment aid | 147 |
| HB 925  | Shine    | Unemployment aid and retirement | 148 |
| * SB 1  | (2) Montford | Workers' compensation revisions | 150 |
| **SB 427| Edwards  | Solicitation by law officers  | 153 |
| * SB 1480| Barrientos | State employee child care    | 154 |

LOCAL GOVERNMENT

| * HB 82  | Stiles    | Personal property tax exemption | 155 |
| * HB 95  | (1) Schluter | Hospital district sales tax    | 156 |
| * HB 243 | Valigura  | Small-city traffic fine limits | 157 |
| * HB 1023| Wolens    | Use of hotel-motel taxes       | 158 |
| * HB 3187| T. Smith  | Services in annexed areas      | 160 |
| HJR 2    | Morales   | State funds for local services | 162 |
| * HJR 4  | Russell   | Hospital district board terms  | 163 |

- v -

House Research Organization
<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HJR 13</td>
<td>Willy</td>
<td>Tax break for veterans groups</td>
</tr>
<tr>
<td>SB 328</td>
<td>Tejeda</td>
<td>County road and bridge fees</td>
</tr>
<tr>
<td>SJR 11</td>
<td>McFarland/</td>
<td></td>
</tr>
<tr>
<td>HB 2959</td>
<td>Schlueeter</td>
<td>Freeport tax exemption</td>
</tr>
<tr>
<td>SJR 16</td>
<td>Henderson</td>
<td>Abolishing county surveyor posts</td>
</tr>
<tr>
<td>SJR 34/SB 907</td>
<td>Armbriester</td>
<td>Creating hospital districts</td>
</tr>
<tr>
<td>SJR 59/SB 1342</td>
<td>Leedom</td>
<td>Investment of local funds</td>
</tr>
</tbody>
</table>

**OPEN RECORDS**

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 1285</td>
<td>Wallace/</td>
<td>Open Records Act revisions</td>
</tr>
<tr>
<td>SB 1540</td>
<td>Caperton</td>
<td></td>
</tr>
<tr>
<td>SB 62 (1)</td>
<td>Leedom</td>
<td>Use of crime victim data</td>
</tr>
<tr>
<td>SB 404</td>
<td>Henderson</td>
<td>Open records in education</td>
</tr>
</tbody>
</table>

**PUBLIC EDUCATION**

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 501</td>
<td>Carter</td>
<td>Junior high vocational programs</td>
</tr>
<tr>
<td>HB 571</td>
<td>Grusendorf</td>
<td>School starting date</td>
</tr>
<tr>
<td>HB 850</td>
<td>Hammond</td>
<td>No driving for dropouts</td>
</tr>
<tr>
<td>HB 884</td>
<td>Hammond</td>
<td>State textbooks</td>
</tr>
<tr>
<td>HB 983</td>
<td>Grusendorf</td>
<td>School testing standards</td>
</tr>
<tr>
<td>HB 1292</td>
<td>Arnold</td>
<td>Parental involvement</td>
</tr>
<tr>
<td>HB 1698</td>
<td>Madla</td>
<td>School deannexation</td>
</tr>
<tr>
<td>HB 2566</td>
<td>Glossbrenner</td>
<td>Career ladder changes</td>
</tr>
<tr>
<td>SB 40</td>
<td>Green</td>
<td>Student testing revisions</td>
</tr>
<tr>
<td>SB 151</td>
<td>Barrientos</td>
<td>Aid for students with children</td>
</tr>
<tr>
<td>SB 152</td>
<td>Barrientos</td>
<td>Drop-out reduction</td>
</tr>
<tr>
<td>SB 246</td>
<td>Barrientos</td>
<td>Pre-kindergarten pilot program</td>
</tr>
<tr>
<td>SB 417</td>
<td>Green</td>
<td>Continuing the TEA</td>
</tr>
<tr>
<td>SB 650</td>
<td>Parker</td>
<td>Educational technology</td>
</tr>
<tr>
<td>SB 951/SJR 53</td>
<td>Haley</td>
<td>Funding for school buildings</td>
</tr>
<tr>
<td>SB 1019</td>
<td>Parker</td>
<td>School finance revisions</td>
</tr>
<tr>
<td>SB 1112</td>
<td>Haley</td>
<td>School attendance requirements</td>
</tr>
<tr>
<td>SB 1668</td>
<td>Zaffirini</td>
<td>Drop-out prevention</td>
</tr>
</tbody>
</table>

**STATE GOVERNMENT, AGENCIES**

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 94 (1)</td>
<td>Tallas</td>
<td>Department of Aviation</td>
</tr>
<tr>
<td>HB 863</td>
<td>Vowell</td>
<td>Licensing and Regulation Dept.</td>
</tr>
<tr>
<td>HB 1237</td>
<td>Polumbo</td>
<td>'Revolving door' permit denial</td>
</tr>
<tr>
<td>HB 1923</td>
<td>Hury</td>
<td>Legislative legal counsel</td>
</tr>
<tr>
<td>HB 2736</td>
<td>Williamson</td>
<td>Managing information resources</td>
</tr>
<tr>
<td>HB 2988</td>
<td>Uher</td>
<td>Notice of ex parte contacts</td>
</tr>
</tbody>
</table>

- vi -

House Research Organization
<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>HJR 6</td>
<td>Williamson</td>
<td>Congressional pay amendment</td>
</tr>
<tr>
<td>HJR 40</td>
<td>Danburg</td>
<td>New oath of office</td>
</tr>
<tr>
<td>HJR 69</td>
<td>Schluefer</td>
<td>Attorney general candidacy limit</td>
</tr>
<tr>
<td>HJR 102</td>
<td>D. Hudson</td>
<td>Increasing legislative pay</td>
</tr>
<tr>
<td>SB 116</td>
<td>Johnson</td>
<td>Contracts to minority business</td>
</tr>
<tr>
<td>SB 479</td>
<td>Barrientos</td>
<td>Human Rights Commission</td>
</tr>
<tr>
<td>SB 481</td>
<td>Barrientos</td>
<td>Indian Commission sunset</td>
</tr>
<tr>
<td>SB 489</td>
<td>Santiesteban</td>
<td>Department of Agriculture</td>
</tr>
<tr>
<td>SB 538</td>
<td>Leedom</td>
<td>Aircraft Pooling Board</td>
</tr>
<tr>
<td>SB 546</td>
<td>Edwards</td>
<td>Accepting resignations</td>
</tr>
<tr>
<td>SB 607</td>
<td>Harris</td>
<td>Revising Finance Commission</td>
</tr>
<tr>
<td>SB 985</td>
<td>Caperton</td>
<td>Uniform statewide accounting</td>
</tr>
</tbody>
</table>

**STATE FINANCE**

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 85</td>
<td>Rudd</td>
<td>Teacher retirement system</td>
</tr>
<tr>
<td>HB 1279</td>
<td>Hury</td>
<td>Shifting funds, spending</td>
</tr>
<tr>
<td>HB 1356</td>
<td>Cain</td>
<td>Transfers to Highway Fund</td>
</tr>
<tr>
<td>HB 2061</td>
<td>Russell</td>
<td>Dividing Highway Fund</td>
</tr>
<tr>
<td>SB 338</td>
<td>Caperton</td>
<td>Emergency appropriations</td>
</tr>
<tr>
<td>SB 872</td>
<td>Caperton</td>
<td>Revenue fund transfer</td>
</tr>
</tbody>
</table>

**STATE TAXATION**

<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 24</td>
<td>Clemons</td>
<td>Tax on controlled substances</td>
</tr>
<tr>
<td>HB 112</td>
<td>Schluefer</td>
<td>Revised sales-tax phase-out</td>
</tr>
<tr>
<td>HB 428/</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HB 40</td>
<td>Perry</td>
<td>Enhanced recovery oil tax break</td>
</tr>
<tr>
<td>HB 1155</td>
<td>Hury</td>
<td>Motor-fuels tax enforcement</td>
</tr>
<tr>
<td>HB 1306</td>
<td>Hury</td>
<td>Franchise tax revision</td>
</tr>
<tr>
<td>HB 1421/</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HB 29</td>
<td>Hury</td>
<td>Property insurance taxes</td>
</tr>
<tr>
<td>HB 1608</td>
<td>Hury</td>
<td></td>
</tr>
<tr>
<td>SB 1062</td>
<td>Caperton</td>
<td>Cigarette tax for Medicaid</td>
</tr>
<tr>
<td>HB 1954</td>
<td>Hury</td>
<td>Life, accident insurance taxes</td>
</tr>
<tr>
<td>HB 2945</td>
<td>Hury</td>
<td>Gas-utility administrative tax</td>
</tr>
<tr>
<td>SB 245</td>
<td>McFarland</td>
<td>Electronic tax payments</td>
</tr>
<tr>
<td>SB 1000</td>
<td>Carriker</td>
<td>Special franchise tax base</td>
</tr>
<tr>
<td>SB 1481</td>
<td>Glasgow</td>
<td>Aircraft sales-tax exemption</td>
</tr>
<tr>
<td>SB 1573</td>
<td>Caperton</td>
<td>Taxes paid under protest</td>
</tr>
</tbody>
</table>

- vii -

House Research Organization
TRANSPORTATION

* HB 729  R. Lewis  Traffic ticket quota ban  241
* HB 1878  Perry  Natural gas as vehicle fuel  242
* HB 1935  Carter  Commercial driver's licenses  243
* SB 41  Lyon  Motorcycle helmet law  244
* SB 170  Parker  Children in open truck beds  245
* SB 740  Henderson  Natural gas for public vehicles  246
* SB 1190  Whitmire  High speed rail authority  248
* SB 1204  Dickson  Motor carrier safety  249

UTILITIES

* HB 911  T. Smith  Regulating city utilities  250
HB 1573  Robnett  Setting utility rates  252
* SB 600  Lyon  Utility self insurance  253
SB 1757  Edwards  Utility management audits  254

INDEX  255
BUSINESS REGULATION

Products liability actions
(HB 15 by Seidlits, et al.)

Died in the Senate

HB 15 would have limited the liability of manufacturers and sellers in products liability actions and would have set out elements of proof for defects in product design and marketing. It would have largely eliminated the liability of sellers acting only as conduits for defective products; if found liable, such sellers would have been entitled to full indemnity from manufacturers. It would have eliminated strict liability (liability regardless of cause) actions for inherently dangerous products and for FDA-approved drugs if warnings had been provided. Comparative fault would have been applied to products actions. The defendant would have to seek a separate proceeding to determine punitive damages, which would have been subject to limits. Certain types of evidence would have been banned. A statute of repose limiting liability actions for certain kinds of machinery would have been established. The bill's provisions would have been severable -- invalidation of any portion would not have affected the rest.

Supporters of the bill said Texas needs a clear statutory outline of products liability law. Texas business is threatened by overbroad liability caused by the vagaries of judge-made law; juries should get better definitions and more complete instructions. Plaintiffs should not be allowed to recover, or their damages should be reduced, when their own carelessness contributed to the injury. Retailers who contribute nothing to a product's dangerous condition should not be targets in products suits, and sellers should not be punished for developing and marketing products that can become safer with technological advances.

Opponents said the bill would turn Texas products liability law upside-down and effectively deny compensation to many victims. HB 15 would radically change the process of proving design defects and would make it harder to prove a products liability case in Texas than anywhere else in the nation. Sellers are in a better position both to include safety devices on their products and to compensate victims when accidents occur. Excusing retailers from liability would eliminate their duty to determine if the products they sell will harm their customers.

Legislative History: The House passed the bill on April 27 by nonrecord vote, one member recorded voting no, after amending it to exclude provisions excusing manufacturers and sellers from liability if a person altered, modified, or misused the product. The Senate Economic Development Committee reported the bill favorably by 9-0 on May 15, but it was not considered on the Senate floor.

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

- 1 -

House Research Organization
Regulation of Medicare-supplement insurance
(HB 116 by Berlanga, et al., first called session)

Effective Oct. 18, 1989

HB 116 expands state regulation of the sale and advertising of Medicare-supplement insurance policies. It prohibits insurers from duplicating benefits already provided by Medicare. Insurers may offer a maximum of three such insurance policies, with one being a basic policy that meets minimum benefit standards adopted by the insurance board. The loss ratio standards set by the insurance board must provide a reasonable return on claims compared to the amount of premiums paid. The "free look" period to examine policies with full refund guaranteed was extended from 10 to 30 days. Insurance agent commissions for replacing a similar policy must be the same as those for renewing one; however, the agents still will be entitled to receive payment for the prorated, unpaid portion of a policy replaced in the first year. An applicant who replaces a policy within two years will receive credit for any waiting period satisfied under the old policy. The insurance board must require each insurer to file a copy of its Medicare-supplement insurance advertisements 60 days prior to use.

Supporters of the bill said it would tighten the insurance board's regulation of Medicare-supplement insurance and correct abuses. It would limit and standardize policies and ensure that the cost of insurance is in line with claims made. It would limit the amount of an agent's commission for replacing a policy. Applicants would not lose coverage for their pre-existing conditions if they switch companies within two years after purchasing a policy. Medicare-supplement lead-card generator companies would be regulated as insurance businesses, allowing the attorney general to obtain injunctions against businesses when they fail to identify an insurance company as the sponsor of their advertising.

Opponents said the bill did not go far enough to clean up the many Medicare-supplement insurance abuses. The directives should be set in statute and not left to shifting priorities of the insurance board. The insurance board should be given the authority to write a basic Medicare-supplement policy and require that it be reviewed every year. The loss-ratio standards should be set in statute and require a specific time period over which they are to be computed. The bill should limit an agent's commission on replacement policies to that of a renewal commission to eliminate any financial incentive for agents to sell excessive coverage. Lead-card generators should have been required to identify themselves.

Legislative History: The House passed a committee substitute for the bill by 137-0 on July 12 (Journal page 273). The Senate passed the bill by voice vote on July 17 (Journal page 369).
During the regular session, SB 672 by Edwards, a Medicare-supplement insurance bill similar to HB 116 as introduced, passed the Senate by 27-0 but died in the House Insurance Committee. The text of SB 672 subsequently was added as an amendment to HB 2608, the AIDS insurance bill, but the amendment was removed in the conference committee on that bill.

Regulating certain telephone services  
(HB 174 by Cavazos, et al.)

Effective Sept. 1, 1989

HB 174 requires the Public Utility Commission (PUC) to regulate alternative operator services (AOS) by Jan. 1, 1990. (An AOS is an operator assisted or automated equipment assisted telephone system, not including 800-number services or a major telecommunications carrier.) The PUC must require an AOS operator to disclose, upon request, the AOS's name and to inform the caller of the rate and all charges associated with the call. Any public AOS access phone must have certain information posted next to the instrument, such as the name of the AOS; notice that the operator must provide the rates and information on how to access the local exchange operator on request and a phone number to call in case of complaint.

HB 174 limits to 50 cents the charge for a local telephone call, a credit card call, a collect call or any other call that does not require service by the hotel or motel operator.

HB 174 creates a statewide hearing- and speech-impaired telecommunications relay service. The service must be operational by Sept. 1, 1990. The cost of the service will be paid from the universal service fund (a fund consisting of contributions from the 166 telephone companies in Texas managed by the PUC). Telephone companies can pass the cost of the service to their customers through a surcharge. During the first year, the cost of service will be paid 55 percent from local phone companies and 45 percent from long distance phone companies. HB 174 sets up a 14-member advisory committee to assist the PUC to administer the service.

Supporters of the bill said that since AOSs are not regulated, they may charge exorbitant prices. Telephone users should be informed of the charges associated with using an AOS service at the time they make the call, not when they receive their bill. HB 174 also would require that local phone calls made from hotels and motels be reasonably priced. In addition, the bill would establish a needed service to allow hearing- and speech-impaired persons access to the telephone network, a basic necessity for all citizens.

Opponents said AOSs already are regulated by the Federal Communications Commission, so an additional layer of state regulation is not needed. Free market competition among AOSs will ensure that rates will not be too high. Also, hotels and motels have a right to recapture the capital investment of providing phone service -- this service should be paid by the user instead of making all hotel and motel guests bear the costs.
Legislative History: The House amended the original version of the bill, which pertained to disclosure of phone charges from hotels and motels, to include regulation of AOS companies and telephone solicitation, then passed it by a nonrecord vote on second reading on May 10 (Journal page 1617). On third reading, the bill was amended to remove regulation of telephone solicitation, then passed by nonrecord vote on May 11 (Journal page 1673). The Senate amended the bill to add the creation of a hearing-and speech-impaired telecommunications relay system, then passed the bill by voice vote on May 22 (Journal page 1893). The House concurred with the Senate amendments by voice vote on May 25 (Journal page 2562).

Labeling sales of gasohol  
(HB 504 by Horn)

Effective Jan. 1, 1990

HB 504 requires motor-fuel pumps dispensing fuel blended with 1 percent or more of ethanol or methanol to carry a label advising that such additives are present. If the mixture contains 10 percent or more ethanol or 5 percent or more methanol, the label must state the percentage. Dealers and distributors are required to keep documentation on the contents of each delivery. Any motor fuel sold in the state is subject to inspection, with or without a consumer complaint. Violation of the labeling requirement is a class C misdemeanor (maximum fine of $200). Refusing to permit inspection of records or testing of fuel, or destroying or falsifying records is a class B misdemeanor (maximum penalty a $1,000 fine and 180 days in jail).

Supporters of the bill said consumers have a right and a need to know about the alcohol content of the motor fuels they buy. Gasohol can damage some equipment, and manufacturers void warranties on certain equipment if gasohol is used. If pumps were labeled, consumers who want to use gasohol would be sure they are using it; those who do not would likewise be protected. The measure also would ensure that only qualified gasohol distributors receive the special motor fuel tax credit -- some have claimed the credit for gasohol even though the alcohol was added before they received the fuel.

Opponents said the bill would unfairly discriminate against gasoline-alcohol blends by not requiring labeling of all additives, some of which pose health hazards. Singling out two alcohol-related additives would give the impression that they are inferior to other additives -- a similar law passed in Alabama later was struck down by the state supreme court on that basis. Because motor-fuel blends vary with the seasons, it will be difficult to maintain up-to-date labels. The labeling law would create an unnecessary amount of regulation and bureaucracy without providing any benefit to the consuming public.

Legislative History: The House passed a committee substitute on second reading, then divided the question on third reading and passed the provisions dedicating fee revenue by 113-14 and the remainder of the bill by nonrecord vote on May 11 (Journal page 1673). The Senate amended the bill, including simplification of the definitions of, and references to, gasoline additives, then passed the bill by voice vote, two members recorded voting nay, on May 27 (Journal page 2707). The House concurred with the Senate amendments and divided the question, passing the revenue dedication portion by 125-19 and the remainder by nonrecord vote on May 29 (Journal page 3257).

The HRO analysis of the bill appeared in the May 10 Daily Floor Report.
Revising interest rate limits on cash loans
(HB 914 by Larry/SB 306 by Harris)

Died in the Senate

HB 914/SB 306 would have lowered the ceiling amount for cash loans subject to the interest-rate limit governed by VACS art. 5069-3.15, from $2,500 ($8,500, adjusted to current dollars) to $1,500 ($5,100 as adjusted). HB 914 would have set the annual interest-rate limit on the first $600 ($2,040 as adjusted) at $16 per $100 and $18 on each additional $100, up to $2,500 ($8,500 as adjusted). Current law allows lenders to charge $18 in annual interest per $100, up to $300 ($1,020 as adjusted) and $8 on each additional $100, up to $2,500 ($8,500 as adjusted). SB 306 would have left the interest rate at $18 per $100 for the first $600 ($2,400 as adjusted).

Supporters of the bills said they would help stop the decline in the number of consumer lending institutions in Texas and thereby help assure that people who need small cash loans will have somewhere to turn. Interest rates on small, uncollateralized cash loans have to be higher than those for collateralized loans because they are riskier. These interest-rate adjustments still would leave Texas interest rates on small cash loans at or below the national average.

Opponents said the bills would allow finance companies to significantly raise their interest rates and their earnings at the expense of those who need small cash loans. Although the bills would decrease the interest rate on loans up to $1,020 --by less than 1 percent -- they would greatly increase the interest rate on loans between $1,020 and $2,040, the amounts for which there is the greatest demand for cash loans.

Legislative History: The Senate passed SB 306 on second reading on March 29 (Journal page 587). On April 4 a motion to consider SB 306 on third reading failed to receive the required two-third vote by 16-15 (Journal page 645).

The House passed HB 914 by nonrecord vote on May 19 (Journal page 2102). HB 914 was referred to the Senate Economic Development Committee on May 22, where it died.

Real estate agent immunity for AIDS non-disclosure  
(HB 976 by Danburg)

Effective Aug. 28, 1989

HB 976 amends the Real Estate License Act to exempt real estate agents and brokers from criminal prosecution or civil liability for failure to ask about or disclose the HIV or AIDS status of a current or former occupant of a residence. A real estate licensee also has no duty to ask about or disclose the HIV or AIDS status of a current or former occupant. However, the bill requires a real estate licensee with actual knowledge of an occupant's HIV or AIDS status to reveal this information to a potential purchaser or lessee who requests the information.

Supporters of the bill said it was necessary to stop disclosure of the AIDS status of current or former occupants of residences that are on the market by agents who fear liability for failing to disclose the information to prospective buyers. To protect consumers, however, realtors should not be able to keep AIDS-related information from prospective buyers who have enough concern to make a request for such information.

Opponents said realtors should not be able to hide AIDS-related information from all prospective buyers and renters except those who take the trouble to request that information. The mere perception that a property poses a health hazard can affect its value, and buyers need this information to make an informed decision. Other opponents said disclosure of AIDS-related information, whether requested or not, threatens protections that are designed to prevent misuse of information about race, religion, or any other factor that might influence buyers who are prejudiced or misinformed. HIV disclosures foster groundless fears and myths surrounding the disease, thereby perpetuating dangerous misinformation concerning AIDS.

Legislative History: The House Business and Commerce Committee substitute removed a provision from the original version of HB 976 that would have allowed suspension or revocation of a real estate license for asking or disclosing whether a former occupant of real property had a communicable disease, including HIV infection. It added language specifying that real estate licensees have no duty to disclose the AIDS or HIV status of a current or former occupant of real property. A point of order that the committee substitute violated the caption rule was sustained (Journal page 1028), and the bill was returned to committee. The second committee substitute added the provision requiring real estate licensee disclosure of the HIV status of previous or current occupants to potential purchasers or lessees making a specific written request for the information. The House amended the bill by striking the requirement that the disclosure request be in writing (Journal page 1621), then passed the bill by

- 8 -

House Research Organization
nonrecord vote on May 11 (Journal page 1674). The Senate passed the bill by 31-0 on May 27 (Journal page 2694).

On Sept. 5 Atty. Gen. Jim Mattox issued an opinion (JM 1093) that the provisions of HB 976 that would allow or require disclosure of the AIDS or HIV status of a prior occupant of real property are invalid because they contravene the Federal Fair Housing Amendments of 1988, which prohibit housing discrimination against the handicapped, including persons with AIDS or HIV infection.

The HRO analysis of the bill appeared in the April 18 and May 10 Daily Floor Reports.
Texas Fair Housing Act  
(SB 75 by Johnson, Farmer)

Effective Jan. 1, 1990

SB 75 forbids housing discrimination based on race, color, religion, sex, familial status, or national origin. It prohibits refusing to sell or rent, or making unavailable or denying a dwelling or privileges connected with it to a person based on one of these criteria. Prohibited discrimination based on "familial status" occurs if the person victimized by discrimination is pregnant or is in the process of obtaining custody of, or is the parent or legal or temporary custodian of, a person under 18 years of age.

The bill gives the power to administer the act to the Commission on Human Rights, which will adopt rules, study discriminatory housing practices, and make recommendations to the Legislature. The commission may accept complaints and conduct an administrative investigation and hearing and may adjudicate and order relief or approve a conciliation agreement that resolves the dispute between the complainant and respondent. The commission may refer a charge to the attorney general for enforcement proceedings under the act or may refer a complaint to a municipality that has been recognized by the federal Department of Housing and Urban Development as having adopted housing discrimination ordinances that are substantially equivalent to federal law. Additionally, a complainant may file a civil action in a district court. Prevailing plaintiffs are entitled to recover actual damages and other relief. The commission or the attorney general also may seek civil penalties against repeat offenders.

SB 75 makes it a class A misdemeanor (maximum penalty a $2,000 fine and one year in jail) intentionally to intimidate or interfere with a person because of race, color, religion, sex, handicap, familial status or national origin in matters related to housing.

Supporters of the bill said it would make state law conform to the federal Fair Housing Act and give to the state and certain cities the power to enforce that act, making enforcement easier and faster. Currently, those who have experienced discrimination in housing must go through the federal Department of Housing and Urban Development, involving a non-local federal administrative proceeding, or to federal court. These provisions have been on the federal books since 1968, although Congress only recently enacted tougher enforcement provisions. The federal prohibition on discrimination based on familial status, which outlaws "adults-only" apartment complexes, became effective on March 19, 1989.

Opponents said that the new state and local provisions would be too broad, allowing possible harassment and bureaucratic red tape for real estate owners and developers. Other opponents said the bill should
prohibit all forms of housing discrimination, including because of a person's sexual orientation.

Legislative History: The Senate passed the bill by voice vote on March 30 (Journal page 613). The House on May 23 amended the bill to provide that discrimination based on "handicap" does not apply to an individual because of sexual orientation or because the individual is a transvestite, after a motion to table the amendment failed by 54-81 (Journal page 2301), then passed the bill by nonrecord vote, two members recorded voting nay, on May 25 (Journal page 2507). The Senate concurred with the House amendments by voice vote on May 26 (Journal page 2479).
Homestead deed of trust used to claim tax deduction
(SB 86 by Henderson)

Died in Calendars Committee

SB 86 would have allowed a borrower and a lender to execute an
unenforceable deed of trust on the borrower's homestead in order to
allow the borrower to count the interest paid on the borrowed funds as
a federal income tax deduction.

Supporters of the bill said it would provide Texas homeowners with the
same access to the mortgage-interest deduction in calculating their
federal income tax as citizens of every other state enjoy. The bill
would accomplish this without weakening the constitutional homestead
protection that limits the use of second-mortgage borrowing to narrow
purposes.

Opponents said this bill was a backdoor attempt to escape the clear
mandate of the Texas Constitution and homestead law that homesteads
not be used as loan collateral in most cases. Other opponents said
that a better, simpler and more effective approach would be to amend
the state Constitution so that second mortgages and home equity loans
could be legally created by responsible homeowners who want to borrow
against their homes.

Legislative History: The Senate passed the bill on April 17 by 25-0
(Journal page 793). On May 5 the House Financial Institutions
Committee reported a committee substitute by 5-1-1, but the House
recommitted the bill on May 16 in order to comply with procedural
rules (Journal page 1843). On May 16 the committee reported by 6-1 a
substitute similar to its earlier substitute except that it restored a
Senate provision that the primary purpose of the bill was to allow the
borrower to obtain a federal tax deduction. The bill died in the
Calendars Committee.
Car rental company collision damage waivers  
(SB 191 by Green, Montford)  

Effective Sept. 1, 1989  

SB 191 repeals and replaces a statute passed during the 70th Legislature (VACS art. 9026) that regulates the sale of collision damage waivers by car rental companies. It forbids car rental companies from selling the waivers unless the customer agrees in writing when the rental agreement is signed. It also forbids aggressive sales tactics and provides civil penalties for violations. The bill provides an exclusive list of types of damages that may be excluded from these waivers. Rental companies are prohibited from requiring or requesting security or damage deposits during the rental period or during disputes. Rental companies must charge rates reasonably related to direct costs of repair or replacement of vehicles.

Supporters of the bill said it would go further than current law to deter dishonest practices by some car rental companies. It would stop these companies from pressuring consumers into buying a waiver that may be useless to them — owners of Texas personal auto policies automatically are covered up to policy limits for damages they cause to cars they do not own. The bill also would stop rental companies from requiring additional rental or a deposit before a customer may take a damaged vehicle elsewhere to get a repair estimate.

Opponents said the bill would leave open the definition of "direct costs" of vehicle repair or replacement, which makes too vague the requirement that the cost of damage waivers be reasonably related to these expenses. This uncertainty would force rental companies to raise their rates. The bill also would mislead consumers into thinking that their personal auto liability policy automatically covers any amount of damages they may cause to a rental car, when this actually depends on the amount of liability insurance they carry and on the severity of the accident.

Legislative History: The Senate passed the bill by voice vote on March 16 (Journal page 516). The House amended the bill to require that the price of waivers be reasonable in relation to vehicle damages for which the company cannot recover elsewhere, then passed the bill by nonrecord vote on May 1 (Journal page 1250). The Senate refused to concur with the House amendments by voice vote on May 9, and a conference committee was appointed (Journal page 1212). The conference committee report changed the bill to require that the price of waivers be reasonable in relation to the direct costs for repair or replacement of vehicles for which the company cannot recover elsewhere. The Senate adopted the conference report by voice vote on May 24 (Journal page 2020), and the House adopted it by nonrecord vote on May 29 (Journal page 3396).

The HRO analysis of the bill appeared in the April 27 Daily Floor Report.
Insurance industry regulation revisions  
(SB 255 by Montford, et al.)

Effective Sept. 1, 1989

SB 255 raises the capital and surplus requirements for insurers and requires insurers to obtain independent annual audits of their financial statements, unless they have less than $750,000 in direct premiums or fewer than 1,000 policyholders. It gives the State Board of Insurance (SBI) commissioner the authority to issue cease and desist orders to stop unfair methods of competition, deceptive acts and other unauthorized practices. It makes public the records of an insurer under supervision or conservatorship, but if necessary the SBI commissioner may declare those records confidential for up to 60 days.

Supporters of the bill said it would bolster regulation of the insurance industry to assure policyholders of its financial stability and protect the interests of consumers. They said the new regulations would make the State Board of Insurance (SBI) a more effective regulatory agency. The regulatory changes would give the SBI the authority it needs to do its job without forcing a radical restructuring of insurance regulation that would punish the entire industry for the misdeeds of a few.

Opponents said the bill would hurt consumers, while allegedly protecting them, by doing little to tackle the problems plaguing regulation of the insurance industry and even weakening current regulation in some instances. Removing the special immunity of insurance companies from antitrust restrictions, requiring independent collection of insurance data and allowing the attorney general independent authority to sue violators are among the long over-due steps needed to restore public confidence in regulation of the insurance industry.

Legislative History: The Senate added several floor amendments, including a provision requiring reinsurance registration and reporting, which was adopted by voice vote (Journal page 840); a provision allowing the attorney general to sue violators without referral by the SBI commissioner, which was adopted by voice vote (Journal page 843); provisions requiring insurers to collect data independently, which were adopted by 20-11 (Journal page 844); and a provision eliminating insurers' limited antitrust immunity, which was adopted by voice vote after a motion to table was defeated by 14-17 (Journal page 854). The Senate then passed the bill by voice vote on April 19 (Journal page 857). The House Insurance Committee restored insurers' limited antitrust immunity and the requirement for SBI commissioner referral to the attorney general. It removed a provision to make information public on insurers under supervision unless expressly made confidential by the SBI commissioner. It removed provisions requiring insurers to collect data independently. It
removed the requirements for reinsurance reporting and registration. It also raised the exemption level for a required audit from $500,000 in direct premiums to $2 million in net direct premiums. The House added a floor amendment restoring the $500,000 audit audit exemption level by 81-61 (Journal page 2429). It restored the provision making insurer information public unless made confidential by the SBI commissioner, by voice vote (Journal page 2432). A motion to restore the reinsurance reporting and registration provisions was tabled by 94-49 (Journal page 2436). An amendment to prohibit insurance companies from sharing certain data was tabled by 74-72 (page 2436). A motion to make the Division of Consumer Protection an independent Office of Public Insurance Counsel was tabled by 85-55 (Journal page 2439). The House then passed the bill by nonrecord vote on May 25 (Journal page 2481). The Senate refused to concur with the House amendments by voice on May 25 (Journal page 2330), and a conference committee was appointed. The conference committee lowered the exemption level for required audits to exempt insurers with less than $750,000 in direct premiums and added a provision giving the SBI commissioner 25 days after receiving intent-to-sue notice from the attorney general to object to the suit. The Senate adopted the conference report by voice vote on May 29 (Journal page 3522), and the House adopted it by nonrecord vote, also on May 29 (Journal page 3497).

Written agreements for loans of more than $50,000
(SB 413 by Harris)

Effective Sept. 1, 1989

SB 413 requires that loans made by financial institutions for more than $50,000 be in writing in order to be enforceable. Written agreements are not required for renewing or extending loans made prior to Sept. 1, 1989 or for credit or charge cards and open-ended accounts used mainly for personal, family or household purposes. Financial institutions are required to post signs informing borrowers of the law, and borrowers must sign a statement acknowledging the provisions of the law.

Supporters of the bill said it would protect the lender as well as the borrower by making each party aware of what is involved in a loan agreement. Too many loans for large sums of money are made by oral agreement. It would prevent frivolous lawsuits that are bogging down the courts, such as countersuits by borrowers against lenders who have sued to collect on a loan. A written agreement at the time a loan is made would not preclude flexibility in loan arrangements; such flexibility could be made part of the written agreement.

Opponents said the bill is an overreaction to lender liability suits. It would protect financial institutions at the expense of borrowers by limiting evidence that could be introduced in a lawsuit. Small businesses and farmers would need to hire lawyers to advise them on their loans. The bill would place borrowers and lenders in an adversarial position, undermining the mutual trust engendered by a deal sealed by a simple handshake.

Legislative History: The Senate passed the bill by a voice vote on March 14 (Journal page 491). The House committee substitute deleted a provision that would have excluded suits under the Deceptive Trade Practices Act from provisions of the bill; the House amended the bill and passed it by nonrecord vote on May 10 (Journal page 1536). The Senate refused to concur in House amendments by 15-13 on May 18 (Journal page 1570), and a conference committee was appointed. The conference report included the requirement that signs be posted to inform borrowers of the law. The House adopted the conference report by nonrecord vote on May 26 (Journal page 2791), and the Senate adopted it by voice vote on May 28 (Journal page 2799).

The HRO analysis of the bill appeared in the May 9 Daily Floor Report.
Creating an independent public insurance counsel
(SB 415 by Caperton)

Died in House committee

SB 415 would have replaced the division of consumer protection in the State Board of Insurance with an independent Office of Public Insurance Counsel. The counsel's authority to appear before the SBI on behalf of consumers would have been expanded to include proceedings over all lines of insurance, not just property and casualty lines. The counsel would have had the authority to recommend pro-consumer legislation to the Legislature. The bill also would have included more insurers in the annual fee assessment used to fund the consumer office.

Supporters of the bill said it would provide insurance consumers with more protection, putting them on a more level playing field with the insurance industry. This bill, part of an insurance-reform package, was warranted in light of the mismanagement and financial problems that have plagued the industry and past regulatory inadequacies within the State Board of Insurance.

Opponents said the bill needlessly would create another layer of bureaucracy by removing the consumer protection division from the State Board of Insurance. Problems in the insurance industry could be addressed more efficiently by focusing on the regulatory authority of the insurance board rather than creating a new state bureaucracy.

Legislative History: The Senate passed the bill by voice vote on April 19 (Journal page 860). The House referred the bill to the Insurance Committee, where it died.
Deceptive Trade Practices Act revisions  
(SB 437 by Montford)  
Effective Sept. 1, 1989

SB 437 revises the Deceptive Trade Practices Act (DTPA). It permits consumer waiver of most DTPA provisions in transactions involving $500,000 or more, if the waiver is an express provision in a written contract signed by both the consumer and the consumer's attorney. A consumer cannot waive any DTPA rights when buying a residence.

The bill applies the comparative responsibility and exemplary damages statutes to DTPA suits involving personal injury, death, and property damage. Comparative responsibility will deny recovery to plaintiffs who are 60 percent or more responsible for their own damages, and will reduce plaintiffs' recovery in proportion to their percentage of responsibility. The bill caps punitive damages in DTPA suits at the greater of four times actual damages or $200,000, if the plaintiff proves malice, fraud, or gross negligence.

The bill lengthens to 60 days the period of advance notice that consumers must give before filing suit and requires consumers to give "reasonable detail" of the complaint in the notice.

Supporters of the bill said it was a compromise that would provide defendants significant procedural and substantive relief under the DTPA without eroding consumer rights. Allowing waivers of DPTA remedies would not disadvantage consumers because defendants would bear the burden of proof that the transaction was large enough to put the other party on guard and that the plaintiff had the advice of a lawyer. Homebuyers could not waive any of their DTPA rights. Extending the notice provision would give defendants more time to investigate consumer complaints.

Opponents said no solid evidence had been presented that the DTPA has been used unfairly against business. Permitting waiver of DTPA remedies would lead to routine, boilerplate contract provisions denying consumers all their rights. Lengthening the required advance notice period only would serve to delay a consumer's right to proceed; sellers who want to resolve claims now do so within 30 days. Other opponents said the DTPA needed more substantial changes than those in SB 437. The statute is too often misapplied to penalize honest businesses and professionals who have not intentionally or knowingly caused harm.

Legislative History: After a committee substitute made substantial changes to the original version of SB 437, which would have allowed waiver of DTPA suits in all cases, barred recovery for various injuries and limited damage awards, the Senate passed the substitute by 29-0 on May 12 (Journal page 1351). The House amended the bill to
delete provisions that would have eliminated the current distinction between "business consumers" and other consumers, then passed it by nonrecord vote on May 22 (Journal page 2252). The Senate concurred with the House amendments by voice vote, one member recorded voting nay, on May 29 (Journal page 3344).

The HRO analysis of HB 965 by C. Harris et al., the companion bill, appeared in the May 19 Daily Floor Report.
Regulation of real-estate timesharing agreements
(SB 442 by Johnson)

Effective Sept. 1, 1989

**SB 442** makes various revisions to the Texas Timeshare Act. It extends the cooling-off period for buyers to cancel a contract from three days to five days after the contract was signed. The prerequisite for cancellation -- that the buyer not have visited the location of the property and not have had the opportunity to inspect a sample accommodation -- has been eliminated. The bill also allows the Real Estate Commission to revoke the registration of a seller who violates the Deceptive Trade Practices Act, Consumer Protection Act or the Contest and Gift Giveaway Act, in addition to the timeshare act. It makes it a class A misdemeanor (maximum penalty of a $2,000 fine and one year in jail) for a developer or seller to offer a timeshare interest in a timeshare property not registered with the real estate commission.

**Supporters** of the bill said it would close loopholes in the timeshare act and add enforcement powers against unscrupulous operators, in response to a flood of complaints from consumers and honest businesses concerned with abuses in the industry.

**Opponents** said regulation of the timesharing industry under a special law is unnecessary and would single out the industry because of a few dishonest operators.

**Legislative History:** The Senate passed the bill by 30-0 on May 16 (Journal page 1490). The **House** passed the bill by 142-1 on May 23 (Journal page 2319).

Determination of debt deficiency after foreclosure
(SB 452 by Krier)

Vetoed

SB 452 would have permitted a debtor on property foreclosed and sold to ask a court to determine the fair market value of the property for purposes of reducing or retiring the remaining debt. The deficiency owed by the debtor would have been the difference between the fair market value and the amount owed on the mortgage loan, rather than the difference between the amount paid at the foreclosure sale and the amount owed.

Supporters of the bill said that current foreclosure law allows lenders, who often are the only bidders at foreclosure auctions, to buy back foreclosed property at a price below true market value. The lender then may sue the borrower for the deficiency between the artificially low foreclosure-sale price and the outstanding mortgage loan, often driving the borrower into bankruptcy. The proposed change would give borrowers protection against the double whammy of both losing their property and having to pay an unreasonably large deficiency judgment.

Opponents said that the bill would make it more difficult for lenders to collect deficiencies, increasing the losses on their real estate portfolios and possibly driving marginal lenders into insolvency. Financing of real estate ventures would become more expensive and less available, while high-flying commercial real estate speculators could skip out on their loans. Current law provides ample notice of foreclosure sales to allow others beside the lender to bid on foreclosed property. This change only would invite litigation and delay in settling debts.

Legislative History: The Senate passed SB 452, which originally contained only technical revisions to the Property Code, by 30-0 on the Local and Uncontested Calendar on March 30 (Journal page 598). The House adopted by nonrecord vote an amendment by T. Smith to require that in order for lenders to pursue a deficiency judgment on a debt, after foreclosure on property securing the debt, they must have a court determine the fair market value of the property and reduce the debt by the determined amount. The property could be redeemed within 30 days of a court-supervised foreclosure. A motion to table the T. Smith amendment failed by 42-94 (Journal page 1848). A proposed amendment to exempt sale under a deed of trust from the provisions of the T. Smith amendment failed on a nonrecord vote, while a proposed amendment to limit the provision to foreclosures on single family residences failed by 40-90-3 (Journal page 1849). The House then passed the bill by nonrecord vote, three members recorded voting nay, on May 16 (Journal page 1849). The Senate refused to concur with the House amendments by voice vote on May 19 (Journal page 1724), and a
conference committee was appointed. The Senate adopted the conference report by voice vote on May 28 (Journal page 2941), and the House adopted it by 143-1 on May 28 (Journal page 3085). The governor vetoed the bill on June 18.

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

SR 759 by Glasgow, adopted by the Senate by voice vote on May 28, instructs the Senate Jurisprudence Committee to study the current foreclosure system and report its findings to the 72nd Legislature.
Regulating contest and gift sales promotions
(SB 1695 by Haley)

Effective Sept. 1, 1989

SB 1695 creates the Contest and Gift Giveaway Act, regulating use of gifts, contests and drawings as advertising promotions to solicit buyers to attend sales presentations. Promotions must have enough gifts to meet the reasonable anticipated response to offers or else pay $100 to gift recipients. No one may offer a gift with certain conditions attached, unless those conditions were disclosed. Gift promotions may not be represented as contests, and specific words so implying are prohibited. Also prohibited is the false representation of the value, or of the legal or governmental authenticity, of a gift.

A first offense is a class B misdemeanor (maximum penalty of a $1,000 fine and 180 days in jail). A second offense is a class A misdemeanor (maximum penalty of a $2,000 fine and one year in jail). Subsequent offenses are a third-degree felony (maximum penalty of a $10,000 fine and 10 years in prison).

Supporters of the bill said it would protect consumers and crack down on unscrupulous sales promoters who lure unsuspecting consumers with bogus prizes and gifts. Also, it would restore the credibility of honest businesses and attract new businesses that have been scared away by the undeserved reputation of the industry. Having a specific statute regulating this activity would help ensure enforcement.

Opponents said the bill was unnecessary and unjustly would label all businesses that offer gift and prize promotions as unscrupulous. State and federal consumer laws already protect against fraudulent advertising and promotion.

Legislative History: The Senate Economic Development Committee amended the bill to reduce first-time offenses from a class A to a class B misdemeanor, then the Senate passed it by voice vote on May 16 (Journal page 1490). The House passed the bill by nonrecord vote on May 22 (Journal page 2250).

The HRO analysis of the companion bill, HB 22 by Clemons, appeared in the May 17 Daily Floor Report.
CORRECTIONS

Bond appropriation for prison, youth correction construction
(HB 1477 by Hightower)

Effective April 13, 1989

HB 1477 appropriates $142,147,300 from the $500 million in general obligation bonds authorized by constitutional amendment in 1987 for construction of new prison facilities and renovation of youth corrections facilities. The appropriation includes $138,500,000 to the Texas Department of Corrections (now the institutional division of the Texas Department of Criminal Justice) for acquiring, constructing or equipping two new maximum-security prisons, each with approximately 2,250 beds, and one prison psychiatric facility. It also appropriates $3,647,300 to the Texas Youth Commission for abatement of asbestos and polychlorinated biphenyls in TYC facilities.

Supporters of the bill said prison capacity must be expanded to relieve the overcrowding crisis. In recent months the prison doors have been closed repeatedly, and inmate parole eligibility has had to be accelerated to make room for new admissions. More than 10,000 inmates are waiting in county jails to be transferred to prisons, causing severe jail overcrowding and costing county taxpayers millions of additional dollars. The voters in 1987 strongly endorsed the bonds used to finance construction of new prison facilities. Paying for capital construction over a period of years rather than all at once is entirely appropriate, especially since the state's bond debt is relatively small, and would help avoid a tax increase.

Opponents said the state should not try to build its way out of the prison capacity problem, especially by adding to the state's soaring $7 billion bond debt. Alternatives to incarceration -- such as electronic monitoring and work-release probation -- that divert non-violent offenders from prison are more cost-efficient and effective at reducing recidivism. Using bonds to finance these construction projects will double the cost over 20 years, saddling the next generation with higher taxes to repay borrowed funds with interest. The cost of staffing, operating and maintaining new prisons would put even greater strain on the state budget.

Legislative History: The House adopted an amendment adding the appropriation for the TYC, then passed the bill by 142-0 on March 14 (Journal pages 548-549). The Senate passed the bill by 30-0 on April 6 (Journal page 68).


- 24 -

House Research Organization
Sentencing alternatives for misdemeanor defendants  
(HB 1779 by Evans)

Effective Aug. 28, 1989

HB 1779 allows county courts-at-law to place misdemeanor defendants in an electronic monitoring program as an alternative to jail time and, in the case of indigents, as an alternative to fines. The bill also allows county courts-at-law to require defendants to perform community service in lieu of jail time and, in the case of indigents, in lieu of fines. A defendant can serve all or part of a jail sentence by submitting to electronic monitoring. Each eight-hour day of community service performed in lieu of a fine earns $50 towards the fine.

Supporters of the bill said it would make possible a "cafeteria" approach to sentencing. The alternatives would help ease jail crowding and costs. Alternative sentences allow an offender to hold down a job. Electronic monitoring already has proven effective with felony defendants. Community service is a way of paying back society directly for wrongs committed.

Opponents said electronic monitoring programs are subject to technical problems that limit their usefulness and security. Releasing offenders to alternative programs would increase the work load of probation officials, weaken incarceration as a punishment and deterrent and amount to a slap on the wrist compared to jail time.

Legislative History: The House amended the bill to authorize courts to determine how the time a defendant spends on electronic monitoring would be credited toward a jail sentence and to specify that a defendant must successfully complete probation for one offense before being considered for electronic monitoring a second time. It also reduced the credit toward a fine from $50 to $25 for each eight-hour day of community service and made it a class B misdemeanor (maximum penalty a $1,000 fine and 180 days in jail) to intentionally or recklessly destroy an electronic monitoring device. The House passed the bill by nonrecord vote on April 26 (Journal page 1157). The Senate amended the bill by restoring credit toward a fine to $50 for each eight-hour day of community service and by deleting court authority to determine how electronic-monitoring time would be credited toward a jail sentence, then passed the bill by 30-1 on May 25 (Journal page 2123). The House concurred with the Senate amendments by nonrecord vote on May 28 (Journal page 3088).

The HRO analysis of the bill appeared in the April 24 Daily Floor Report.

- 25 -

House Research Organization
Criminal justice revision
(HB 2335 by Rightower)

Effective Sept. 1, 1989

HB 2335 consolidates state administration of the prison, parole and probation systems, authorizes construction of additional prison beds, expands prison alternatives and adds new sentencing options.

The bill combines, under the new Texas Department of Criminal Justice and Texas Board of Criminal Justice, the Texas Department of Corrections (now the institutional division under the new department) and, as of Jan. 1, 1990, the Texas Adult Probation Commission (the community justice assistance division) and the Board of Pardons and Paroles (the new division responsible for parole and mandatory supervision). The Legislative Criminal Justice Board and the Judicial Advisory Council are established to provide oversight and advice.

HB 2335 (along with SB 558 by McFarland) authorizes the state to issue $400 million in general obligation bonds (contingent on constitutional authorization in SJR 24 (Amendment No. 8), which was approved by the voters on Nov. 7, 1989), which could be used to finance prison construction. (The General Appropriations Act for fiscal 1990-91 appropriated $197.8 million from bond proceeds to construct an additional 5,809 prison beds.)

The criminal justice board is required to adopt, by Feb. 1, 1990, a formula for allocating to the counties space in the prison system when prison capacity is limited. Prisoners in county jails awaiting transfer to the prison system will earn good conduct time toward possible parole.

The maximum fine for a third degree felony increased from $5,000 to $10,000, and courts may substitute up to a year in a community corrections facility for a prison sentence for such offenses.

If a convicted felon is sentenced to prison and the sentencing court does not suspend the sentence and place the felon on probation, the court must justify why it did not take that step. Options were expanded for allowing defendants to serve jail time during off-work hours and weekends and under work-release and jail alternatives such as electronic monitoring, restitution and community service, as were use of local restitution centers and community corrections facilities. The prison system must reserve at least 1,000 beds for repeat probation violators.

As of Sept. 1, 1990, the state's community justice assistance division must require, as a condition for receiving state financial assistance, that each local community supervision and corrections (probation) department submit an acceptable community justice plan for using

- 26 -

House Research Organization
prison alternatives. A community justice council and community justice task force, consisting of local officials with responsibility for criminal justice functions, will develop the plan. The state also may help finance county correctional facilities.

Use of electronic monitoring and restitution as prison-release conditions was expanded, as was use of community residential facilities, work facilities, pre-parole transfer facilities and intermediate sanction facilities, which also may be used to house parolees who violate a condition of their release. A public meeting with advance notice must be held before a release facility may be established within a community.

The bill also includes a new Battering Intervention and Prevention Program to provide state support for local family violation programs. An expanded, computerized criminal history record system also was authorized.

Supporters of the bill said that it represents a balanced approach to alleviating the problem of prison overcrowding. The Texas prison system is prohibited by federal court order from exceeding its capacity. Since local courts have been sentencing people to prison at a faster rate than inmates are being released, more than 11,000 convicted felons are in county jails awaiting transfer to prison, creating an overcrowding problem in the jails. HB 2335 would authorize bond financing of additional prison capacity, allowing more beds to be built without raising taxes. It also would consolidate under a single department the state agencies responsible for prisons, probation and parole, to allow better coordination and more efficient use of criminal justice resources. Finally, the bill would greatly expand the options available for punishing and rehabilitating convicted criminals short of sentencing them to serve long prison terms, increasing local responsibility within the criminal justice system.

Opponents said that the bill should ensure that the state does not have to assume responsibility for an unchecked flow of inmates into the prison system. Local courts and prosecutors routinely have been shipping to prison those convicted of offenses for which probation is more appropriate. If counties exceed their fair share of space in the prison system, then the state should have no duty to accept more prisoners from those counties. A massive, open-ended prison building program financed with borrowed money will do nothing to remedy the root causes of crime, such as poverty, illiteracy and drug and alcohol abuse, which HB 2335 barely addresses.

Legislative History: The House considered a substitute that incorporated various bills concerning the criminal justice system (Journal pages 1321-1400), then passed the bill by 136-2 on May 4 (Journal page 1431). The Senate considered a committee substitute and
various floor amendments, then passed the bill by 31-0 on May 19 (Journal pages 1617-1703). The House refused to concur with the Senate amendments by nonrecord vote on May 22 (Journal page 1913), and a conference committee was appointed. The Senate adopted the conference report by 28-0 on May 28 (Journal page 3187), and the House adopted it by 144-0 on May 29 (Journal page 3214).

Consolidation of criminal justice agencies  
(HJR 101 by Hightower)

Approved by voters on Nov. 7, 1989

HJR 101 amends the Texas Constitution to authorize the Legislature to combine state agencies dealing with criminal justice. The state agencies that could be combined include those concerned with confining or supervising convicted persons, setting standards or distributing money to political subdivisions that confine or supervise convicted persons and gathering criminal justice information. Members of more than one of the three departments of government could serve on the governing body of any consolidated agency.

Supporters of the proposal said that it was a necessary precaution to ensure that the consolidation of state criminal justice agencies provided for in HB 2335 did not violate the strict separation of powers required by the Texas Constitution. For example, parole traditionally has been considered a function of the judicial department, while prisons and parole are executive functions. Combining state agencies with criminal justice functions under a single board (such as the new Board of Criminal Justice, with authority over probation, prisons and parole), would allow better coordination and more efficient administration of state criminal justice resources without undermining the checks and balances in the criminal justice system itself.

Opponents said the proposal would erode the restraints on government power inherent in the strict separation of powers among the executive, legislative and judicial branches. The checks and balances by each department on the other protect the individual against abuse of authority by government, and the exception to that fundamental principle created by HJR 101 would be broader than necessary.

Legislative History: The House adopted HJR 101 by 139-0 on May 19 (Journal page 2101). The Senate adopted HJR 101 by 29-1 on May 27 (Journal page 2653). The voters approved HJR 101 (Amendment No. 9) on Nov. 7.

Pre-parole transfer of inmates to community facilities
(SB 192 by Glasgow)

Effective April 26, 1989

SB 192 makes prisoners sentenced to state prison, but serving their term in a county jail or federal or out-of-state facilities, eligible for transfer to a secure halfway house six months prior to their likely parole date, in the same manner as state prison inmates. The Board of Pardons and Paroles, rather than the prison system, has custody over the prisoners and decides which prisoners are to be transferred and the facility where they are to be housed. The board decides if pre-parole prisoners have violated the conditions of their transfer and, with the agreement of the prison system, may return them to prison. Prisoners who satisfactorily serve their pre-parole term no longer have the right to be released once they reach their initial parole-eligibility date; release is at the discretion of the board.

Supporters of the bill said it would make eligible for pre-parole transfer to halfway houses more than 1,000 of the approximately 11,000 convicted felons in county jail awaiting transfer to state prison. As with prison inmates, the additional prisoners made eligible for pre-parole transfer could not have committed an offense involving actual or threatened violence. Granting sole authority to the parole board to administer the pre-parole program would allow prisoners to be granted pre-parole status without the complication of first being placed under the prison system’s jurisdiction. The bill also would grant the board the flexibility to deny parole to prisoners on pre-parole status once they have reached their initial parole date, should other circumstances justify continued custody.

Opponents said the bill would do little to alleviate the overcrowding problem in county jails caused by the backlog of convicted felons awaiting transfer to state prison because there is inadequate space in existing halfway houses to hold all those made eligible for transfer. Many communities resist locating halfway houses in their midst because the facilities may lower property values and harm public safety by introducing a criminal element into the neighborhood -- this dilemma should be addressed before the pre-parole program is substantially expanded.

Legislative History: The Senate passed the bill by 29-1 on Feb. 23 (Journal page 311). The House adopted without objection an amendment eliminating after one year pre-parole transfer of prisoners from county jail or federal or out-of-state facilities, then passed the bill by 131-6 on March 30 (Journal page 756). The Senate by voice vote refused to concur with the House amendments on March 30 (Journal page 615), and a conference committee was appointed. The conference report dropped the House's one-year limit on pre-parole transfers from

- 30 -

House Research Organization
facilities other than state prison. The House adopted the conference report by 135-4 on April 11 (Journal page 913), and the Senate adopted it by 30-1 on April 17 (Journal page 797).

The HRO analysis of the bill appeared in the March 29 Daily Floor Report.
Jury instruction on parole and good conduct time
(SJR 4/SB 54 by Brown)

Approved by voters on Nov. 7, 1989

SJR 4 amends the Texas Constitution to allow the Legislature to enact laws to require or permit courts to inform juries about the effect of good conduct and eligibility for parole or mandatory supervision on the jail or prison time served by a defendant convicted of a criminal offense. The implementing legislation, SB 54, became effective Jan. 1, 1990. The bill sets guidelines on what information the courts may provide juries. Juries may consider the existence of the parole and good-conduct time law in determining sentence. They may not consider the extent to which good-conduct time would be awarded to, or forfeited by, the defendant, nor how the parole law would be applied to the defendant.

Supporters of the proposal said it was necessary to override a ruling of the Court of Criminal Appeals that invalidated a 1985 statute providing for jury instructions on the parole laws. The bill would lead to "truth in sentencing" because the jury would have facts, not speculative information about the effect of parole and good-conduct time laws. Although jurors are not permitted to consider those factors now, they do anyway, often based on misinformation. The instructions would not lengthen the penalty phase of trials -- defense attorneys would not be able to introduce voluminous evidence on the determination of sentence length. Also, there is no evidence that the jury instruction lengthened the penalty phase prior to its invalidation by the Court of Criminal Appeals. In any event, the impact on the Texas Department of Corrections and the criminal justice system would not be significant since juries set punishment in relatively few cases.

Opponents said the system of parole and good-conduct time is too difficult to explain within the confines of a jury instruction. Jury confusion could lead to more hung juries or efforts to impose longer sentences, exacerbating the prison overcrowding crisis. SJR 4 and SB 54 present an internal contradiction that would invite jury error and likely result in many more cases being overturned on appeal. Texas law does not allow jurors to discuss the possibility of parole when a jury determines the length of a sentence. Yet this proposal would invite jurors to consider the existence of parole and good-conduct time laws, but not the extent to which they would affect the particular defendant. Defense attorneys would be encouraged to introduce evidence explaining how the parole and good-conduct time laws are applied.

Legislative History: The Senate adopted SJR 4 by 26-5 on April 3 (Journal page 633), and the House adopted it by 133-10 on May 2 (Journal page 1286). The voters approved SJR 4 (Amendment 10) on Nov. 7.
The Senate passed SB 54 by voice vote on April 3 (Journal page 634), and the House passed it by nonrecord vote on May 3 (Journal page 1313).

The HRO analyses of SJR 4 and SB 54 appeared in the May 2 Daily Floor Report.
Judicial salary increase and appropriation
(HB 101 by Hinojosa)

Effective Sept. 1, 1989

HB 101 increases state salaries for justices of the Texas Supreme Court and judges of the Court of Criminal Appeals, the 14 courts of appeal and district judges and adjusts ceilings and other mechanisms affecting judicial salaries.

Salaries for judges on the two highest appellate courts are increased from $78,795 to $85,000 ($87,500 for the chief justices). Court of appeal state salaries, which remain set at 90 percent of Supreme Court salary, increase from $70,916 to $76,500 ($77,000 for chief justices). State salaries for district court judges are set at 95 percent of courts of appeal salaries and increase from $56,135 to $72,675.

Unless otherwise provided by law, combined state and county salaries of district judges must be at least $2,000 less than the salary of Supreme Court justices.

Supporters of the bill said salary increases would help Texas attract and retain the best judges and deter experienced judges from leaving the bench for more lucrative jobs. HB 101 would greatly reduce salary disparities among judges whose duties and workloads are similar. Eliminating county salary supplements completely may be a worthy goal to work toward but should not be rushed -- reducing the local supplements at least would make state judges less beholden to county officials.

Opponents said little-discussed effects of the bill would raise the price tag beyond that required to fund the proposed judicial salaries. It automatically would increase costs for judicial retirement, compensation of certain visiting judges, state-paid prosecutors and legislative retirement. Legislators are in the position of voting themselves a retirement increase since their pensions are tied to salaries of district judges. Other opponents said HB 101 would not go far enough toward equalizing salaries. The state should assume total responsibility for paying state judges.

Legislative History: The House passed the bill by nonrecord vote on May 11 (Journal page 1668). The Senate passed a committee substitute by voice vote, one senator recorded present not voting, on May 22 (Journal page 1896). The House concurred with the Senate amendments by nonrecord vote, 10 members recorded voting nay, on May 24 (Journal page 2363).

The HRO analysis of the bill appeared in the May 3 Daily Floor Report.
Adding licensed drivers to jury list in certain counties
(HB 347 by Crawford, et al.)

Effective Sept. 1, 1989

HB 347 allows certain counties to use lists of licensed drivers residing in a county in determining the pool of potential jurors (the "jury wheel"). The lists are to be provided by the state Department of Public Safety and are to be used in addition to lists of registered voters. Failure to register to vote does not disqualify a person from jury duty. The measure applies only to counties in which the most populated city includes more than one county.

Supporters of the bill said an expanded pool of potential jurors would help ensure a more reliable supply of jurors in 36 Texas counties. Many persons fail to register to vote, but this should not exempt them from jury duty. Exemptions from jury duty can reduce the list of potential jurors by up to one-third; lists of licensed drivers contain approximately 40 percent more names than the registered voters list. Cities situated in two counties, with the majority of population concentrated in one county but with most of the litigation occurring in the other, can pose a problem in jury selection -- this means of expanding the jury pool would relieve this shortage.

Opponents said a license to drive a car does not qualify a person to serve on a jury. The voter registration list is the most appropriate basis for choosing jurors because it includes only those with enough sense of civic duty to register. The courts would waste time weeding out the unqualified if all licensed drivers were lumped together with registered voters. If the problem is attracting more jurors, then it would make more sense to increase juror pay from the current level of $6 per day.

Legislative History: The House amended the bill to make reconstituting the jury wheel subject to approval by the county commissioners court and a majority of the district judges, rather than mandatory (Journal page 893), then passed the bill by nonrecord vote on April 11 (Journal page 907). The Senate passed the bill by voice vote, three members recorded voting nay, on May 4 (Journal page 1138).

The HRO analysis of the bill appeared in the April 10 Daily Floor Report.
Payment to the state of exemplary damages in tort cases
(HB 520 by A. Smith)

Died on the House floor

HB 520 would have required that exemplary damages in civil lawsuits be paid to the State Treasury, rather than to an injured claimant. Attorneys representing clients for a contingency fee (a percentage of the damages awarded to the plaintiff) would have been paid their percentage based on both ordinary and exemplary damages. Attorneys who were not paid on a contingency fee basis would have received payment of their actual expenses plus reasonable compensation as an incentive to seek exemplary damages.

Supporters of the bill said punitive damages are awarded as a penalty for egregious wrongdoing and to deter outrageous conduct, not to compensate injured claimants, whose actual expenses due to the injury are covered by the award of ordinary damages. Since punitive damages serve public purposes, they should be awarded to the public, not as a windfall for claimants.

Opponents said the bill would create a conflict of interest between injured plaintiffs, who would be willing to accept a settlement offer limited to only their actual damages because any punitive damages would be awarded to the state, and plaintiffs' attorneys, who would have an interest in rejecting a settlement offer that would pay only actual damages because they would receive a larger contingency fee from an award of punitive damages. Also, the state would, for the first time, have an interest in private civil cases, which could complicate litigation. Other opponents said that if exemplary damages are to be awarded to the state, then the money should be earmarked for a specific purpose, such as public education.

Legislative History: The House considered HB 520 on May 3. It adopted without objection an amendment removing the state as a necessary party to a suit in which it might receive the exemplary damages. By 33-103 it rejected a motion to table an amendment to earmark exemplary damages for the Texas public school employees group insurance fund or the Foundation School Fund. This amendment was amended, without objection, to distribute a portion of exemplary damages to the state employees insurance fund. The amendment, as amended, failed to pass by nonrecord vote. An amendment to allow poor claimants to retain exemplary damages was tabled by nonrecord vote. HB 520 then failed to pass on second reading by 63-77. A motion to table reconsideration of the vote passed by nonrecord vote. (Journal pages 1402-5).

The HRO analysis of the bill appeared in the May 3 Daily Floor Report.
Prohibiting concealment of public hazards
(HB 698 by Wolens)

Died in Senate committee

HB 698 would have prohibited agreements or court orders that had as their purpose or effect the limiting or denial of public access to information about a "public hazard," defined as a device or condition of a device that has caused or may cause serious bodily injury to more than one individual. The bill would have allowed courts to issue orders to protect private or proprietary information only if that information did not in itself constitute a public hazard. Intentionally, knowingly, or recklessly sealing a public record about a public hazard or entering into an agreement to conceal a public hazard would have been a class A misdemeanor (maximum penalty of a $2,000 fine and one year in jail).

Supporters of the bill said it would help get dangerously defective products off the market by making more information available to the public. It would stop parties to products liability lawsuits from asking courts to seal documents as a condition of a settlement agreement, which keeps consumers from finding out about the potential harm associated with certain products. Making this information public would not impede legitimate settlement agreements, but it would prevent plaintiffs from negotiating higher settlements by promising not to reveal information that the public has a right to know.

Opponents said the definition of "public hazard" is so vague that it could encompass every tangible object that has ever seriously injured two or more people. Because the bill does not restrict itself to products liability cases, it would apply to all agreements that had the effect of limiting public information about anything that falls within the unreasonably broad definition of "public hazard." Products plaintiffs who made settlement deals despite the law, but became dissatisfied and revealed the terms, might be subject to criminal penalty. Better sources of documented product information exist, such as the Consumer Products Safety Commission and the National Highway Traffic Safety Commission.

Legislative History: The House passed the bill by nonrecord vote, one member recorded voting nay, on April 12 (Journal page 912). The bill was referred on April 17 to the Senate Jurisprudence Committee, where it died after being tagged.

The HRO analysis of HB 698 appeared in the April 11 Daily Floor Report.

A related bill, HB 1637 by Garcia, which took effect Sept. 1, directs the Texas Supreme Court to adopt guidelines for state courts to use in determining whether in the interest of justice the records in civil cases, including settlements, should be sealed.
Reorganizing the county court system
(HB 1513 by P. Hill)

Died on the House floor

HB 1513 would have restructured the system of statutory county courts by expanding and making uniform their jurisdiction. It would have repealed statutes granting specialized jurisdiction to certain constitutional county courts. It also would have standardized the qualifications of statutory county-court judges, designated a uniform place to file lawsuits falling under the concurrent jurisdiction of district courts and statutory county courts, enabled the creation of multi-county statutory circuit county courts, created the office of local administrative statutory county-court judge, and repealed statutes granting certain district courts jurisdiction concurrent with constitutional county courts.

Supporters of the bill said the lack of order in state statutes governing statutory and constitutional county courts causes confusion and prevents the balancing of caseloads. Making compensation for statutory county court judges commensurate with the increase in the court's jurisdiction deliberately was omitted because a bill similar to this one (HB 36 by A. Hill) was enacted by the Legislature in 1983 but was vetoed by the governor, in part because it might have required counties to increase salaries for county court judges.

Opponents said statutory county court jurisdiction should not be increased unless salaries for those judges also are increased. Conforming all statutory county courts to the same jurisdictional limits would increase the load on district courts in El Paso, where statutory county courts share complete concurrent jurisdiction with district courts. Certain district courts and constitutional county courts need concurrent jurisdiction because county judges need not be lawyers and may not have sufficient legal knowledge to conduct trials in their courts.

Legislative History: The House considered several amendments to the bill on May 15 before recommitting it on a point of order (Journal page 1791). The bill was re-reported in the same form as that initially considered and was read a second time but was tabled by nonrecord vote on May 20 (Journal page 2142).

The HRO analysis of HB 1513 appeared in the May 19 Daily Floor Report.

A provision establishing local administrative statutory county-court judges was enacted as a part of SB 1564 by Glasgow and became effective Aug. 28, 1989.
Judicial selection
(HJR 52/HB 1116 by Gibson, et al.)
(SJR 22/SB 407 by Caperton)

Died in committee

HJR 52/HB 1116 and SJR 22/SB 407 would have replaced partisan election of appellate judges and district judges in the six largest counties with gubernatorial appointment from a list of three names submitted by 15-member nominating commissions. Appointed judges and commission members would have been subject to Senate confirmation. Judges appointed to fill mid-term vacancies would have faced a nonpartisan confirmation election at the first general election after taking office. Those appointed after an incumbent failed to file a declaration of candidacy would face the same type of election, at the last general election before the incumbent's term expired.

Supporters of the proposal said a system of appointment and confirmation election of judges would remove partisan politics from selection of judges and would provide the most suitable way to comply with the federal Voting Rights Act. Voters would retain the opportunity to keep or oust judges. Public confidence in the judiciary would be enhanced, and more qualified lawyers would be willing to serve as judges if the incessant need for fund-raising and uncertainty of partisan election sweeps were eliminated.

Opponents said the proposal would replace democratic selection of judges with selection by an elite commission and the governor. Potential judges who are not part of the legal establishment would have no means of cracking the system. Confirmation elections would not hold judges accountable, since few voters would be willing to cast out a judge without knowing if the replacement would be worse. In other states, when confirmation elections involve a controversial judge, they often are more costly than partisan elections. Limiting campaign contributions would be a more reasonable approach. Other opponents said single or multi-member districts are more likely to satisfy recent federal court demands for equality in judicial voting districts.

Legislative History: The House Judicial Affairs Committee considered HJR 52 and HB 1116 in a public hearing on March 15; no further action was taken.

The Senate State Affairs Committee considered SJR 22 and SB 407 in a public hearing on March 8 and referred them to a special subcommittee; no further action was taken.
Grand jury revisions  
(SB 208 by Glasgow, et al.)

Effective Sept. 1, 1989

SB 208 limits those persons who may question a witness before the grand jury to the district attorney and the grand jurors. Only the district attorney, a witness, the accused or the accused's attorney may address the grand jury. Prior to any questioning before the grand jury, accused persons must receive written and oral notification of their rights and duties and sufficient time to consult with an attorney. Also, if an individual is charged with aggravated perjury — false testimony before a grand jury — the grand jury against whom the alleged perjury was committed cannot indict the individual for that offense. No grand jury member may be related within the third degree of consanguinity or second degree of affinity to another member of the same grand jury.

Supporters of the bill said it would help alleviate abuses of grand jury powers while still retaining the average citizen's input into the criminal justice system. It also would strengthen protection for the accused by limiting those who may question witnesses and appear before the grand jury and allowing accused persons time to consult with their attorney prior to questioning. Requiring a different grand jury to indict for aggravated perjury before a grand jury would eliminate an inherent conflict of interest.

Opponents said the bill would continue the grand jury as a rubber stamp for the prosecution by allowing grand jurors to be appointed by commissioners instead of randomly selected, thus hampering the jury's role as an objective and fair judicial body. Also, small counties with a grand jury that meets only once annually could have trouble meeting the requirement that a separate grand jury address a charge of aggravated perjury committed before a grand jury.

Legislative History: The Senate passed the bill by voice vote on Feb. 8 (Journal page 210). The House Criminal Jurisprudence Committee reported a committee substitute that added the accused's attorney to the list of persons allowed to address the grand jury and added limitations on relatives serving on the same grand jury. It also incorporated SB 213, passed by the Senate by voice vote on April 3 (Journal page 630) providing for written and oral notification of rights and duties to be given to the accused and an opportunity to consult with counsel prior to questioning, and SB 211, unanimously passed by the Senate on Feb 9 (Journal page 224), providing that an indictment for aggravated perjury must come from a different grand jury. The House added several amendments, including provisions that changed grand juror selection from a jury commissioner system to a jury wheel system, then passed the bill by nonrecord vote on May 18 (Journal page 1999). The Senate refused to concur with the House

- 40 -

House Research Organization
amendments by voice vote on May 24 (Journal page 2014), and a conference committee was appointed. The conference report deleted the House provisions changing grand jury selection; on May 29 it was adopted by the Senate by voice vote (Journal page 3596) and by the House by nonrecord vote (Journal page 3430).

Creation of district courts
(SB 1379 by Parmer, et al.)

Effective Sept. 1, 1989

SB 1379 creates 11 new district courts. Two courts in Tarrant County, one in Dallas County and one in Victoria County will give preference to criminal cases, while the remaining seven courts have general jurisdiction. One court each is created in Lubbock, Collin, Denton, Williamson and Hidalgo counties. Dimmit, Maverick and Zavala counties share a new court as do Anderson and Cherokee counties. An additional four district courts would be created in Tarrant County, contingent on creation of a crime control district that would reimburse the state for salaries and other costs (SB 1694 by Parmer).

The bill appropriates funds for the new judicial districts created in the same amounts as existing courts under the General Appropriations Act.

Supporters of the bill said court systems in some counties are bulging at the seams because of rising crime rates, rapid population growth and other special circumstances. The new courts were proposed by counties and justice system officials to deal with overcrowded court dockets that are delaying justice. There was no reason to wait until a Midland federal court rules on the makeup of state judicial districts in nine urban courts; that case addresses how judges should be elected, not how many judges should serve.

Opponents said the bill would create expensive new district courts haphazardly, without enough care to protect against the expense of unnecessary courts. The judicial districts board, created in 1985 to review court caseloads and propose creation of new courts and judicial-district boundary changes, did not recommend creation of any new courts this year, primarily because of the pending federal suit challenging at-large election of district judges in nine counties. Tinkering by adding new courts when the entire structure soon may be revamped would make little sense. Allowing local funding of state judicial salaries through taxing districts, as proposed for Tarrant County, would set a bad precedent; district courts are state courts and should be supported by the state.

Legislative History: The Senate passed the bill by voice vote on May 22 (Journal page 1886). The House amended the bill in committee and on the floor to create additional courts and the appropriation provision, then passed it by nonrecord vote, one member recorded voting nay, on May 27 (Journal page 2904). The Senate concurred with the House amendments by voice vote on May 28 (Journal page 3195).

The HRO analysis of the bill appeared in the May 26 Daily Floor Report.

- 42 -

House Research Organization
CRIMINAL LAW

Revision of organized crime statute
(HB 5 by Morales)

Effective Sept. 1, 1989

HB 5 decreases from five to three the minimum number of people who, by collaborating to carry out criminal activities, form a "combination" to commit the acts punished under the organized crime title of the Penal Code. The bill defines the profits of a combination as including all property derived from any direct or indirect proceeds of the acts punished under the organized crime title. It also adds fraud to the list of specified organized-crime offenses.

Supporters of the bill said it would increase the power of Texas prosecutors to punish participants in organized crime rings without making the organized crime statute so broad that it would encourage prosecutors to use the statute to increase penalties for ordinary crimes.

Opponents said the changes the bill would make in the organized crime statute would be insignificant. The statute should be broadened to specifically include violations of the Controlled Substances Act to target drug dealers as well as those who launder their money. Courts should be given the power to grant injunctive relief to protect innocent parties while a criminal case works its way through the courts.

Legislative History: The House passed the bill by a nonrecord vote on May 3 (Journal page 1319). The Senate amended the bill by deleting the Texas Controlled Substances Act from the list of specified organized crime offenses, a new offense of receiving or using proceeds from criminal activity and a provision permitting a court to issue a temporary restraining order against a criminal act, then passed the bill by voice vote on May 26 (Journal page 2553). The House concurred with the Senate amendments by a nonrecord vote on May 27 (Journal page 3010).

The HRO analysis of the bill appeared in the May 2 Daily Floor Report.
Forfeiture of property used in felonies
(HB 65 by Morales, first called session)

Effective Oct. 18, 1989

HB 65 allows the seizure and forfeiture of property used in the commission of robbery, burglary, theft, fraud or any first- or second-degree felony under the Penal Code, or any felony under the Securities Act, as well as property used or intended to be used in the commission of any felony under the Controlled Substances Act or the Dangerous Drugs Act. Proceeds from these felonies or property acquired with the proceeds also are subject to seizure or forfeiture. Conviction for the underlying felony is not a prerequisite for forfeiture; acquittal on the underlying charge creates a presumption that the property is not forfeitable, but that presumption may be rebutted with evidence that the owner knew or should have known that the property was contraband.

By local agreement the district attorney may transfer the property to law enforcement agencies to use for official purposes. Otherwise, the property is to be sold at public auction and the proceeds deposited in the state General Revenue Fund.

Supporters of the bill said it would enhance the punishment of criminals by allowing the state to confiscate property connected with almost any felony, rather than the limited crimes covered by current law. HB 65 also would strike at the economic incentives for crime by expanding the amount of crime-connected property subject to forfeiture.

Opponents said the bill could induce some prosecutors and law enforcement agencies to focus their energies on high-dollar crime to bolster their budgets. Innocent persons unjustly accused should be spared the burden of a full-blown court proceeding to reclaim their property. The bill should be limited to specific offenses motivated by pecuniary gain, like securities fraud.

Legislative History: The House amended the bill on July 14 to eliminate the use of forfeiture auction proceeds for a new Prison Construction Fund (Journal page 330), then passed the revenue dedication provisions of the bill by 122-1 and the remainder of the bill by nonrecord vote (Journal page 332). The Senate on July 19 considered a committee substitute that changed the felonies to which the bill applied and the disposition of forfeited property (Journal page 391), accepted three amendments (Journal page 399) and passed the bill by a voice vote (Journal page 400). The House on July 19 concurred with the Senate amendments on the revenue dedication provisions by 118-1 and with the amendments to the remainder of the bill by nonrecord vote (Journal page 387).

The HRO analysis of the bill appeared in the July 14 Daily Floor Report.

- 44 -

House Research Organization
Probating drivers license suspension in DWI cases
(HB 164 by Rudd)

Died in the Senate

HB 164 would have allowed county courts to grant probation for suspension of a driver's license for refusing to submit to a breath or blood test after a DWI arrest when a lower court's finding on the suspension issue had been appealed to a county court. The bill would have defined the probationary period for a suspension for refusal to take the test as at least 180 days and not more than a year. A driver could have received probation under these circumstances only once every five years.

Supporters of the bill said current law contains an inconsistency that gives more discretionary authority to justices of the peace and municipal court judges who initially decide license suspension cases than to county court judges who hear these cases on appeal. HB 164 would correct this inconsistency. By restricting the frequency of probation allowed under these circumstances and specifying the minimum length of the probationary period, HB 164 would set prudent guidelines for the courts.

Opponents said the bill would undermine the intent of the tough DWI bill enacted in 1983, which required license suspension for refusing to take a breath or blood alcohol test. The penalty should be clearcut in these cases -- refusal to take the test means license suspension, period. The alleged inconsistency in the law is the result of conflicting attorney general opinions, not any problem in the law. If any clarification is needed, then it should be to eliminate probation of license suspension at the JP or municipal court level.

Legislative History: The House passed the bill by nonrecord vote, three members voting nay, on April 11 (Journal page 907). The Senate passed it on second reading by voice vote, two members voting nay, on May 24 (Journal page 2084), but a motion to consider the bill on third reading and final passage failed by 9-17 on May 26 (Journal page 2538).

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

- 45 -

House Research Organization
Interfering with public servant
(HB 507 by J. Harris)

Effective Sept. 1, 1989

HB 507 makes it a class B misdemeanor offense (maximum penalty a $1,000 fine and 180 days in jail) for a person intentionally, knowingly, recklessly or with criminal negligence to interrupt, disrupt, impede or otherwise interfere with peace officers performing their duties or exercising their authority, emergency medical services personnel performing duties such as transporting ill or injured persons or fire fighters fighting or investigating fires. It is a defense to prosecution that the defendant's only action was to warn another person of the presence of a peace officer enforcing traffic laws or that the alleged action consisted of speech only.

Supporters of the bill said it was a tightly drawn attempt to deter persons from interfering with the duties of public servants in ways that could cause harm to them or to others. Seconds count when fire fighters and paramedics are doing their jobs, and they should be able to warn those hindering them that they could be subject to arrest. Peace officers should not have to contend with bystanders trying to impede them in enforcing the law or investigating a crime. The exceptions for speech only and for warning others of traffic patrols would set appropriate limits on the offense to avoid constitutional challenges.

Opponents said that the bill was a vague, overly broad and unnecessary attempt to allow public servants to harass persons who have done nothing other than to "interfere" with their actions. For example, a news photographer could be arrested merely for taking a picture of a crime victim after being asked by a police officer to leave the scene, regardless of any justification for the request. The U.S. Supreme Court recently struck down a similar Houston city ordinance as an unconstitutional infringement on free expression. Other offenses, such as resisting or hindering arrest, disorderly conduct and inciting a riot, already exist to deal with situations involving serious interference with public servants.

Legislative History: The House adopted without objection an amendment creating a defense to prosecution if the action consisted of speech only, then passed the bill by nonrecord vote on April 18 (Journal page 993). The Senate passed the bill by voice vote on May 25 (Journal page 2276).

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

- 46 -

House Research Organization
Expanding the criminal mischief statute
(HB 1777 by Wolens)

Effective Sept. 1, 1989

HB 1777 expands the criminal mischief statute -- which makes it a crime to damage, destroy, or tamper with someone's property -- to include making it a crime to deface property with markings or slogans. It also raises criminal mischief from a misdemeanor to a third-degree felony (maximum penalty a $10,000 fine and ten years in prison) if the damage or destruction were to a place of worship or a community center and totaled less than $20,000; if damage were over $20,000 it would be a second-degree felony (maximum penalty a $10,000 fine and 20 years in prison). The bill changes desecrating a place of worship or burial from a class A misdemeanor (maximum penalty a $2,000 fine and one year in jail) to a third-degree felony.

Supporters of the bill said it was necessary to halt increasing violence against community centers and religious buildings, such as synagogues and mosques. It would reaffirm the concept of freedom and the right to practice one's religion in peace.

Opponents of the original version said it would be difficult to prove crimes were motivated by hate, making prosecutions unlikely. They also objected to including crimes based on sexual orientation in the statute.

Legislative History: The House amended the original version of the bill by deleting a section creating a new "hate crime" offense in the Penal Code involving crimes against a person or a person's property because of the race, color, ethnicity, national origin, sex, age, sexual orientation, religion, creed, or disability of the victim. It also deleted a provision granting victims of the offense civil remedies against the perpetrator. It added a provision in the criminal-mischief statute creating a penalty for destruction of religious and community places and a provision raising the penalty for desecration of a place of worship or burial. The House passed the bill by nonrecord vote on May 17 (Journal page 1898). The Senate added a provision making it an offense to deface a person's property with slogans or markings, then passed the bill by voice vote on May 27 (Journal page 2776). The House on May 29 tabled by nonrecord vote a motion not to concur with the Senate amendment, then concurred by nonrecord vote, two members recorded voting nay (Journal page 3287).

During the first called session, the Legislature enacted HB 103 by Wolens, amending HB 1777 to clarify that its provisions apply only to loss of real property or tangible personal property.

- 47 -

House Research Organization
Constitutional rights for crime victims
(HJR 19 by Richardson)

Approved by voters Nov. 7, 1989

HJR 19 amends the state Bill of Rights in the Texas Constitution to list the rights of crime victims. These rights include fair treatment, respect for dignity and privacy and reasonable protection from the accused throughout the criminal justice process. A crime victim must be notified of court proceedings related to the offense and must be allowed to attend those proceedings, unless the victim's testimony would be materially affected by hearing other testimony. Victims also have the right, upon request, to confer with the prosecutor's office, receive restitution and receive information about the accused's conviction, sentence, imprisonment and release.

The state, through its prosecutors, may enforce crime victims' rights. The Legislature may provide that judges, prosecutors and law enforcement officers and agencies are not liable for failure or inability to enforce crime victims' rights. Defendants may not appeal their convictions on the ground that a victim's rights have been denied.

Supporters of the proposal said that it would acknowledge in the state constitution the rights of crime victims, providing increased public awareness of those rights and giving victims stronger legal standing to enforce them. Victims of crime should, for their own protection and peace of mind, at least have the right to be notified when the perpetrator of a crime against them is to be released from custody. While the amendment would give crime victims constitutional rights along with accused criminals, it would in no way impinge upon the right of an accused person to a fair trial.

Opponents said the proposed amendment was unnecessary and even deceptive because it merely would duplicate rights already provided by statute. Adding extraneous provisions to the state Bill of Rights would introduce confusion and uncertainty. By prosecuting accused criminals the state already defends and protects the rights of crime victims. Giving such rights constitutional status could conflict with the fundamental rights of accused persons to be considered innocent until proven guilty and to be free from official harassment once they have paid their debt to society. Other Opponents said that the proposal should have included protection of the due process rights of the state in order to give prosecutors a right to a fair trial equal to criminal defendants.

Legislative History: The House adopted an amendment deleting due process rights for the state and adding that the state, through its prosecutors, has the right to enforce the rights of crime victims, then adopted HJR 19 by 144-0 on May 23 (Journal page 2312). The

House Research Organization
Senate adopted HJR 19 by 30-0 on May 28 (Journal page 2898). The voters approved HJR 19 (Amendment No. 13) on Nov. 7.

The HRO analysis of HJR 19 appeared in Part One of the May 23 Daily Floor Report.
Making murder of a child a capital offense
(SB 12 by Brown, et al., first called session)

Died on the House floor

SB 12 would have made it a capital offense (punishable by death by lethal injection or life imprisonment) to murder someone six years old or younger or 65 years old or older, knowing that the victim falls within those age groups.

Supporters of the bill said murdering a young child or elderly person is a particularly grotesque crime that should receive the harshest penalty possible. People in these age groups often are defenseless and dependent on others and deserve an additional deterrent against harm.

Opponents said expanding the list of offenses for which the death penalty could be applied would only perpetuate ritualized killing by the state. This eye-for-an-eye system of punishment is uncivilized, ineffective and a throwback that has no place in modern society.

Legislative History: The Senate passed the bill by voice vote on July 11 (Journal page 262), after lowering the age of the victim from 14 to six. The House voted to suspend the 72-hour rule to consider SB 12 on second reading by 93-29 on July 19 (Journal page 379). An amendment expanding the bill to make it a capital offense to murder someone 65 years old or older passed by nonrecord vote after a motion to table lost by 47-76 (Journal page 380). The bill was amended further, without objection, to require that the murderer know the victim's age was within either of those age groups, then passed to second reading by 114-12 (Journal page 383). A motion to suspend the constitutional rule requiring bills to be read on three several days lost by 99-25, failing to receive the necessary four-fifths vote of the members present (Journal page 383). The bill died because it was considered on second reading on the final day of the first called session, so no third reading on a separate, subsequent day was possible.

The HRO analysis of the bill appeared in the July 18 Daily Floor Report.
Oral confessions recorded without notice
(SB 55 by Brown, Bivins)

Effective Sept. 1, 1989

SB 55 eliminates the Code of Criminal Procedure requirement that the recording of an oral confession made under custodial interrogation reflect that the accused was advised that the interrogation would be recorded, in order for it to be admitted into evidence against the accused. It adds a requirement that the defendant's attorney be given a copy of any recordings of an oral confession given by the defendant not later than 20 days before a hearing in the defendant's case.

Supporters of the bill said making a recorded confession inadmissible evidence simply because the defendant was not told the confession was being recorded is an unnecessary and unrealistic requirement that impedes justice. Requiring that the defendant receive a copy of any recorded confessions would protect the defendant's rights.

Opponents said the bill would give police officers far too much leeway in obtaining oral confessions that easily could lead to abuse, such as coercion and subterfuge. Guaranteeing that the defendant receive a copy of any recorded statement would be insufficient protection once the confession already has been obtained.

Legislative History: The Senate amended the bill to require that the defendant receive a copy of recorded confessions at least 20 days before a hearing and that the courts strictly construe this requirement (Journal page 777), then passed the bill by voice vote on April 13 (Journal page 778). The House adopted by nonrecord vote a floor substitute requiring the prosecuting attorney to provide a copy of a recorded confession to a defendant within 10 days of the defendant's trial, unless the defendant requested the copy sooner, and deleting the strict interpretation provision (Journal page 1199), then passed the bill by nonrecord vote on May 11 (Journal page 1658). The Senate refused to concur with the House amendments by voice vote on May 15 (Journal page 1378), and a conference committee was appointed. The conference report restored the Senate provisions but excepted from the strict construction clause the identification of immaterial voices on the recording and the reading of Miranda warnings. The Senate adopted the conference report by voice vote on May 28 (Journal page 2927), and the House adopted it by nonrecord vote, also on May 28 (Journal page 3676).

The HRO analysis of the companion bill, HB 11 by A. Smith, et al., appeared in the May 2 Daily Floor Report.
Prohibiting destruction of U.S. and Texas flags
(SB 80 by Parmer, first called session)

Effective Sept. 1, 1989

SB 89 prohibits the intentional and knowing damage, defacement, mutilation or burning of the U.S. or Texas flag. Violation is a class A misdemeanor (maximum penalty a $2,000 fine and one year in jail). It is not an offense to dispose of damaged flags in accordance with federal or state statutes.

Supporters of the bill said it would establish a law against flag destruction or defacement that would be consistent with the recent ruling of the U.S. Supreme Court. Any intentional or knowing damage or destruction of the flag would be an offense, regardless of the motive, which would eliminate concerns about infringing on free speech. The U.S. flag is the most powerful symbol we have of our nationhood and all the principles that make us Americans; the Texas flag is similarly honored. These symbols should not be defiled.

Opponents said that the bill would not satisfy the requirements of the Supreme Court regarding constitutionally permissible statutes against flag-burning. The flag should not be imbued with more sanctity than the enduring principles it represents.

Legislative History: The Senate passed the bill by voice vote on July 10 (Journal page 252). The House amended the bill to add the Texas flag to the offense and a definition of what constitutes a flag under the offense. It adopted without objection an amendment extending coverage of the bill to the flag of any state or U.S. territory, then deleted the amendment. The House passed the bill by 123-1 on July 14 (Journal page 303). The Senate concurred with the House amendments by 26-0 on July 18 (Journal page 369).

The HRO analysis of the bill appeared in the July 13 Daily Floor Report.
Prohibiting boating while intoxicated
(SB 276 by Parker)

Effective July 1, 1989

SB 276 prohibits operation while intoxicated of a moving vessel, water skis, aquaplane, or other waterborne device, other than one propelled by the current of the water. A first offense carries a maximum penalty of a $1,000 fine and a 180-day jail term, a second offense brings a maximum penalty of a $2,000 fine and a one-year jail term, and a third offense brings a maximum penalty of a $2,000 fine and a five-year prison term. If a person committing the offense causes another person serious bodily injury, the minimum term of confinement increases by 60 days and the fine increases by $500. Operating a vessel or waterborne device constitutes giving consent to submitting to breath or blood tests to determine alcohol or drug intoxication. If a person refuses to submit to a breath or blood test, the fact can be used as evidence at trial.

Supporters of the bill said two-thirds of the 70 deaths and nearly 150 injuries on Texas waters in 1988 were alcohol-related. The statewide boating death rate is nearly twice the national average. It makes no sense for the state to be lenient with drunken boaters when it has stiff laws to curb drunken drivers. Parks and Wildlife officials have had their hands all but tied when attempting to curb dangerous activities on Texas waters.

Opponents said the bill might violate Fifth Amendment rights against self-incrimination because anyone operating a waterborne device would be deemed to have given consent for a breath or blood alcohol test. Licenses to operate power boats should be required, subject to revocation for boating while intoxicated.

Legislative History: The Senate amended the original version of the bill to exempt operating a vessel that is propelled solely by the current of the water and by deleting the provision allowing for prosecution of a person who refuses to submit to a breath or blood test, then passed the bill by 29-0 on March 2 (Journal page 360). The House considered the bill on the Consent Calendar and divided the question, passing the revenue-dedicating provisions by 138-2 and the remainder of the bill by 128-1 on May 22 (Journal page 2221).
Penalties for evading a peace officer
(SB 916 by Tejeda)

Effective Sept. 1, 1989

SB 916 makes it a criminal offense for a person to intentionally flee a peace officer attempting to detain the person for questioning or to investigate possible criminal activity, if the officer has reasonable suspicion to investigate. The offense is a class B misdemeanor (maximum penalty fine of $1,000 and 180 days in jail), but if the offender's reckless conduct places another person in imminent danger of serious bodily injury, the offense is a class A misdemeanor (maximum penalty of $2,000 fine and one year in jail). If a peace officer suffers serious bodily injury or death, from any cause other than assault or homicide by the offender, as a direct result of the officer's attempt to apprehend a person in flight from arrest or detention, the offense is a third-degree felony (maximum penalty a fine of $10,000 and ten years in prison).

Supporters of the bill said it would broaden the existing offense of evading arrest by adding evasion of legitimate questioning in connection with a criminal investigation. The bill would deter flight that might seriously injure or kill a peace officer by making it a felony if an officer is badly hurt or killed. Safeguards in the law would allow prosecution only if the detention were based on reasonable suspicion.

Opponents said the bill was too broad because it would subject persons to a felony for injury or death they did not cause or intend. For example, a person pulled over for a traffic violation should not be sent to prison if he drives off and the officer, through his own negligence, is hit by another car as he runs back to his own vehicle to give chase. Also, persons being questioned by an officer should retain the right to walk away from an officer if they are not being arrested. Evading arrest already is a crime and should be sufficient to prosecute in almost all cases.

Legislative History: The Senate passed the bill by voice vote, two members recorded voting nay, on March 30 (Journal page 611). The House passed the bill by nonrecord vote, five members recorded voting nay, on May 3 (Journal page 1313).

The HRO analysis of the bill appeared in the May 2 Daily Floor Report.
Injury to a child, elderly person or invalid
(SB 1154 by Tejeda)

Effective Sept. 1, 1989

SB 1154 adds invalids to the victims -- children younger than 14 and persons over 65 -- for whom it is an offense to cause, by act or omission, bodily injury, serious bodily injury, physical or mental deficiency or impairment, disfigurement or deformity. The bill also adds robbery of persons over 65 to the definition of aggravated robbery. The offense of causing injury is expanded to include injury caused by omission that was intentional, knowing or reckless. An affirmative defense to prosecution would include methods of healing based on a recognized religion.

Supporters of the bill said no statutory duty to protect invalids from injury exists, so criminal liability cannot be imposed. This bill will provide invalids with protection from intentional injury, and from injury caused by neglect by someone who had recognizably assumed care, custody and control for their well-being. The bill would protect community-help programs like Meals On Wheels by creating specific definitions of responsibility.

Opponents said freedom to cause injury or death is not protected under freedom of religion provisions and should be left out of the law. Absolving someone from the responsibility of providing adequate care to a dependent on the basis of their religious belief, when that belief includes the omission of providing necessary medical attention, is wrong.

Legislative History: The Senate approved the bill by voice vote on April 26 (Journal page 987). The House amended the bill to add invalids and persons over the age of 65 to those specifically protected from bodily injury or the threat of bodily injury in the commission of a robbery, then passed the bill by nonrecord vote on May 27 (Journal page 2923). The Senate refused to concur with the House amendments (Journal page 2776), and a conference committee was appointed. The Senate adopted the conference committee report by voice vote on May 29 (Journal page 3400), and the House adopted it by nonrecord vote, also on May 29 (Journal page 3397).

The HRO analysis of the bill appeared in the May 26 Daily Floor Report.
Product commercialization fund, loans for product development, small business incubators
(HB 362 by Williamson)

Effective Sept. 1, 1989

HB 362 creates a Product Commercialization Fund to make loans for the commercialization of products or processes not financed by the private sector. The fund will be administered by the Office of Advanced Technology in the Department of Commerce, under guidelines established by a product commercialization advisory board.

HB 362 also authorizes the governing board of the Texas Department of Commerce to issue up to $25 million in general obligation bonds to provide loans for the Texas Product Development Fund, to provide grants and loans to small businesses in high-tech and other areas, and up to $20 million in general obligation bonds for the Small Business Incubator Program, to provide services to help new businesses get off the ground. The authority to issue bonds was made contingent on the adoption of HJR 51 (Amendment No. 3, which was approved by the voters Nov. 7).

Supporters of the bill said it would contribute to the growth of new industries in the state. The Product Commercialization Fund will help bring to market products and processes being developed through advanced technology programs at Texas colleges and universities, which will help create new businesses and jobs. The state would help small businesses get off the ground and then reap increased revenue from job creation and new businesses.

Opponents said the state should avoid using taxpayer dollars to subsidize private business ventures, allowing the free market to operate and individuals to take the risks and reap the rewards of investment. The bill would add to the state's substantial bond debt, which future generations will have to retire.

Legislative History: The House passed the fund dedication provisions of the bill by 135-6, then passed the bill by nonrecord vote on May 1 (Journal page 1245). The Senate amended the bill to authorize the issuance of general obligation bonds of $25 million for the product development fund and $20 million for the small business incubator fund, then passed the bill by voice vote, one member voting nay, on May 20 (Journal page 1776). The House on May 24 concurred with the Senate amendments on dedication of funds by 141-2 and on the remainder of the bill by nonrecord vote (Journal page 2366).

The HRO analysis of the bill appeared in the April 26 Daily Floor Report.
State guarantee fund for exporter loans
(HB 369 by H. Cuellar, et al.)

Effective on Sept. 1, 1989

HB 369 creates the Texas Exporters Loan Fund administered by the Texas Department of Commerce to guarantee loans made by private lenders to Texas businesses entering or expanding their activities in export markets. The fund consists of appropriated funds, user fees and earned interest. The fund guarantees 85 percent of private sector loans for a year or less that are between $10,000 and $1 million. The borrower must put up at least 10 percent of the cost of the business venture and must secure the loan with appropriate collateral. (The Legislature appropriated $2 million to the Export Loan Fund in a rider for the Department of Commerce in the General Appropriations Act for fiscal 1990-91.)

Supporters of the bill said it would help small businesses in Texas by creating or expanding export markets. Small businesses create more jobs than any other sector of the economy, but it often is difficult for them to obtain a loan to finance exports. State money would not be at risk -- the 85 percent of the loan guaranteed by the state would have to be fully collateralized.

Opponents said the state should not use taxpayer dollars to subsidize private business ventures. Texas is one of the top three states in exports of manufactured products and is third in total number of jobs related to manufactured exports. The private sector is doing well and the state does not need to interfere with market forces.

Legislative History: The House approved the fund dedication provisions by 132-6, then passed the bill by nonrecord vote on April 11 (Journal page 906). The Senate clarified the carryover of unexpended money in the export fund and deleted a provision authorizing financing of maquiladora industries, then passed the bill by 29-2 on May 18 (Journal page 1585). The House concurred with the Senate amendments on dedication of funds by 120-12 and with the remainder of the bill by nonrecord vote on May 22 (Journal page 2237).

The HRO analysis of the bill appeared in the April 10 Daily Floor Report.
Creating the Texas Rural Economic Development Fund
(HB 613 by Waterfield)

Effective Sept. 1, 1989

HB 613 renames the Texas Rural Industrial Development Fund as the
Rural Economic Development Fund and changes its functions to
guaranteeing loans rather than making them. The fund, administered by
the Texas Department of Commerce, will assist rural economic
development, giving preference to food and fiber processing
industries. Upon approval of an application submitted by either the
borrower or a private lender, the department may guarantee up to 85
percent of a loan. A borrower must pledge funds or property worth at
least 10 percent of the costs of the project and show a commitment
from other financial resources to cover all other funds necessary.
Any money left in the Rural Industrial Development Fund was to be
transferred to the new fund.

Supporters of the bill said it would more effectively promote an
increase in agricultural processing in Texas, which could boost the
state's economy by tapping the potential for profitable new
enterprises. One of the main factors limiting the expansion of
processing facilities is a lack of capital. The new fund would
provide greater financial flexibility and increase the role of the
private sector in providing needed capital by concentrating on
guarantee of loans made by financial institutions, rather than direct
loans by the state. Only the most promising ventures would get help.

Opponents said that just because other states use taxpayer dollars to
subsidize private business ventures, Texas need not follow suit. If
these processing facilities are economically beneficial, they should
attract sufficient private capital on their own merits. Under a loan
guarantee program, money would go to projects that likely would be
financed anyway, resulting only in a shift of the financial risks from
the bank to the state. Other state agencies and community economic
groups should have a better defined role in administration of the
fund.

Legislative History: The House on May 1 approved the revenue
dedication provisions by 137-4, then passed the bill by nonrecord
vote, one member recorded voting nay (Journal page 1247). The Senate
passed the bill by voice vote, one member recorded voting nay, on
May 22 (Journal page 1877).

The HRO analysis of the bill appeared in the April 27 Daily Floor
Report.
Issuing bonds for agricultural fund
(HB 1111 by Harrison)

Effective Sept. 1, 1989

HB 1111 authorizes the Texas Agricultural Finance Authority to issue up to $25 million in general obligation bonds and up to $500 million in revenue bonds. Proceeds of the bonds will be deposited in the Texas Agricultural Fund to provide financial assistance for agricultural diversification projects to eligible businesses, to pay costs connected with issuing bonds, and to pay the principal or interest on outstanding bonds. The bill also authorizes the Texas Agricultural Finance Authority to issue up to $5 million in general obligation bonds for a rural microenterprise development fund, which will provide loans to family owned and operated rural businesses.

Supporters of the bill said the financial assistance provided by the issuance of these bonds would help Texas agriculture expand and diversify, providing new jobs in this important sector of the state's economy. Because of ongoing economic difficulties, the agricultural sector needs the financial support of the state to expand. Similar programs at the federal level and in other states have been successful in providing this needed boost. The bill will also provide assistance to small, family-owned rural businesses (microenterprises) which are also important sources of employment in rural areas.

Opponents said the bill would just add to the state's outstanding bond debt of approximately $7 billion, which future generations will have to retire, and in competing for scarce investment dollars may drive up interest rates generally, raising the cost of local bonds used to finance needed public works projects. Any effort by the state to lend money where traditional financial institutions fear to tread should be viewed with caution. The agricultural sector has begun to show signs of recovery in recent years without public subsidies by the state.

Legislative History: The House passed the bill by nonrecord vote, one member voting nay, on May 18 (Journal page 2024). The Senate amended the bill to authorize Texas Department of Agriculture to issue $5 million in general obligation bonds for a rural microenterprise development fund, then passed the bill by voice vote on May 26 (Journal page 2551). The House concurred with the Senate amendment by nonrecord vote on May 28 (Journal page 3147).

The HRO analysis of the bill appeared in the May 15 Daily Floor Report.
State fund to guarantee business loans
(HB 2803 by Connelly)

Effective Sept. 1, 1989

HB 2803 creates the Texas Business Enhancement Fund in the state Treasury to guarantee loans by financial institutions to Texas businesses for agricultural, commercial or industrial purposes. The fund is to be administered by the Texas Department of Commerce, which will decide which financial institutions can participate in the fund and will set general policies regarding loans guaranteed by the fund. Each financial institution that makes a loan guaranteed by the fund must establish a reserve account, which will cover any losses on guaranteed loans. Each borrower must deposit a fee of 3 to 5 percent of the total loan. The enhancement fund initially will match the fee amount 2-to-1 by depositing twice the fee amount in the reserve account for the first year, or until the total amount of loans made by the financial institution reaches $1 million; then the fund will deposit the same amount as the borrower. The fund cannot deposit more than $150,000 in any institution's account over a three-year period for any single loan recipient.

A financial institution may recoup losses incurred from a guaranteed loan with a one-time payment made from the reserve fund. However, the payment may be made only if sufficient money has been appropriated for the fund (none was appropriated by the Legislature for fiscal 1990-91).

Supporters of the bill said the enhancement fund would increase the availability of capital for small business and job creation and would help Texas recover from its economic slump. The fund would encourage banks to make small business loans by setting up reserve funds to cover bad loans.

Opponents said the state should not use taxpayer dollars to subsidize private business ventures. The state would be asked to place an unspecified amount of money in the fund to match fees paid by borrowers.

Legislative History: The House amended the bill and passed it by a nonrecord vote, two members recorded voting nay, on May 18 (Journal page 2033). The Senate changed the name of the fund from the Texas Capital Access Fund to the Texas Business Enhancement Fund, among other technical changes and passed it by voice vote on May 26 (Journal page 2553). The House concurred with the Senate amendments by nonrecord vote on May 28 (Journal page 3158).

Bond funding for agriculture, new products and small businesses
(HJR 51 by Harrison)

Approved by the voters Nov. 7

HJR 51 amended the Texas Constitution to allow the Legislature to authorize issuance of $75 million in general obligation bonds for business assistance -- $25 million for agricultural production, processing and marketing, $5 million to stimulate the creation and expansion of small businesses (microenterprises) in rural areas, $25 million to provide venture financing to small businesses for new product development and $20 million for assistance to "incubators" that assist small businesses in getting started.

Supporters said the proposed constitutional amendment was a key part of an economic development program adopted by the 70th Legislature to rejuvenate and diversify Texas' economy. Although the voters rejected a similar constitutional amendment in 1987, this was the result of ballot confusion rather than a rejection of the aims of the program. The programs to provide these funds were established by the 70th Legislature; approval of this constitutional amendment would allow them to meet their objectives. In the current tight financial climate, this kind of government program is needed to provide start-up funds for promising small businesses. It ultimately would pay for itself through increased revenues from job creation and new businesses.

Opponents said the voters rejected this amendment in 1987 not because they failed to understand it, but because they did not want it. The program would increase the state's bond debt, shifting the burden of repaying this debt to future generations. The state should not meddle in the free market by subsidizing with public funds private business schemes so risky that they could not obtain private financing.

Legislative History: The House adopted HJR 51 by 132-0 on May 5 (Journal page 1483). The Senate amended HJR 51 to add the rural business development (microenterprise) program, then adopted it by 31-0 on May 26 (Journal page 2549). The House concurred with the Senate amendments by 140-2 on May 28 (Journal page 3123). The voters approved HJR 51 (Amendment No. 3) on Nov. 7.

The HRO analysis of HJR 51 appeared in the May 5 Daily Floor Report.

- 61 -

House Research Organization
Work force development incentive program
(SB 193 by Ratliff)

Effective Aug. 28, 1989

SB 193 transfers the Industrial Start-up Training Program from the Texas Education Agency to the Texas Department of Commerce and renames it the Work Force Development Incentive Program. The department is to develop a job-training program to enhance job opportunities and meet the needs of employers. At least 40 percent of the funds expended are to be used to assist businesses already in Texas. For the state to spend more than $250,000 on a single project, the business must match state funds by at least a 2-to-1 ratio. When selecting trainees for a project, the department must give priority in the following order: Texas residents receiving welfare or unemployment compensation, unemployed Texas residents and all other Texas residents.

Supporters of the bill said Texas needs to expand its state job training program to help existing and new businesses. States such as California, New York and North Carolina spend far more -- $55 million, $15 million and $5.5 million, respectively -- on similar programs. The bill is targeted to reduce the cost of social services by helping to provide a trained work force. Increasing the minimum use of funds for businesses already in the state from 10 to 40 percent would ensure that existing businesses receive their fair share of job training assistance. By increasing the cap on state assistance from $89,000 to $250,000, the program could be made more attractive to larger operations. The matching grant provision would ensure that the largest businesses would pay at least two-thirds of the cost.

Opponents said the new restrictions would greatly reduce the flexibility of the program and increase administrative costs, diminishing it attractiveness to business. The state already administers similar programs under the federally funded Job Training Partnership Act; there is no need to duplicate these efforts.

Legislative History: The Senate passed the bill by 31-0 on Feb. 8 (Journal page 207). The House approved a committee substitute removing the priority for trainees and reporting provisions, then passed the bill by nonrecord vote on March 28 (Journal page 696). The Senate refused to concur with the House amendments by voice vote on May 9 (Journal page 1215), and a conference committee was appointed. The Senate provisions were reinstated by the conference committee. The Senate adopted the conference report 31-0 on May 24 (Journal page 2020), and the House adopted it by nonrecord vote, also on May 24 (Journal page 2445).

The HRO analysis of the bill appeared in the March 22 Daily Floor Report.

- 62 -

House Research Organization
ELECTIONS

Single-location primary elections and financing revisions
(HB 1665 by Hammond)

Died in House committee

HB 1665 would have required that primary elections for all political parties holding primaries be conducted jointly by one set of election officers at each polling place. A requirement that parties using the same building must conduct primaries in separate rooms would have been repealed. Co-judges of different parties would have been appointed, but one would have been designated as having law enforcement powers and duties. Each co-judge would have had exclusive authority in determining eligibility of voters, tabulating votes and delivering returns for their own party.

Counties would have provided election equipment and would have been reimbursed with state funds for actual transportation expenses. No charge would have been allowed for use or operation of central counting stations. Expenses of securing and operating polling places and compensation of personnel conducting the primary would have been paid with state funds.

Supporters of the bill said requiring single-location primaries would save the state nearly $4 million by reducing duplication of polling places and election workers. Trained election professionals would improve the efficiency of conducting primaries. Voter confusion about where to vote would be reduced, and turnout likely would improve. Making it easier for a few voters to vote in the primary of their choice would not constitute a partisan advantage.

Opponents said the bill would not save nearly as much money as was claimed. Most polling places already share buildings, and personnel cannot be reduced much without compromising service. In precincts where both parties do not now conduct primaries, the bill would actually increase costs. Requiring separate rooms for voting protects voters from harrassment by workers for the opposing party. The major purpose of the bill is to benefit the Republican party, which remains unable to mount its own primary in some parts of the state. Other opponents said some of the savings would result from shifting financial burdens to counties.

Legislative History: The House Elections Committee held a public hearing March 29 and referred the bill to subcommittee, which reported the bill favorably without amendments; no further action was taken. SB 450 by Krier, the companion bill to HB 1665, was scheduled for a March 8 hearing in the Senate State Affairs Committee, but no action was taken.
Campaign and officeholder finance
(HB 2178 by Hammond)

Died on House Floor

HB 2178 would have made a number of changes to regulation of campaign
and officeholder funds under Title 15 of the Election Code. These
include modification of the ban on contributions during legislative
sessions, more detailed reporting of political contributions, loans
and expenditures, increased penalties for late reports, modified
reporting provisions for small general-purpose committees, new
reporting requirements for individuals who contribute more than
$25,000 per year, and expanded authority for certain direct campaign
expenditures by corporations and trade associations.

Supporters of the bill said it would improve campaign finance
regulation by clarifying the intent of some provisions, increasing
disclosure in many areas and removing certain provisions that burden
filers without enhancing public knowledge. The bill represents a
carefully crafted response to campaign finance issues examined this
year by a task force of legislators and public members led by the
secretary of state.

Opponents said the bill would continue the unfortunate practice of
piecemeal amendment of law governing the nuts and bolts of the
democratic process. Despite, or perhaps because of, frequent
revisions, Title 15 is a complex web that is difficult to unravel for
filers who are not attorneys or certified public accountants. The
task force that met a few times this year did not take a comprehensive
look at current law concerning disclosure.

Legislative History: The House passed the bill by a nonrecord vote on
May 2 (Journal page 1287). The Senate amended the bill to add the
provisions of HB 3057 by Williamson, another campaign finance measure,
and passed it by voice vote on May 26 (Journal page 2516). The House
did not consider the Senate amendments.

The HRO analysis of HB 2178 appeared in the April 24 Daily Floor
Report.
Temporary absentee polling places  
(SB 443 by Johnson)

Died on House floor

SB 443 would have required counties with a population of 400,000 or more to establish at least one absentee polling place in each state representative district in the county. Counties with population of 100,000 to 399,999 would have been required to establish an absentee polling place in each county commissioner precinct. In counties with population of more than 2.4 million (Harris), two or more polling places in each justice of the peace precinct would have been required, but not to exceed the number of peace justices in each precinct. Commissioners courts could have restricted voting at each temporary branch to voters residing in that House district or commissioners' precinct.

Supporters of the bill said locating absentee polling places in districts and precincts that are drawn according to population would address concerns that voters in predominantly minority areas, whether by design or neglect, have been denied convenient access to absentee polling places. Increasing the number of absentee polling places would help all voters by alleviating long lines. The optional residency limitation would allow counties to save money spent on ballot printing. Allowing Harris County, which has 26 House districts, to continue to locate sites by justice precinct would make good administrative and economic sense.

Opponents said the bill would mandate site arrangements that could cost counties a lot of money without guaranteeing better service to voters. Fast-growing counties whose populations bear little relation to the last apportionment would be forced to waste resources by establishing absentee polling place in areas of sparse population. State representative districts are too numerous to allow cost-effective planning, and in some cases they are oddly shaped enough that many voters would not necessarily live close to their designated site. Moreover, neither provision would ensure an end to complaints about minority access. Other opponents said the special provision concerning Harris County needs clarification regarding whether Harris would be excluded from placing sites in each state representative district.

Legislative History: The Senate passed SB 443 by voice vote on April 26 (Journal page 995) after amending the bill to make separate provisions for Harris County. The bill was returned to committee by the House after a procedural point or order was raised on May 25 (Journal page 2554).

Voter registration at state agencies
(SB 1551 by Edwards)

Died in Calendars Committee

SB 1551 would have required that voter registration facilities be provided by the Department of Public Safety at its drivers license offices, by the Texas Department of Human Services at its assistance application offices, by public institutions of higher education at appropriate locations designated by their governing boards and by any other state agency designated by the secretary of state. Nonpartisan voter registration assistance, including routinely informing applicants or interested persons of the opportunity to register, would have been designated as part of the job function of appropriate state employees.

Supporters of the bill said it would make registering to vote more convenient, increasing voter participation and strengthening democracy. Persons who must visit state government offices to change or renew a drivers license or to apply for state assistance would be able to register at the same time. Routinely informing citizens of the opportunity to register when they are filling out other government forms would place little additional burden on state employees.

Opponents said the bill was unnecessary and could add to the cost of state government by distracting state employees from their other duties. Overzealous state employees might spend too much time away from their principal duties in convincing people to register. Voter registration by mail is relatively easy in Texas, and citizens have ample opportunities to register without adding to the burden of state government offices.

Legislative History: The Senate passed the bill by voice vote on May 17 (Journal page 1531). The House Elections Committee reported a committee substitute by 5-2 on May 22, adding public institutions of higher education to the offices where voter registration information would be provided. The House Calendars Committee took no action on the bill.

(On Dec. 21 Gov. Bill Clements issued an executive order (WPC-89-21) urging all state agencies and institutions of higher education to participate in the voter registration/education process and to designate a contact person to coordinate voter registration/education efforts with the Secretary of State's Office.)
Regulation of underground fuel storage tank installers
(HB 183 by Robnett)

Effective Sept. 1, 1989

HB 183 gives the Texas Water Commission (TWC) authority to license persons who install, repair, or remove underground fuel storage tanks, or who supervise such work on-site. An unlicensed person engaging in this work commits a Class A misdemeanor (maximum penalty a $2,000 fine and one year in jail). A fine of up to $2,500 for each day of the violation also may be assessed. Fees will be imposed to offset the cost of the licensing program, and will be deposited in the Underground Storage Tank Fund in the State Treasury. A nine-member Underground Storage Tank Advisory Committee will include experienced tank installers and representatives of the construction industry and the engineering profession.

Supporters of the bill said nearly 50,000 underground storage tanks in Texas now leak or soon will, posing a serious environmental hazard. Many of the problems are due to improper installation or repair. The EPA now requires owners/operators to certify that their equipment meets federal standards. Unless installers are state-certified, it is difficult to provide this certification. The fees would offset the cost of certification and discourage the unqualified from engaging in this activity. In the long run, proper installation and repair will prevent leaks and avoid costly clean-up operations.

Opponents said the licensing program would require that installers, often small businessmen, carry a large cost burden and discourage many from acquiring the education and expertise needed to undertake this sort of work. Nothing would prevent a person from taking the exam for a variety of contractors, who could then represent themselves as licensed. The commission has insufficient staff to police the entire state and inspect every installation. The licensing program would provide no recourse for victims of faulty installation or repairs.

Legislative History: The House amended the bill to make underground storage tank contractors subject to registration with the Texas Water Commission and to revise the composition of the advisory committee, then divided the question and passed the revenue-dedication provisions by 136-0 and the remainder of the bill by nonrecord vote on May 11 (Journal page 1672). The Senate approved a committee substitute that strengthened the installation and repair standards and the on-site supervisory requirements, altered the composition of the advisory board, and altered the the fee structure, then passed the bill by 28-1 on May 28 (Journal page 2821). The House concurred with the Senate amendments, approving the revenue dedication provisions by 139-1 and the remainder of the bill by nonrecord vote on May 29 (Journal page 3254).

The HRO analysis of the bill appeared in the May 8 Daily Floor Report.
State groundwater protection
( HB 1458 by Guerrero)

Effective Sept. 1, 1989

HB 1458 establishes as state policy that usable and potentially usable groundwater be protected, maintained and kept reasonably free of contaminants, and that the existing quality of groundwater not be degraded. An interagency Texas Groundwater Protection Committee will coordinate state agency actions regarding groundwater protection and develop and update a comprehensive groundwater protection strategy for the state. Public files are to be maintained on all cases of groundwater contamination resulting from actions regulated by state agencies.

Supporters of the bill said the policy statement regarding preservation of groundwater quality reflects a consensus by industry, agriculture and the Texas Water Commission and would send a strong message to the federal Environmental Protection Agency that Texas is serious about dealing with the demands on this vital resource. Establishing easily accessible files would facilitate the public's understanding of the problems the state faces in managing this critical resource.

Opponents said that interagency coordinating activities work well enough without creating additional regulations. The requirements of the bill would impose additional paperwork and personnel burdens on the agencies involved, costing the Texas taxpayer. Other Opponents said that the policy goal of restoring groundwater quality should be stated in more specific terms.

Legislative History: The House passed the bill by nonrecord vote on May 22 (Journal page 2247). The Senate amended the bill to authorize any agency represented on the Texas Groundwater Protection Committee to receive and spend federal funds on the development of management plans and to create the Texas Water Resources Coordinating Council, then passed the bill by voice vote on May 28 (Journal page 2936). The House refused to concur with the Senate amendments by nonrecord vote on May 29 (Journal page 3282), and a conference committee was appointed. The conference committee deleted the Texas Water Resources Coordinating Council provision. On May 29 the House adopted the conference committee report by nonrecord vote (Journal page 3455), and the Senate adopted it by voice vote (Journal page 3515).

The HRO analysis of the bill appeared in the May 19 Daily Floor Report.
State review of city water pollution abatement plans
(HB 1546 by T. Smith)

Effective Aug. 28, 1989

HB 1546 requires that a water pollution abatement program adopted by a city be submitted to the Texas Water Commission for review and approval. The commission is authorized to adopt rules setting the criteria for establishing such programs and for their review and approval.

Supporters of the bill said only about half the cities required to adopt these programs are complying, and the quality of the programs already adopted varies significantly. Granting review and approval authority to the commission would bring about uniformity. Texas should develop its own program before the EPA imposes federal controls.

Opponents said the bills would give the commission unlimited regulatory authority over local programs. It provides no means of appeal for a municipality that feels its program has been unjustifiably rejected by the commission. Smaller communities may not have the economic resources to prepare a detailed program such as the commission may require.

Legislative History: The House passed the bill by nonrecord vote on May 3 (Journal page 1320). The Senate amended the bill to authorize the commission to adopt rules for establishing minimum standards for municipal programs, then passed the bill by 21-3 on May 25 (Journal page 2223). The House on May 27 voted not to concur with the Senate amendment (Journal page 3060), and a conference committee was appointed. The conference committee adopted the House version. On May 29 the House adopted the conference report by nonrecord vote (Journal page 3537), and the Senate adopted it by 31-0 (Journal page 3600).

The HRO analysis of the bill appeared in the May 2 Daily Floor Report.
Petroleum tank cleanup fund and product delivery fee  
(HB 1588 by Schlueter, et al.)

Effective May 31, 1989

HB 1588 creates a remediation fund to pay for cleanup of groundwater and surface water pollution caused by leaks and spills from petroleum products storage tanks. The fund is composed of petroleum-product delivery loading fees based on the cargo capacity of the delivery vehicle. Petroleum products brought into the state to a storage facility pay a similarly based fee. Fees will be charged until the fund reaches a maximum of $125 million during fiscal 1990-91 and $100 million thereafter. The fees will be reintroduced when the fund drops to $50 million in fiscal 1990-91 and $25 million thereafter. A limit of $1 million per occurrence is placed on disbursements from the remediation fund. Tank owners are responsible for the first $10,000 of the cost of a cleanup and any costs exceeding $1 million. A five-member review board is established, headed by the executive director of the Texas Water Commission, to oversee the fund, decide payment claims, hear complaints, and establish qualifications for contractors who undertake corrective work on tanks.

Supporters of the bill said the EPA has established new regulations requiring owners and operators of petroleum storage tanks to provide at least $1 million in insurance coverage for each tank for cleanup operations in the event of a spill. Inflated premiums threaten the businesses of many of the 3,000 to 4,000 independent gas station operators in Texas. In addition, the available policies have a $25,000 deductible and a ceiling of $500,000 in coverage, half of what the EPA requires. About one-third of the estimated 150,000 tanks in Texas either leak now or may soon. The remediation fund would be the only effective way to handle the expected cleanup costs. The fees would be reasonable and fair, and although they might be passed through to the consumer, they would add only about $3 per year to a typical car owner's gasoline bill.

Opponents said those who create environmental hazards should pay for their actions. Since the tank fee would be passed through to consumers, the public would have to shoulder a large portion of the financial burden for cleaning up leaking underground tanks and pay a thinly disguised tax increase. The fund would bail out the big operators who can afford to pay for problems they create. The proposed regulations are not worth much without active oversight. More emphasis should be placed on preventing leaks before they occur. Any revenue from taxes related to motor fuels should go to the Highway Fund and the Available School Fund, as the Constitution directs.

Legislative History: The House amended the bill to include permit posting requirements, bonding requirements and penalties for refusing or hampering inspection of vehicles, premises or records, and for
avoiding fees, then passed the revenue portion of the bill by 138-1 and the remainder of the bill by 140-1 on April 14 (Journal page 820). The Senate amended the bill to exclude common carrier railroads from tank fees and from reimbursement from the fund and to provide that if a tank owner and operator are separate entities, both shall be liable for expenses for corrective action, then passed the bill by 31-0 on May 23 (Journal page 1974). The House initially concurred with the Senate amendments on May 25 by 143-1 on the revenue portion of the bill and 146-0 on the remainder of the bill (Journal page 2578), then on May 26 by nonrecord vote it reconsidered the vote and decided to not concur with Senate amendments (Journal page 2656), and a conference committee was appointed. The conference committee increased the fund maximum from $50 million to $125 million in fiscal 1990-91 and to $100 million thereafter and increased the fund base from $25 million to $50 million for fiscal 1990-91 only. The Senate adopted the conference report by 29-0 on May 28 (Journal page 2971), and the House adopted it by 148-1 on May 29 (Journal page 3207).

The HRO analysis of the bill appeared in the April 3 Daily Floor Report.
Aid to wastewater projects along the Rio Grande  
(HB 1862 by Cuellar)

Died in Senate committee  
(Effective Sept. 1, 1989, as part of SB 2 by Santiesteban)

HB 1862/SB 2 establishes a means of coordinating and financing the joint development of wastewater treatment plants along the Rio Grande by the state of Texas, the U.S. government and Mexico. Financial participation by Texas may be made available through the Water Loan Assistance Fund managed by the Texas Water Development Board (TWDB). The fund may be used for loans to federal agencies or state agencies and political subdivisions acting jointly on projects covered by an international contract or treaty to which the U.S. is a party. The TWDB must coordinate a review of plans and specifications of projects to determine that they meet state and federal water quality standards.

Supporters of the bill said as much as 30 million gallons of raw sewage is dumped into the Rio Grande every day from Nuevo Laredo, Mexico. The nearly 200 miles of the river downstream from Nuevo Laredo is seriously affected by this contamination. The Mexican government is unable to fund and build the needed facilities by itself. A joint program has been approved by the U.S. and Mexican governments. Delay will be costly. Texas would shoulder no more than 10 percent of the U.S. contribution to the $44 million cost of the project.

Opponents said the unstable Mexican economy makes it uncertain that Mexico would be able to live up to its obligations. Texas might end up building and maintaining a plant in Mexico financed almost entirely with Texas and U.S. funds. Texas already pays taxes to the U.S. government, so there is no reason for financial participation by Texas. Any such project should be built on the U.S. side of the river, as was done in a similar case in San Diego, Calif. Outside of the U.S. there would be no effective regulation of construction standards or over the quality of effluent released into the river. The maquiladora plants along the border are the primary reason for the huge population influx into the region, thus contributing significantly to river pollution -- the companies that have profited from these ventures should shoulder a portion of the burden they have helped create.

Legislative History: The House passed the bill by nonrecord vote on May 5 (Journal page 1485). The Senate on May 9 referred it to the Natural Resources Committee (Journal page 1205), where no further action was taken. The committee on March 30 had favorably reported the companion bill, SB 1545 by Zaffirini, et al. The provisions of HB 1862/SB 1545 subsequently were incorporated into SB 2 by Santiesteban, which became effective Sept. 1.

The HRO analysis of HB 1862 appeared in the May 3 Daily Floor Report.
Disposing of hazardous waste in municipal landfills  
(HB 2979 by Saunders)  

Effective Sept. 1, 1989

HB 2979 adds to the Solid Waste Disposal Act a policy statement that the storage, processing and disposal of hazardous waste at municipal solid-waste facilities poses a risk to public health and the environment, and that it is in the public interest to require that hazardous wastes be disposed of only in permitted hazardous industrial solid waste facilities. The bill allows small quantities of hazardous waste produced by conditionally exempt small-quantity generators to be disposed in municipal solid waste facilities only if authorized by the Texas Department of Health and the Texas Water Commission. A generator of Class I nonhazardous waste will be required to certify that waste sent to a municipal landfill is nonhazardous.

Supporters of the bill said it would establish in state law guidelines for small generators of hazardous waste and give the state greater control over hazardous waste in municipal landfills. Although federal guidelines for hazardous waste disposal are being observed in Texas, the state has no regulations for small-quantity generators. By requiring generators of nonhazardous waste to certify that the waste is not hazardous, the bill also would free operators of municipal landfills from any liability for illegal dumping of hazardous waste.

Opponents said that in spite of its policy statement that hazardous wastes should be eliminated from the state's landfills, HB 2979 would at best merely maintain the status quo. The original objective of the bill was to prohibit all hazardous wastes from municipal landfills, but the committee substitute allowed small quantity generators, which are responsible for most of the hazardous waste dumped in municipal landfills, to continue this practice. Even though the bill would put these waste generators under the direction of the Texas Water Commission and the Texas Department of Health, it would do little to reduce the hazardous waste now in municipal landfills.

Legislative History: The House passed the bill by nonrecord vote on May 16 (Journal page 1852). The Senate passed the bill on the Local and Uncontested Calendar by 31-0 on May 26 (Journal page 2400).

The HRO analysis of the bill appeared in the May 12 Daily Floor Report.
Regulating and providing aid to colonias
(SB 2 by Santiesteban, et al.)

Effective Sept. 1, 1989

SB 2 provides for financial assistance to economically distressed areas ("colonias") in qualifying counties whose residents cannot pay for adequate water and sewer services. (This financial assistance was contingent on passage of Constitutional Amendment No. 2 (SJR 5) which was approved by the voters on Nov. 7.) SB 2 authorizes the Texas Water Development Board (TWDB) to issue up to $25 million per year in general obligation bonds for the program, up to a total of $100 million. A greater amount can be issued with the approval of the Bond Review Board if justified by a risk to public health and safety. The TWDB will use bond proceeds to purchase local bonds from qualifying local entities. The county in which a project is located must guarantee repayment of the bond debt or finance a minimum of 2.5 percent of the total project cost or $500,000, whichever is less. The TWDB cannot waive repayment of more than 50 percent of the assistance it provides to a local entity unless the Texas Department of Health determines a nuisance dangerous to public health and safety exists in the area.

Counties eligible for the program include those bordering Mexico and those with a per capita income averaging 25 percent below, and an unemployment rate averaging 25 percent above, the state average for the prior three years.

Counties and cities where a project is located are required to adopt model rules, developed by the TWDB, the Texas Water Commission and the Texas Department of Health, establishing minimum standards for safe and sanitary water supply, sewer services, septic tanks, drinking water and other waste disposal systems in residential areas. An application for financial assistance must come from an area that has adopted the model rules.

SB 2 also contains provisions, not contingent on approval of Amendment No. 2 (SJR 5), authorizing counties to adopt regulations prohibiting new residential development in unincorporated areas unless the new development meets minimum standards for water and sewer service.

A provision in the bill also makes federal agencies eligible for water loan assistance funds for projects covered by international projects or treaties (see HB 1862).

Supporters of the bill said SB 2, with a relatively small investment of state money, would help remedy the deplorable conditions that as many as 200,000 residents of unincorporated subdivisions called "colonias" are facing, including the lack of adequate water and sewer facilities and the high incidence of hepatitis and other serious
illnesses. Misled by unscrupulous developers who promised them water and sewer systems, colonia residents are willing to pay for these services but lack the financial resources to make the needed improvements. SB 2 would also give counties more power to control any further development of colonia-type subdivisions.

Opponents said the state should not add to its already substantial debt to finance more water projects to benefit private developers and individual homeowners. Since the recipients of these loans would not likely be able to fully repay the loans, state funds would be used to make up the difference. Colonias are a local problem and should be dealt with on that level.

Legislative History: The Senate passed the bill by voice vote on April 5 (Journal page 659) after amending it so that only border counties, counties contiguous to border counties and those applying for financial assistance would have to comply with new subdivision development regulations in the bill (Journal page 658-9). After a House Natural Resources subcommittee reported the bill unfavorably, the full committee reported a substitute that made various changes, which included narrowing the eligibility requirements, prohibiting the development of tracts two acres or less without water service, instead of the Senate's five-acre limit, calling the financial assistance "loans" rather than "loans and grants," authorizing a financing fee if it was judged cost effective, eliminating references to direct appropriations, requiring areas applying for assistance to have 80 percent of their houses occupied by June 1, 1989, and authorizing districts to petition the water commission to convert irrigation use rights to municipal use rights. The House added various floor amendments, including specifying when the TWDB could waive repayment of assistance if it provided to a local entity, providing that the water financing fee would not be a debt of personal obligation, prohibiting the development of tracts one acre or less without adequate water and sewer service, stating that only border counties and those applying for assistance must adopt the model rules, removing a section of the bill that referred to irrigation and municipal water rights and making the ability to pay a consideration in decisions concerning financial assistance and fees. The House passed the bill as amended by nonrecord vote, four members recorded voting nay, on May 27 (Journal page 2917). The Senate concurred with the House amendments by 30-0 on May 28 (Journal page 2897).

The HRQ analysis of the bill appeared in the May 26 Daily Floor Report.
Establishing a Texas artificial reefs program  
(SB 5 by Brown)  

Effective May 1, 1989

SB 5 establishes an artificial reef program to be overseen by the Texas Parks and Wildlife Department. The department will develop a state artificial reef plan and maintain and monitor artificial reefs. The reefs must enhance and conserve fishery resources, facilitate use by commercial and recreational fishermen, minimize conflicts among competing water uses, and minimize environmental and health and safety risks. All funds for the development of these reefs will come out of a special fund. The state will not be liable for damages caused by an activity required under the terms and conditions of a permit for an artificial reef.

Supporters of the bill said it would provide an environmentally sound alternative to removing used-up oil rigs from Texas waters, which can be extremely costly. Artificial reefs attract a variety of aquatic life and thus provide rich opportunities for sports and commercial fishermen. The program will be financed not from general revenue, but from private donations. In other states, oil companies have donated to artificial reef funds one-half of the money saved by not having to remove rigs.

Opponents said SB 5 could allow oil companies to litter the ocean with platforms. The number of used-up oil rigs is expected to increase dramatically over the next decade, which could lead to huge maintenance costs if these rigs are turned into reefs. Even though the bill would relieve the state of liability, these reefs still would raise a variety of other liability concerns.

Legislative History: The Senate amended the bill to stipulate that all program funds must come from the artificial reef fund, then passed the bill by 31-0 on Feb. 15 (Journal page 257). The House substituted a bill that clarified the rulemaking authority of the Texas Department of Parks and Wildlife, deleted references to a national artificial reef plan, and deleted the requirement that all funds come from the state artificial reef fund, then passed the bill on the Local and Consent Calendar on April 20 (Journal page 1052). The Senate concurred with the House amendments by 30-0 on April 24 (Journal page 1081).
Texas Rivers Protection System  
(SB 370 by Santiesteban)

Died in Calendars Committee

SB 370 would have established a Texas Rivers Protection System designed to preserve, protect and enhance the natural qualities, scenic beauty, historical values and ecological regimens of protected river systems. Three river segments would have been designated for protected status, and four would have been designated for further study and possible inclusion.

The system would have been administered to protect both the rights of owners of land adjacent to the protected river segments and of the public to navigate these segments, and to conserve aesthetic, archaeological, geological, botanical and other natural and physical features and resources. SB 370 would have prohibited channelization -- changing a natural stream into a man-made ditch or canal with channels to accelerate runoff, realign the stream or fill a reservoir -- within the boundaries of protected river segments.

Supporters said the bill would protect certain scenic river segments from destruction brought about by population growth and overdevelopment. It would balance the interests of riparian landowners by including tough litter and trespassing laws, and of the public by stressing river conservation and management and by improving river access. Both landowners and the public would have input into the management of protected river segments and into the study and possible protected designation of additional river segments.

Opponents said the bill would restrict use of land by its owners. By promoting recreational use, it would increase trespassing and litter on the private property along these river segments, which would interfere with the landowners' peaceable enjoyment of their property. SB 370 could dry up potential sources of water for drinking and irrigation and block future flood control projects.

Legislative History: The Senate amended the bill to reduce the number of river segments designated for protection under the bill from seven to three and designating the remaining four for further study and possible inclusion, then passed the bill by voice vote on April 19 (Journal page 839). The House Environmental Affairs Committee amended the bill to protect rights relating to existing private property and use of private property (including bridges and trestles), then reported the bill favorably by 7-1 on April 25. The bill was sent to the House Calendars Committee, which took no further action.
Coding plastic containers for recycling
(SB 444 by Armbrister)

Effective Sept. 1, 1989

SB 444 requires that plastic bottles and containers be marked with a symbol indicating which resin or resins were used to make the container. The symbols must conform to designs specified by the bill. Anyone who fails to label plastic containers following the guidelines in the bill will be subject to a $500 fine for each violation. The labeling requirement will apply to plastic containers manufactured or distributed after July 1, 1991.

Supporters of the bill said SB 444 would reduce the amount of plastic in the state's landfills and help launch a plastics recycling industry. Labeling the containers will make consumers aware that plastic can be recycled and encourage them to recycle rather than discard these containers.

Opponents said the campaign to label plastics should remain voluntary. Changing the molds used to make plastic containers to incorporate these symbols would be expensive, and manufacturers should be able to decide whether, or when, to make these changes without interference by the state.

Legislative History: The Senate passed SB 444 by 30-0 on the Local and Uncontested Calendar on March 30 (Journal page 598). The House passed the bill by nonrecord vote on April 13 (Journal page 965).

The HRO analysis of the companion bill, HB 985 by Holzheuser, appeared in the April 13 Daily Floor Report.
No sunset review for river authorities
(SB 631 by Montford)

Effective Aug. 28, 1989

SB 631 removes river authorities from the sunset review process, and authorizes the Texas Water Commission to develop rules necessary to supervise the river authorities and water districts. The commission's jurisdiction over water authorities will be limited to water-related matters. The commission will report to the governor, the lieutenant governor and the speaker any findings related to river authorities.

Water districts and river authorities also will be required to provide wholesale consumers with the opportunity to review and comment on the district or authority's annual budget as it applies to their services.

Supporters of the bill said it would allow the state to regulate river authorities every day, rather than every 12 years under the sunset review cycle. Since river authorities receive no state funds, they have not been accountable to the state until recently. Placing the river authorities under the jurisdiction of the water commission would enhance the Legislature's control over river authorities and ensure that they are accountable to the state.

River authorities are regional entities and should not be subject to the same sunset review process required of state agencies. By its own projections, the sunset review commission was unequipped to do an effective review. The river authorities could not have been dissolved under sunset, and the only change that could have been made was to replace the board of directors. This would have given unfair political power to the governor when the agency was reviewed in 1991. The possibility of the dissolution of the board could have also threatened the bond ratings of river authorities.

Opponents said river authorities have a history of mismanagement and abuse, and the threat of sunset review has led them to dramatically improve their operations since 1985. This powerful reform incentive should not be removed. Putting one water bureaucracy in charge of another would invite abuse, as the water commission's current involvement in revolving-door controversies illustrates.

Legislative History: The Senate amended SB 631 to exempt any water quality standards adopted by a river authority from Water Commission rules if the standards meet or exceed commission standards, then passed the bill by voice vote, four members recorded voting nay, on March 28 (Journal page 574). SB 631 was scheduled for second reading in the House on May 3 but was returned to committee on a procedural point of order (Journal page 1317). When the bill was considered again, the House adopted an amendment specifying that water commission supervision of river authorities does not apply to electric utilities.

- 79 -

House Research Organization
and adding river authorities to portions of the bill involving water districts, then passed it by nonrecord vote, two members recorded voting nay, on May 9 (Journal page 1533). The Senate concurred with the House amendment by record vote, three members recorded voting nay, on May 10 (Journal page 1281).

The HRO analysis of the bill appeared in the May 3 and May 8 Daily Floor Reports.
Conversion to natural gas use
(SB 769 by Caperton)

Effective Aug. 28, 1989

SB 769 requires the Texas Air Control Board to adopt rules to encourage the use of natural gas and other alternative fuels in vehicles and boilers. It applies to metropolitan areas with populations of at least 350,000 that have not met federal air quality standards, which include the Houston, Dallas—Fort Worth, El Paso, and Beaumont—Port Arthur areas. Transportation departments in these areas have to convert their vehicles to run on compressed natural gas or another alternative fuel that would lower hazardous emissions. Thirty percent of the fleet must be converted by Sept. 1, 1994 and 50 percent converted in two more years. If a Texas Air Control Board review by Dec. 31, 1996 determined that the program was reducing emissions in an area, 90 percent of the fleet would have to be converted by Sept. 1, 1998. A clean fuel incentive surcharge could be levied on fuel oil used in industrial and utility boilers in these designated areas of the state during certain times of the year. SB 769 makes exceptions from the mandatory conversion schedule and the fuel surcharge-based financial and supply constraints.

Supporters of the bill said it would begin a process that could make natural gas both an economic and environmental boon to the state. Increasing the consumption of natural gas by just a trillion cubic feet over five years could create between 50,000 to 100,000 new jobs and more than $3 billion in personal income. This consumption of natural gas could also increase the royalty revenues from public lands and improve the economy. Fifty-two percent of the population, representing 21 counties, live in areas of state that do not meet federal air quality standards. Natural gas is a clean-burning fuel that would significantly reduce harmful emissions in these areas. By providing for a gradual conversion of vehicles and providing exemptions based on financial and supply constraints, the bill outlines a firm yet reasonable move toward better air quality.

Opponents said the cost of converting vehicles is high in some cases and uncertain in others. The technology to reduce these costs is still in question. A program to increase the use of natural gas could also increase its price, offsetting some of the initial benefits of the change. Some entities that have converted vehicles to use natural gas have experienced problems with acceleration, which could raise safety concerns for larger transit vehicles operating on highways.

Legislative History: The Senate passed the bill by voice vote on April 21 (Journal page 911). The House amended the bill and passed it by nonrecord vote, two members recorded voting nay, on May 19 (Journal page 2100). The Senate concurred with the House amendments by voice vote on May 28 (Journal page 2933).

The HRO analysis of the bill appeared in the May 18 Daily Floor Report.

- 81 -

House Research Organization
Creating underground water conservation districts
(SB 1212 by Santiesteban)

Effective Sept. 1, 1989

SB 1212 amends Chapter 52 of the Water Code to clarify the relationship between underground water management areas and underground water conservation districts. It grants the Texas Water Commission (TWC) exclusive jurisdiction over the creation of management areas and water districts. Underground management areas and water conservation districts can be created by petitioning the TWC, after which notice and hearings requirements apply. A majority vote of the residents of a proposed water conservation district is required to ratify creation of a water district. A proposal for the issuance of bonds can be included in such an election. An area adjacent to a water conservation district can petition to be included in the district, and two or more districts can consolidate. Notification, hearings, and ratification by the voters is required.

Supporters of the bill said the existing procedures for creating an underground water conservation district by petition have become cumbersome since the 1985 restructuring of the Texas Water Commission and the Texas Water Development Board. Streamlined procedures are needed to allow an efficient and consistent response to public needs.

Opponents said too much additional authority would be added to the water commission's already extensive powers. No means of appeal of the commission's decisions would be provided.

Legislative History: The Senate passed the bill by 31-0 on May 20 (Journal page 1736). The House amended the bill to provide a review process in the event of complaints concerning inadequate protection of groundwater by a district, then passed the bill by nonrecord vote, two members recorded voting nay, on May 27 (Journal page 2926). The Senate did not concur with the House amendments by voice vote on May 28 (Journal page 3196), and a conference committee was appointed. The conference committee retained the House version's provision for arbitration when water districts overlap, refined the definition of groundwater that is wasted, and modified the water commission's latitude when creating Chapter 52 general law water districts. On May 29 the Senate adopted the conference report by voice vote (Journal page 3600), and the House adopted it by nonrecord vote (Journal page 3588).
Regional plans to protect endangered species
(SB 1461 by Brown)

Effective Aug. 28, 1989

SB 1461 permits the Department of Parks and Wildlife to participate with local governments in regional habitat conservation plans that follow U.S. Fish and Wildlife Service regulations and are submitted for that agency's approval. Local governments may enforce approved plans outside their boundaries but within their extraterritorial jurisdiction and may require information about endangered species in a specific habitat. They also may acquire land to protect habitat.

Supporters of the bill said it would help protect endangered and threatened species in different regions, without encouraging isolated pockets of conflicting conservation rules. Regional habitats could be better managed than city- or countywide areas because wildlife movement is not confined to particular localities. SB 1461 would give cities and counties full participation in planning habitats and would facilitate more rapid progress in establishing protected areas for threatened species. The bill provides an acceptable compromise for environmentalists and developers.

Opponents said the bill does not address what would happen if no plan were devised by a local government or if Parks and Wildlife refused to participate in a regional conservation plan. Endangered and threatened species could remain unprotected, as they often are now. Federal agencies cannot act quickly enough to place threatened wildlife on the endangered species list, and so local governments should be permitted to act to save their surroundings without having to wait on federal action. Other opponents said the compromise struck in this bill is undermined by HB 2884 by T. Smith (effective Aug. 28, 1989). That bill, by allowing developers to opt out of the extraterritorial jurisdiction of the Village of Bee Cave, would leave unclear which local government would be entitled to enforce a regional habitat plan to protect the golden-cheeked warbler.

Legislative History: The Senate passed the bill by voice vote on May 4 (Journal page 1139). The House passed the bill by nonrecord vote on May 18 (Journal page 1999).

Solid waste management plans and fees
(SB 1519 by Brooks)

Effective Sept. 1, 1989

SB 1519 requires the Texas Department of Health (TDH) to develop a plan for all solid waste under its jurisdiction and to update the plan at least every five years. Counties, multi-city regions, and cities also will be required to develop waste management plans, provided the funds are available from TDH.

Effective Jan. 1, 1990, TDH is to charge a solid waste disposal fee and an annual registration fee for waste disposal carriers. TDH is to use the money collected from these fees to fund permit and enforcement programs and the state solid-waste management programs.

Supporters of the bill said it would allow TDH to manage solid waste disposal by requiring counties and local governments to contribute to, and participate in, the state's solid waste disposal process. Because of a lack of funding and little support from local governments, the state has been criticized for lack of enforcement and regulation of solid waste management. SB 1519 would strengthen this system by requiring local governments to participate in solid waste management and imposing fees to generate funds for enforcement of regulations, and to provide 50/50 matching grants to aid local governments in developing solid waste management plans.

Opponents said SB 1519 would transfer much of the responsibility for solid waste management from the state to local governments, which are not equipped to handle this load. The state should provide more funding for the TDH solid waste management program, rather than having cities impose and collect taxes to remit to the state for its programs.

Legislative History: The Senate passed the bill on the Local and Uncontested Calendar by 31-0 on May 4 (Journal page 1121). The House adopted a committee substitute that imposed fees on solid waste disposal, then passed the bill by nonrecord vote, one member voting nay, on May 27 (Journal page 2923). The Senate concurred with the House amendment by voice vote on May 28 (Journal page 3055).

Issuance of $500 million in water development bonds
(SJR 5/SB 61 by Montford)

Approved by voters Nov. 7, 1989

SJR 5 amends the Texas Constitution to authorize the Texas Water Development Board to issue an additional $500 million in water development bonds. Of the amount, $250 million will be used for financial assistance for water conservation and development projects, $200 million for financial assistance for wastewater projects and $50 million for flood control projects. The Legislature may authorize use of up to 20 percent of the bonds ($100 million) for subsidized loans and grants to provide retail and wholesale water and wastewater facilities to economically distressed areas ("colonias"). SB 61 authorizes issuance of the bonds, contingent on voter approval of SJR 5. (SB 2 by Santiesteban, implements the provisions concerning aid to the "colonias.")

Supporters of the proposal said it would continue and expand the comprehensive approach to development and conservation of the state's water resources based on the 1985 State Water Plan. The low-interest, tax-exempt bonds would be used primarily to back loans to small communities. Up to $100 million would be used to help provide water and sewer service to the impoverished "colonias" along the Mexican border, where local communities and residents cannot afford to clean up the mess made by unscrupulous developers who failed to provide promised services. The bill would further the goal of developing regional systems to serve a number of communities. Local entities and political subdivisions would pay the debt service, not the state.

Opponents said less than four years ago the state asked for $980 million in water bonds, and less than two years ago it asked for another $400 million. Now it is asking the voters to approve yet another $500 million in bond debt. Continued bond financing of these water projects would only add to the state's soaring debt. Too many public programs compete for bond financing, including prison construction, mental health and public education, to allow water interests to go to the well once more. The colonias clean-up program would allow water bonds to be used for grants rather than loans, undermining the pay-as-you-go nature of the program.

Legislative History: The Senate adopted SJR 5 by 30-0 on April 11 (Journal page 725). The House adopted a substitute, adding the provisions for up to $100 million in loans and grants for water and sewer facilities serving the "colonias" and for distribution of water to delivery points and deleting a provision allowing financing of retail water transportation, including indoor plumbing systems, then adopted SJR 5 by 137-2 on May 25 (Journal page 2501). The Senate concurred with the House amendments by 30-0 on May 28 (Journal page 2948). The voters approved SJR 5 (Amendment No. 2) on Nov. 7.
The Senate passed SB 61 by voice vote on April 12 (Journal page 725). The House added a technical amendment, then passed SB 61 by nonrecord vote, one member recorded voting nay, on May 27 (Journal page 2909). The Senate concurred with the House amendments by voice vote on May 29 (Journal page 3255).

Issuance of $200 million in agricultural water bonds
(SJR 44/SB 1117 by Montford)

Approved by voters Nov. 7, 1989

SJR 44 amends the Texas Constitution to repeal the Nov. 5, 1989, expiration date on the authority of the Texas Water Development Board (TWDB) to issue up to $200 million in general obligation bonds for agricultural water conservation. SB 1117 authorizes the TWDB to issue the $200 million in water development bonds for the Water Conservation Fund. The TWDB may loan the proceeds directly to political subdivisions and to conservation and reclamation districts. Loans are to be used for improving irrigation efficiency and for converting irrigated land to dryland farming and related projects. Districts with the statutory authority may make loans to individual borrowers for use on private property. If an individual defaults on a loan, the lender district is responsible for foreclosure, and the state will assume 50 percent of the outstanding debt after liquidation of the secured assets.

Supporters said that because about 70 percent of the water used in Texas for irrigation is groundwater, every means should be used to conserve this limited and critical resource. The pilot program implemented after adoption of the 1985 comprehensive state water plan has been a success. Eliminating the expiration date on issuing bonds to finance the water conservation program would allow it be expanded to all parts of the state.

Opponents said the pilot program funded too few programs to judge its worth. Demand for the water-conservation loan program is nowhere near the $200 million level. The state's ability to issue bonds for more important and pressing concerns should not be tied up until it can be shown that demand warrants it.

Legislative History: The Senate adopted SJR 44 by 30-0 on April 3 (Journal page 630). The House adopted SJR 44 by 142-0 on May 19 (Journal page 1995). The voters approved SJR 44 (Amendment No. 18) on Nov. 7.

The Senate passed SB 1117 by 30-0 on April 3 (Journal page 630). The House amended the bill to require the TWDB to supply the Bond Review Board with an estimate of demand for water conservation loans and by adding collateral requirements for loans to individual borrowers, then passed the bill by 133-0 on May 20 (Journal page 2130). The Senate concurred with the House amendments by 31-0 on May 25 (Journal page 2273).

The HRO analysis of SJR 44 and SB 1117 appeared in the May 18 Daily Floor Report.
Postadoption services
(HB 1806 by Collazo)

Effective Aug. 28, 1989

HB 1806 permits the Department of Human Services to provide postadoption support services to adoptees and their adoptive families, including financial assistance and counseling services. The bill establishes the Postadoption Services Advisory Committee, which is charged with monitoring postadoption services and reporting to the Legislature. The bill also lists additional facts that must be included in the department's report on a child who is to be adopted, requiring that the adoptive parents receive the full report, rather than a summary, and that they receive the report before their first meeting with the child. It imposes upon the person or entity placing a child for adoption the duty to edit records and information to protect the identity of the biological parents and any other person whose identity is confidential.

Supporters of the bill said that the state must do more to help adoptees and their families after the adoption has taken place. Many children eligible for adoption have had negative experiences that may require future counseling and other kinds of assistance in order to settle into a normal family. Families are less likely to adopt these hard-to-place children if they cannot afford to provide the special services these children need.

No apparent opposition

Legislative History: The House passed the bill on the Consent Calendar on May 5 (Journal page 1475). The Senate amended the bill and passed it on the Local and Uncontested Calendar by 31-0 on May 26 (Journal page 2395). The House concurred with the Senate amendments by nonrecord vote on May 27 (Journal page 2961).
Child-support law revisions
(SB 67 by Krier, first called session)

Effective Nov. 1, 1989, unless otherwise noted

SB 67 revises various child-support provisions in the Family Code, the
Human Resources Code and the Health and Safety Code. Effective
Sept. 1, 1989, the attorney general may initiate actions to adjust,
modify and enforce child-support orders and may review child-support
awards. The attorney general is entitled to notice of suits affecting
the parent-child relationship that seek to establish, modify or
enforce a support right assigned to the attorney general.

Effective Sept. 1, 1989, child-support guidelines must be reviewed
every four years.

In suits affecting the parent-child relationship, the court must
require that health insurance be provided for a child. If a court has
appointed a managing conservator to a child, an insurer may pay the
child's group health-insurance benefits to the conservator on behalf
of the child.

Supporters of the bill said it would ensure that Texas continues to
receive federal funds for child-support enforcement and is not
penalized for failing to comply with federal guidelines.

No apparent opposition.

Legislative History: The Senate passed the bill by voice vote July 11
(Journal page 265). The House adopted a floor amendment that added
various provisions, including guidelines for suits affecting a
parent-child relationship and for enforcement procedures, a
requirement in these suits that health insurance be provided for the
child, and a provision allowing group health insurance benefits to be
paid to a child's managing conservator (Journal page 304-322), then
passed the bill by 119-0 on July 14 (Journal page 347). The Senate
concurred with the House amendments by voice vote on July 16 (Journal
page 331).

The HRO analysis of the bill appeared in the July 14 Daily Floor
Report.
Family violence protective orders and enforcement
(SB 171 by Krier)

Effective Sept. 1, 1989

SB 171 amends various provisions that govern the application for family-violence protective orders and their issuance and enforcement. Certain specific information and warning language must be included in notices to respondents to applications for protective orders. Prosecuting attorneys must decide whether to file for protective orders without regard to whether the applicant files a criminal complaint. It shortens from 20 to 14 days the time within which hearings on protective orders must take place, except in counties with a population of one million or more (Dallas, Harris).

The bill permits protective orders against direct or indirect communication in a threatening manner or any other communication on a finding of good cause. It increases criminal penalties for violating protective orders. Courts may exclude persons from their own residences in an ex parte proceeding if the applicant for the protective order files a sworn affidavit and appears in person to testify. Successful applicants may ask for a police escort home to inform the person of an order of exclusion.

Supporters of the bill said increasing penalties for violations of protective orders would make it harder for the perpetrators of family violence to abuse and harass relatives and others protected by the family-violence laws. SB 171 also would require prosecuting attorneys to act on all credible requests to file for protective orders; in some counties, authorities have not been responsive to these requests.

No apparent opposition

Legislative History: The Senate passed the bill by voice vote on March 3 (Journal page 362). The House added various amendments, including one adding a more elaborate definition of "family violence," then passed the bill by nonrecord vote on May 27 (Journal page 2919). The Senate concurred with the House amendments by voice vote on May 29 (Journal page 3330).

Child support and visitation guidelines
(SB 188 by Brown)

Effective Sept. 1, 1989

SB 188 codifies guidelines for courts to use when issuing orders for child support and visitation. It sets out a detailed "standard possession order," which specifies presumptively reasonable periods of possession. Parents may agree to different terms, but the standard order governs if the parents cannot agree. It provides dates or identifiable days and specific hours at which possession begins and ends, requires one parent to give the other written notice to set up summer vacation schedules and states rules about timeliness of notice and length and frequency of possession. Existing visitation orders that differ substantially may be modified if the change is in the child's best interest. The bill also permits modification of an existing order if it was entered after Sept. 1, 1987 and made only one parent a managing conservator.

SB 188 also supersedes the child support guidelines issued by the Texas Supreme Court in 1987 and all existing local rules and replaces them with guidelines that apply in all suits affecting the parent-child relationship. The new guidelines differ from the court's by fixing flat percentages of net resources as support payments, by permitting a court to consider all of the income of the person receiving support (the "obligee") and by defining "net resources" to exclude amounts allowable as depreciation under federal tax law. The guidelines permit consideration of any factor that affects the ability to pay support, including income attributable to assets not currently producing income, and whether the person required to pay support (the "obligor") is intentionally unemployed or underemployed. Obligors must provide health insurance for the child or the support amounts will be increased. Orders issued in accordance with the guidelines will be presumed to be reasonable and in the best interest of the child; however, courts may approve agreements between parties setting different amounts and may set a different amount if justified.

The new guidelines can provide the basis for modification of existing support orders that are not in substantial compliance. Courts may not, however, modify an order because of the birth or adoption of another child, or because of a history of voluntarily providing more support than required or an increase in the standard of living of the obligee. Neither is a court permitted to modify an existing support order based on the addition of a new spouse's financial resources to the net resources of either the obligee or the obligor.

Supporters of the bill said it would provide badly needed predictability and stability in emotionally charged matters of child support, possession and access. The visitation guidelines are meant to provide rules for people who cannot agree; they will not apply if
parents are able to negotiate an arrangement more suitable for them. The Texas Supreme Court was charged with drafting these guidelines but it has failed to act.

The court also has failed to review the results of its child support guidelines or to update them. The range of percentages has been eliminated because it only encouraged parties to fight harder to shave off or add on percentage points. There is no provision requiring a court to ignore an obligee's income if it is less than $1,600; this is an unrealistic distinction.

Opponents said the child support guidelines would create additional hardship for families already broken apart. The Supreme Court's range of percentages already was too low, yet SB 188 would chop back to an arbitrary, flat rate the amount that can be awarded. The visitation guidelines attempt to dictate behavior in great detail. Such rigid rules are bound to create more fighting than ever.

Legislative History: The original version of SB 188 contained only visitation guidelines. The Senate passed the bill by voice vote on March 2 (Journal page 362). The House added the child-support guidelines and made the visitation guidelines mandatory rules for courts to follow, then passed the bill by nonrecord vote on May 5 (Journal page 1487). The Senate concurred with the House amendments by 19-4 on May 12 (Journal page 1344).

The HRO analysis of the bill appeared in the May 4 Daily Floor Report.
Limiting proof of common-law marriage
(SB 307 by Glasgow/HB 588 by P. Hill)

SB 307 Effective Sept. 1, 1989/HB 588 Died in the Senate

SB 307 requires that any legal proceedings to establish a common-law marriage begin within one year of the end of the cohabitation, or by Sept 1, 1990, whichever is later. HB 588 would have eliminated common-law marriage as of Jan. 1, 1990.

Supporters of eliminating common-law marriage said it would end confusion about a couple's marriage status and help prevent unintentional bigamy and its consequences. SB 307 would require that a partner prove within one year after the relationship ended that a common-law marriage had existed. As cohabitation by unmarried persons has increased, a clear time limit on proving a common law marriage is necessary to prevent widespread abuse of the law, such as trying to claim a former partner's income as community property years later.

Opponents said the bill would set too short a time period for establishing a common-law marriage. Many people, especially women, have been protected through rights gained as common-law spouses. The bill would effectively block deserving spouses from claiming their community property and survivorship rights unless they begin to prove common-law marriage within only one year of a break-up.

Legislative History: The House passed HB 588, which would have eliminated common-law marriages as of Jan. 1, 1990, on May 5 (Journal page 1486). The Senate amended the bill to require cohabitants to begin proof of common-law marriage proceedings within a year of the couple's break up and also added a provision authorizing spousal maintenance payments in limited cases (see SB 330 by Caperton), then passed it by voice vote on May 28 (Journal page 2998). The House refused to concur with the Senate amendments by nonrecord vote on May 29 (Journal page 3263), and a conference committee was appointed. The conference committee deleted the spousal maintenance amendment, and the Senate refused to adopt the conference report by 8-20 on May 29 (Journal page 3620).

SB 307, making technical corrections relating to marriage laws, was amended in the House to repeal, as of Sept. 1, 1990, existing law allowing common-law marriages, then was approved by nonrecord vote on May 26 (Journal page 2711). The Senate refused to concur with the House amendment by voice vote on May 27 (Journal page 2755, and a conference committee was appointed. The conference committee added the time limit on proving common-law marriages. On May 29 the Senate adopted the conference report by voice vote (Journal page 3597), and the House adopted it by nonrecord vote (Journal page 3540).


- 93 -

House Research Organization
Post-divorce spousal maintenance
(SB 330 by Caperton, et al.)

Died on the House floor

SB 330 would have authorized maintenance payments for either spouse after divorce, if the marriage had lasted at least 10 years and the dependent spouse lacked adequate property to provide for minimum needs and was incapable of self-support because of a disability, inadequate job skills, or caring for a young or disabled child at home. Maintenance could have been ordered only for the period of time, not to exceed three years, needed to obtain either employment or a marketable skill; awards could not have exceeded the lesser of $1,500 per month or 20 percent of the paying spouse's gross monthly income. Maintenance would have ended if the dependent spouse remarried or cohabitated with another person. Unmarried cohabitants could not have obtained maintenance.

Supporters of the bill said its narrow scope would provide only for spouses who are in real need. Women homemakers who have passed up job opportunities to care for home and children often have great difficulty when divorce throws them onto the job market; temporary spousal maintenance would help ease this transition. The community property system has proved inadequate to provide post-divorce support for homemakers, who often wind up on public assistance rolls. Texas is the only community property state, indeed, the only state in the nation, that completely denies spousal support after divorce.

Opponents said Texas has a community property system that upon divorce partitions money, property, and value added to separately held property. Courts have the discretion to divide property equitably and take account of one spouse's economic need. Alimony is unnecessary because most wives bring home their own paychecks. The absence of alimony in Texas is attractive to out-of-state businesses.

Legislative History: The Senate passed the bill by voice vote on April 18 (Journal page 8230). The House Judicial Affairs Committee reported the bill favorably with a substitute. When the House considered the bill on second reading on May 25, a procedural point of order was raised and sustained (Journal page 2556), and the bill was returned to committee, where no further action was taken.

The provisions of SB 330 were added as a Senate committee amendment to HB 588 by P. Hill, but that bill died after the Senate refused to adopt the conference committee report on the bill on May 29.


- 94 -

House Research Organization
State services for runaways  
(SB 1698 by Zaffirini, Tejeda)  

Effective Sept. 1, 1989  

SB 1698 requires the Department of Human Services (DHS) to provide services to runaways, truants and children at risk of running away from home or at risk of abuse or neglect as well as to the families of these children. The bill broadens the definitions of abuse and neglect, and requires DHS to investigate all reports of child abuse committed by a person responsible for the child's care.

DHS must provide services for abuse victims, for children between the ages of 7 and 10 who have engaged in delinquent conduct, and for the families of these children. A court may order the parent or guardian to use these services.

Supporters of the bill said it would establish programs designed to more effectively serve abused and neglected children and their families and would strengthen statutory provisions involving abuse and neglect. It would establish a program to provide short-term residential care, counseling and other services to runaways. The bill also would involve families in these programs, which experts see as an extremely important element in treating troubled youth.

Opponents said these programs should be established at the local level, rather than through the state bureaucratic maze of DHS. Some of the provisions of the bill, such as broadly requiring parents to take part in treatment programs, would be ineffective. The original fiscal note on the bill was substantially higher and was reduced because DHS changed its interpretation of the bill, but there is reason to suspect the program may cost more than the $3 million fiscal note suggests.

Legislative History: The Senate passed the bill by 27-0 on April 28 (Journal page 1057). The House amended the bill to clarify the definition of abuse and designate the state Capitol as a safe place for runaways, then passed the bill by voice vote on May 26 (Journal page 2723). The Senate concurred with the House amendments by voice vote on May 28 (Journal page 3219).

Nonbinding referendum on a state lottery  
(HB 33 by Wilson, et al.)

Died on the House floor

HB 33 would have placed on the Nov. 7, 1989 ballot a nonbinding referendum proposition, to be voted for or against: "The establishment of a state lottery the revenue of which must be used for the support of state government." The referendum would have had no binding effect.

Supporters of the bill said a nonbinding referendum would have given the people of Texas an opportunity to directly indicate how they feel about a state lottery. Lotteries are a popular way to generate a large amount of revenue without raising taxes. More than half the states operate lotteries. Opinion polls have indicated for years that an overwhelming majority of Texans favor a lottery. Those who oppose a state lottery would not have to participate.

Opponents said a state lottery would be an unreliable and inefficient way to raise revenue that would put the state in the immoral position of promoting gambling. A referendum would allow the Legislature to abdicate its responsibility to make an independent assessment of the suitability of a lottery in Texas. The bill was an attempt to put the lottery on the ballot by a majority vote of the Legislature, circumventing the requirement of a two-thirds vote to propose a constitutional amendment. If lottery proponents wish to hold a nonbinding referendum on the issue, under current law they seek to persuade the state party executive committees to place such a referendum on their statewide primary ballot, rather than have the Legislature enact a special law.

Legislative History: The House rejected HB 33 on second reading on May 17 by 59-84 (Journal page 1957).

The HRO analysis of the bill appeared in the May 16 Daily Floor Report.
Gambling on cruise ships originating in Texas
(HB 141 by Hurv)

Effective Sept. 1, 1989

HB 141 eliminates the requirement that a ship sailing to or from a Texas port make a foreign-port stop in order for on-board gambling to be permitted outside of state territorial waters. The Texas Department of Public Safety is authorized to conduct criminal history checks on anyone who owns, has a financial interest in, operates, or is employed by, the operator of a vessel in this state, regardless of whether the vessel is in violation of the law. Municipalities may impose safety regulations and conduct safety inspections on ships operating out of their jurisdiction.

Supporters of the bill said it would boost the sagging economies of Texas' port cities and increase state sales tax revenues. In Galveston alone, cruise ships that offer gambling are projected to bring in $67 million per year in additional tourist dollars, with about half going to the local economy. The state could expect to collect about $2 million per year in additional sales taxes. This revenue would be generated without the drawbacks of casinos and other land-based operations, since the gambling could take place only outside of Texas waters. Gambling would be only one amenity offered on these cruises, which also offer dining, entertainment and swimming.

Opponents said the bill would undermine anti-gaming laws and could lead to gambling inside Texas. While these gambling ships might bring in some money to Texas' coastal cities, they could also lead to more crime and corruption. Even though these cruise ships offer other amenities, most people take the cruises only to gamble.

Legislative History: The House amended the bill to provide for criminal history checks of ship owners and operators and to allow municipal safety regulation of ships, then failed to pass the bill to engrossment on May 9 by 60-71-4 (Journal page 1551). The vote was reconsidered, and the bill passed on final reading by 73-58 on May 10 (Journal page 1611). The Senate passed the bill by voice vote, eight members recorded voting nay, on May 27 (Journal page 2642).

The HRO analysis of HB 141 appeared in the May 8 Daily Floor Report.
Revising the Texas Racing Act
(HB 1232 by Berlanga)

Died in conference committee

HB 1232 would have made numerous changes in the Texas Racing Act. As passed by the House, the bill would have allowed the racing commission to impose penalties of up to $10,000 for violating the racing act or commission rules. The commission could have set fees to offset the costs of compensating racing officials. Racing officials would have been considered independent contractors, not state employees. The commission could have adopted rules regarding distribution of the breakage (a few pennies per payback on each dollar wagered); 5 percent of the total breakage would have been paid to the appropriate state horse breed registry (as now) and another 5 percent would have gone to the commission to fund research and programs for horse-racing, instead of to the appropriate breed registry for the same purpose.

As amended by the Senate, HB 1232 would have allowed the commission to permit pari-mutuel wagering at licensed racetrack enclosures on races simulcast (telecast simultaneously) from other tracks. Licensing provisions would have been revised. Applicants for a Class I racetrack would have had to have shown evidence they planned to make a minimum investment of $38 million, and the commission could not have approved building a racetrack near a school, church, or residential neighborhood except under unusual circumstances.

(HCR 303 by Berlanga would have allowed the conference committee on HB 1232 to add a provision lowering the state's share of each pari-mutuel pool from the current 5 percent to 1 percent for the first $200 million, 2 percent for the next $200 million, 3 percent of the next $100 million and 5 percent for additional amounts.)

Supporters of the bill said it would have given the racing commission the flexibility it needs to properly administer and enforce the law. Licensed racetracks would have been allowed to show simulcasted races held throughout the country, allowing fledgling racetracks and the state to bring in additional revenue with relatively little overhead. Lowering the state's share of proceeds in a graduated fashion would help the racing industry get off the ground and generate revenue for the state.

Opponents said wagering on simulcasted races would be a form of off-track betting and would expand the level of pari-mutuel wagering in Texas far beyond that originally envisioned when it was approved by the voters in 1987. Lowering the state's share of wagers also would violate the spirit of the 1987 referendum on pari-mutuel wagering, which was sold to the voters as a means of generating new revenue for the state.
Legislative History: The House amended the bill and passed it by nonrecord vote on May 4 (Journal page 1433). The Senate considered a substitute allowing simulcasting and making other changes, then passed the bill by 23-5 on May 26 (Journal page 2593). The House refused to concur with the Senate amendments by nonrecord vote on May 27 (Journal page 3057). Both the House and the Senate appointed conferees, but they never met.

HCR 303 would have permitted the conferees to add a new provision, not included in either the House or the Senate versions of HB 1232, replacing the state's 5 percent share of wagers with a graduated system basing the state's percentage share on the total amount of the betting pool. The House rejected HCR 303 by 65-73 on May 28 (Journal page 3402). The Senate did not consider any similar resolution.

The HRO analysis of HB 1232 appeared in the May 3 Daily Floor Report.
Bingo regulation by Alcoholic Beverage Commission  
(HB 2260 by Wilson)  

Effective Jan. 1, 1990  

HB 2260 makes numerous changes in the laws governing bingo, including raising the amount of receipts exempt from the gross receipts tax from $2,500 to $15,000, requiring distribution of a minimum percentage of receipts to charity and increasing state enforcement powers. The bill transfers bingo-regulation from the Comptroller's Office to a new division within the Alcoholic Beverage Commission (ABC). It also postpones the sunset expiration of the ABC for four years, until Sept. 1, 1995.  

Supporters of the bill said it would close many of the loopholes that have allowed some commercial bingo lessors to make large profits by guaranteeing that charities receive a reasonable proportion of the profits. It would help establish an audit trail for better regulatory control. The bill would free employees of the Comptroller's Office to pursue tax collection by transferring bingo regulatory powers to the ABC, which has more appropriate enforcement functions.  

Opponents said that rather than tinker with the bingo laws each session, fundamental changes should be made to eliminate abuses. Commercial operation and leasing of bingo should be eliminated entirely, with bingo games run only by the legitimate charities that are meant to benefit from the money raised. Other opponents said the state should not have legalized any form of gambling and that efforts to regulate and tax it will inevitably lead to further abuses.  

Legislative History: The House passed HB 2260, which originally would have changed only certain administrative provisions affecting the Alcoholic Beverage Commission, on April 20 on the Consent Calendar (Journal page 1052). The Senate placed on the Local and Uncontested Calendar for May 27 a committee substitute for HB 2260 that contained detailed bingo regulations, transferred regulation to the ABC, and exempted the ABC from abolition under the Sunset Act, but removed it from that calendar. On May 28 the Senate adopted by voice vote six amendments that postponed sunset review of the ABC for two years, and made various changes in bingo regulations and penalties (Journal pages 2962-66). It tabled by 22-7 an amendment that would have exempted prizes from the gross receipts subject to tax (Journal page 2967), then passed the bill by 29-0 (Journal page 2967). The House refused to concur with the Senate amendments by nonrecord vote on May 29 (Journal page 3313), and a conference committee was appointed. On May 29 the Senate adopted the conference report by 30-1 (Journal page 3616), and the House adopted it by 143-3 (Journal page 3523).  

The HRO analysis of HB 342 by Collazo, which proposed many of the regulatory changes adopted in HB 2260, appeared in the May 16 Daily Floor Report.
Raffles for certain nonprofit organizations
(HJR 32/HB 240 by T. Smith)

Approved by voters Nov. 7, 1989
Effective Jan. 1, 1990

HJR 32 amended the Texas Constitution to allow the Legislature to permit certain qualified organizations to conduct raffles for charitable purposes. These organizations include religious societies, volunteer fire departments, volunteer emergency medical services, or other nonprofit organizations. All proceeds from the raffle must be spent for the charitable purposes of the organization. A raffle must be conducted, promoted, and administered by members of the qualified organization. The implementing legislation, HB 240 by T. Smith, effective Jan. 1, 1990, places further restrictions on raffles by requiring the prize not be money and not exceed $25,000 in value. A raffle may not be promoted statewide or by paid mass communication advertising. The tickets may not be sold statewide.

Supporters said hundreds of nonprofit organizations sponsor raffles without realizing they are subject to prosecution for a third-degree felony, which carries a maximum penalty of 10 years in prison and a $10,000 fine. District attorneys prosecute few charities for unintended violations of the law, and lack of enforcement undermines public respect for all laws. The people of Texas, by overwhelmingly adopting the bingo amendment in 1980, showed their support for the use of games by community groups to raise funds for worthy causes.

Opponents said that legalizing raffles, like bingo, would further erode state laws prohibiting gambling. It would open the door wider to a state lottery, using the same arguments offered to support this measure. The only place to draw the line is at the beginning, by refusing to permit any more exceptions to the laws against gambling. The current bingo law has been subject to multiple abuses, enriching a few commercial operators and doing little to help charities. It would be necessary to enact another complex and expensive set of laws and regulations to govern raffles.

Legislative History: The House passed HJR 32 by 105-33 on May 11 (Journal page 1667), and the Senate passed it by 24-4 on May 27 (Journal page 2696). The voters approved SJR 32 (Amendment No. 15) on Nov. 7.

The House approved HB 240 by a nonrecord vote on May 22 (Journal page 2249). The Senate amended the bill and approved it by voice vote, four members recorded voting nay, on May 28 (Journal page 2698). The House concurred with the Senate amendment by nonrecord vote, one member recorded voting nay, on May 29 (Journal page 3256).

Rural health care, state indemnification of health-care providers
(HB 18 by McKinney)

Effective Sept. 1, 1989

HB 18 provides for state indemnification (reimbursement of civil damages) for certain health-care providers whose medical practice includes a substantial percentage of charity-care patients. It also reduces malpractice insurance premiums for these providers, changes certain procedures in medical liability actions, authorizes physicians in medically underserved sites to delegate to nurses authority to complete prescription drug orders, encourages new physicians to practice in underserved areas, regulates patient transfers between hospitals, establishes a swing bed program in rural hospitals, establishes a new center for rural health initiatives and a new health professions resource center in the Texas Department of Health, and authorizes the Department of Health to develop an emergency medical services and trauma care system.

Supporters of the bill said it would improve the quality of rural health care and emergency and charity care. State indemnification of persons providing charity care would encourage provision of care without limiting the rights of injured patients.

Opponents said a state indemnification scheme would be costly to the taxpayers without adequately addressing the problems of excessive insurance rates and jury awards in malpractice cases involving emergency care. Protecting doctors from excessive jury awards and making the civil liability system more rational could remove disincentives to providing charity and emergency care.

Legislative History: The House on April 26 considered a committee substitute that would have limited the civil liability of persons providing certain medical services. It tabled by nonrecord vote an amendment that would have deleted the limits on liability and certain procedural changes in medical liability actions (Journal page 1158), tabled by 102-33 on April 27 an amendment that would have deleted a provision exempting from liability certain persons providing emergency medical care that was not grossly negligent (Journal page 1169), tabled by 108-26 an amendment to limit the applicability of the bill to rural counties (Journal page 1170) and tabled by nonrecord vote an amendment to require hospitals to post notices of immunity from liability, then passed the bill by nonrecord vote, five members recorded voting nay, three members recorded voting aye, on May 1 (Journal page 1241). The Senate considered a committee substitute that included the provisions on indemnification, reduced insurance premiums and delegation of prescription drug orders and deleted from the House version the provisions concerning limits on liability and some changes in court procedure, adopted by voice vote an amendment
adding the section on emergency medical services (Journal pages 2067-72), then passed the bill by 30-0 on May 24 (Journal page 2072). The House on May 26 tabled by 101-44 a motion to not concur with the Senate amendments and request a conference committee, then concurred with the Senate amendments by nonrecord vote, one member recorded voting nay (Journal page 2792).

The HRO analysis of the bill appeared in the April 25 Daily Floor Report.
Income eligibility for nursing home and community care
(HB 318 by Denton, S. Thompson, A. Hill)

Effective Sept. 1, 1989

HB 318 requires the Texas Department of Human Services to set the state income-eligibility cap for persons to qualify for nursing home and in-home community care at between $1,104 and the maximum allowed under federal law. The cap set by the department is dependent on legislative appropriations and social security benefit increases; however, the cap must be set high enough to ensure that the number of recipients is at least as great as in the previous year.

Supporters of the bill said it would allow thousands of needy Texans to become eligible for help in paying for their nursing home and in-home community care. The bill would allow the state cap to be adjusted for social security increases so these increases would not affect eligibility status. The Legislature would continue to determine the amount of funds that the state will spend on Medicare above the minimum of $1,104.

Opponents objected to having the state income-eligibility cap tied automatically to the federal maximum, as proposed in the original bill.

Legislative History: The House passed a version of the bill setting the maximum cap at $1,104, by 136-10 on April 18 (Journal page 1001). The Senate approved a committee substitute requiring that the cap be set at between $1,104 and the federal cap, then passed the bill by 30-1 on May 19 (Journal page 1612). The House concurred with the Senate amendments by nonrecord vote on May 23 (Journal page 2330).

The HRO analysis of the bill appeared in the April 18 Daily Floor Report.
Emergency medical services
(HB 791 by McKinney)

Effective Aug. 28, 1989

HB 791 requires the Texas Department of Health to coordinate and support a statewide system of poison and drug information services. The bill also permits emergency services providers to create subscription programs to fund their services.

Supporters of proposed limits on liability for emergency medical care, contained in the House committee substitute, said they would increase the provision of quality health care to the poor by encouraging physicians to provide emergency care.

Opponents of the liability limitations said they would establish a lower standard of care for emergency care patients.

Legislative History: The House on May 11 considered a committee substitute that would have limited the liability of those providing emergency medical care and authorized the Department of Health to develop emergency medical services and trauma care systems. It adopted without objection an amendment deleting certain limits on liability and changing trial procedures in health care liability claims involving emergency medical care (Journal page 1666). On May 12 it adopted without objection an amendment making certain changes in the trial procedures, then passed the bill by nonrecord vote (Journal pages 1709-10). The Senate on May 28 considered a committee substitute that contained only provisions involving poison control centers. It adopted by voice vote amendments concerning emergency-service subscription programs, financial support of resident physicians and liability of poison control centers (Journal pages 2956-58), then passed the bill by 30-0 (Journal page 2958). The House refused to concur with the Senate amendments by nonrecord vote on May 29 (Journal page 3266), and a conference committee was appointed. On May 29 the Senate adopted the conference report, which dealt only with poison control, by 31-0 (Journal 3606), and the House adopted it by nonrecord vote (Journal page 3572).

The HRO analysis of the bill appeared in the May 10 Daily Floor Report.
Parental consent for abortion for minors
(HB 987 by Shelley)

Died in House committee

HB 987 would have required that, before an unmarried minor could have an abortion, the minor and both parents would have to give written permission. If one parent had custody, that parent's consent would have sufficed. A court could have authorized an abortion for a minor without prior parental consent if it found that she was sufficiently mature. Performing an abortion on a minor without parental or court authorization would have been a first-degree felony (maximum penalty a $10,000 fine and 5-99 years in prison) if the procedure resulted in serious injury or death to the mother or fetus, and a second-degree felony (maximum penalty a $10,000 fine and 2-20 years in prison) if no harm to mother or fetus occurred.

Supporters of the bill said it would ensure that parents have a role in a minor child's decision to have an abortion. Currently, abortions are the only non-emergency medical procedure that do not require parental consent. In Minnesota, which has a parental consent law, the abortion rate among teens has dropped by a third. The bill would allow a minor the alternative of petitioning a court to authorize an abortion if the minor's parents would not provide their consent.

Opponents said most families are already involved in a minor's decision to have an abortion, but the state should not force every minor seeking an abortion to receive parental consent. A minor who chooses not to tell her parents usually has legitimate reasons for not doing so, and the state should not invade her privacy and restrict her constitutional rights. While the bill might lead to a decrease in abortions, it would do nothing to alleviate the problem of teen pregnancy and would increase the number of teenage mothers dependent on the state.

Legislative History: The House State Affairs Committee considered the bill in a public hearing on May 1, but did not report it to the House.
Medicaid expansion and revision
(HB 1345 by Wright)

Effective Sept. 1, 1989

HB 1345 requires the Department of Human Services to expand Medicaid eligibility, establish a medically needy program for certain groups that fail to qualify for Medicaid, change Medicaid reimbursement formulas for hospitals, authorize the provision of respite care by hospitals and increase state aid for hospitals caring for large numbers of indigents.

Supporters of the bill said it would improve the Texas Medicaid program, expanding coverage to more needy Texans and increasing reimbursement payments to hospitals and nursing homes. The bill would recapture some of the federal tax dollars that would otherwise flow to states with more liberal eligibility requirements and help curb inflation of health-care costs, without sacrificing other vital state services.

Opponents said the bill was too costly and would cause even higher spending for the future. Money spent to increase Medicaid coverage could also be spent to equalize public school finance or to construct new prisons.

Legislative History: The House on April 27 adopted without objection an amendment setting a minimum income eligibility cap for nursing home care (Journal page 1216), then passed the bill by nonrecord vote, one member recorded voting nay on May 1 (Journal page 1248). The Senate adopted by voice vote a floor substitute that deleted the minimum income eligibility cap for nursing home care and certain provisions concerning reimbursement rates for hospitals and doctors and decreased the appropriation to hospitals caring for large numbers of indigents (Journal page 1750), then passed the bill by 30-0 on May 20 (Journal page 1751). The House concurred with the Senate amendments by nonrecord vote on May 28 (Journal page 3083).

The HRO analysis of the bill appeared in the April 27 Daily Floor Report.
Granting medical power of attorney
(HB 2098 by McDonald)

Effective June 14, 1989

HB 2098 allows adults to delegate to another person the authority to
make their medical decisions in the event that a physician certifies
them as incapacitated. Treatment may not be given or withheld if the
patient objects, regardless of his or her capacity to make health care
decisions, and even if a binding medical power of attorney exists. A
patient's delegated agent may not consent to voluntary inpatient
mental health services, convulsive treatment, psychosurgery, abortion
or neglect through omission of care intended to comfort the person.

A power of attorney may be revoked through written or oral
notification by the person granting it or by the execution of a
subsequent power of attorney. If the person's spouse is granted the
medical power of attorney, divorce revokes the document.

Supporters of the bill said it would allow people to exercise some
control over their medical care even though they have become
incapacitated and allow them health care with dignity. The bill would
protect physicians and other medical providers who often are put in
the precarious position of second guessing the desires of a patient.
Numerous safeguards in the bill would protect a patient from being coerced or forced to grant medical power of attorney.

Opponents said the bill could expand legal euthanasia to those with
progressive diseases.

Legislative History: The House passed the bill by 138-0 on May 18
(Journal page 2024). The Senate passed the bill on the Local and
Uncontested Calendar by 31-0 on May 26 (Journal page 2396).

The HRO analysis of the bill appeared in the May 15 Daily Floor
Report.
Human burials and disposition of remains  
(HB 2434 by Wallace)

Vetoed

HB 2434 would have provided protection for human burials and specified the terms for disposition of human remains and their associated burial objects. A person who discovered a burial would have been required to stop activity that would disturb it. A burial less than 75 years old would have fallen under the jurisdiction of the local medical examiner or justice of the peace. A burial 75 years old or more would have become the responsibility of the state archeologist. A burial on state land would have become state property; a burial on private property would have been placed under the temporary jurisdiction of the Texas Historical Commission. The commission would have then negotiated a settlement with the property owner regarding the disposition of the remains. The state archeologist would have had to make a reasonable effort to establish the direct kinship, tribal, or community relations with a person whose remains constitute the burial.

Supporters of the bill said human remains are being bought and sold as commodities, a desecration of individual dignity and of valuable historical resources. Commercial and amateur collectors destroy as many as 8,000 human burial sites a year in Texas. The historical information these burials contained can never be reconstructed. Most of the looting is done by trespassers. This measure would help protect the rights of property owners.

Opponents said artifact collectors should not face legal restrictions when operating with good intentions. Private collectors have conscientiously assembled significant collections that are accessible to students and the public. Restricting collection would create a black market that local law enforcement agencies are not prepared to deal with. Other opponents said the bill would do nothing to protect burial sites from intentional destruction by landowners who wish to destroy remains in order to facilitate commercial development.

Legislative History: The House amended the bill on May 22 to reduce the penalty for knowingly disturbing, destroying, or removing human remains or burial objects from a third-degree felony to a class A misdemeanor and to allow the state's jurisdiction over burials on private land to terminate if a settlement over their disposition is not reached within four years of the bill's effective date, then passed the bill by nonrecord vote, one member recorded voting nay, on May 22 (Journal page 2249). The Senate passed the bill by 31-0 on May 27 (Journal page 2631). The governor vetoed the bill on June 18.

The HRO analysis of the bill appeared in the May 19 Daily Floor Report.
AIDS/HIV and life and health insurance coverage
(HB 2608 by McKinney)

Effective Sept. 1, 1989

HB 2608 sets up guidelines and restrictions for insurance coverage of persons with HIV infection and AIDS. The bill allows insurers to require a test for HIV infection in applications for insurance coverage under specific guidelines. Any unauthorized release of HIV test results through negligence carries civil and criminal penalties.

An insurer may not renegotiate an insurance contract with an employer to terminate an employee's eligibility for coverage for a sickness or injury that was covered before the renegotiation. Nor may insurers cancel coverage of an employee in a group health insurance plan or to an individual with accident and health insurance because the employee was infected with the HIV virus.

Group health insurance coverage for state, higher education and local government employees may not exclude or limit coverage for HIV infection. Also, the Department of Human Resources and hospital districts may purchase conversion policies or other health insurance for indigent persons who are infected with HIV or other terminal or chronic illnesses and cannot obtain health insurance.

Supporters of the bill said it would protect the rights of insurers and persons with AIDS or HIV infection while saving the state money. Protecting persons with AIDS and HIV infection against insurance discrimination and arbitrary cancellation of their coverage would help keep them off public assistance. Insurance companies could require applicants for coverage to take an HIV test.

Opponents said the bill was unnecessary and would elevate HIV/AIDS to an unwarranted special status. The bill would go far beyond current insurance-board rules, making insurers and policy holders foot the bill for covering persons with AIDS.

Legislative History: The House passed the bill by 101-41 on May 17 (Journal page 1945). The Senate Committee on Health and Human Services added amendments to increase the penalty for insurers that release an HIV test result with criminal negligence from a Class-C to a Class-A misdemeanor; remove a provision for a $1,000 fine against an employer who fails to notify an employee of a conversion or group continuation privilege upon termination of coverage; allow mandatory HIV testing of residents of Texas Youth Commission facilities; allow hospital districts to pay for the health insurance of a person with HIV or other terminal or chronic illnesses who is unemployed and indigent; and prohibit local governments from limiting or excluding insurance coverage for AIDS. It also added a floor amendment, by voice vote, revising standards for Medicare supplement insurance.

- 110 -

House Research Organization
policies (Journal page 2654), then passed the bill by voice vote on May 27 (Journal page 2661). The House refused to concur with the Senate amendments by nonrecord vote on May 29 (Journal page 3400), and a conference committee was appointed. The conference committee deleted the provisions concerning Medicare supplement insurance policies. On May 29 the Senate adopted the conference report by voice vote (Journal page 3605), and the House adopted it by nonrecord vote, 15 members recorded voting nay (Journal page 3554).

The HRO analysis of the bill appeared in the May 16 Daily Floor Report.
Repealing authorization for liens against homes of Medicaid recipients
(SB 1 by Parmer, et al.)

Effective May 26, 1989

SB 1 repeals a 1987 statute that permitted the Department of Human Services to file a lien against the estate of a deceased Medicaid recipient to recover the costs of Medicaid assistance, unless the recipient left a surviving spouse or dependent or disabled child.

Supporters of the bill said the Medicaid reimbursement lien provisions caused widespread public confusion and controversy. The provision also may conflict with constitutional protections for the homestead, an essential part of our Texas heritage.

Opponents said implementation of an estate recovery program in Texas would raise $11.7 million a year and enable the state to annually serve more than 1,000 additional persons in need of nursing home care. Critics of the program used scare tactics to generate opposition among older Texans and obscure the primary purpose of the program. Medicaid reimbursement liens would not force older Texans to choose between their homes and adequate nursing care, nor would spouses or dependent children be affected.

Legislative History: The Senate passed the bill by 28-2 on Feb. 20 (Journal page 273). The House passed the bill by 126-1 on May 12 (Journal page 1749).

Indoor Air Quality Act
(SB 35 by Uribe)

Died in the House

SB 35 would have established minimum standards for indoor air quality, ventilation and pollution-control systems in local and state government buildings, public schools, state universities and state hospitals. Building with materials that contaminated the air, allowing or causing indoor air pollution or poor ventilation in such buildings would have been prohibited. Violators would have been subject to a civil penalty of $50 to $1,000 per day for each violation. The standards would not have applied to manufacturing facilities, asbestos regulation or pollution from tobacco smoke.

The State Board of Health would have been required to appoint an advisory committee to make recommendations about air quality standards, and the commissioner of health would have been authorized to investigate air quality in specified buildings.

Supporters of the bill said there is an urgent need for measurement and regulation of indoor air pollution, a serious health hazard that leads to chronic illness and decreased productivity in workers exposed to it. Regulation would ensure a safer workplace for many employees while saving employers money in reduced health insurance premiums and increased worker productivity.

Opponents said the potential costs of complying with this bill would have been enormous, especially for public schools and rural hospitals that are already beset with financial difficulties. Hospitals often use a variety of medicines, alcohol and other substances that would make it difficult to comply with stringent indoor air standards.

Legislative History: The Senate passed the bill by voice vote, five members recorded voting nay, on April 13 (Journal page 769). The House Public Health Committee amended the bill to narrow its scope to local and state government buildings, public schools, state universities and state hospitals, then reported the bill favorably by 7-0 on May 9 (Journal page 2067). The bill was placed on the General State Calendar on May 26, but no further action was taken.
Penalties for tobacco sales to youths
(SB 115 by Krier)

Effective Sept. 1, 1989

SB 115 makes it a class C misdemeanor (maximum fine of $200) to sell cigarettes or other tobacco products to persons known to be under the age of 18 or persons intending to give tobacco products to someone under the age of 18. A sign explaining the law and its consequences must be conspicuously posted by anyone selling tobacco products by vending machine or at retail. Failure to post the sign, provided free on request by the Texas Department of Health, also is a class C misdemeanor.

Supporters of the bill said boosting the legal age for cigarette purchases would make it more difficult for teenagers to obtain tobacco. Older consumers are better able to weigh the risks of tobacco use. The tobacco industry reaps enormous profits from teenagers hooked at an early age on cigarettes. Reducing the number of teenagers who start smoking would in turn reduce the enormous strain that smoking-related illnesses put on our public health-care system.

Opponents said legitimate, tax-paying businesses that sell tobacco products should not be singled out for over-regulation and discriminatory treatment in a vain attempt to stop teenagers from smoking. If the state is serious about discouraging teenagers from smoking, it should fund education campaigns for that purpose instead of putting the onus of enforcement on retailers and vending machine operators.

Legislative History: The Senate amended the bill to remove a requirement that cigarette vending machines, in places where minors were present, would have to be supervised by an adult and a requirement that the sign posted by cigarette vendors warn that tobacco products cause cancer and addiction, then passed it by voice vote, one member recorded voting nay, on April 10 (Journal page 700). The House passed the bill by nonrecord vote on May 27 (Journal page 2912).

The HRO analysis of the bill appeared in the May 26 Daily Floor Report.

- 114 -

House Research Organization
Smoking in public places and meetings  
(SB 120 by Brooks)

Died in House committee

SB 120 would have prohibited smoking in public places and at public meetings except in designated smoking areas. It would have required that smoking areas be designated in public places, including work places. Certain areas -- restrooms and elevators, for instance -- would have been ineligible for designation as smoking areas. Violation of the Texas Smoke-Free Indoor Act would have been a class C misdemeanor (maximum fine of $200). The Texas Department of Health would have implemented and determined compliance with the act.

Supporters of the bill said smoking is life-threatening, and it has been proven that nonsmokers can be adversely affected from inhaling smoke. This bill would protect the public by limiting smoking in public places and meetings across the state, using uniform guidelines rather than a hodge-podge of varying local regulations.

Opponents said the bill was not necessary, would infringe on individual rights and would be difficult to enforce. It has not been conclusively proven that passive smoking is harmful to health. If nonsmokers want a smoke-free environment, they can ask smokers not to smoke or to move to another location. Furthermore, many localities already have limited anti-smoking ordinances; these decisions should be determined by local circumstances, not imposed statewide.

Legislative History: The Senate passed the bill by voice vote, seven members recorded voting nay, on March 30 (Journal page 612). The bill received a public hearing on May 1 in the House State Affairs Committee, where no further action was taken.
Options for independent living program for the elderly
(SB 482 by Carriker)

Effective Sept. 1, 1989

SB 482 requires the Texas Department on Aging to establish a statewide Options for Independent Living Program to help elderly people to remain at home despite limited capacity to care for themselves. Individuals with incomes above the cutoff for entitlement programs and who are unable to pay for these services are eligible for the program. The program is to give priority to elderly persons who have recently suffered a major health care crisis, live in rural areas, have insufficient caregiver support, and have a mild-to-moderate impairment or temporary severe impairment. Support services include homemaking assistance, respite care, home-delivered meals, and transportation.

Supporters of the bill said it would provide much-needed care for elderly people with health problems who are confined to their homes and who cannot afford care because their incomes fall just above the Medicaid eligibility cutoff. The bill would allow care to be provided at the local level, with individualized programs to meet the needs of each patient. Although some Medicaid-eligible individuals would be served by the program, this assistance would only cover gaps in Medicaid support and not duplicate the Medicaid program.

No apparent opposition

Legislative History: The Senate passed the bill by voice vote on April 13 (Journal page 768). The House substituted a version of the bill that would allow a local agency more flexibility in providing services, then passed it by voice vote on May 27 (Journal page 2922). The Senate concurred with the House amendment by voice vote on May 28 (Journal page 3170).

Long-term health care services for the elderly
(SB 487 by Brooks)

Effective Sept. 1, 1989

SB 487 establishes various programs and requirements for the provision of long-term care for the elderly and for persons in nursing care facilities. The Texas Department of Human Services (DHS) must publicize Medicaid limits and the costs of long-term care, develop rules to describe the eligibility process and notify the public of any attempts to change the state Medicaid program.

The Texas Department of Health and DHS are to develop one set of standards for licensing and certifying nursing homes that participate in Medicaid. The bill establishes regulations for facilities that provide services such as personal care assistance and supervision and for facilities that provide health care services primarily to individuals with AIDS. The bill also creates a task force to study a statewide case-management system for the elderly.

Supporters of the bill said it would streamline the state's program of long-term care for the elderly. It would make the state system of Medicaid funding less arcane and confusing to those who depend on it by requiring DHS to provide clear notice of program changes and by articulating in law the process of Medicaid data collection and rate setting. It also would streamline the process of licensing nursing care facilities and establish standards for facilities for those who need care facilities that are less expensive and restrictive than nursing homes.

Opponents said the bill would merely replace certain bureaucratic hassles with others. An overburdened Medicaid services department would have to comply with a labyrinth of notification rules that may not reach the public. The bill creates a whole new department to regulate personal care facilities, and establishes yet another task force, all at a cost to the state of more than $3 million per year.

Legislative History: The Senate passed the bill by voice vote on April 13 (Journal page 767). The House made several changes, including adding a new section regulating special care facilities, then passed the bill by nonrecord vote on May 26 (Journal page 2722). The Senate concurred with the House amendments on May 28 (Journal page 2905).

Health insurance risk pool  
(SB 832 by Montford)  

Effective Sept. 1, 1989

SB 832 creates the Texas Health Insurance Risk Pool to offer individual health insurance coverage to those who prove they are substandard risks and whose private insurance premiums would exceed the premium charged by the pool. Those ineligible for coverage from the pool include people who have or are eligible for coverage from another insurer, who have terminated coverage in the pool within a year of reapplying, who have been paid $500,000 in benefits by the pool, who are in prison or jail and who are eligible for benefits under Medicare or the Chronically Ill and Disabled Children's Services Act. Insurance coverage from the pool includes hospital and medical professional services, x-rays, oxygen, anesthetics, prostheses and certain oral surgery.

The bill also requires third party insurance administrators who adjust or settle claims for life, health and accident insurance to obtain a certificate to do business from the State Board of Insurance.

Supporters of the bill said it would save public funds and help people with fatal and chronic diseases that insurers refuse to cover. Providing an insurance-pool alternative for these people would prevent reliance on welfare assistance.

No apparent opposition.

Legislative History: The Senate passed the bill by voice vote on April 19 (Journal page 860). The House added the provisions creating the Texas Health Insurance Risk Pool (Journal page 2684), then passed the bill by nonrecord vote on May 27 (Journal page 2912). The Senate concurred with the House amendments by voice vote on May 29 (Journal page 3252).
Insurance coverage for chemical dependency
(SB 911 by McFarland, et al.)

Effective Jan. 1, 1990

SB 911 extends requirements for mandatory insurance coverage of care and treatment of alcohol dependency to include other forms of chemical dependency. The expanded requirement applies to insurers that must provide coverage for alcohol dependency: group health insurers, group health maintenance organizations and certain self-funded or self-insured programs. The State Board of Insurance and the Texas Commission on Alcohol and Drug Abuse are to formulate standards for reasonable control of costs, which are to be adopted as SBI rules governing benefits.

Supporters of the bill said most people seeking treatment for alcohol abuse are dependent on more than one chemical, and they are not likely to succeed with treatment unless they are helped to abstain from all mind- or mood-altering substances. Treatment can be costly, but the costs of substance abuse, estimated at $15 billion a year in Texas, are far greater. Mandatory coverage is necessary to encourage treatment of Texans who cannot afford the lump-sum costs yet have refused optional coverage because of social stigma or denial.

Opponents said mandatory coverage of non-traditional risks such as chemical dependency provide little benefit at great cost to the health insurance system. Employers and employees, especially in small businesses, would be unfairly saddled with higher premiums for coverage they may not want or need. Rising costs push businesses to self-insure or stop offering insurance, increasing the proportion of uninsured workers. Other opponents said additional safeguards such as admission limits and prohibitions on supervision by financially interested physicians are needed to control costs.

Legislative History: The Senate passed the bill by voice vote, one senator recorded voting nay, on April 21 (Journal page 914). The House tabled a committee amendment allowing limits on the number of treatment admissions but adopted other amendments before passing the bill by nonrecord vote on May 8 (Journal page 1513). The Senate refused to concur with the House amendments by voice vote on May 11 (Journal page 1318), and a conference committee was appointed. The Senate adopted the conference report by voice vote on May 22 (Journal page 1877), and the House adopted it by nonrecord vote on May 23 (Journal page 2329).

The HRO analysis of HB 954 by C. Harris, the companion bill, appeared in the May 4 Daily Floor Report.
AIDS education, testing, treatment and policies  
(SB 959 by Brooks, et al.)

Effective Sept. 1, 1989

SB 959, the Human Immunodeficiency Virus Services Act, establishes programs and policies for dealing with the AIDS epidemic in Texas. The bill requires the Texas Department of Health (TDH) to develop public education programs, workplace guidelines, and school education programs for AIDS and HIV infection. The bill also includes guidelines for AIDS policies and education in state agencies, schools, universities, and correctional facilities. Educational programs targeted at persons under age 18 are to warn against homosexual conduct and emphasize sexual abstinence and marital fidelity.

The TDH is required to administer a state grant program and provide technical assistance to nonprofit community organizations for HIV education, prevention and risk reduction programs, and for treatment, health and social service programs for people with HIV-infection. A contracting entity or grant recipient may not advocate or promote conduct that violates state law.

The TDH is required to establish voluntary and confidential HIV-testing programs. The TDH must identify and notify anyone who may have been exposed to a person who tests HIV-positive in such a program. The bill also requires the TDH to establish a program under which HIV-positive persons may voluntarily and confidentially disclose the identity of a partner and have the partner notified.

A TDH program is created to assist hospitals, health departments, non-profit community organizations and HIV-infected individuals to purchase approved medications for HIV treatment.

Except as otherwise provided by law, an AIDS test may not be performed on an individual without that person's informed consent. The bill lays out procedures for court-ordered testing. A person who tests positive for HIV or AIDS must receive immediate post-test counseling. Knowingly transmitting HIV with the intent to cause serious injury or death is a third-degree felony (maximum penalty of a $10,000 fine and 10 years in prison).

The Texas Higher Education Coordinating Board is required to encourage universities to undertake AIDS-related research. The TDH is required to routinely analyze the incidence of AIDS and HIV infection and project the number of future cases.
Supporters of the bill said it represents a balanced and wide-ranging approach to the AIDS epidemic. It would provide cost-effective care for those infected with HIV and help educate the entire population about the disease.

The bill would institute stronger AIDS education efforts by the state; until now, such efforts have been left largely to financially strapped community organizations. Through grant programs, model education programs and other efforts, the bill could help slow the spread of the disease.

For those already infected with HIV, the bill would extend the same rights as others infected with communicable diseases and would establish a medication-grant program to provide effective medication for those who need it but might otherwise not be able to afford it.

The bill would clarify legal questions about AIDS testing, confidentiality and knowing transmission of the AIDS virus. In addressing these sensitive issues, it would balance the rights of those who have HIV infection and those who may be exposed to the disease.

Opponents said the bill would go too far in trying to shield from responsibility for their actions those who engage in homosexual conduct, which is illegal in this state. In the name of treating a disease, it would imply that homosexual conduct and sexual promiscuity fall within the range of acceptable behavior. More provision should be made to deter the spread of HIV/AIDS by punishing those who intentionally or recklessly engage in conduct leading to its spread. Other opponents said the bill contains a number of provisions that implicitly discriminate against homosexuals and drug users and make the dangerous suggestion that those not in these two groups are not at risk of getting the disease. The bill also does not go far enough in protecting those with HIV infection from discrimination.

Legislative History: The Senate adopted various amendments and passed the bill by voice vote, three members voting nay, on May 15 (Journal page 1457). The House Public Health Committee reported a committee substitute that made various changes, such as adding provisions prohibiting the TDH from contracting with or granting money to groups that advocate or promote conduct that violates state criminal laws. The House adopted various floor amendments by nonrecord vote, including provisions to require education programs for minors to emphasize sexual abstinence and fidelity and to state that homosexual conduct is an unacceptable lifestyle and illegal (Journal page 2288); to eliminate the option of anonymity in TDH's HIV voluntary testing programs and to require the TDH to identify and notify anyone exposed to a person who tests positive under the programs (Journal page 2289); to make it a third-degree felony for a blood donor to falsify HIV status (Journal page 2290); to require HIV and AIDS information to be
distributed with marriage licenses (Journal page 2292); to regulate special care facilities that provide nursing care to the terminally ill (Journal page 2294); and to allow the Texas Department of Corrections to segregate inmates who test HIV positive (Journal page 2428). A floor amendment allowing university health centers to distribute condoms to students was tabled by 100-36 (Journal page 2292). The House passed the bill by nonrecord vote on May 24 (journal page 2428). The Senate refused to concur with the House amendments by voice vote on May 25 (Journal page 2261), and a conference committee was appointed. The conference committee made various changes, including to remove the criminal sanctions against blood donors who falsify information and the licensing provisions for special care facilities. On May 29 the Senate adopted the conference report by voice vote (Journal page 3652), and the House adopted it by 138-5-2 (Journal page 3587).

Affordable housing for low-income earners
(SB 1416 by Pfarmer)

Died in the House

SB 1416 would have created a program under the Texas Housing Agency to provide services and loans for housing to people with low and moderate incomes. The Legislature could have appropriated up to $20 million, and the agency would have been authorized to sell up to $100 million in general obligation bonds, to finance the program. The agency also would have been required to maintain information on each available state and federal housing program.

Grant and loan programs established under the Texas Department of Commerce would have provided assistance to impoverished counties in the border region to finance public water, sewer, or road projects. The department could have issued revenue bonds and up to $100 million in general obligation bonds to finance these programs.

Supporters of the bill said that too many Texas families live in substandard or unaffordable housing or are homeless. Texas lags behind other states in addressing this problem, which has been worsening due to a marked decrease in federal housing assistance programs. The bill would authorize a needed injection of state funds to help persons of low and moderate incomes obtain one of the basic necessities of life.

Opponents said financing new housing programs through bond sales would be a drain on state finances, locking the state into even greater future debt.

Legislative History: The Senate passed the bill by voice vote on May 12 (Journal page 1376). The House Urban Affairs Committee reported the bill favorably by 7-0 on May 23. The bill was placed on the General State Calendar on May 26, but no further action was taken.
State grants to the physically disabled
(SB 1509 by Brooks)

Effective Sept. 1, 1989

SB 1509 allows the Texas Department of Human Services (DHS) to provide physically disabled individuals and their families with support payments of up to $3,600 a year for equipment or architectural changes, medical or other health services related to the disabilities, counseling for the family, attendant care, respite care, transportation, and the costs of evaluation and diagnosis. DHS may grant additional amounts based on individual needs and also may provide one-time grants of up to $3,600 for appropriate architectural renovations or capital expenditures.

Supporters of the bill said it would provide much-needed assistance to physically disabled individuals who often do not have the financial resources to make even small improvements that can greatly improve their quality of care. These support payments for vital services could spell the difference between caring for a person in the home and having to rely on expensive attendant-care facilities. By providing a cash grant rather than specific services, SB 1509 would give individuals and families the flexibility to get exactly what they need from the place they need it. In a similar program established for the mentally disabled, people used less than the maximum allowed grant amount; as a result, the program has cost less than originally projected.

Opponents said this program is projected to cost $2 million the first year and $4 million each year thereafter. It would create a new group of people dependent on money from the state. The state cannot afford this kind of program, and it should not raise hopes by authorizing such a program, and then not funding it or funding it inadequately.

Legislative History: The Senate passed the bill by 30-0 on April 11 (Journal page 723). The House amended the bill to exclude from eligibility persons with communicable diseases, then passed it by nonrecord vote on May 18 (Journal page 2000).

Expanding medical services for pregnant women  
(SB 1678 by Brooks, et al.)

Effective Sept. 1, 1989

SB 1678 requires the Texas Department of Human Services (DHS) to presume that any pregnant woman who applies for Medicaid and meets the basic federal eligibility requirements is eligible for assistance. DHS also must develop case management programs for high-risk pregnant women and high-risk children under one year old. The bill establishes a Maternal and Child Health Advisory Committee to advise DHS, the Texas Department of Health and the Legislature on issues in this area. The board is authorized to use local funds as part of the state funds matched by federal funds under the Medicaid program. Public hospitals may transfer funds to DHS to apply as state-share matching funds under Medicaid.

Supporters of the bill said it would allow low-income pregnant women to get care at the crucial early stages of pregnancy and help reduce problems, such as low birthweight, that arise from lack of prenatal care. Providing this prenatal care and care for high-risk babies up to one year old can result in healthier babies, preventing higher health costs to the state in the future. While the bill stipulates that no new DHS funds can be used for this program, it would provide an opening for a substantial increase in federal Medicaid funds by allowing county hospital funds to qualify as matching fund money for Medicaid purposes.

Opponents said the bill's intention is good, but it would guarantee none of the funds that it promises. Money deposited by local hospitals might not qualify for matching funds from Medicaid; the funding mechanism should be more definite.

Legislative History: The Senate passed the bill by 31-0 on May 10 (Journal page 1288). The House amended the bill to allow public hospitals to transfer funds to DHS for the matching state share under Medicaid, then passed it by nonrecord vote on May 26 (Journal page 2730). The Senate concurred with the House amendments by 30-0 on May 28 (Journal page 2809).

Texas college work-study and opportunity grant programs  
(HB 3 by G. Lewis, et al.)  

Effective Aug. 28, 1989  

HB 3 creates two higher-education financial aid programs administered by the Texas Higher Education Coordinating Board. A new work-study program is to provide part-time jobs to needy students who are Texas residents. The state will cover a percentage of a student's wages for jobs that are nonpartisan or nonsectarian, related to the student's academic interests, and do not supplant positions normally filled by other employees. A new Educational Opportunity Grant Program will assist "educationally disadvantaged" students, as defined by the board. A grant can be no more than 50 percent of a student's reasonable expenses. Priority in awarding grants will be given to students with the most financial need and members of minority groups. 

Supporters of the bill said increasing costs and declining student assistance are putting higher education out of reach for many. HB 3 would enable more Texans to attend college without going deeply into debt by taking out student loans. The program would allow students to earn money to pay for college while learning job skills that would help them after graduation. The educational grant program would represent a state commitment to assist all students to attend college regardless of financial need. The $15- to $25-million investment needed to launch the two programs would be a fraction of the social costs of unproductive lives. 

Opponents said support for work-study programs is declining. The state should not underwrite the wages of private employers, who may use the cheap labor to displace other workers. Texas already offers substantial amounts of student aid and can ill afford the $30 million a year this bill would require. Grants are an inappropriate form of student assistance; students should not be paid to attend college. An income-contingent loan program would be a better answer. 

Legislative History: The House passed the bill by nonrecord vote, four members recorded voting nay, on April 25 (Journal page 1119). The Senate passed it by 31-0 on May 19 (Journal page 1603). 

The HRO analysis of the bill appeared in the April 20 Daily Floor Report.
Expanding UT-Dallas to four-year status
(HB 42 by Cain et al., second called session)

Effective Oct. 18, 1989

HB 42 allows the University of Texas at Dallas to enroll freshman and sophomore students, as well as upper-division students, beginning in summer of 1990, contingent on approval by the Texas Higher Education Coordinating Board. The bill limits the Legislature's spending of general revenue for the expansion to $500,000 for the current budget period.

Supporters of the bill said creating a four-year institution that emphasizes science and engineering would help state economic diversification, and UT-Dallas would be the perfect place for such a school. UT-Dallas has a history of solid financial support from the private sector and would not require any substantial increase in state funds. Expansion to include lower-division students would not harm nearby institutions serving freshmen and sophomores because UT-Dallas would be geared toward special programs. The Dallas County Community College District board has endorsed the UT-Dallas expansion.

Opponents said authorizing admission of lower-division students would be educationally unnecessary and financially unwise. Two years ago the Select Committee on Higher Education considered consolidating some of the state's higher education institutions, and each year the Legislature has difficulty funding existing institutions. The UT-Dallas undergraduate engineering program would only duplicate the program at UT-Arlington. While UT-Dallas may have private financial resources now, this may not always be the case. Downward expansion will cut enrollment at neighboring two-year institutions.

Legislative History: During the 1989 regular session, the Legislature enacted SB 895 by Harris, which would have expanded both UT-Dallas and UT-Permian Basin into four-year institutions and required the UT board of regents to develop UT-Pan American-Brownsville into a degree-granting institution. The Senate passed SB 895 by 20-8 on May 15 (Journal page 1400). The House approved a committee substitute removing the provisions for UT-Permian Basin and UT-Pan American-Brownsville, then passed the bill by 109-30-3 on May 26 (Journal page 2668). The Senate refused to concur with the House amendments by 25-3 on May 27 (Journal page 2644), and a conference committee was appointed. The conference committee reinstated the Senate provisions. On May 29 the Senate adopted the conference report by 23-3 (Journal page 3526), and the House adopted it by 95-51-3 (Journal page 3451). The governor vetoed SB 895 on June 1, saying he did not support the provisions relating to UT-Permian Basin and UT-Brownsville.
During the second called session, the House passed HB 42, which provided for expansion only of UT-Dallas, by 108-22 on June 26 (Journal page 40). The Senate passed the bill by voice vote, four members recorded voting nay, on June 28 (Journal page 56).

On Jan. 26, 1990 the Texas Higher Education Coordinating Board gave final approval to the admission of freshman and sophomore students to the University of Texas at Dallas.

Tuition for nonresident students and educational grants
(HB 558 by Delco)

Effective Aug. 28, 1989

HB 558 makes resident tuition available to additional out-of-state students at Texas higher education facilities, changes the grant/loan allocation under the Public Educational Grants Program and changes payment of tuition by installment. The bill increases, from 2 to 5 percent, the limit on the number of nonresident scholarship students allowed to pay resident tuition rates. It allocates tuition revenue under the Educational Grant Program to at least 90 percent, instead of not more than 80 percent, for grants and not more than 10 percent, instead of at least 20 percent, for emergency loans. Tuition may be paid in three installments, instead of either two or four payments, as under previous law.

Supporters of the bill said changing the cap on the percentage of nonresidents who may receive in-state tuition would continue to make Texas attractive to bright students, regardless of the recent tuition increases for nonresidents. The changes in educational grant funding would close the gap between supply and demand for student grants. The supply of emergency loan funds is generally more than adequate; what is really needed is more grant money. The proposed three-payment plan would address the administrative problem created when the final payment comes too late in the year to be processed in time for final exams.

Opponents said the state can no longer afford to subsidize the education of so many nonresidents. The state should not devote so much of its student assistance to grants rather than loans. Loans are revolving funds that, when repaid with interest, can be recirculated to other deserving students.

Legislative History: The House passed the bill by nonrecord vote, four members recorded voting nay, on April 26 (Journal page 1157). The Senate passed a committee substitute by 31–0 on May 11 (Journal page 1309). The substitute removed a proposal that would have made certain Mexican students who received a competitive scholarship without competing with a Texas resident eligible to pay resident tuition. The House concurred with Senate amendments by nonrecord vote, two members recorded voting nay, on May 16 (Journal page 1899).

The HRO analysis of the bill appeared in the April 24 Daily Floor Report.
Uniform annexation by public junior college districts  
(HB 1039 by D. Hudson)

Died on House floor

HB 1039 would have authorized the Texas Higher Education Coordinating Board to establish an exclusive service area for each public junior college district. The bill would have amended requirements for annexation of territory by junior college districts. Territory in the service area could have been annexed by contract, or the governing board of the district could have ordered an annexation election. Eligible voters would have included residents of the district and those in the area to be annexed.

Supporters of the bill said it would provide uniform laws for annexation of new territory by the 49 community college districts rather than the current patchwork. Although all 254 counties send students to community colleges, only 12 percent of the actual area of the state is included in junior college districts. This bill would provide for expanding the financial base of the districts, the only way to relieve the burden imposed on the community college system. By changing the annexation election process to a "unified vote" the bill would allow voters in the current district as well as those in the proposed expansion area to participate in the decision.

Opponents said providing access, quality and equity is fine, but the unified vote process is undemocratic and would result in taxation without representation. Annexation elections would be weighted grossly in favor of an existing district, whose residents are likely to outnumber those in the area to be annexed and whose voters would be interested in reducing their taxes by spreading the costs of the college district among a larger number of taxpayers, regardless of the concerns of the annexed area.

Legislative History: The House returned the bill to committee on a procedural a point of order on May 17 (Journal page 1956). No further action was taken.

The HRO analysis of the bill appeared in the May 15 Daily Floor Report.
Texas partnership and scholarship program
(HB 2385 by A. Luna)
(HB 2565 by Glossbrenner)

Died in the House

HB 2385/ HB 2565 would have created the Texas Partnership and Scholarship Program, to be administered by the Texas Higher Education Coordinating Board. The program would have linked institutions of higher education, public school districts and nonprofit community organizations to identify high school students for a school retention and college scholarship program. An eligible entity would have submitted an application to the coordinating board to operate a partnership program. The board would have awarded annual grants for skills assessment, tutoring, academic counseling and other programs to assist students at risk of dropping out. Participating students who graduated from high school would have been entitled to a college scholarship.

Supporters of the bill said more than 30 percent of all Texas students fail to finish high school, and that percentage rises to 40 percent for minorities. Each dropout class costs the state $17.12 billion in direct costs and economic losses. This program would attack the drop-out problem with a cooperative school-retention program and with college scholarships as an incentive to graduate.

Opponents said the program would be too costly -- nearly $16 million for administration and for grants to partnership programs between 1990 and 1993, before any scholarships would be awarded. In 1994, when the first scholarships would be awarded, only $173,280 would be spent on scholarships, while the grants would cost the general revenue fund $9.6 million.

Legislative History: The House recommitted HB 2385 on a procedural point of order on May 20 (Journal page 2148); no further action was taken.

The House Public Education Committee reported HB 2565 favorably by 6-0 on May 20. The Committee on Calendars placed the bill on the General State Calendar for May 23, but no further action was taken.

Contingent creation of Central Texas University
(HB 2853 by Schlueter, et al.)
(HB 67 by Schlueter, first called session)

Conditionally effective Sept. 1, 1994

HB 2853 authorizes the creation of a new Central Texas University as a
four-year coeducational institution of higher education in Killeen. A
nine-member board of regents would be appointed by the governor for
staggered six-year terms. The bill will take effect Sept. 1, 1994,
only if the American Educational Complex and the American
Technological University are dissolved or abolished before that date.

HB 67 amended HB 2853 to require approval by the Texas Higher
Education Coordinating Board prior to creating the new university.

Supporters of the proposal said a new state university in Killeen
would fill a gap in the educational needs of students from Central
Texas communities, which are not now served by a four-year public
university geared to local needs. The long-term fate of American
Educational Complex College District (AECCD) is uncertain, since it
has been involved in several recent controversies. Should
circumstances force the disbanding of the American Educational Complex
and the American Technological University, the physical resources left
by these institutions could be used by the state, and HB 2853 would
create a replacement structure. For now, the bill would simply
provide needed reassurance that a new university would, if necessary,
be ready to assume the educational role now played by the existing
institutions.

Opponents said the Legislature has neither conducted nor requested a
study on the need for a new university in Killeen. Since the creation
of this four-year school is contingent on the abolition of two other
institutions before Sept. 1, 1994, it may be jumping the gun to enact
this bill now. Authorizing a new university could draw the state into
controversies involving AECCD, with implications that cannot be
predicted. The eventual fiscal impact on the state is unknown, nor
does the bill address transition questions.

Legislative History: The House approved HB 2853 by nonrecord vote on
May 1 (Journal page 1241). On May 22 the Senate by 16-13 amended
HB 2853 to require prior coordinating board approval for the
institution, then passed the bill to third reading by voice vote, one
member recorded voting nay, (Journal page 1880). On May 23 the Senate
reconsidered the vote on passage to third reading by 26-4 and on the
prior-approval amendment by 22-8, defeated the amendment on
reconsideration by 10-20, then passed the bill by 23-8 (Journal page
1950).
During the first called session, the House amended HB 67 to clarify that Central Texas University would not assume any debts of its predecessor institutions and could agree to a transfer of their property, then passed the bill by nonrecord vote on July 7 (Journal page 226). The Senate amended the bill to include a provision for degree-granting by the UT-Pan American Center at Brownsville, then passed the bill by voice vote on July 13. The House by nonrecord vote refused to concur with the Senate amendment on July 13 (Journal page 289) and a conference committee was appointed. The conference report dropped the Senate amendment on UT-Pan American. The House approved the conference report by nonrecord vote on July 14 (Journal page 345), and the Senate approved it by 23-3 on July 16 (Journal page 309).

Merging Pan American University with the UT System  
(SB 47 by Uribe)

Effective Sept. 1, 1989

SB 47 transfers control of Pan American University to the University of Texas System Board of Regents. The two campuses are to be known as The University of Texas-Pan American in Edinburg and the University of Texas-Pan American-Brownsville. Control over appropriations made to Pan American University and contractual obligations, including bonds, made by the university's board of regents also are transferred to the University of Texas System board. A prior provision giving the coordinating board the discretion to abolish the Pan American University at Brownsville center was eliminated and this upper-level center could become a freestanding institution upon complying with coordinating board requirements and securing a site of at least 200 acres.

Supporters of the bill said the merger would help ensure that the resources to provide a quality higher education are available to students in every area in the state. South Texas has a wealth of talent to offer but has been denied the funds to develop it. The merger would allow South Texas institutions to share the influence and prestige of UT and also would diversify the UT system by increasing the flow of Mexican-American students into graduate programs at other UT system schools.

Opponents said mergers hurt the state's higher education system as the special needs of the smaller schools are overshadowed. Pan American University's unique ability to provide an open admissions policy and remedial programs could get lost in the UT system's agenda. The bill guarantees no additional funds or programs to Pan American University. The state should instead consider establishing a first-class, comprehensive graduate research facility in South Texas.

The Brownsville campus has neither the facilities nor the enrollment to justify the potential change to a freestanding institution. Establishing procedures in the law to make this change would be premature and unwarranted. Other opponents said the Brownsville campus should be granted separate degree-granting status without delay.

Legislative History: The Senate passed the bill by voice vote on Feb. 27 (Journal page 325). The House approved a committee substitute, then passed the bill by nonrecord vote on May 5 (Journal page 1489). The Senate concurred with the House amendments by voice vote on May 10 (Journal page 1285).

The HRO analysis of the bill appeared in the May 4 Daily Floor Report.
Merging West Texas State University with Texas A&M
(SB 64 by Bivins, first called session)

Effective Nov. 1, 1989

SB 64 would transfer the organization, control and management of West Texas State University in Canyon from the university's current board of regents to the board of regents of the Texas A&M University System. The transfer will occur only if both boards agree to the merger no later than Dec. 31, 1989 and if the Texas Higher Education Coordinating Board approves the merger no later than March 31, 1990. The actual transfer will take effect on the date agreed to by both boards and approved by the coordinating board; the West Texas State University board would be abolished on that date.

All property comprising West Texas State University is to be transferred to the Texas A&M University System and operated as a component institution.

Supporters of the bill said the boards of regents of West Texas State University and the Texas A&M University System both support a merger. A merger would help create a comprehensive, regionally balanced state university network and follow the general recommendations of the Select Committee on Higher Education. It would allow the resources of the Texas A&M system to be extended to the Panhandle area.

Opponents said the proposed merger would move too quickly. The mergers of Texas A&I and Laredo State into the Texas A&M System occurred only after an extensive, two-year study. If a merger is a good idea, it can wait until the next regular session. Other opponents said it might make more sense for the campus to merge with Texas Tech University as part of a regional system serving the Panhandle area. The University of Texas System, with its broader statewide network, is another merger possibility -- both should be studied before a merger with A&M is made.

Legislative History: The Senate passed the bill by voice vote, one member recorded voting nay, on July 11 (Journal page 263). The House passed the bill by nonrecord vote on July 14 (Journal page 335).

On Jan. 26, 1990 the Texas Higher Education Coordinating Board voted by 10-7 to give final approval to the merger of West Texas State University into the Texas A&M University System. The board also adopted a resolution requesting that in the future the Legislature seek the board's recommendation prior to enactment of legislation concerning mergers or conversions of higher education institutions and noting that its approval of the merger and of the conversion of UT-Dallas to four-year status (see HB 42) should not be seen as an open invitation to further mergers or conversion.

The HRO analysis of the companion bill, HB 105 by Smithee, appeared in the July 14 Daily Floor Report.

- 135 -

House Research Organization
Texas A&M System merger with South Texas universities
(SB 122 by Truan, et al.)

Effective Sept. 1, 1989

SB 122 merges Texas A&I University, Corpus Christi State University and Laredo State University with The Texas A&M University System (TAMUS). All contracts and written obligations by the University System of South Texas board of regents on behalf of the institutions were validated and transferred to the board of regents of the Texas A&M System.

Supporters of the bill said the merger of the three South Texas universities with the Texas A&M system would give those schools access to the many advantages of affiliation with one of the nation's most prestigious institutions. The schools would gain greater access to financial and academic resources. The merger would facilitate academic programs between the South Texas institutions and other institutions within the A&M system. Additional graduate programs would bring research expertise to the area and stimulate business activity. The South Texas institutions could retain the brightest students and provide greater opportunities for more minority students to enter new academic fields.

Opponents said the bill offered no guarantee that the merger would solve problems involving financial resources and academic programs. The South Texas schools could be treated merely as minority feeder institutions for the A&M central campus, with no guarantee of any additional benefits. The South Texas schools would give up their autonomy, losing their separate board more likely to be responsive to local concerns.

Legislative History: The Senate passed the bill by voice vote on Feb. 27 (Journal page 325). The House passed it by nonrecord vote on May 5 (Journal page 1489).

The HRO analysis of the bill appeared in the May 4 Daily Floor Report.
Insurance benefits for graduate student employees
(SB 253 by Barrientos)

Effective June 16, 1989

SB 253 allows the Legislature to make appropriations to institutions of higher education to purchase insurance coverage for graduate student employees who work at least 20 hours per week. The institution also is allowed to use any available funds to purchase insurance coverage for these students.

(SB 457 by Parker, the coordinating board sunset bill, requires the institutions to report the number and classification of employees affected by the bill. The report must be made to the Legislature, the Legislative Budget Board and the Governor's Office of Budget and Planning by Oct. 1, 1990.)

Supporters of the bill said the earlier rescission of health insurance for graduate students was inadvertent, and these benefits should be restored. Graduate-student employees are essential; without them research and teaching costs would increase. In recent years graduate students have seen their salaries increase only 2 percent while the consumer price index rose 13 percent and tuition increased five-fold. Salary supplements in lieu of premium payments would not be the best approach for either the students or the institution. For students to acquire the individual health insurance coverage comparable to what the state provides, they would need far more than the $115 the state pays.

Opponents said the state cannot afford to assume the cost of health insurance for graduate student employees. The $10.5 million cost from general revenue, plus another $3 million from educational and general income, would be prohibitive given the state's tight budget.

Legislative History: The Senate passed the bill by 27-2 on April 19 (Journal page 862). The House amended the bill to allow, but not require, the Legislature and institutions of higher education to provide insurance benefits to graduate students working 20 hours per week then passed the bill by 78-65-2 on May 26 (Journal page 2749). On May 28 the Senate by voice vote refused to concur with the House amendments (Journal page 2968), but on May 29 it concurred by 30-0 (Journal page 3923).

Banning gifts to student athletes
(SB 429 by Glasgow)

Effective Sept. 1, 1989

SB 429 prohibits a student athlete from soliciting or accepting any benefit on the understanding that the benefit will influence the student to enroll at a particular institution of higher education and participate in its program of intercollegiate athletics. An offense is a class A misdemeanor (maximum penalty a $2,000 fine and one year in jail). Conferring any benefit to a student athlete for the same purpose is also prohibited; such an offense is a third-degree felony (maximum penalty a $10,000 fine and 10 years in prison). If student athletes contact law enforcement agencies and furnish testimony or evidence of an offense within 60 days, they are not liable for prosecution. No offense occurs if the person who offers or confers a benefit and the student athlete who solicits or accepts a benefit are related within the second degree of consanguinity or affinity.

Supporters of the bill said illegal recruiting has plagued Southwest Conference and other Texas athletic programs for too long. The problem has not been solved despite years of NCAA investigations and sanctions. The universities and their programs are penalized, but the alumni who pay or make gifts to students go untouched. Criminal prosecution is justified as a deterrent in these cases. The provision allowing a student up to 60 days to report illegal gifts would make violators think twice about illegal recruiting activity.

Opponents said the measure would undermine the NCAA's authority to police its member schools and thwart its efforts to investigate violations. It would become difficult to obtain voluntary testimony from individuals who have knowledge of violations if they were subject to criminal penalties. Only one state, California, has such a law on the books, and enforcement has been very spotty. Law enforcement officials have more important matters to deal with than college recruiting violations.

Legislative History: The Senate passed the bill by voice vote, one member recorded voting nay, on March 6 (Journal page 382). The House placed the bill on the Local and Consent Calendar and passed it by nonrecord vote on May 5 (Journal page 1474).
Continuing the Texas Higher Education Coordinating Board
(SB 457 by Parker)

Effective Sept. 1, 1989

SB 457 continues the Texas Higher Education Coordinating Board until Sept. 1, 2001. The bill makes changes in coordination and curricula oversight, financial aid programs and authority over capital improvements and certain administrative areas. It also makes changes in the Texas Opportunity Program (TOP), including requiring the board to end its litigation agreement with the federal government, to file suit to collect loans more than a year in default, to extend access to Hinson-Hazelwood loans to students at proprietary schools approved by the board and to establish stricter standards for certain students to demonstrate their ability to repay a student loan if they attend an institution with a default rate of more than 15 percent.

The board will review a lease-purchase agreement of an institution if it planned to add the property to the facilities inventory and the value was more than $300,000. The trigger for applying a more stringent review of new or remodeled buildings is increased from $500,000 to $600,000. Institutions must develop a campus master plan that includes deferred maintenance needs and a plan to address them.

SB 457 changes the composition and duties of the administrative council of the Higher Education Insurance Program. The bill includes the implementing legislation for SJR 74, which authorizes issuance of $75 million in general obligation bonds as college savings bonds for Texans to set aside money for college. The bill allows institutions to provide insurance benefits for graduate students employed at least 20 hours per week at the university. The State Rural Medical Education Board is changed to the State Medical Education Board. The coordinating board cannot restrict a public junior college district from offering courses or establishing a branch campus or extension facility outside the district. The governor can order the board to act as conservator of a public junior college if gross fiscal mismanagement exists.

Supporters of the bill it would continue and improve the higher education coordinating board and make needed changes in higher education programs. The role and mission statements for individual institutions would be fundamental to planning and goal setting for education. Retaining the Hinson-Hazelwood loan program would ensure access by low-income and minority students to low interest loans. By cancelling the board's litigation agreement, the board could settle claims that would bring $25 million back into the loan fund. The modifications of the teacher loan programs would utilize the most cost effective and efficient loan-repayment method and would reduce state risks. Information required by this bill would provide a more realistic tool for assessing an institution's building needs.

- 139 -

House Research Organization
savings bonds would give Texans a vehicle for coping with the increasing costs of a college education. The system developed by the board for transferring courses would provide a means of resolving problems that still occur between sending and receiving institutions.

Opponents said provisions related to the role and mission statements of public institutions of higher education would still result in only a snapshot of existing operations, rather than a detailed statement to assist in the planning and goal setting processes. Transferring the Hinson-Hazelwood loan program to the Guaranteed Student Loan Corporation, rather than maintaining the existing system of direct state loans, could save the state up to $102 million, which could be used to guarantee more loans. Phasing out the litigation contract and requiring the board to immediately file suits on defaulted loans would force students to pay 25 percent of the face value on defaulted loans; the federal government would have to reimburse the state for the entire loan, resulting in increased costs to the student and taxpayers and a higher default rate for financial institutions.

Legislative History: The Senate passed the bill by voice vote on March 15 (Journal page 503). The House amended the bill to require the coordinating board to include ethnic-group information on aid recipients in its annual report, plus other changes, then passed the bill by nonrecord vote on May 26 (Journal page 2667). The Senate refused to concur with the House amendments by voice vote on May 27, and a conference committee was appointed. On May 29 the Senate adopted the conference report by voice vote (Journal page 3517), and the House adopted it by nonrecord vote (Journal page 3451).

Expanding Corpus Christi State to four-year status  
(SB 647 by Truan)

Effective Sept. 1, 1989

SB 647 authorizes the addition of freshman and sophomore level classes at Corpus Christi State University. The university may offer freshman and sophomore courses in the fall semester of 1994. Freshman enrollment cannot exceed 400 students for 1994 and 500 for 1995 unless the total enrollment at Texas A&I and at Del Mar College increases by 300 or more students between the fall semester of 1993 and the fall semester of 1994. The admissions standards must be comparable to standards at Southwest Conference institutions.

Supporters of the bill said Corpus Christi is the only U.S. city of its size without a public or private four-year university. An expanded university would serve the rapidly growing South Texas population and provide a base of students for any new graduate-level programs. The enrollment caps for the first two years and the high admission standards of the university would reduce any adverse impact a four-year university would have on Del Mar College and Texas A&I in nearby Kingsville. The experiment of pairing upper-level institutions with local community colleges, started in the 1960s, has not proven successful. The institution, as a four-year university, would continue to work with community colleges in the Corpus Christi area.

Opponents said the bill appears more linked to local economic development than to a sound statewide education plan. No objective, comprehensive study has concluded that the proposed expansion is justified. Statewide studies have focused on the inadequacies of upper-level and graduate opportunities in South Texas; the downward expansion of Corpus Christi State would do nothing to relieve this and would siphon away the best students from community colleges.

Legislative History: The Senate passed the bill by voice vote, one member recorded voting nay, on March 3 (Journal page 376). The House amended the committee substitute to eliminate a name change to Texas A&M University at Corpus Christi, then passed the bill by nonrecord vote on May 5 (Journal page 1490). The Senate concurred with the House amendment by voice vote on May 10 (Journal page 1255).

The HRO analysis of the bill appeared in the May 4 Daily Floor Report.
State bond issue for college savings and student loans
(SJR 74 by Edwards/ SB 457 by Parker/ SB 94 by Henderson, et al.)

Approved by voters on Nov. 7, 1989/
Effective June 16, 1989

SJR 74 amended the Texas Constitution to allow the Legislature to authorize the issuance of up to $75 million in general obligation bonds. The bonds would be issued as college savings bonds by the Higher Education Coordinating Board. Proceeds from the sale of the bonds would be credited to the Texas Opportunity Plan Fund to be used for student loans. SB 457 contains implementing provisions for the college savings bond program. It requires that the bonds be issued in denominations of $1,000 or less. The purchaser's proceeds from the bonds, up to $10,000, may not be considered in determining eligibility of a student for state financial assistance. SB 94 the College Opportunity Act, allows the state to designate as college savings bonds veterans land and housing bonds, water development bonds and college student loan bonds.

Supporters said authorizing issuance of more general obligation bonds to finance additional student loans would expand higher education opportunities by ensuring adequate funding for the Hinson-Hazelwood student loan program for those who cannot obtain guaranteed loans from private financial institutions. The savings bonds would be easy to understand and convenient to buy. Small investors could save for their children's education and enjoy the convenience and small-denomination sales.

Opponents said college savings bonds would provide no real incentive for prudent investors. The only advantage of a college savings bond over any other state-issued tax-free bond would be that it is not considered in determining a student's eligibility for financial aid. However, interest rates on state bonds are so much lower than rates available on taxable investments that most Texans would do better to purchase certificates of deposit.

Legislative History: The Senate approved SJR 74 by 31-0 on May 15 (Journal page 1450), and the House approved it by 105-30 on May 25 (Journal page 2498). The voters approved SJR 74 (Amendment No. 21) on Nov. 7.

The Senate passed SB 1762 by Edwards, the implementing legislation for SJR 74, by 31-0 on May 15 (Journal page 1450). The bill was placed on the House General State Calendar but was never considered.

- 142 -

House Research Organization
The House approved an amendment incorporating the provisions of SB 1762 into SB 457, then passed SB 457 by nonrecord vote on May 26 (Journal page 2667). The Senate concurred with the House amendments by voice vote on May 29 (Journal page 3517).

The Senate passed SB 94 by 31-0 on April 24 (Journal page 934). The House passed SB 94 by 121-0-2 on May 16 (Journal page 1469).

The HRO analysis of SJR 74 appeared in Part One of the May 24 Daily Floor Report. The analysis of HB 1214 by Delco, the companion bill to SB 94, appeared in Part Two of the May 4 Daily Floor Report.
Drug testing in the workplace  
(HB 291 by Criss, et al.)

Died in the Senate

HB 291 would have established regulations for any employer engaging in drug testing and required employers in hazardous industries to develop a drug policy. In order to test, employers would have to adopt a written drug policy and distribute it to each employee or prospective employee.

Only urine samples could have been tested, and testing would have to be done by a state or federally registered lab. Labs would have to perform an initial screening test and a confirmatory procedure on samples that tested positive. On samples that tested positive, only the results of the confirmatory test could have been reported to the employer. The employer would have to pay all costs related to testing.

Disciplinary actions could have included requiring the employee to enter a treatment program, suspension or termination of employment, refusal to hire the prospective employee, or reporting the employee to a professional licensing authority or peer assistance program. All information relating to drug testing would have been confidential.

Supporters of the bill said it would establish badly needed uniform standards for drug testing in the workplace, which is becoming increasingly common. It would balance an employer's right to ensure a drug-free workplace with an employee's right to privacy. Employee protections would include requiring confidentiality for all information collected in the testing process, requiring that an employee be notified about an employer's drug policy, and requiring that drug testing labs be registered.

Opponents said the bill would not go far enough to protect either the employer or the employee. It would provide employers few protections they do not already have and would increase the cost of testing. Employees could be tested at random at any time, regardless of any suspicion or evidence of actual drug use. Random drug testing is justified only for those in hazardous occupations.

Legislative History: HB 291 was scheduled for second reading in the House on March 29, but was recommitted by the author (Journal page 720). On May 2 the House amended the bill to eliminate provisions restricting it to hazardous occupations, then passed the bill by nonrecord vote, one member recorded voting nay (Journal page 1288). The Senate Health and Human Services Committee revised the bill to specify that only urine samples could be used, that all testing labs must be registered and that only a confirmed positive test could be
reported to employers. It also eliminated causes of action protecting
the employer and provisions making all information relating to drug
testing the property of the employer. The amended version was
reported from committee on May 26, but no further action was taken.

The HRO analysis of the bill appeared in the March 29 and May 1 Daily
Floor Reports.
Wages paid under public contracts
(HB 430 by Stiles)

Vetoed

HB 430 would have raised, from $10 to $60 per worker, per day, the penalty for paying workers under public contracts less than the prevailing wage paid to workers in private industry in the same area. It would have specified that the penalty money be used to offset administrative costs for collecting penalties and other amounts due. A public entity contracting for services also would have been allowed to forego payment to the penalized contractor of the difference in wages owed to each worker under the contract, after 14 days notice and opportunity for a hearing, and to reimburse underpaid workers with the amounts retained.

Supporters of the bill said it would protect workers and public agencies that hire contractors. Raising the penalty for contractors that pay lower wages and providing a mechanism to collect the balance of those wages would ensure that workers are compensated as required under the law.

Opponents said the bill would unduly burden businesses and was unnecessary because a mechanism already exists for ensuring that public-contract employees are paid. Other opponents said the $60 penalty was too low to cover administrative costs involved in pursuing violators.

Legislative History: The House passed the bill by 90-49 on May 22 (Journal page 2249). The Senate passed the bill by voice vote on May 28 (Journal page 2852). The governor vetoed the bill on June 18.

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.
Employee drug testing and unemployment benefits
(HB 574 by Stiles)

Died in Senate committee

HB 574 would have disqualified persons from receiving unemployment benefits if they were fired for violating their employer's written drug-testing policy. The disqualification could have continued until a claimant had returned to work for six weeks or had earned six times the weekly benefit amount.

The disqualification would have applied only if the employer had a written drug policy. Drug-policy guidelines in the bill included that employees be made aware of the policy, that both employers and employees be subject to it, that a positive test result undergo a confirmatory test by a registered laboratory, and that all information received as part of a drug testing program be confidential. The employer would have been authorized to test for drugs at any time.

Supporters of the bill said it would ensure that employers would not be penalized for drug testing by having to pay unemployment benefits to an employee fired for a positive drug test. The bill would also have set up uniform standards for drug testing, which are badly needed to regulate this sensitive and increasingly common practice. Numerous protections for employee rights were included.

Opponents said drug testing is often unreliable and that it would be unfair to deny a person unemployment benefits based on such tests. Random drug testing has the potential for discrimination and abuse. If allowed, it should be strictly regulated.

Legislative History: The House amended the bill to add alcoholic beverages to the list of substances defined as drugs and to strengthen testing and reporting procedures, then passed the bill by nonrecord vote, one member recorded voting nay, on May 22 (Journal page 2245). The bill was tagged on May 25 in the Senate State Affairs Committee, where no further action was taken.

The HRO analysis of the bill appeared in the May 19 Daily Floor Report.
Unemployment benefits reduction for certain retirement payments
(HB 925 by Shine)

Died on the Senate floor

HB 925 would have expanded the list of disqualifications for receiving unemployment compensation benefits. Persons who filed for unemployment benefits after receiving a lump sum or annuity retirement payment or a severance payment along with a retirement payment would have received their unemployment benefits on a prorated basis. The amount of the lump sum retirement payment or severance payment would have been subtracted from the total amount of unemployment benefits an individual was entitled to receive. If the amount of the lump sum or severance payment was less than the total unemployment benefits for which the individual was eligible, the individual would have received the difference.

Supporters said the bill would close a loophole in the law that allows some retirees to receive unemployment benefits while others are ineligible. Under current law, persons who receive their retirement benefits on a periodic basis have their unemployment benefits reduced in proportion to their retirement benefits. Yet retirees who receive a lump sum payment receive full unemployment benefits. This bill would allow all retirees to be treated the same.

The current system of allowing full payment to persons who receive lump sum retirement or severance payments thwarts the purpose of unemployment benefits, which is to assist people through periods of economic difficulty. The bill would save the state unemployment benefits fund from being depleted during times of economic downturn by payment of benefits to those who do not need them.

Opponents said the bill would open the door to converting unemployment compensation into a means-based system. Unemployment benefits are not distributed on the basis of a person's wealth or assets, yet this bill would reduce unemployment benefits on the basis of a person's retirement or severance pay.

During times of economic difficulty, businesses often lay off workers. Some of these workers are entitled to vacation pay and other types of benefits, which they receive as severance pay. In other cases workers asked to take early retirement are paid lump sum retirement benefits. These workers were laid off through no fault of their own; they earned their pay or benefits and should not be penalized.

Legislative History: The House amended the bill to allow individuals who receive a return of their prior contributions, including earnings, to receive unemployment benefits and also to require that the Texas Employment Commission notify the employer of any initial claim, then passed the bill by 86-29 on May 12 (Journal page 1711). The Senate
amended the bill to clarify that disqualification would be based on receiving a lump-sum payment due to retirement only, then passed the bill by voice vote on May 25 (Journal page 2287). The House did not concur with the Senate amendments by nonrecord vote on May 26 (Journal page 2790), and a conference committee was appointed. On May 29 the House by nonrecord vote adopted the conference report, which would have disqualified only individuals who actually retired and received retirement benefits and deleted the TEC notification requirement (Journal page 3422). The Senate did not act on the conference report.

The HRO analysis of the bill appeared in the May 10 Daily Floor Report.
Revision of the workers' compensation system
(SB 1 by Montford, et al., second called session)

Effective Jan. 1, 1991, except as otherwise noted

SB 1 makes various revisions in the Texas workers' compensation system. Starting April 1, 1990, the three-member full-time Industrial Accident Board will be replaced by a new six-member Texas Workers' Compensation Commission. A commission-appointed executive director will oversee the commission staff.

Disability benefits to injured workers will be called "income benefits" and will include four categories: temporary, impairment, supplemental and lifetime. Benefits will be based on a rating of impairment using the American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment. Temporary benefits will be paid until a worker has healed to the full extent possible for the injury. Impairment benefits will be paid if the worker suffers impairment after healing from the injury. Supplemental benefits will be paid if the worker is seriously impaired, receives a lower salary than before the injury, has not reached a settlement for benefits, and has made a good-faith effort to seek employment.

Until Dec. 31, 1992, a worker's choice of doctors will be subject to approval by the insurer or the commission, starting with the third time the worker makes a change of doctors. Beginning Jan. 1, 1993, workers will have to choose their initial doctor from a commission-approved list, and subsequent changes will require commission approval.

Settlement of benefits will be permitted only in the case of impairment benefits. Parties will no longer be permitted to settle medical benefits.

A hearings division will be established within the workers' compensation commission to conduct all dispute proceedings affecting benefits. A third administrative hearing level -- an appeals panel -- will be added, and starting Jan. 1, 1992, binding arbitration of disputes will be allowed.

Trials of appeals of administrative decisions to state district court will no longer be under de novo review, which bars admission of evidence about any prior administrative proceedings. Instead, the trial court will be allowed to consider the commission's ruling in rendering its decision. For disputes over compensability or over income or death benefits, the parties will be entitled to a jury trial, but the issues and evidence introduced will be limited. For disputes involving all other issues, judicial review will be under the substantial evidence rule -- that is, the judge may consider only
whether the prior administrative decision violated a law, was justified by the evidence, or was an abuse of discretion.

A workers' health and safety administrative division will be established to enforce worker safety laws and identify employers with high losses.

The assigned-risk pool -- for employers who are refused insurance -- will be replaced by a Texas Workers' Compensation Insurance Facility. The facility will be required to assign insurers to provide coverage to small employers with low accident losses.

Beginning Jan. 1, 1993, qualified private employers will be able to provide workers' compensation coverage by insuring themselves rather than purchasing insurance policies.

Insurers will be able to deviate from State Board of Insurance-set workers' compensation premium rates by charging 25 percent or less than the prescribed rates.

Two or more employers in the same business will be allowed jointly to purchase a single workers' compensation policy to cover all members of the group, entitling the group to any discount given to a single policy having the same premium.

Small-business employers will receive premium discounts and penalties according to their safety records, as larger employers do under current law.

Supporters of the bill said it would revive the state's ailing system of workers' compensation by stabilizing insurance costs to employers and ensuring adequate benefits for workers. The ailing system demands immediate reform, and further legislative delays would lead to the system's collapse and cause irreversible damage to the state's economy. Determination of benefits should be based on a uniform, accepted standards such as the AMA guidelines to introduce some predictability into the system.

Opponents said the bill would exacerbate, rather than relieve, the workers' compensation insurance premium problem because it would expand the state bureaucracy, jeopardize the rights and benefits of injured workers and force already astronomical insurance rates to rise still further. It would do nothing to address the real cause of soaring premium rates -- inadequate regulation by the State Board of Insurance and the state's failure to impose stringent job-safety requirements. The inflexible AMA guidelines for figuring benefits for injured workers fail to take into account the individual differences among workers -- for example, a skilled machinist should receive more for a hand injury than a radio announcer.
Legislative History: SB 1 originally was introduced as two bills, SB 1, which concerned administrative structure, benefits, dispute resolution, appeal of administrative decisions, and enforcement of worker safety, and SB 2, which concerned changes in workers' compensation insurance. The Senate added various floor amendments to SB 1, including provisions to retain the current system of a three-member full-time administrative board, adopted by voice vote after a motion to table failed by 14-17 (Journal page 51); to add binding arbitration and allow a jury trial for all issues considered in the administrative hearing, adopted by voice vote after a motion to table failed by 14-17 (Journal page 76); and to change the benefits calculation to consider the injured worker's ability to get and keep a job and to account for income taxes paid by the worker, adopted by voice vote after a motion to table failed by 13-18 (Journal page 59). The Senate then passed SB 1 by 22-9 on Nov. 21 (Journal page 106). The Senate also added various floor amendments to SB 2, including provisions to drop mandatory workers' compensation coverage except for construction employers, adopted by 20-10 (Journal page 108), then passed SB 2 by voice vote on Nov. 21 (Journal page 116). The House Business and Commerce Committee incorporated SB 2 into SB 1. It also restored major provisions of SB 1 as introduced, but deleted the provision for mandatory insurance coverage. On Nov. 29 the House passed the revenue dedication provisions of the bill by 132-13 (Journal page 323) and the remainder of the bill by 122-23 (Journal page 324). The Senate refused to concur with the House amendments by 14-17 on Dec. 1 (Journal page 271), and a conference committee was appointed. The House adopted the conference report by 111-31 on Dec. 7 (Journal page 373). The Senate refused to adopt the conference report by 14-17 on Dec. 8 (Journal page 411), and a new conference committee was appointed. The new conference committee added various new provisions, including to prohibit discrimination under the bill because of race, sex, national origin or religion, to provide higher temporary benefits for low-wage earners, and to allow the court or the jury on appeal to consider prior administrative findings. The House adopted the conference report by voice vote, 11 members recorded voting nay, on Dec. 11 (Journal page 386), and the Senate adopted it by 18-13 on Dec. 12 (Journal page 547).

(The 71st Legislature also considered workers' compensation legislation during the regular session and the first called session, but the bills died in conference committee.)

The HRO analysis of the bill appeared in the Nov. 29 Daily Floor Report.

For a summary of SB 1 as enacted, see House Research Organization Special Legislative Report No. 146, Changes in the Workers' Compensation System, Dec. 21, 1989.
Solicitations by law enforcement personnel
(SB 427 by Edwards)

Vetoed

SB 427 would have changed state law regarding solicitation by law enforcement organizations. The organizations would have been required to report annually to the Attorney General's Office regarding solicited contributions. The report would have included particulars of the organization and its membership and the percentage of funds collected that was paid to maintain the solicitation operation. Solicitors would have been required to notify persons solicited that this information could be reviewed in the Attorney General's Office. To mislead persons solicited concerning the use of funds received would have constituted a class B misdemeanor (maximum penalty a $1,000 fine and 180 days in jail); a second offense would have constituted a class A misdemeanor (maximum penalty a $2,000 fine and one year in jail).

Supporters of the bill said that while the public generally is more willing to respond to charitable solicitations made in the name of law enforcement groups, some groups use solicitation as the primary source of funding for the organization itself rather than the charity. The public has a right to know whether donations are going to support a group's own expenses or for charity. The existing law regulating solicitation is difficult to enforce; this bill would allow more effective regulation.

Opponents said the added reporting requirements would add to the soliciting expenses of law enforcement organizations and reduce the amount available for charitable purposes. Having to notify each person solicited that information about the organization is available at the Attorney General's Office would only make people suspect the organization's legitimacy.

Legislative History: The Senate passed the bill by voice vote on April 24 (Journal page 933). The House amended the bill by refining the definition of a solicitor and by providing that the net proceeds of a solicitation be used only for charitable purposes and not for an organization's salaries or expenses, then passed it on May 18 by nonrecord vote (Journal page 2002). The Senate refused to concur with the House amendments by voice vote on May 20 (Journal page 1814), and a conference committee was appointed. The conference committee deleted the House provision requiring that the net proceeds of a solicitation be used only for charitable purposes and added a provision requiring that if a law enforcement organization is required to file an IRS Form 990 or its successor, the organization shall also file a copy with the Attorney General's Office. The House adopted the conference report by nonrecord vote on May 27 (Journal page 3009), and the Senate adopted it by voice vote on May 28 (Journal page 2906). The governor vetoed the bill on June 18.
Child care facilities for state employees
(SB 1480 by Barrientos)

Effective Sept. 1, 1989

SB 1480 establishes a Child Care Development Board to develop and administer child-care services for state employees who work in state-owned buildings. A Child Care Advisory Committee, made up of child care specialists, will advise the board. The board is to lease a site to a child care provider, who will operate the program and assume any liability. Funding to establish and operate the program may come from the Texas Capital Trust Fund. The board must select a site for the first child-care facility by March 1, 1990.

Supporters of the bill said it would allow the state to take the lead in providing family support systems. Providing child care for employees makes good business sense; companies with child care programs have lower absenteeism and turnover. The cost of these services to the state would be minimal, because parents would pay fees to cover the cost of running the center. Naming two oversight groups would ensure that the program is run wisely.

Opponents said the child-care business is better left to the private sector. The state would have to provide a large amount of space, kitchen and bathroom facilities and easy access. Even though the bill allows for expansion of the program, the program would serve only a tiny percentage of those who may want it.

Legislative History: The Senate passed the bill by voice vote on May 15 (Journal page 1451). The House defeated a motion to table the bill by 56-84 (Journal page 2271), amended the bill to add six state employees with children to the Child Care Advisory Committee, then passed the bill by 86-53-2 on May 22 (Journal page 2320). The Senate concurred with the House amendments by voice vote on May 25 (Journal page 2522).

The HRO analysis of the companion bill, HB 1869 by Guerrero, appeared in the May 20 Daily Floor Report.
Tax exemption for certain personal property  
(HB 82 by Stiles) 

Effective Jan. 1, 1990

HB 82 exempts from ad valorem taxation all non-income-producing tangible personal property, except manufactured homes. It repeals specific provisions exempting non-income-producing household goods, personal effects, automobiles and recreational boats. Local taxing units may override the exemption and tax tangible personal property if they provide prior published notice and hold a public hearing prior to any action to override the exemption.

Supporters of the bill said it would implement the constitutional amendment adopted in 1987 that removed any remaining question that all personal property not used to produce income may be exempted from property taxation. The Legislature had previously exempted almost all such property, adding recreational boats in 1987. In effect, HB 82 would only extend the personal-property tax exemption to private aircraft and recreational vehicles, and local taxing authorities could override the exemption if they chose.

Opponents said exempting airplanes and recreational vehicles from local property taxes would shift more of the tax burden onto those who cannot afford such luxuries.

Legislative History: The House adopted amendments permitting local taxing units to override the exemption and tax tangible personal property and requiring prior notice and a public hearing (Journal page 309), then passed the bill by nonrecord vote on Feb. 21 (Journal page 324). The Senate approved a committee substitute providing for an adjustment of school district taxable value in calculating the value of exempted personal property, then passed the bill by voice vote on April 20 (Journal page 876). The House concurred with the Senate amendment by nonrecord vote on April 27 (Journal page 1218).

Hospital- and emergency services-district sales tax
(HB 95 by Schlueter, first called session)

Effective Sept. 1, 1989

HB 95 permits hospital districts and emergency services districts to impose a local sales tax, subject to voter approval, of 0.5 percent, 1 percent, 1.5 percent or 2 percent. The bill also permits rural counties to impose, subject to voter approval, a 0.5 percent sales tax to provide health services in the county. A district or county could not adopt a tax rate or increase a tax rate if the resulting combined local tax rate would be more than 2 percent anywhere in the district or county.

Supporters of the bill said it would help improve rural health care in Texas by providing a new source of revenue for hospital districts, emergency services districts and county health services, which currently must rely on property taxes for their support. The bill would not threaten the tax needs of rural counties, since most counties that are interested in levying a local sales tax have already acted.

Opponents said that the bill would inhibit the ability of many counties to levy a local sales tax for non-health purposes by permitting hospital and emergency services districts to monopolize the full 2 percent local sales tax now permitted by law.

Legislative History: The House adopted an amendment adding the sales tax for county health services (Journal pages 252-256), then passed the bill by 127-3 on July 11 (Journal page 257). The Senate passed the bill by 25-2 on July 13 (Journal page 293).

The HRO analysis of the bill appeared in the July 11 Daily Floor Report.
Traffic fines in small cities
(HB 243 by Valigura et al.)

Effective Sept. 1, 1989

HB 243 replaces a requirement that cities remit excess speeding fines to the state with a requirement covering fines assessed for all traffic violations, including non-speeding violations, on state and interstate highways. Cities with population under 5,000 may retain all traffic fines in a fiscal year until the total exceeds 30 percent of city revenue from all sources, excluding federal funds and bond proceeds, during the previous fiscal year. After the cap is reached, cities must send all but $1 of each fine to the state treasurer for deposit as state general revenue.

Supporters of the bill said it would close a loophole in provisions aimed at preventing small cities from using highway traffic fines as a primary source of revenue. Because limits enacted in 1987 apply only to speeding fines, a few enterprising cities have been abusing non-speeding charges, such as broken taillights and dirty license plates. The 30 percent ceiling would provide enough revenue for road construction and maintenance and traffic law enforcement. Cities should rely on local taxes to finance their needs rather than forcing police to provide a revenue source through speed traps and roadside inspection stations.

Opponents said the bill would punish all property-poor small cities for a few cities' past abuses, which are being corrected through the electoral process and other forms of citizen involvement. The 30 percent ceiling would leave some cities without traffic enforcement for several months of the year. Some small cities depend on traffic fines to pay for police protection beyond what meager property values can generate. The punitive nature of this bill is revealed in the limitation to cities of less than 5,000; large cities still could write as many tickets as they choose.

Legislative History: The House passed the bill by nonrecord vote, three members recorded voting nay, on May 10 (Journal page 1610). The Senate passed the bill by voice vote on May 25 (Journal page 2281).

The HRO analysis of the bill appeared in the May 9 Daily Floor Report.
Revising use of hotel/motel tax revenue  
(HB 1023 by Wolens, et al.)

Effective Oct. 1, 1989

HB 1023 changes the limitations on municipal hotel/motel tax revenue. For cities with a population of 200,000 or more, at least half of the taxes collected must be spent on tourist and convention advertising. The minimum amount for smaller cities varies according to their tax rates. A city cannot spend more than 75 percent of the tax revenue on convention facilities, with certain exceptions. For cities with a population over 125,000, there is a 15 percent spending cap on historical preservation. On spending for the arts, the cap is the greater of 15 percent of the taxes collected or the taxes collected at a 1-percent tax rate on the cost of a room.

The bill requires cities to oversee hotel/motel tax spending. Cities must approve in advance the annual budget of anyone contracted to oversee tax-funded programs. The person or entity with oversight also is required to maintain and report tax revenue spending to the city and is prohibited from commingling the tax revenue with other funds.

Supporters of the bill said it would reduce abuses in use of hotel-motel taxes by further restricting how the revenue is to be spent. The bill would require strict oversight of the use of tax revenues and prohibit travel expenditures unrelated to tourism and commingling of tax revenues with other funds to hide discrepancies.

Opponents said the bill could hurt the tourist industry by severely restricting spending of hotel/motel tax revenue and discouraging cities from developing their own unique attractions. Caps on local spending of this revenue eliminate local flexibility and encourage waste. The accountability provisions are overly complex, placing an unjustified state burden on city spending of locally generated revenue.

Legislative History: The House amended the bill to exempt cities with a population of 125,000 or less from spending caps on tax revenue, and allow Houston to use up to 1 percent of its hotel/motel tax revenue for establishing the NASA Space Center, then passed the bill by nonrecord vote, three members recorded voting nay, on May 11 (Journal page 1678). The Senate Committee on Intergovernmental Relations amended the bill, applying different spending caps on tax revenue for cities with a population less than 200,000 and removing the spending-cap exemption for cities with a population of 125,000 or less. It also reinstated the hotel/motel tax exemption for religious, charitable and educational organizations. The Senate adopted a floor amendment changing the spending cap for the arts and returning the spending-cap exemption for cities with a population of 125,000 or less, then passed the bill by voice vote on May 26 (Journal page
2525). The House refused to concur with the Senate amendments by voice vote on May 27 (Journal page 3051), and a conference committee was appointed. The conference committee adopted the Senate cap on tax spending for the arts and changed the spending cap for historical preservation to apply to cities with a population of more than 125,000. On May 29 the House adopted the conference report by nonrecord vote, one member recorded voting nay (Journal page 3245), and the Senate adopted it by voice vote (Journal page 3309).

The HRO analysis of the bill appeared in the May 10 Daily Floor Report.
Extending municipal services to newly annexed areas
(HB 3187 by T. Smith)

Effective June 16, 1989 and Sept. 1, 1989

HB 3187 makes several changes in the laws governing annexation by
cities and the extension of city services to newly annexed areas.

Effective June 16, 1989, owners of land that was annexed for limited
purposes before Sept. 1, 1987, but was not annexed for full purposes
by Dec. 31, 1988, could file a written request for disannexation no
later than Aug. 1, 1989. Requests for disannexation of land within a
platted subdivision had to be signed by the owners of at least 51
percent of the land in the subdivision. The city receiving the
request had to disannex by Sept. 30, 1989, and this land may not be
re-annexed for limited purposes for five years, or re-annexed for full
purposes before Aug. 1, 1990, unless the landowner so requests.

Effective Sept. 1, 1989, HB 3187 requires cities to extend full
municipal services (defined as those services funded wholly or partly
by city taxes and provided within its regular boundaries) to newly
annexed areas within 4-1/2 years of annexation. A landowner may,
however, give written agreement to waive the city's obligation to
annex the area for all purposes, which will bind future owners of the
land. The bill also permits populous home-rule cities to annex areas
that are not contiguous to their boundaries, if the owner of the area
consents.

The bill authorizes cities to extend into their extraterritorial
jurisdiction (ETJ) ordinances related to access to public roads, but
specifically prohibits cities from extending into their ETJs certain
zoning regulations.

Owners of land that falls within the newly created ETJ of certain
villages may obtain release under certain circumstances; previously
effective land-use approvals may be revalidated upon return to the
prior status quo. The bill also requires villages to adopt a nonpoint
source pollution abatement program before creating an ETJ.

Effective Sept. 1, 1989 to March 1, 1992, cities that have disannexed
territory that previously was annexed for limited purposes may
designate planned unit development districts within their ETJs. Such
a district must contain at least 250 acres, and the owners of the land
may agree with the city that the land will continue to be a part of
the city's ETJ and will be immune from annexation for up to 15 years.
If a city refuses to create a planned district within six months of an
application, the landowners may begin incorporation as a separate
municipality.

- 160 -

House Research Organization
Supporters of the bill said it would spell out municipal obligations to provide services to newly annexed areas. It is a compromise measure worked out primarily between the city of Austin and local developers, who have chafed under extensions of the city's stringent land-use regulations to areas outside its boundaries. The planned use development district would permit the city to maintain its interests in the nature of property development around it; the city could participate in land use planning, and controls affecting each development could be individually tailored.

Opponents said that the threat of re-annexation could have a negative impact on the value of property affected by the bill. Excessive regulation of private property hinders economic development and the rights of property owners. The bill would not do enough to restrain Austin's appetite for annexation. Other opponents said the bill would create an explosion of applications for planned unit developments, and cities could not handle the volume that would result.

Legislative History: The House passed the bill by 133-2 on May 18 (Journal page 2016). The Senate amended the bill and passed it by 31-0 on May 27 (Journal page 2647). The House refused to concur with the Senate amendments by nonrecord vote on May 29 (Journal page 3363), and a conference committee was appointed. On May 29 the Senate adopted the conference report by 31-0 (Journal page 3530), and the House adopted it by nonrecord vote (Journal page 3496).

State funding of state mandates to local governments
(HJR 2 by Morales)

Died in Calendars Committee

HJR 2 would have proposed a constitutional amendment requiring the state to pay the costs of laws imposing new state standards for local services or operation of local facilities. The comptroller would have estimated the probable costs of such laws, which would not be binding unless the comptroller certified that the Legislature had appropriated or provided for other funding for the program from a source other than local revenue. The state reimbursement requirement would not have been binding during a budget biennium if four-fifths of each house of the Legislature voted to declare an emergency.

The state funding requirement would not have applied to laws creating or modifying criminal offenses, approved by voters at a general election or enacted to comply with the Texas Constitution or federal law. A new estimate and provision for funding would have been required in each budget biennium. Similar requirements would have applied to state agency rules.

Supporters of the proposal said unfunded state mandates that result in higher local taxes have brought overburdened taxpayers near the brink of revolt. The state has a moral obligation to pay for its programs and reduce this threat to homes, property and economic development. State officials would behave in a more fiscally responsible manner if they were constitutionally bound to fund what they enact. Local officials should not have to endure taxpayers' ire to fund locally unpopular programs imposed from Austin.

Opponents said the proposal would add uncertainty and administrative cost to the state budget process and could cost the state billions of dollars. The Legislature could become immobilized by concern that any locally administered act might require a state tax increase. Local governments would lose control of programs they administer if all state-mandated programs had to be funded.

Legislative History: The House State Affairs Committee reported HJR 2 with a substitute by 10-0 on May 4 and on May 18 sent it to the Calendars Committee, where no further action was taken.
Authorizing four-year terms for hospital district board members
(HJR 4 by Russell)

Approved by voters Nov. 7, 1989

HJR 4 amended the Texas Constitution to allow the Legislature to set
the terms of hospital district board members, formerly limited to two
years, at up to four years.

Supporters said the proposal would allow the Legislature set hospital
district board terms to meet local needs. The two-year term limit,
combined with staggered terms, means hospital district budgets often
are drained by yearly elections when local revenue should be spent on
health care needs. Further savings would result because four-year
terms would allow hospital district elections to coincide with county
elections.

Opponents said two-year terms make board members more accountable and
should be retained. Other opponents said the constitutional
limitation of two-year terms for local offices generally should be
scraped, not amended piecemeal.

Legislative History: The House adopted HJR 4 by 128-0 on April 20
(Journal page 1060). The Senate adopted it by 30-0 on May 20 (Journal
page 1758).

The HRO analysis of HJR 4 appeared in the April 20 Daily Floor Report.
Property tax exemption for veterans groups
(HJR 13 by Willy, et al.)

Approved by voters Nov. 7, 1989

HJR 13 amends the Texas Constitution to permit the Legislature to exempt from ad valorem taxes property owned by nonprofit organizations composed primarily of members or former members of the armed forces of the United States or its allies and chartered or incorporated by the U.S. Congress.

Supporters said the amendment is necessary to ensure that veterans groups receive property-tax exemptions, which they deserve in recognition of their members' service. Since the existing statewide tax exemption for veterans groups was declared unconstitutional in 1982, these groups have been receiving exemptions on a county-by-county basis under an exemption for charitable purposes. This resolution would give a constitutional basis to a specific, statewide exemption for veterans groups.

Opponents said the voters rejected a similar proposed amendment in 1983, and it should not be put before them again. The exemption is special-interest legislation that would merely shift the tax burden to those taxpayers without a special privilege. Veterans groups that perform real charity work already are eligible for the existing tax exemption for charity groups; those groups that primarily operate local halls to sell beer and hold dances do not need a tax break.

Legislative History: The House adopted HJR 13 by 140-0 on May 10 (Journal page 1606). The Senate adopted it by 31-0 on May 26. The voters approved HJR 13 (Amendment No. 4) on Nov. 7.

Optional county road and bridge fees  
(SB 328 by Tejeda)  

Effective Aug. 28, 1989

SB 328 changes from a flat $5 to any amount up to $10 the optional road and bridge fee that counties may add as a surcharge to annual motor vehicle registration fees. Counties with a population of more than 2.39 million (Harris) may charge no more than $5.

Supporters of the bill said counties need greater flexibility in levying the optional road and bridge fee. Increasing the fee would be a fairer way to fund necessary road repairs and construction in growth areas than tapping property tax owners for general revenue. Counties that are not charging the $5 fee but still have unmet needs could charge fees of $3 or even $1. Harris County does not need this particular source of revenue for roads and should concentrate efforts on more pressing social needs, such as homelessness.

Opponents said the bill would allow counties to double the surcharge on vehicle owners, who already are struggling to pay state registration fees and the existing surcharge. Allowing counties to charge less than $5 would only encourage the 48 counties not now charging a fee to impose one and tell voters they are getting off easy compared to other counties. Other opponents said Harris County needs this additional revenue as much as other urban counties.

Legislative History: The Senate amended the bill to allot half of new Harris County fee revenues to the City of Houston, then passed it by 18-9 on March 29 (Journal page 585). The House removed committee provisions to authorize use of the fee for supercollider land acquisition and to allot half of new Harris County revenues to Houston and Pasadena. The bill initially failed to pass by 56-76-2 on May 26 (Journal page 2732). The House reconsidered the vote and adopted an amendment to limit Harris County fees to $5, then passed the bill by nonrecord vote, one member recorded voting yea and 15 recorded voting nay, on May 26 (Journal page 2745). The Senate concurred with the House amendments by 28-0 on May 28 (Journal page 3212).

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

- 165 -

House Research Organization
Tax break for goods in transit ("freeport exemption")
(SJR 11 by McFarland et al./ HB 2959 by Schlueeter)

Approved by voters on Nov. 7, 1989/ Effective Jan. 1, 1990

SJR 11 amends the Texas Constitution to exempt from taxation goods, wares, merchandise and ores -- except oil, gas and petroleum products -- that are acquired in or imported into the state; used for assembling, storing, manufacturing, processing or fabricating, and shipped out of the state within 175 days of being acquired or imported. Property covered by the amendment includes aircraft and aircraft parts brought into the state or acquired in the state to repair or maintain aircraft operated by a certificated air carrier.

A city, county, school district or junior college district could have continued to tax this property in 1990 if it took official action before Jan. 1, 1990. It may tax the property in subsequent years if it acts before April 1, 1990. A taxing unit may rescind a decision to tax, but the rescission is irrevocable.

HB 2959 implements the local-option "freeport" tax exemption authorized by SJR 11.

Supporters said SJR 11 and HB 2959 would reinstate a tax exemption that had been enacted by statute but had been struck down by the courts. The goods exempted add value to the products produced in Texas and have been a proven incentive for economic development. The exemption is necessary for Texas to compete with the many other states that offer similar tax incentives. If the tax break proved too onerous for some jurisdictions, they could opt out.

Opponents said SJR 11 would deprive cities, counties and school districts of a substantial portion of their tax base. The provisions allowing local taxing units to opt out of the exemption are too restrictive. It would be an unjustified public subsidy for private business. The break for aircraft parts is special-interest legislation for American Airlines. Other opponents said oil and natural gas should be included among the products eligible for a "freeport" exemption to allow the petroleum industry to compete with oil-producing countries that have started to refine their own crude oil.

Legislative History: The Senate adopted SJR 11 by 27-2 on March 16 (Journal page 518). The House committee substitute excluded oil, natural gas and other petroleum products. The House tabled by 73-68 a proposed amendment that would have made oil and gas eligible for an exemption (Journal page 1774), then adopted SJR 11 by 140-0 on May 15 (Journal page 1774). The Senate refused to concur with the House amendment by voice vote on May 25 (Journal page 2118), and a conference committee was appointed. The conference committee added a
new section, not included in either the House or Senate versions, that made aircraft, aircraft parts and equipment used to repair and maintain aircraft eligible for an exemption. (This addition was authorized by SCR 177, which was adopted by the Senate by voice vote on May 26 (Journal page 2601) and by the House by nonrecord vote on May 27 (Journal page 2865).) The Senate adopted the conference report by 28-1 on May 27 (Journal page 2703), and the House adopted it by 143-2-2 on May 29 (Journal page 3245). The voters approved SJR 11 (Amendment No. 5) on Nov. 7.

The House passed HB 2959 by nonrecord vote on May 16 (Journal page 1855). The Senate added provisions concerning aircraft and aircraft repair and defining petroleum products (Journal page 2699), then passed the bill by 22-3 on May 27 (Journal page 2700). The House concurred with the Senate amendments by nonrecord vote on May 29 (Journal page 3246).

Abolishing county surveyor office in certain counties
(SJR 16 by Henderson)

Approved by voters on Nov. 7, 1989

SJR 16 amended the Texas Constitution to abolish the office of county surveyor in Cass, Ector, Garza, Smith, Bexar, Harris and Webb counties. The powers, duties and functions of the office were transferred to the county officer or employee designated by the commissioners court of the county in which the office was abolished.

Supporters of the proposal said the office of county surveyor goes unfilled in many counties and should no longer be elective in counties where it is no longer wanted or needed. The office is an antiquated hold-over from the 1800s when large areas of land were being given away or sold by the state. Today many elected county surveyors do nothing but maintain the county's survey records, which could be done by another official. Counties are statutorily required to provide the county surveyor with an office, which is an unwarranted expense. Counties should be allowed to determine how to best handle county business.

Opponents said the trend toward abolishing constitutionally created, elected offices is unfortunate, especially when the duties are transferred to an appointee or a county employee. If the argument against having a county surveyor boils down to the cost of maintaining office space, why not just amend the laws that require providing the space? The county surveyor has traditionally acted as an impartial judge to resolve disputes between the private surveyors. While the surveyor's functions are limited, the office is far from obsolete. Other opponents said all counties should be given the discretion to decide by local option whether or not they need county surveyors, rather than changing the Constitution by piecemeal amendment.

Legislative History: The Senate adopted SJR 16, which initially would have affected only Harris County, by 29-0 on April 13 (Journal page 765). The House County Affairs Committee added Cass, Ector and Webb counties, and the House adopted an amendment to include Garza, Smith and Bexar counties, then adopted SJR 16 by 134-5 on May 26 (Journal page 2695). The Senate concurred with the House amendments by 28-0 on May 28 (Journal page 3121). The voters approved SJR 16 (Amendment No. 20) on Nov. 7.

The HRO analysis of SJR 16 appeared in the May 26 Daily Floor Report.
Local creation of hospital districts
(SJR 34/SB 907 by Armbrister)

Approved by voters on Nov. 7

SJR 34 amended Art. 9, sec. 9 of the Texas Constitution to allow the Legislature to authorize creation of local hospital districts by general or special law, rather than by special law only. It changed the previous requirement that a hospital district be approved by a majority of taxing voters to a majority of qualified voters. For hospital districts created in counties with population of 75,000 or less, the Legislature may authorize the commissioners court to levy an ad valorem property tax and could set the maximum tax rate.

SB 907 establishes procedures for local formation of hospital districts by petition and election.

Supporters of the proposal said it would put the authority and responsibility for creating a hospital district where it really belongs -- in the hands of the people who will be using the facility and paying for it. Creating a hospital district with local taxing authority is a local matter. The current procedure of requiring the Legislature to enact a special law to authorize every hospital district wastes time, which often is a critical concern in light of the dramatic increase in rural hospital closings in recent years.

Opponents said the creation of hospital districts, with their extensive authority to tax, issue bonds, and seize property through eminent domain and their responsibility for indigent care, should be reviewed individually by the Legislature. This change could lead to a proliferation of hospital districts to handle some immediate problem that might not justify establishing a full-blown taxing district.

Legislative History: The Senate amended SJR 34 to include provisions affecting counties with a population of 75,000 or less (Journal page 619), then adopted it by 29-0 on March 30 (Journal page 620). The House adopted SJR 34 by 137-0 on May 8 (Journal page 1504). The voters approved SJR 34 (Amendment No. 16) on Nov. 7.

The Senate passed SB 907 by voice vote on March 30 (Journal page 620). The House amended the bill to require voter approval in each county of a multicounty district, then passed it by nonrecord vote, one member recorded voting nay, on May 8 (Journal page 1548). The Senate concurred with the House amendments by voice vote on May 11 (Journal page 1302).


- 169 -

House Research Organization
Broader investment of local government funds
(SJR 59/SB 1342 by Leedom)

Approved by voters on Nov. 7/ Effective Aug. 28., 1989

SJR 59 amends the Texas Constitution to permit a county, city, town, or other political subdivision to invest its funds as authorized by law. It also specifies that the Constitution does not prevent a county, city or other municipal corporation from investing its funds as authorized by law.

SB 1342 adds conservation and reclamation districts, hospital districts and fresh water supply districts to the political subdivisions whose investments are controlled by the Public Funds Investment Act. Political subdivisions subject to the act may invest in certain money-market mutual funds.

Supporters of the proposal and its implementing legislation said it would broaden the range of investments available to governmental subdivisions, enabling them to replace income from taxes and grants with increased returns from their investments. The level of competence of finance officers serving local governments has improved to the point that even small units can knowledgeably choose among a wider range of investment alternatives.

Opponents said the proposal and its implementing bill would allow local governments to make risky investments that they do not have the sophistication to evaluate. New investments would pull local government money out of the local banks that currently hold the funds, lessening their ability to make loans to consumers and small businesses.

Legislative History: The Senate adopted SJR 59 by 25-0 on April 26 (Journal page 992). The House adopted a committee substitute almost identical to the Senate version by 120-7-2 on May 22 (Journal page 2244). The Senate concurred with the House amendments by 31-0 on May 24 (Journal page 2033).

The Senate amended SB 1342 to add conservation and reclamation districts, hospital districts and fresh water supply districts to the political subdivisions whose investments are controlled by the Public Funds Investment Act, then passed the bill by 25-0 on April 26 (Journal page 996). The House Financial Institutions Committee adopted a committee substitute changing the permissible credit ranking and maturity of commercial paper and bankers' acceptances, adding limitations on money-market mutual-fund investments, and making most of the bill's provisions contingent on the adoption of SJR 59. On May 25 the House considered an amendment that would have prohibited political subdivisions affected by the bill from investing in companies doing business in South Africa. It rejected a motion to
table the amendment by 67-70-2 then also rejected the amendment by 66-71-2 (Journal pages 2517-19). The House then passed SB 1342 by nonrecord vote, one member recorded voting nay, on May 26 (Journal page 2711). The Senate concurred with the House amendments by voice vote on May 28 (Journal page 3147).

The HRO analyses of SB 1342 and SJR 59 appeared in the May 22 Daily Floor Report.
Access to information under state Open Records Law
(HB 1285 by Wallace/SB 1540 by Caperton)

Effective Sept. 1, 1989

HB 1285, revising government recordkeeping procedures, also includes provisions originally included in SB 1540 by Caperton that amend the state Open Records Act to require disclosure of information collected for a governmental body, unless the agency either does not own or does not have right of access to the information. Individuals have a special right of access to information about themselves, even if that information is exempted from the Open Records Act, subject to certain restrictions. The custodian of information is required to treat each request for information equally, including requests from the news media. Public records must be furnished without charge, or at the actual cost of producing copies, and a person who overpays is entitled to three times the overpayment. Also, test items developed by licensing agencies or governmental bodies are exempt from disclosure.

Supporters of SB 1540 said it would strengthen the state Open Records Act and provide the public with broader access to information. The bill would prevent government agencies from using private contractors to avoid the requirements of the act. Under limited circumstances to protect all concerned, the bill would grant a special right of access to individuals to obtain information about themselves. The bill also would prevent agencies from charging exorbitant amounts for information as a means of discouraging requests.

Opponents said taxpayers should not have to pay the costs of retrieving information for a curious citizen. In many cases, the legal work involved in releasing information can take years and add up to significant research and legal costs. The state should not be dictating to local governments how they should handle information.

Legislative History: The Senate passed SB 1540 by voice vote on May 17 (Journal page 1540). The House substituted a version of the bill that required the custodian of records to treat all requests equally and added provisions involving cases where a third party's privacy or property interests are at stake. While the bill was being considered on the floor on May 26, the 72-hour rule took effect, so the bill died (Journal page 2791).

The Senate by voice vote amended HB 1285 to include the provisions of SB 1540, then passed the bill by voice vote on May 28 (Journal page 2858). The House concurred with the Senate amendments by nonrecord vote on May 29 (Journal page 3275).
Commercial use of information about crime victims
(SB 62 by Leedom, et al., first called session)

Effective July 21, 1989

SB 62 repeals an exception to the Open Records Act, enacted during the regular session (HB 2481 by Blair), that closed to public inspection information on felony crime victims and amends the Business and Commerce Code to prohibit use of certain crime-victim information for solicitation purposes. Crime victim information is defined as information that identifies or serves to identify persons who may have been victims of crime involving physical injury, entry of the victim's dwelling or attempts at those offenses.

Persons who possess crime victim information that they have obtained or know was obtained from a law enforcement agency are prohibited from using the information to directly contact crime victims or their family members to solicit business. The attorney general is authorized to pursue injunctive relief and civil penalties against violators under the Deceptive Trade Practices-Consumer Protection Act.

Supporters of the bill said it would protect emotionally vulnerable crime victims from home security solicitations without stemming the flow of information essential to the news media's task of informing citizens about crime. SB 62 would sweep aside varied local interpretations of the open records exception, which has been cited in decisions to withhold names of people killed or injured by drunken drivers, knifing victims and even missing children who may have been kidnapped.

Opponents said the bill would restrict the flow of information to crime victims about home security measures that might protect them against subsequent crimes and make them feel more secure. The line between media and business communications is not a solid one, since media operate for profit and commercial solicitations provide valuable information. Other opponents said SB 62 would do nothing to protect crime victims from intrusive media attention. Law enforcement officials at least should be able to withhold information that might facilitate another crime.

Legislative History: The Senate passed the bill by 24-0 on July 6 (Journal page 81). The House adopted a committee substitute adding the solicitation provision and passed the bill by 137-0 on July 12 (Journal page 271). The Senate concurred with the House amendment by 27-0 on July 12 (Journal page 276).

The HRO analysis of the bill appeared in the July 12 Daily Floor Report.
Open records exemptions in education  
(SB 404 by Henderson)  

Effective May 17, 1989

SB 404 exempts from the state Open Records Act the college transcripts of professional public school employees, except for the degree obtained and the curriculum studied. The names of applicants for chief executive officer of a political subdivision or institution of higher education also are exempt from disclosure, but the names of finalists for a position must be disclosed at least 21 days before the meeting at which final action is taken on the employment of the individual.

Supporters of the bill said it would clarify that grades and certain other data in the college transcript of a teacher or administrator is personal and confidential under the Open Records Act. Reporters and the public still would have access to information about the degree obtained and curriculum studied, which is the point at which the public's right to know ends. The bill also would provide search committees the privacy they need in pursuing applicants for such high-level public posts as university president, while still allowing sufficient time for the public to scrutinize the finalists under serious consideration for such posts.

Opponents said the bill would violate the spirit of the Open Records Act by providing officials with a means of covering up information that should be part of the public record. In the case of taxpayer-supported positions, the public has a right to know about the qualifications and background of all individuals being considered.

Legislative History: The Senate amended the bill to add the disclosure exemption for applicants for public posts, then passed the bill by voice vote, one member recorded voting nay, on March 13 (Journal page 445). The House amended the bill to extend from seven to 21 days the period prior to final employment action that finalists' names are must be disclosed, then passed the bill by nonrecord vote, two members recorded voting nay, on May 11 (Journal page 56). The Senate concurred with the House amendments by 30-0 on May 12 (Journal page 1716).

The HRO analysis of the bill appeared in the May 10 Daily Floor Report.
Junior high school vocational education programs
(HB 501 by Carter, et al.)

Died in Senate Committee

HB 501 would have required that vocational education programs for students with special learning needs start with seventh and eighth grades and be funded under the school finance formula for vocational education. Vocational programs could include coordinated vocational-academic education programs with cocurricular activities sponsored by various vocational education clubs and groups.

Supporters said the bill would continue a valuable educational program for seventh and eighth grade students. Coordinated vocational-academic education (CVAE) programs for students performing at well below their grade level provide much-needed help for those who are at high risk of dropping out. These courses provide a bridge between vocational studies and academics. In many school districts, compensatory funds for junior high vocational education already are committed to other programs; the bill would provide a more secure funding source for these early-grade vocational programs.

Opponents said the bill would result in the removal of children from the academic process too soon by placing them on the vocational track starting in junior high. This would set them on a downward economic slope before they have had a chance to demonstrate their ability to learn. Many vocational programs turn out to be dumping grounds for students with learning problems, and the vocational skills learned may be obsolete by the time the student graduates from high school. The State Board of Education, after much time and study, has recommended that CVAE programs be phased out in favor of other appropriate alternatives to social promotion for students in grades seven and eight. This bill would effectively jettison all of the work done in this area and eliminate the funding flexibility needed.

Legislative History: The House passed the bill by nonrecord vote on April 26 (Journal page 1158). The Senate referred the bill to the Education Committee, where no action was taken.

The HRO analysis of the bill appeared in the April 24 Daily Floor Report.
School start date
(HB 571 by Grusendorf, et al.)

Effective May 5, 1989

HB 571 changes the law that prohibited starting public school any earlier than Sept. 1. The bill requires that school begin no earlier than the Monday of the calendar week in which Sept. 1 falls.

Supporters of the bill said school districts need some flexibility in scheduling the first day of school. The bill would allow school to begin on either Monday or Tuesday, depending on where Labor Day falls in the calendar year. The bill would avoid having school start in the middle of the week on an arbitrary date.

No apparent opposition

Legislative History: The House passed the bill on the Consent Calendar by 139-0 on April 6 (Journal page 865). The Senate passed it by 31-0 on May 1 (Journal page 1073).
Denying driver's licenses to dropouts
(HB 850 by Hammond, et al.)

Effective Sept. 1, 1989

HB 850 prohibits anyone under age 18 from receiving a driver's license or motorcycle operator's license or an instruction permit without proof of high school graduation, current school enrollment or enrollment in a high school equivalency examination preparatory program.

License applicants who have not received a diploma would have to be enrolled in school for at least 80 days in the fall or spring semesters preceding the application or have been enrolled in a school equivalency examination preparatory program at least 45 days. The Texas Education Agency must design a standard form for schools to verify a student's enrollment and attendance, subject to approval by the Texas Department of Public Safety.

Supporters said the bill would provide an excellent incentive for students to stay in school. Not being allowed to drive until age 18 would force students who are considering dropping out to think twice. A 1988 West Virginia law that suspends the license of students who drop out or are habitually truant has helped to reduce the drop-out and truancy rates by an estimated 25 percent and has increased the high school attendance rate markedly.

Opponents said this bill would all but preclude students who have left school from getting a decent job, leaving them with little to do but get into trouble. A student who has not finished school but who has managed to find a job needs help to hold that job, not further roadblocks to earning a living. Keeping unmotivated students in school would disrupt classes as they hang around just to meet a requirement for driving. Those who cannot obtain a license will likely drive without one, encouraging disrespect for the law.

Legislative History: The House amended the bill to make students in high school equivalency examination preparatory programs eligible for a driver's license, then passed it by nonrecord vote, one member recorded voting nay, on May 18 (Journal page 1955). The Senate passed the bill by voice vote on May 26 (Journal page 2510).

The HRO analysis of the bill appeared in the May 15 Daily Floor Report.
State textbooks
(HB 884 by Hammond, et al.)

Effective Sept. 1, 1989

HB 884 continues the State Textbook Committee and eliminates its separate review under the Sunset Act, placing it under the Texas Education Agency. The bill changes the administration of the committee by creating a number of independent subject area committees and providing new membership requirements. It modifies some of the textbook selection and purchasing provisions.

The bill requires the State Board of Education (SBOE) to appoint a textbook proclamation advisory committee for each subject area and review recommendations made by the advisory committees. A proclamation is to be issued at least 32 months before the adoption schedule starts. This provision takes effect Jan. 1, 1991.

The bill establishes a pilot program to allow the State Board of Education (SBOE) to authorize certain publishers to ship textbooks directly to school districts, rather than maintaining or designating a state textbook depository in a city approved by the board. The pilot program will be in effect for two years, with a report on its impact made to the 72nd Legislature.

The bill restricts the state from considering the adoption of textbooks for more than one of the base elementary subjects in any one year.

Supporters of the bill said the subject area committees would improve the selection process by increasing the time and expertise given each subject area. The current system of adopting more than one base subject textbook in one year affects the quality of textbooks. Establishing a pilot program for distribution of textbooks directly to the schools rather than through depositories would determine whether cost savings would result by eliminating a step in the distribution process.

Opponents said direct delivery of textbooks to schools would increase costs for local school districts and ruin the state depository system, causing the state to lose control of its stock of textbooks. It would also increase the paperwork and processing burden on the districts. Other opponents said requiring the state to consider only one base subject a year is special-interest legislation that would hurt education, teachers and taxpayers. Completing the adoption process for math and science courses is especially important. The current books have been used for six years and do not meet the state-mandated curriculum.
Legislative History: The House amended the bill to change the effective date for proclamation schedules from Sept. 1, 1989 to Jan. 1, 1991 and set the effective date on which the prohibition against adopting texts for more than one elementary level base subject to apply to textbook proclamations issued before May 1, 1989, then passed the bill by nonrecord vote on May 19 (Journal page 2019). The Senate made technical corrections to the bill and passed it by voice vote on May 26 (Journal page 2508). The House concurred with the Senate amendments by nonrecord vote on May 27 (Journal page 3045).

The HRO analysis of the bill appeared in the May 18 Daily Floor Report.
Regulating public school assessment tests
(HB 983 by Grusendorf)

Effective fall semester of 1990

HB 983 requires the State Board of Education to regulate standards and
security of school district testing. The bill prohibits school
districts from using the same assessment test for more than three
consecutive years. Companies that grade assessment tests must report
the test results, along with other state and national comparison
averages, to the school district and the Texas Educational Agency.
Texas student college entrance exam results must be reported to the
TEA along with other state and national average scores. Multiple sets
of questions may be used on the same TEAMS test to enhance security.

Supporters of the bill said it would assure that school districts
vary, update and provide adequate security for assessment tests. It
would require that comparison data for assessment tests be up-to-date
and be reported to the TEA along with Texas student college entrance
exam results. The tests scores and comparison data would give TEA
needed information.

Opponents said the bill would go too far in regulating the publishing
industry when it should be addressing education. TEA can make rules
and regulations to assure quality and security of assessment tests.
The assessment test publishing industry changes its tests every five
to seven years and the comparison data every four years, which is more
than adequate. Requiring the tests and comparison data to be changed
every two years would be unnecessary and expensive.

Legislative History: The House rejected an amendment that would have
required the state to pay for the costs of administering the tests
mandated by the bill, then passed the bill by nonrecord vote on May 11
(Journal page 1664). The Senate amended the bill to define
norm-referenced tests, then passed it by voice vote on May 25 (Journal
page 2282). The House refused to concur with the Senate amendments by
nonrecord vote on May 27 (Journal page 3051), and a conference
committee was appointed. The conference committee amended the
definition of norm-referenced test. On May 29 the Senate adopted the
conference report by voice vote (Journal page 3428), and the House
adopted it by nonrecord vote (Journal page 3189) on the same day.

The HRO analysis of the bill appeared in the May 8 Daily Floor Report.
Parental involvement in public school programs  
(HB 1292 by Arnold, Glossbrenner, et al.)  

Effective Aug. 28, 1989

HB 1292 requires the Texas Education Agency (TEA) to establish a process for the approval and funding of pilot parental involvement and parent education programs for parents of students in public schools and for parents of children up to age 3. Funds will be appropriated for the programs and will be available on a competitive basis to school districts.

Supporters said the bill would help parents help their children succeed by authorizing programs to provide valuable parenting skills. Studies have proven that parent attitudes about school play an important role in the child's success in school. The programs would be implemented on an optional pilot program basis with funding and approval from TEA. The programs would not overtax school districts and would be used by only those that need them.

Opponents said the government has no business trying to teach parents how to raise their children. Other opponents said if the state is going to establish such projects, it should fund them.

Legislative History: The House rejected an amendment to allow the state to require parental involvement programs only if it funds them, then passed the bill by 80-58 on May 16 (Journal page 1855). The Senate adopted a committee substitute requiring TEA to establish a process for the approval and funding of pilot programs developed by school districts and regional education service centers for parents of children up to age 8 and passed the bill by 31-0 on May 25 (Journal page 2372). The House refused to concur in the Senate amendments by nonrecord vote on May 27 (Journal page 2961), and a conference committee was appointed. On May 29 the Senate adopted the conference report by 30-0 (Journal page 3429), and the House adopted it by nonrecord vote, four members recorded voting nay (Journal page 3385).
Deannexation from unaccredited school districts
(HB 1698 by Madla)

Died in Senate committee

HB 1698 would have allowed territory to be detached from an unaccredited school district and attached to another district, without the approval of either school board. The commissioner of education could have declared that territory of an unaccredited school district that was found unable to provide instruction without state aid was not officially part of any school district. Current law would then require that the county commissioners court annex the territory to another district or districts. Title to all real property in a deannexed area would have transferred to the receiving district, as would any indebtedness and any personnel and service contracts and other existing contracts and legal obligations.

Supporters said the bill would allow residents in unaccredited districts to control their own destiny by splitting off and joining a new school district. Students in unaccredited districts now are in education limbo, and the commissioner of education lacks authority to force school district consolidation. The remedy proposed in the bill could be used only in limited circumstances in which drastic action was justified.

Opponents said the bill offered no solution for districts with accreditation problems. It only would allow residents in a portion of a district with accreditation problems to cut and run, leaving the rest of the district to contend with the accreditation problems. School boards are elected to represent the people of the district and should have a role in these decisions, rather than granting almost complete authority in this area to an unelected education commissioner.

Legislative History: The House returned the bill to committee on a procedural point of order on May 17 (Journal page 17). It considered the bill again on May 23 and amended it to restrict deannexation to unaccredited school districts, not to schools subject to accreditation sanctions, then passed the bill by nonrecord vote on May 23 (Journal page 2323). The Senate referred the bill to the Education Committee, where no further action was taken.

The HRO analysis of the bill appeared in the May 17 and May 22 Daily Floor Reports.
Teacher career ladder revisions
( HB 2566 by Glossbrenner)

Effective Sept. 1 1989

HB 2566 makes numerous changes in the public school career-ladder system. Placement on career ladder levels, two, three and four is to be based on current year appraisals instead of prior year appraisals. Current year appraisals for entry to level three will not begin until Sept. 1, 1990. The bill delays entry into level four until Sept. 1, 1991. Teachers will receive career-ladder salary supplements not later than Aug. 31 of the school year in which they are appraised. The bill sets out criteria for entry into each career ladder level. It requires that the board of education adopt by Jan. 1, 1991 certain appraisal criteria for evaluating teachers for entry into levels three and four. School districts that adopt stricter performance criteria than outlined by the State Board of Education must do so by Sept. 30 of the school year in which the criteria would apply. A district may reduce or revoke additional criteria if funds are available to place more teachers on the career ladder.

Supporters of the bill said it would strengthen the career ladder system and make it the true merit pyramid it was originally intended to be. It would ensure that only the best and brightest teachers advance to the upper rungs of the career ladder by tightening entry to levels three and four. Requiring that school districts adopt stricter appraisal standards by Sept. 30 would assure that there is no misunderstanding on exactly what the performance standards would be for that school year. The bill would ensure that current year appraisals be used for placement on the career ladder, providing teachers with the immediate recognition they deserve. Teachers would be able to receive their career ladder supplement the same year as the appraisal was made, rather than waiting up to 18 months, as has happened under the existing system.

Opponents said the bill would do little to solve the problems that have plagued the career ladder since its inception. The career ladder would still be underfunded, and administrators would continue to dodge the hard choices when it comes to deciding who is to be placed on the career ladder. Changing the evaluation and reward sequence from prior year to current year would require school districts to pay for both in the transition year. School districts cannot afford to pay career ladder supplements twice in the same school year. The appraisal criteria for placement on levels three and four would be subjective and would undermine the purpose of the career ladder -- to reward the best qualified teachers. The Sept. 30 deadline for school districts to adopt stricter appraisal criteria could force school districts to set the appraisal criteria artificially high at the beginning of the year and then change it when they know how much money they have to fund the career ladder. Changing the requirements in mid-stream would

- 183 -

House Research Organization
not be fair to teachers who met the original strict requirements. Other Opponents said the bill should include all those who instruct students at least 60 percent of the time in the career ladder. Librarians, speech pathologists, other special education instructors and non-degreed vocational teachers and certified non-administrative personnel should also be included.

Legislative History: The House passed the bill by 119-15-1 on May 9 (Journal page 1541). The Senate adopted a committee substitute and passed the bill by 29-1 on May 24 (Journal page 2081). The House refused to concur in the Senate amendments by nonrecord vote on May 25 (Journal page 2601), and a conference committee was appointed. The conference committee outlined the procedure that a teacher must follow to remain at level one. On May 29 the House adopted the conference report by nonrecord vote, two members recorded voting nay (Journal page 3546), and the Senate adopted it by voice vote (Journal page 3602).

The HRO analysis of the bill appeared in the May 8 Daily Floor Report.
Student testing revisions
(SB 40 by Green, et al.)

Effective Aug. 28, 1989

SB 40 eliminates testing of first graders under the Texas Educational Assessment of Minimum Skills (TEAMS) program. TEAMS tests will no longer test only minimum basic skills but will be competency tests that record a student's performance in reading, writing, social studies, science and mathematics. TEAMS tests also must test for problem solving abilities and complex thinking skills. The bill requires that social studies and science be added to the list of subjects tested on the TEAMS test and high school exit exam by the 1994-95 school year. The exit exam also must test for writing competency by 1994-95. The State Board of Education is required to report to the Legislature every two years on the correlation between student grades and student performance on the TEAMS tests. The bill allows school districts to evaluate first graders on some basis other than numerical grades. Instead of being notified when a child is failing a class, parents will be notified when performance is below that necessary to advance a grade level or complete a course.

Supporters of the bill said testing of first-grade students is inappropriate and there are better, non-numerical ways to assess a child's ability and performance. The TEAMS test is more useful when testing a student's total performance, not just minimum skills.

No apparent opposition

Legislative History: The Senate passed a bill that eliminated the first-grade TEAMS test on March 28 by 31-0 (Journal page 571). The House amended the bill to include testing of social studies and science, to prohibit a teacher from recording a grade higher than the student actually earned and to allow social promotions for educationally handicapped students, then passed it by a nonrecord vote on May 17 (Journal page 1933). The Senate refused to concur with House amendments by voice vote on May 23 (Journal page 1980), and a conference committee was appointed. On May 28 the House adopted the conference committee by voice vote (Journal page 3080), and the Senate adopted it by 30-0 on May 29 (Journal page 3262).

Aid to pregnant students, student parents
(SB 151 by Barrientos, Truan)

Effective Sept. 1, 1989

SB 151 allows school districts to provide an integrated program of educational and support services for students who are pregnant or who are parents, if at least 30 percent of the district's students are of low-socioeconomic status. The program includes counseling and self-help programs, job readiness training, transportation, day care for students' children and instruction in family life. Students will get help in obtaining available services from government agencies or community service organizations. The district will be required to solicit recommendations for obtaining community support for the students and the their children.

Funding for the program will come from the compensatory education allotment, with $10 million allocated each fiscal year. A school district must apply for funding.

Supporters of the bill said it would help stem the tide of students who drop out of school. The Joint Special Interim Committee on High School Drop-outs found that pregnancy is the single greatest cause of dropping out among girls. Four out of five girls who become pregnant leave school. Texas leads the nation in births to girls under the age of 14 and is third in the nation in the number of births to teen-aged girls. School drop-outs often cannot secure a job that supports two people. Teen parents are often unaware of what is involved in child-rearing.

Opponents said education relating to child development, parenting and home and family living does not belong in the public schools but in the home. The school system should not become involved in family matters. This bill would go beyond providing students with an education and start providing social services. Schools should not encourage, even indirectly, sexual activity by teens.

Legislative History: The Senate passed the bill by voice vote, three members recorded voting nay, on March 20 (Journal page 525). The House passed it by nonrecord vote, four members recorded voting nay, on May 26 (Journal page 2726).

The HRO analysis of the bill appeared in the May 23 Daily Floor Report.
School drop-out reduction plans
(SB 152 by Barrientos, et al.)

Effective May 25, 1989

SB 152 would require the Texas Education Agency (TEA) to establish an annual statewide dropout rate goal that decreases in equal annual increments so that the goal equals no more than 5 percent of the total student population by 1997-98.

Each school district must have at-risk coordinators to prepare a drop-out reduction plan that identifies the number of students who dropped out in the preceding school term, the number of students in grades 1-12 at risk of dropping out, the district's drop-out rate goal and the drop-out reduction programs, resources and strategies to be used during the school year. Districts are not required to prepare a dropout reduction plan if less than 5 percent of their students are identified as "at-risk" of dropping out unless the district had 100 or more students drop out in the preceding year. School districts that had an actual drop-out rate that exceeded the state's drop-out rate goal for that year must allocate a portion of their compensatory education allotment to drop-out prevention.

Supporters of the bill said it would create uniformity in addressing the school drop-out problem. This bill provides school districts with a specific goal. The bill also provides for accountability to the public by requiring that the drop-out reduction plan be reviewed and approved by the district's school board.

No apparent opposition

Legislative History: The Senate passed an amendment exempting districts with less than 5 percent of their students identified as "at-risk" unless the district had 100 or more students drop out in the proceeding year, then passed the bill by voice vote on March 8 (Journal page 406). The House amended the bill to require that the district's drop-out reduction plan include the number of students in grades 1-12 who are at risk, rather than grades 7-12, then passed the bill on the Consent Calendar on May 5 by 134-1 (Journal page 1476). The Senate concurred with the House amendments by 31-0 on May 10 (Journal page 1257).
Pilot pre-kindergarten program for three-year-olds
(SB 246 by Barrientos, Edwards, Truan)

Effective Aug. 28, 1989

SB 246 allows the Texas Education Agency (TEA) to develop a pilot pre-kindergarten program for three-year-olds for 1989-90 through 1992-93. It is to serve three-year-olds who are either unable to speak English or are from low-income families. The program would be coordinated with other local preschool programs, including Head Start, and would encourage parental involvement.

TEA will be required to conduct a study to evaluate the effectiveness of the pilot program in preparing children to succeed in the regular public school curriculum. It must report its findings to the 73rd Legislature no later than Feb. 1, 1993.

Supporters said the bill would provide a reasonable approach to assess the value of a pre-kindergarten program for three-year-olds. Research strongly supports the value of pre-kindergarten programs for disadvantaged four-year-olds. However, the research on pre-kindergarten programs for three-year-olds is limited.

Opponents said formally educating very young children can do more harm than good. Three-year-olds are not emotionally or physically developed enough to spend long periods of time in a structured educational environment. They belong with their parents. Other opponents said the state needs a comprehensive pre-kindergarten program for three-year-olds, not a pilot program. The value of such programs is undeniable.

Legislative History: The Senate passed the bill by 25-4 on March 13 (Journal page 444). On May 25, the House sustained a procedural point of order against the bill and returned it to committee (Journal page 2549). The House considered the bill again on May 27 and passed it by nonrecord vote, six members recorded voting nay (Journal page 2913).

The HRO analysis of the bill appeared in Part Two of the May 26 Daily Floor Report.
Continuing the Texas Education Agency
(SB 417 by Green)
Effective Sept. 1, 1989

SB 417 continues the Texas Education Agency (TEA) until Sept. 1, 2001 and revises numerous education laws.

The State Board of Education (SBOE) is directed to create an alternative to the current system of certifying teachers and school administrators for employment in Texas. The bill requires the renewal of teacher appraiser certification every three years. School districts are required to notify the parents of students being taught by non-certified teachers, with certain exceptions.

The bill allows school districts to operate year-round schools. It directs the SBOE to appoint a committee to study the concept of "open enrollment" within school districts.

Students must attend school for at least 80 days a semester to receive credit for a course, except in extenuating circumstances. The bill drops the provision in current law that prohibits students from having more than five unexcused absences during a semester. It expands the compulsory school attendance ages from 7-16 to 6-17.

TEA is required to fund pilot projects of intensive academic programs for students in first through third grades who are performing below grade level. The bill also requires districts to offer remedial instruction for fourth grade students who did not perform satisfactorily on the TEAMs test.

The bill requires districts to establish committees to develop individualized educational programs for special education students.

Proprietary schools must establish minimum entrance requirements for prospective students subject to TEA approval.

The University Interscholastic League (UIL) is required to deposit all funds with the University of Texas, where they will be subject to various audits. The bill creates the Interscholastic League Advisory Council to review the rules of the UIL and make recommendations to the Legislative Council of the University Interscholastic League and to the SBOE. The SBOE is required to conduct a comprehensive study of the UIL.

Students who are at least 17 years of age may take the high school equivalency exam, now limited to those over 17. Sixteen-year-olds may take the exam in special circumstances. TEA must develop a pilot program to prepare potential dropouts to take the exam.
The bill establishes the Educational Excellence Program for Texas to recognize high-achieving districts and students by giving financial rewards and other benefits.

The bill exempts school districts from paying state fuels taxes.

Supporters of the bill said it would make the changes needed to continue the smooth operation of the Texas Education Agency. It would make necessary adjustments to the teacher appraisal process and open the door to qualified persons to teach in schools through the expansion of the alternative certification process, while also providing for notification of parents when teachers are not certified.

The bill would add flexibility to current law that allows students to miss no more than five days of school a semester. It would provide remedial help for students in the early grades and involve parents in the remediation. It would slow the increase in the number of students dropping out of school and offer aid to those who do drop out. It would authorize financial incentives for excellence, to students and to schools.

Opponents said sunset legislation should not be a catch-all for bills that were not passed in the normal process. Many of the items in this bill were not added in full public view.

The alternative certification program should not be expanded. If there are plenty of certified teachers available, the underqualified should not be hired.

The pilot program providing high school equivalency examinations for students at-risk of dropping out is so expansive it could hardly be called a pilot program, yet the bill would provide no state funding. Some of the programs mandated by the bill would be paid for by a redistribution of limited compensatory education funds; school districts would have to make up the difference to continue compensatory education programs.

Legislative History: The Senate passed the bill by 29-0 on March 14 (Journal page 489). The House adopted a committee substitute including provisions for open enrollment of schools, changes in the age at which a student is allowed to take a high school equivalency examination and changes in the composition of the Proprietary School Advisory Commission. The House amended the bill to include changes regarding accreditation standards, the creation of the Texas Education Excellence Award System (TEXAS), pilot program for elementary students at-risk of dropping out, an exemption of school districts from state fuels taxes and a requirement that teacher education programs include training to spot alcohol and drug abuse. An amendment to change the no-pass, no-play requirement was tabled by 75-63 (Journal page 2424). The House passed the bill by nonrecord vote, three members recorded
voting nay, on May 25 (Journal page 2481). The Senate refused to concur with the House amendments by voice vote on May 25 (Journal page 2154), and a conference committee was appointed. On May 29 the Senate adopted the conference report by voice vote (Journal page 3528), and the House adopted it by 74-64 (Journal page 3414).

Statewide education technology link and training programs  
(SB 650 by Parker)

Effective June 16, 1989

SB 650 requires the State Board of Education to institute a statewide electronic information transfer system that will link independent school districts, state agencies, and other educational institutions with instructional computer software and a variety of inservice training and support services. The SBOE is to create an educational technology research center and to establish technology demonstration programs to teach teachers to use computers and other technological advances in classrooms. The bill requires a pilot-project report and recommendations for the 72nd Legislature.

Supporters of the bill said it would bring Texas education up to date and carry it into the future by providing ways to test new educational theories to combat dropout rates and inadequate instruction by reaching students who otherwise would fall behind. Interactive video, self-paced supplementary studies and statewide transmission of top-quality teaching lectures would help schools experiment with new ways of time allocation and would level out differences caused by disparate tax bases by transferring modern curricula from wealthier districts.

Opponents said the program would not be the best use of the state's educational resources and would divert attention from more fundamental needs.

Legislative History: The Senate passed the bill by 28-0 on May 4 (Journal page 1150). The House amended the bill and passed it by 123-7 on May 20 (Journal page 2136). The Senate concurred with the House amendments by 31-0 on May 23 (Journal page 1984).

The HRO analysis of HB 2783 by Williamson, the companion bill, appeared in the May 16 Daily Floor Report.
Funding of school district facilities
(SB 951 and SJR 53 by Haley)

SB 951 - Effective Aug. 28, 1989/
SJR 53 - Approved by voters on Nov. 7

SB 951 establishes a School Facilities Aid Fund, governed by the Bond Review Board, that can issue up to $750 million in revenue bonds. The fund may make loans to school districts to buy, build or fix equipment and buildings for classroom teaching or to refinance its outstanding bonds. It also may purchase bonds issued by school districts.

SJR 53 amends the Texas Constitution to allow the Permanent School Fund (PSF) to guarantee repayment of the state revenue bonds. With the approval of two-thirds of each house of the Legislature, more than $750 million in revenue bonds may be guaranteed by the PSF. If the bonds were required to repay any amount under the bond guarantee, it would be reimbursed by the State Treasury as a general obligation of the state. If a school district's loan payment were delinquent, its state-aid entitlement would be reduced by the amount of the delinquent payment.

Supporters of the bill said SB 951 would save school districts $10 million a year by lowering their costs of borrowing money. Because the state would be able to issue a larger amount of bonds at one time than the school district, it would enjoy relatively lower issuance costs. Because the bonds would be guaranteed by the Permanent School Fund, they would receive much higher ratings and would therefore carry lower interest costs. There would be no risk to the PSF, since the state treasury would reimburse it in the unlikely event a school district defaulted on a loan, and the program would be structured to minimize administrative costs.

Opponents said the existing program of using the PSF to guarantee repayment of local bonds is sufficient to meet school district needs, without having the state add to its growing debt burden. Local tax dollars are used to retire bonds used to finance facilities, and all considerations about whether to issue such bonds should remain at the local level. Other opponents said that SB 951 did not address the issue of equalizing access to educational facilities. The districts that would need the most help are too poor to participate in the state bond program.

Legislative History: The Senate passed SB 951 by voice vote on May 2 (Journal page 1092). The House adopted amendments concerning the type of financial aid that may be granted and the purposes for which the aid may be used (Journal page 2535-6), then passed SB 951 by nonrecord vote on May 26 (Journal page 2721). The Senate concurred with the House amendments by voice vote on May 28 (Journal page 3118).
The Senate adopted SJR 55 by 31-0 on May 2 (Journal page 1092). The House added amendments limiting state aid for school facilities to loans or purchases of local bonds, allowing the Legislature to authorize a guarantee greater than $750 million and requiring a state-aid deduction for delinquent payments (Journal page 2314), then adopted SJR 53 by 121-20 on May 25 (Journal page 2498). The Senate concurred with the House amendments by 28-0 on May 28 (Journal page 3117). The voters approved SJR 53 (Amendment No. 12) on Nov. 7.

The HRO analysis of HB 951 and SJR 55 appeared in Part One of the May 23 Daily Floor Report.
Public school finance revisions
(SB 1019 by Parker)

Effective on Sept. 1, 1989

SB 1019 revises the Texas school finance system by instituting a guaranteed-yield system of providing equalization aid to school districts, mandating various studies for determining future educational funding, and raising teacher minimum salary levels. It also appropriates $450 million in additional state aid.

SB 1019 raises the basic per-pupil allotment from the current $1,350 to $1,477 for school year 1989-90 and $1,500 for each school year thereafter. Districts are required for the first time to raise their total local share of the foundation program to qualify for foundation program aid.

All districts are entitled to receive $18.25 per one-cent on their school property-tax rate, per weighted student, up to a tax rate of 36 cents.

During school year 1989-90, a school district may not receive less per student in guaranteed yield state funds than the amount of state funds it received under the enrichment equalization allotment for the 1988-89 school year. The guaranteed yield allotment may be used for any legal purpose.

SB 1019 increases each step of the current 10-step minimum salary schedule for education professionals by $180 a month, or $1,800 for a standard 10-month contract. During the 1989-90 school year, each employee on the salary schedule will be paid $180 per month more than they were paid during the 1988-89 school year but will not advance a step on the salary schedule.

The bill changes the career ladder allotment to $90. It restricts use of the allotment to funding career ladder supplements only, eliminating a provision allowing a district to use part of the allotment for other purposes.

Employment contracts made by school districts prior to June 15, 1989 are subject to the salary schedule in effect at the time the contract was signed. Districts are required to pay each person the minimum salary outlined in the bill for the step to which they are assigned. The $50 million cap on spending for pre-kindergarten is raised to $55 million during the 1989-90 and 1990-91 school years. The experienced teacher allotment and enrichment equalization allotment are repealed.

The bill directs the SBOE to study and develop a funding system for compensatory education regarding students in remedial education or

- 195 -

House Research Organization
at-risk of dropping out and pregnant students. The funding system should be ready for implementation in the 1991-92 school year.

The bill institutes the use of a cost of education adjustment (COE) instead of the current Price Differential Index (PDI) to account for regional or district variations in resource costs. The PDI will continue to be used for the next biennium to calculate the adjustments to the basic allotment. The PDI adopted by the SBOE in November 1988 will be used to adjust the basic allotment in school years 1989-90 and 1990-91.

Beginning with the 1990-91 school year, each district must meet a minimum tax effort of 70 cents per $100 to be eligible for the COE adjustment. The adjustment will be reduced in proportion to the tax effort made. The bill requires the commissioner to calculate the loss in state aid from one year to another for each district due to the funding changes made in the bill.

The SBOE is directed to establish a statewide inventory of school facilities and periodically update the inventory and standards for the adequacy of school facilities. The SBOE also is directed to develop, by Oct. 1, 1990, a comprehensive set of recommendations to the Legislature for state assistance to school districts for school facilities.

Supporters of the bill said it would take the first step toward a system of equitable school finance by implementing a guaranteed yield system that would recognize the tax effort made by school districts in allocating equalization aid. It would make the best possible use of limited state public education funds, recognizing the actual cost of educating students, and make provisions for paying these costs. It would establish new funding mechanisms for two years in order that the next legislature may examine what adjustments are required. Teachers would receive a much needed salary increase, the first general increase since enactment of HB 72 in 1984.

Opponents said the bill offers more state mandates to public schools without providing the money to pay their costs. The $450 million provided by this bill would barely begin to cover the cost of the increases in inflation much less the mandated increases in teacher salary. The adjustment for inflation would use outdate information and continue to be biased toward urban districts over districts serving rural areas, which also have special needs. Other opponents said the bill does not go far enough and should provide for a six-year plan and adequate funding to achieve equity. State courts have questioned the constitutionality of the school finance system in providing equal access to an adequate education for all students, and the Legislature should fix the problem once and for all.
Legislative History: The Senate made several floor amendments to the bill before passing it by 31-0 on May 2 (Journal page 1091). The House Public Education Committee adopted a committee substitute making several changes in the Senate version, including a teacher salary increase, $16.50 rather than $18 of state aid per one cent of local tax effort in the first years, a more rapid increase in the local share of education funding, transition aid for districts that would face a reduction in state aid, elimination of the cap on pre-kindergarten spending and other changes. The House adopted a complete floor substitute proposing a two-year rather than a six-year plan, repeal the price differential adjustment, a larger initial basic allotment, $23 per one cent of tax effort under the guaranteed yield program and other changes. The floor substitute was adopted by 81-64 on May 18 and was amended to include a teacher salary increase (Journal page 1993), then the House passed the bill by 116-22 on May 19 (Journal page 2107). The Senate refused to concur with the House amendments by voice vote on May 20 (Journal page 1789), and a conference committee was appointed. The Senate adopted the conference report by 25-3 on May 29 (Journal page 3620). A point of order was twice raised and sustained in the House before a motion to suspend all necessary rules and adopt the conference committee report was adopted by 129-21 on May 29 (Journal page 3589).

The HRO analysis of the bill appeared in the May 18 Daily Floor Report.
School attendance requirements
(SB 1112 by Haley)

Effective on Aug. 28, 1989

SB 1112 requires that a student attend class for at least 80 days a semester to receive credit for the class, replacing prior law that denied credit if a student had five days of unexcused absences. School boards are directed to appoint as many attendance committees as they determine are necessary to hear petitions for class credit by students who did not meet the attendance requirements. The committees may give class credit to students who did not meet the attendance requirements due to extenuating circumstances. Each local school board will determine what constitutes extenuating circumstances and establish alternatives for students to make up work or regain credit lost due to absences. A student who is denied credit may appeal the decision to the school board. The student may also appeal the school board's decision to the commissioner of education on the grounds that the decision is arbitrary, capricious, or not supported by substantial evidence.

Supporters said the bill would offer more flexibility than the current attendance law. Local school districts could deal with individual circumstances involving students who have a problem and cannot attend school for the required number of days.

No apparent opposition

Legislative History: The Senate passed the bill by voice vote on May 4 (Journal page 1137). The House passed the bill on May 22 on the Consent Calendar (Journal page 2203).
Drop-out prevention programs
(SB 1668 by Zaffirini, Barrientos, Krier, Tejeda)

Effective Sept. 1, 1989

SB 1668 makes various changes in law regarding the juvenile justice system, truancy, substance abuse and other factors related to drop-out prevention. It expands the definition of "student at risk of dropping out of school."

A school attendance officer may file a complaint against a parent of a truant child in the jurisdiction where the parent resides or the school is located. A parent who was convicted of failing to require a child to attend school and who received a probated sentence could be required to provide services to a charitable or educational institution. Attendance officers may refer a child to the county juvenile probation department if the child is absent from school for 10 days or more within a six-month period or three days or more within a four-week period.

The Texas Commission on Alcohol and Drug Abuse and TEA are required to assist regional education service centers to develop substance abuse prevention and early intervention programs.

School districts must notify parents of children eligible for enrollment in a pre-kindergarten class. School districts are also required to notify parents of four- and five-year-olds eligible for enrollment in special education classes.

The State Board of Education is required to adopt rules for school districts to follow when using a private or public community-based drop-out recovery education program to provide alternative education programs for at-risk students.

TEA is required to develop a policy governing the child abuse reports and to provide child abuse anti-victimization programs in elementary and secondary schools. TEA also must establish a committee to develop guidelines for identifying children with attention deficit disorders.

Supporters said the bill was a unified attack on the problems that cause children to drop out of school. It would implement the recommendations of the Senate Select committee on Juvenile Justice and the Joint Special Interim Committee on High School Drop-outs. It would allow better coordination of efforts aimed at identifying students at-risk of dropping out and intervening at every level to discourage them from leaving school.

Opponents said the program was ill-conceived and would cause the state to meddle in family matters.
Legislative History: The Senate amended the bill to allow legal action to be taken against truants and their parents, then passed the bill by 29-0 on April 27 (Journal page 1017). The House amended the bill to remove provisions for counseling of abused children, identifying emotionally disturbed students and requiring that public notices be distributed through the Texas Department of Human Services, then passed the bill by nonrecord vote, four members recorded voting nay, on May 27 (Journal page 2915). The Senate concurred with the House amendments by voice vote on May 28 (Journal page 3219).

The HRO analysis of the bill appeared in the May 26 Daily Floor Report.
Establishing the Texas Department of Aviation  
(HB 94 by Tallas, et al., first called session)

Effective Oct. 18, 1989

HB 94 reestablishes the Texas Aeronautics Commission as the Texas Department of Aviation. The bill restores all appropriations and riders for the commission vetoed by the governor after the regular session and appropriates an additional $4.65 million in general revenue for fiscal 1990-91. HB 94 adds an aviation experience requirement for members of the Texas Board of Aviation and designates the agency as the state's agent in seeking and distributing federal grants. Sunset review is postponed from 1993 to 1999.

Supporters of the bill said it would reconstitute Texas' only source of aviation expertise as a viable agency, funded at levels commensurate with its essential role in the state's economic development. Earlier proposals to merge the TAC into the State Department of Highways and Public Transportation would have relegated important functions to the back burner of a large agency dedicated to other goals. The channeling provision would allow the state to coordinate distribution of federal aviation funds within its borders. The new agency needs time to sort out its policies before facing sunset review.

Opponents said the bill would give only lip service to concerns that led to the governor's veto of the TAC appropriation in the General Appropriations Act. The new appropriation would hand the agency millions of dollars more than it had before the veto. Proposals to combine the TAC with other agencies would have come closer to the goal of unifying transportation functions within a single agency for greater administrative efficiency. Sunset review should not be delayed; if anything, it should be accelerated to coincide with review of the highway department in 1991.

Legislative History: The House passed the bill by 125-0 on July 14 (Journal page 334). The Senate amended HB 94 to change the name of the department and its board, then passed the bill by voice vote on July 17 (Journal page 371). The House concurred with the Senate amendments by 119-0 on July 18 (Journal page 368).

The HRO analysis of the bill appeared in the July 14 Daily Floor Report.

- 201 -

House Research Organization
Establishing the Texas Department of Licensing and Regulation

(HB 863 by Vowell)

Effective Sept. 1, 1989

HB 863 continues the Texas Department of Labor and Standards, renamed the Texas Department of Licensing and Regulation, until Sept. 1, 2001. Administrative authority for three employment-related laws -- "payday" regulation, minimum wage and child labor -- are transferred to the Texas Employment Commission. Registration of health spas and membership campgrounds is transferred to the Secretary of State's Office. Regulation of professional wrestling was eliminated, except for registration of promoters with the secretary of state.

A six-member commission replaces a single commissioner appointed by the governor. The commission appoints an executive director, whose title is commissioner of licensing and regulation. The commissioner has authority to impose various administrative sanctions for violations of laws and rules and shares with the attorney general authority to seek injunctive relief and civil penalties.

HB 863 makes several changes in laws administered by the department and by other agencies receiving its former duties. It expands provisions for employees to collect compensation owed by employers through the TEC and increases security requirements for health spas. Regulation of manufactured housing is retained by the department with changes, including a requirement that sellers of used manufactured homes as residences provide written warranties of habitability. The bill also repeals authority for the department to inspect used manufactured homes, except when they have been used for business purposes.

Supporters of the bill said it would redefine the department to serve as an umbrella agency for business and occupational licensing and regulation and would give it a new name to match this role. Most of the department's activities still benefit consumers and industries, even though they might not fit within the confines of more narrowly defined agencies. The functions transferred would be better suited to other agencies. The provision requiring written warranties of habitability for used manufactured homes would protect consumers without burdening businesses. Inspections have been ineffective because of the high volume of sales and inconsistent application of standards.

Opponents said a warranty provision for manufactured homes would not provide the same type of consumer protection as inspections. The fact that the department is not able to inspect every used manufactured home is no reason to stop inspections, which are performed while department employees are on retail lots performing other duties related to new manufactured homes.

- 202 -

House Research Organization
Legislative History: The House passed the bill by nonrecord vote on May 18 (Journal page 2018). The Senate substitute made several changes regarding manufactured housing and was amended to add a bill concerning private process servers. The Senate passed the bill by voice vote, one member recorded voting nay, on May 27 (Journal page 2755). The House refused to concur with the Senate amendments by nonrecord vote on May 28 (Journal page 3164), and a conference committee was appointed. The conference report retained the Senate changes on manufactured housing but deleted the process-servers provisions. On May 29 the Senate adopted the conference report by voice vote (Journal page 3614), and the House adopted it by nonrecord vote (Journal page 3451).

Permit denial for assistance by former agency employee
(HB 1237 by Polumbo)

Effective Sept. 1, 1989

HB 1237 requires state agencies considering permits under three environmental control acts to deny applications if the applicants had received help on the application from certain former agency employees. Only supervisory or exempt-salary-level employees would be subject to the provision. Applications are to be denied if an agency determines that a former employee had participated personally and substantially in the agency's review, evaluation or processing of an application and later helped an applicant with the same application.

The restriction applies to preparation, presentation and legal representation concerning applications for issuance, amendment, renewal, or transfer of permits before the Texas Air Control Board, the Texas Water Commission, and the Texas Department of Health.

Supporters of the bill said it would protect the public's interest in a safe environment from permit applicants taking advantage of enhanced influence and inside information offered by former regulatory agency employees. Applicants are quick to hire agency employees with detailed knowledge of particular applications, especially if they carry clout with former subordinates. Current employees often are tempted to please potential employers in the private sector. This carefully tailored response would not prevent former employees from finding work in their fields of expertise but would prevent them from picking up permit applications on their way out the door.

Opponents said the bill would impair employment prospects of regulatory employees without serving any public policy purpose. Current law provides adequate protection against side-switching and conflict of interest by former state employees; it would make more sense to scrutinize actions of current employees. Both the state and employees benefit from employment of highly motivated people who gain expertise and move on. Other opponents said conflicts of interest are not limited to agencies that deal with environmental agencies nor to the highest-level employees. The scope of the problem calls for stricter post-employment limits on all state employees.

Legislative History: The House passed the bill by nonrecord vote on May 23 (Journal page 2315). The Senate passed the bill by voice vote on May 27 (Journal page 2734).

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.
Legal representation of the Legislature
(HB 1923 by Hury)

Died in the Senate

HB 1923 would have allowed the Legislature either to hire outside counsel or to authorize counsel of a legislative agency to represent it in state or federal court. The Legislature could have authorized these attorneys to file suits, intervene in pending litigation or take other action to represent its interests. Such representation would have required approval by the speaker of the house and the lieutenant governor or by a concurrent resolution of both houses. The authorization would not have applied to representation of the Legislature before the Texas Supreme Court in violation of Art. 4, sec. 22 of the Constitution.

Supporters of the bill said it would give the Legislature the option of hiring outside counsel to represent its interests in certain situations in which the interests of the Legislature and the attorney general might differ. It would not divest the attorney general of the authority to represent the state. As a separate branch of government, the Legislature should not have to obtain permission from the attorney general, a member of the executive branch, when it wants to hire outside counsel. The idea that the attorney general must always represent the Legislature is a statutory interpretation and is not in the Constitution. During redistricting and in other situations, the Legislature may want to ensure that its interests are independently represented.

Opponents said the bill could violate the separation of powers provision of the Texas Constitution and the well-established rule that the attorney general alone speaks for the state before the courts. It could create confusion in the courts about who actually represents the people of the state of Texas. If the Legislature perceives a conflict of interest in certain situations, it should follow already-established channels to address this problem. Also, allowing the speaker and lieutenant governor to decide independently to seek outside counsel would put too much power in their hands.

Legislative History: The House passed the bill by nonrecord vote on April 18 (Journal page 993). It was considered in public hearing by the Senate State Affairs Committee on May 8 and reported favorably by 7-4 on May 16, but no further action was taken.

The HRO analysis of the bill appeared in the April 17 Daily Floor Report.
Information Resources Management Act
(HB 2736 by Williamson, A. Luna)

Effective Aug. 28, 1989

HB 2736 creates a new state agency, the Department of Information
Resources to coordinate information resources management and training
for all state agencies. It is to identify agency needs, make funding
recommendations and provide for all interagency use of information
technology. Each state agency will submit to the department plans for
budgeting and management of information resources. The bill abolishes
the Automated Information and Telecommunications Council and the
Automated Services Division of the State Purchasing and General
Services Commission and transfers the records, personnel, property and
unspent appropriations of these agencies to the new department. The
department is subject to the Sunset Act and unless continued will be

The bill specifically states that it does not affect laws, rules or
decisions relating to the confidentiality or privileged status of
categories of information and does not enlarge the state's right to
require information or records from the people.

Supporters of the bill said it would respond to the recommendations of
the Governor's Task Force on Financial Accountability and to agency
and vendor dissatisfaction with red tape, lost time and wasted money
involved in acquiring technological advances in information
processing. The new Department of Information Resources would plan
and implement standardized equipment and software services across
state agency lines to facilitate the exchange of information and
eliminate expensive and unnecessary duplication. The transfer of two
existing agencies into the new department would ease the transition
and provide improved and cost-effective service.

No apparent opposition

Legislative History: The House passed the bill by nonrecord vote on
May 23 (Journal page 2315). The Senate amended the bill and passed it
by 31-0 on May 26 (Journal page 2510). The House concurred with the
Senate amendments by nonrecord vote on May 29 (Journal page 3322).

The HRO analysis of the bill appeared in the May 20 Daily Floor
Report.
Making ex parte consultations open to public
(Amendment to HB 2988 by Uher)

Bill effective Aug. 28, 1989/ Amendment deleted

A Senate amendment to HB 2988, a bill allowing state agencies to adopt rules required by state or federal law on less than 30 days notice, would have made ex parte (informal, without prior notice) communications by members of state regulatory boards subject to the Open Meetings Act.

Supporters of the amendment said ex parte communications involving a quorum of an agency's governing body should be open to the public. Citizens have a right to participate in decisions that affect them. A recent court of appeals decision found that the Administrative Procedures Act, which allows ex parte communications between members of an agency, supersedes the Open Meetings Act. This loophole should be closed.

Opponents said it is not realistic to expect that every time two members of a three-member commission have a discussion that may touch upon a pending case that they must post notice of an open meeting. Judges on appellate courts can meet in private to discuss their decisions as long as the evidentiary hearings leading to the decision and the final decision itself are made public; the same standard should apply to quasi-judicial administrative proceedings.

Legislative History: The House passed the bill on the Consent Calendar on May 12 (Journal page 1736). The Senate amended the bill to add the Open Meetings Act requirement for ex parte communications, then passed it on the Local and Uncontested Calendar on May 27 (Journal page 2632). The House refused to concur with the Senate amendment by nonrecord vote on May 29 (Journal page 3402), and a conference committee was appointed. The conference committee deleted the Senate amendment on ex parte communication. On May 29 the Senate adopted the conference report by 31-0 (Journal page 3612), and the House adopted it by voice vote (Journal page 3588).
Ratification of congressional pay amendment
(HJR 6 by Williamson)

Filed with the secretary of state

HJR 6 directs the Texas secretary of state to notify Congress and others that Texas has ratified an amendment to the U.S. Constitution, proposed by the First Congress of the United States in 1789, concerning compensation of U.S. representatives and senators. The amendment stipulates that no law varying the compensation of representatives and senators can take effect before an election for representatives intervenes. HJR 6 lists 31 other ratifying states and stipulates that the Legislature believes the amendment may still be ratified despite the span of time elapsed since it was first submitted. (Ratification by 38 states is required to meet the three-quarters requirement of the U.S. Constitution.)

Supporters of the resolution said it would enhance accountability without preventing or limiting pay increases. Public outrage over backdoor approaches to congressional pay could have been lessened or avoided if a delay provision had been in effect during consideration of recent pay proposals. Unlike modern amendments, this one has no expiration date for its ratification. The U.S. Supreme Court has held that Congress is the final arbiter of ratification questions, including whether the process has taken too long. Thus it makes no sense to start over with a substantially similar amendment.

Opponents said the proposed amendment would not foster accountability. Lawmakers already are held accountable for pay raises in subsequent elections, and voters are more likely to be aware of raises if they take effect before an election. The amendment could inhibit congressional pay increases, further restricting service to the wealthy and inviting corruption. Other opponents said two centuries is too long for ratification of a constitutional amendment, which should represent contemporaneous national consensus. A new version of the amendment would alleviate this concern and update the language to ensure that members could not collect additional pay until after the next Congress was sworn in, rather than immediately after the election.

Legislative History: The House adopted HJR 6 by 131-2 on May 4 (Journal page 821). The Senate added an amendment including recently ratifying states, then adopted HJR 6 by 30-0 on May 24 (Journal page 2088). The House concurred with the Senate amendments by 145-0 on May 25 (Journal page 2615).

The HRO analysis of the resolution appeared in the May 4 Daily Floor Report.

- 208 -

House Research Organization
Bifurcated oath of office
(HJR 40 by Danburg)

Approved by voters Nov. 7, 1989

HJR 40 amends the Texas Constitution to divide the oral oath of office taken by public officials into a shorter oral oath or affirmation and a written statement filed with the secretary of state. The oral oath or affirmation no longer includes a denial of bribery. In the written statement, which is to be signed and filed prior to taking the oral oath or affirmation, officials must swear or affirm that they have not bribed anyone to obtain their offices. The new requirement applies to all state and local elected and appointed officers.

Supporters of the proposal said shortening the oral oath of office would enhance the dignity of swearing-in ceremonies while preserving provisions relating to denial of bribery in a written statement. The current oath, which contains a lengthy recitation concerning methods of corruption, gives swearing-in ceremonies a negative cast. Maintaining and improving election laws and other laws relating to official conduct would continue to provide the best safeguard for honest government. The words of the existing oath, which have changed twice since 1876, are not sacrosanct.

Opponents said Texas officials have been reciting the denial of bribery in public for more than a century without apparent harm. There is no reason to shuffle the oath's ethical considerations into a written statement, especially when interest in the ethical propriety of public officials is on the upswing. This proposal is not worthy of the amendment process and detracts from the electorate's consideration of more important matters. The ballot language is misleading in that it suggests that a bribery oath would be a new requirement.

Legislative History: The House adopted HJR 40 by 110-30 on May 10 (Journal page 1605). The Senate amended HJR 40 to add appointed officials, then adopted it by 30-0 on May 20 (Journal page 1775). The House refused to concur with Senate amendments by nonrecord vote on May 24 (Journal page 2357), and a conference committee was appointed. The House adopted the conference report by 139-2 on May 27 (Journal page 3007), and the Senate adopted it by 30-0 on May 28 (Journal page 2798).

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

- 209 -

House Research Organization
Limits on attorney general election
(HJR 69 by Schlueter, et al.)

Died in Senate committee

HJR 69 proposed a constitutional amendment that would have limited the attorney general's term of office, fund-raising and eligibility for other office. Attorneys general elected in 1990 and thereafter would have been limited to a single six-year term and could not have held any other constitutionally created office during that term or for two years afterward. They would have been prohibited from accepting political contributions during their terms, except in the first year for the sole purpose of retiring campaign debt. More generally, the proposal also would have prohibited use at any time of political funds accepted for a federal office during the term for any state office to which the person was elected.

Supporters of the proposal said it would prevent ambitious individuals from using the Office of Attorney General as a political stepping stone to higher state office, such as governor or U.S. senator. It also would protect the state against potential conflicts of interest that can occur when the people's lawyer must rule on litigation and issue opinions that affect past or likely campaign contributors. The proposal is not intended to affect the incumbent attorney general and would apply only to attorneys general elected in 1990 and thereafter.

Opponents said Texas voters are capable of rejecting any attorney general with more ambition than scruples. By denying them that opportunity, this proposal actually would decrease accountability. The job would become a political dead-end and might attract a less-qualified pool of candidates. No reason exists to treat the attorney general differently than other major offices, all of which have been used as political stepping stones and are subject to potential conflicts of interest. Although it would not apply to the incumbent attorney general, the proposal implicitly criticizes the choice made by him and some of his predecessors to seek higher office, which is their right.

Legislative History: The House amended HJR 69 to reduce the period of disqualification for the attorney general to seek other constitutional offices, change the election date for the proposed amendment, stipulate that several provisions apply to those elected in 1990 and thereafter and modify the contribution ban, then adopted HJR 69 by 116-29 on April 25 (Journal page 1114). The Senate State Affairs Committee considered HJR 69 in a May 15 hearing, where it failed by 6-4 to receive the majority vote of the 13-member committee required to report it.

The HRO analysis of the bill appeared in the April 12 Daily Floor Report.
Increasing legislative salary and per diem
(HJR 102 by D. Hudson)

Rejected by the voters on Nov. 7, 1989

HJR 102 proposed two amendments to constitutional provisions limiting legislative salary and per diem, which were to be voted on as separate ballot measures.

One proposed amendment (Amendment No. 1 on the ballot) would have raised the salary of legislators -- now limited to $7,200 a year -- to one-fourth of the governor's salary. At the current gubernatorial salary of $93,432, legislative pay would have been $23,358. The speaker of the House of Representatives and the lieutenant governor would have received twice that amount -- $46,716, at the current level. The increases would have taken effect in 1991, and any subsequent changes, except for the lieutenant governor's pay, would have taken effect only after an intervening general election. An increase in the emoluments (salary and benefits) of the lieutenant governor would not render members of the Legislature ineligible for that office.

The other amendment (Amendment No. 11) would have set legislative per diem during regular and special sessions -- now $30 -- at the amount of the federal income tax deduction for state legislators' living expenses -- $81, under current guidelines. Per diem for a calendar year would have been the amount allowed as a deduction on Jan. 1 of that year.

Supporters of a legislative pay raise said improved salary and per diem would allow Texans of modest means to serve in what has become a demanding, full-time job. These proposals would lessen financial dependence on lobbyists and should not be held hostage to adoption of ethics reforms. The current salary and per diem were inadequate when adopted 14 years ago and have since eroded in value. Texas ranks behind most other large states in legislative compensation. Voters could hold individual legislators accountable in subsequent elections for their actions concerning their compensation.

Opponents said legislators do not deserve a raise of 224 percent in salary and and 170 percent in per diem. These amendments would lead to replacement of part-time legislators with professional politicians out of touch with their communities. The ballot description of the proposed salary increase is misleading in stating that the change would "limit" legislative salaries. Other opponents said the proposals would remove control over legislative compensation from the electorate and allow lawmakers to manipulate salary and per diem indirectly. More fiscally responsible increases should have been proposed.
Legislative History: The House amended HJR 102 to add the per diem provision and adopted it by 103-39 on May 15 (Journal page 1771). The Senate added the delayed effect provision for subsequent salary changes and adopted HJR 102 by 22-7 on May 27 (Journal page 2718). The House concurred with the Senate amendment by 120-22 on May 28 (Journal page 3125).

State contracts to minority businesses
(SB 116 by Johnson)

Died in the House

SB 116 would have required the State Purchasing and General Services Commission to adopt a statewide goal of 15 percent participation in state contracts for minority- and women-owned businesses. A contract awarded to a minority or women-owned business would have been subject to the lowest and best bid requirement only to the extent necessary to determine the lowest and best bid by such a business. Construction contracts would have been subject to a similar 15 percent goal, based on the total value of all construction contract awards made by the commission. Professional bond-service contract awards an issuer expects to make in a fiscal year would likewise have been subject to a 15 percent goal. The Texas Department of Commerce would have been required to compile and maintain a list of minority and women-owned businesses and to distribute the list to state agencies.

Supporters of the bill said it would force the state to begin removing the barriers to economic opportunity that have long faced minority and women-owned business enterprises. The 15 percent goal is modest and reasonable in light of the proportion of minorities and women participating in the state's economy. The Department of Commerce is well equipped to provide the support information to ensure these goals are met.

Opponents said the measure would have undermined the competitive bidding process by giving preferential treatment to special interest groups. The taxpayers would bear the cost burden if minority and women-owned businesses received contracts at higher bids than other businesses. Such a subsidy would undermine the free enterprise system.

Legislative History: The Senate passed the bill by voice vote on April 27 (Journal page 1017). The House State Affairs Committee reported the bill favorably by 8-2 on May 18. It was set on the House calendar on May 26, but no further action was taken.
Restablishing the Human Rights Commission
(SB 479 by Barrientos, et al.)

Effective Sept. 1, 1989

SB 479 revises the Texas Commission on Human Rights Act, enacted in 1983 to prohibit job discrimination on the basis of race, color, handicap, religion, sex, national origin or age. The bill expands coverage to include employees of all state agencies, counties and cities, regardless of the number of employees. (The law applies to other employers with 15 or more employees.) The bill extends protection against age discrimination to include employees over 69 years old. It replaces the term "handicap" with the term "disability" and excludes from the definition of disability anyone with a communicable disease or infection, including AIDS and HIV infection, that is a direct health threat to others. It extends the Texas Human Rights Commission's sunset date to Sept. 1, 2001.

Supporters of the bill said it contained recommendations of the Sunset Advisory Commission and would make other changes to ensure the Human Rights Commission's continued effectiveness. The bill would increase protection of employees and streamline the administrative process for filing job-discrimination complaints.

Opponents of the original version said the bill would severely infringe on the protections against disability discrimination by exempting most private employers from that part of the law and by too narrowly defining disability to require a record of mental or physical impairment. Opponents of the final version said specifically eliminating AIDS and other communicable diseases from the definition of disability was unfair and discriminatory.

Legislative History: The Senate passed the bill by voice vote on April 11 (Journal page 724). The House added an amendment specifically deleting AIDS and HIV-infection or other communicable diseases or infections constituting a direct or indirect health threat from the definition of the type of disability protected under the statute (Journal page 1943). It refused by 68-73 to adopt a floor amendment exempting school districts from the law (Journal page 1944) but adopted amendments to eliminate a record of mental or physical impairment as a requirement for being considered disabled under the law and to apply the law to those public employers with 15 or more employees (Journal page 1976), then passed the bill by 109-26 on May 18 (Journal page 1977). The Senate refused to concur with the House amendments by voice vote on May 19 (Journal page 1705) and a conference committee was appointed. The conference committee deleted communicable diseases from the definition of disability only if they constituted a direct health threat, and applied the law to public employers regardless of their size. On May 29 the Senate adopted the conference report by voice vote (Journal page 3264), and the House adopted it by nonrecord vote (Journal page 3180).


- 214 -

House Research Organization
Continuing the Texas Indian Commission
(SB 481 by Barrientos)

Died in the House

SB 481 would have extended the life of the Texas Indian Commission until 1993, doubled its membership to six, including three Indians, and provided for removal of appointees to the commission for inadequate performance. The commission would have been charged with providing technical assistance to the three Texas tribes, including advice on legal matters, grant applications and agency services, and to nonreservation Indians regarding programs and services available to them. The commission would have been required to develop a plan to become a private, nonprofit foundation after four years. The bill also would have removed the commission's authority to accept gifts, grants, and donations to purchase or acquire land and to obtain federal grants to assist in the development of reservations.

Supporters of the bill said native American rights and interests are well served by the Texas Indian Commission, which has a two-year budget of only $600,000. Without the commission, native Americans would find it difficult to wade through the complexities of programs available to them and to deal with the legalities of issues affecting them. A private, nonprofit foundation to replace the commission cannot be developed overnight and needs the time specified in this bill to make the transition.

Opponents said the commission is inefficient and nonessential. The trust for two of the tribes is now the federal government's responsibility. Nonreservation Indians have the same access to services and programs as anyone else. The commission's role in planning and implementing the Native American Restitutionary Program, designed to provide energy-related assistance to Texas tribal governments, is not essential; the program could more efficiently be handled by the Governor's Energy Management Center.

Legislative History: The Senate passed the bill by voice vote on April 10 (Journal page 698). The House referred the bill to the Committee on Government Organization, which recommended a substitute that deleted the definition of "Indian" from the Senate version, and reported the bill by 5-1 on May 22. No further action was taken.

During House consideration of SB 265, a bill revising the sunset dates for certain state agencies, an amendment was offered to change the sunset date of the Texas Indian Commission from Sept. 1, 1989 to Sept. 1, 1991. The amendment failed to receive the two-thirds vote required for adoption on third reading by 82-64 on May 27 (Journal page 2901).

The commission ceased operations as of Sept. 1, 1989.
SB 489 continues the Texas Department of Agriculture until Sept. 1, 2001. It provides new statutory authority to enforce agricultural laws and alters the administration of certain programs. The Agriculture Resources Protection Authority is created as the coordinating body for pesticide policies and programs conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission and the Texas Structural Pest Control Board. This nine-member authority may adopt any rule relating to pesticides, but any new rules may not be less protective of public health, safety or welfare than rules in effect on May 1, 1989.

Violators of the pesticide and herbicide laws are subject to new and increased administrative and civil penalties. The bill establishes criteria for setting fines for administrative penalties, as well as procedures for contesting fines. The department may use a range of penalties, such as license suspension or revocation. Misdemeanor penalties would be the same as those in the Penal Code. The minimum insurance requirements for commercial pesticide applicators is increased to $100,000 each for property damage and bodily injury. Private applicators who use certain dangerous pesticides must be licensed and supervisory employees of commercial applicators be licensed and physically present during pesticide application. The department is directed to bring fees for its programs in line with administrative costs by submitting a fee schedule aimed at recovering most direct costs. The bill designates a fee schedule for late renewal of a license or registration.

Supporters of the bill said it was carefully crafted legislation continuing a key state agency. Maintaining the agriculture commissioner as an elected office would allow broad public participation in the selection. The pesticide authority, with its diversified and knowledgeable membership, would allow a balance of differing interests to contribute to the formulation of state policy in this area. SB 489 also would provide a wider range of enforcement tools and bring the department's administrative and civil penalties in the area of pesticide regulation more in line with other state environmental agencies and federal law. The higher penalties would make it more feasible for the attorney general to prosecute cases in a cost-effective manner. New licensing requirements placed on pesticide applicators would ensure increased competency and would recognize the responsibility commercial applicators take for their employees. The proposed changes in the fee schedule would require the department to justify the level of fees within its programs. The non-refundable fee provisions would allow the department to recover the costs of
processing applications. Late charges would provide incentive for timely renewal and reduce costly paperwork.

Opponents said the bill failed to address the politicization of the department. An elected commissioner can no longer serve the advocates for the agricultural interest of the state because campaigning for election requires a concentration on urban areas. Examples of this politicization are the current commissioner's involvement with the European beef boycott and the efforts to promote high-profile, "pipedream" crops at the expense of familiar agricultural products. The proposed penalty structure would provide too much discretion to the department and would increase the potential for abuse; the Legislature should provide a penalty schedule based on the severity of the violation. More administrative and civil penalties are not needed, and the process for contesting administrative penalties should presume an individual is guilty until proven innocent. SB 489 would not go far enough to ensure that applicators working "under supervision" of commercial applicators are adequately trained.

Legislative History: The Senate passed the bill by voice vote, two members recorded voting nay, on March 20 (Journal page 530). The House tabled an amendment to create a State Agriculture Board composed of members elected from the 15 districts established for the State Board of Education, rather than a single elected commissioner, and adopted by 88-54 an amendment to create a pesticide board (Journal page 1589), then passed the bill by nonrecord vote on May 11 (Journal page 1655). The Senate refused to concur with the House amendments by 17-8 on May 15 (Journal page 1448). A conference committee was appointed, but after its report was withdrawn, a second committee replaced it. The Senate adopted the conference report by voice vote, three members recorded voting nay, on May 25 (Journal page 2384), and the House adopted it by nonrecord vote, two members recorded voting nay, on May 26 (Journal page 2791).

The HRO analysis of the bill appeared in the May 10 Daily Floor Report.
State Aircraft Pooling Board  
(SB 538 by Leedom)  
Effective Sept. 1, 1989

SB 538 requires the Aircraft Pooling Board to set up a scheduling system to coordinate state air travel. As of Jan. 1, 1990 the board is required to gather information on the use of state aircraft and to keep travel logs that include the names and signatures of persons traveling on state aircraft, their agencies and the reasons for the trips. The bill prohibits the use of state aircraft to transport individuals to make non-official speeches or to attend political or political fund-raising events. Individuals can use a state aircraft to attend a function for which they receive an honorarium if they reimburse the state for the cost of transportation. All state aircraft in Austin must be housed and serviced at Aircraft Pooling Board facilities. All state pilots must be employed by the board, unless the board grants an exception.

Supporters of the bill said it would correct some of the Aircraft Pooling Board management problems raised by the Joint Select Committee on Air Transport Systems and prohibit use of state aircraft for political purposes. It would create a system to collect information on the use of state aircraft and a coordinated scheduling system to use aircraft more efficiently. It would standardize the hiring of state pilots and save money by requiring state aircraft in Austin to use the new state hangar instead of expensive private facilities.

Opponents said state agencies should be allowed to hire or contract for their own pilots without having to go through the pooling board. State pilots have been on individual agency payrolls for years and should not be forced to change allegiance.

Legislative History: The Senate passed the bill by voice vote on April 13 (Journal page 764). The House amended the bill to prohibit the use of state aircraft for political business and to designate the Aircraft Pooling Board as the coordinating agency for federal grants under the airport improvement program, then passed it by voice vote on May 26 (Journal page 2729). The Senate refused to concur with the House amendments by voice vote on May 27 (Journal page 2704), and a conference committee was appointed. The conference committee deleted the amendment dealing with federal grants and a provision to allow operation of a state aircraft by certain pilots not employed by the board. On May 29 The House adopted the conference report by nonrecord vote (Journal page 3397), and the Senate adopted it by voice vote, one senator recorded voting nay (Journal page 3308).


- 218 -

House Research Organization
Acceptance of resignations
(SB 546 by Edwards)

Effective Sept. 1, 1989

SB 546 stipulates that vacancies in office occur on the date a public officer's resignation is accepted by the appropriate authority or on the eighth day after its receipt by the authority, whichever is earlier. A requirement that resignations must be accepted by authorities is replaced by a prohibition on refusal of resignations.

Supporters of the bill said time limits for acceptance of resignations must be specified to prevent delay for partisan advantage. This concern is not hypothetical -- in 1988 the governor, by delaying official acceptance of a state senator's resignation, delayed from spring until fall a special election to replace the resigning senator and also might have prevented any election for an appellate justice's seat for two years were it not for court action.

Opponents said an eight-day time limit would place undue burdens on the governor's office and might harm those who submit resignations. A 20-day interval would allow the governor sufficient time to review resignations even if a resignation were tendered while the governor is out of town. Some delays in acceptance are justified. A longer time limit also would allow officials more time to reconsider and to withdraw hasty resignations.

Legislative History: The Senate passed the bill by voice vote on April 26 (Journal page 989). The House passed it by nonrecord vote on May 22 (Journal page 2252).

The HRO analysis of HB 891 by Finnell, the companion bill, appeared in the May 19 Daily Floor Report.
Restructuring the Finance Commission  
(SB 607 by Harris)  

Effective Sept. 1, 1989

SB 607 restructures the state Finance Commission, changing the number of members and their qualifications and creating the position of executive director. The Finance Commission membership will be reduced from 12 to nine -- two with banking experience, two with savings and loan experience, and five selected by the governor on the basis of recognized business ability. The bill also removes all salary caps on the banking and savings and loan commissioners.

Supporters of the bill said it was a response to the tremendous strains that the crisis in Texas's financial institutions has placed on the state Finance Commission, which regulates the financial industry. It would restructure the commission to help free it from industry domination and make it more responsive to the needs of the public. A salary cap would make it impossible to attract the best commissioners; the bill would remove it.

Opponents said that the bill would present the appearance of dealing with the cause of recent problems with banks and saving and loans, without significantly improving state regulation of the financial industry. A majority of public members on the commission would not necessarily improve the commission's operations. It would be wrong to pay commissioners industry-level salaries, which are much higher than those earned by any state employee, since it would create an elite within state government.

Legislative History: The Senate passed SB 607 by voice vote on April 11 (Journal page 718). The House added amendments concerning receivership of uninsured associations and removing the commissioner salary caps, then passed the bill by nonrecord vote on May 22 (Journal page 2244). On May 23 the House without objection reconsidered the vote by which the bill had passed, adopted amendments concerning pawnshop regulation and salaries within the consumer credit commission, then passed the bill again by nonrecord vote (Journal page 2285-6). The Senate concurred with the House amendments by voice vote, one member recorded voting nay, on May 26. (Journal page 2473).

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.
Uniform statewide accounting system
(SB 985 by Caperton)

Effective Sept. 1, 1989

SB 985 establishes a state government accounting division in the Comptroller's Office to implement a uniform statewide accounting system, including a statewide payroll. The comptroller may exclude any state agency from central calculation of payroll.

Supporters of the bill said Texas should establish a statewide accounting system for the state to operate in a modern and efficient manner. A statewide system could reduce state interest payments on bonds by allowing Wall Street bond rating houses to more accurately assess the state's financial strength and could result in other savings by making it easier to uncover inefficiencies in state government.

Opponents said a totally inclusive accounting system could cost more than it was worth. The cost of purchasing standardized software and changing all state accounts could be more than the $33.5 million allocated for the task.

Legislative History: The Senate passed the bill by voice vote on April 28 (Journal page 1047). The House passed on May 11 by 133-0 a committee substitute that allowed the comptroller broader powers to contract for goods and services for the system (Journal page 1655). The Senate by voice vote refused to concur with the House amendments and appointed a conference committee on May 18 (Journal page 1568). It discharged the conferees by unanimous consent and concurred with the House amendments by 31-0 on May 22 (Journal page 1917).

The HRO digest of the bill appeared in the May 10 Daily Floor Report.

- 221 -

House Research Organization
Teacher Retirement System contributions and benefits  
(HB 85 by Rudd)

Effective Sept. 1, 1989

HB 85 lowers the state contribution rate to the Teacher Retirement System (TRS) from 9 percent of payroll to 7.65 percent through Aug. 31, 1993. Starting Sept. 1, 1989, TRS members can retire with full standard benefits at age 55 with 30 years service. Members between the ages of 55 to 59 who retire with 20 to 29 years of service will receive 90 to 98 percent of full benefits. Members who retire between May 1, 1989 and Sept. 1, 1989 will have their benefits recalculated as of Sept. 1, to reflect the benefit changes. The bill increases retirement or survivor death benefits beginning August 1989 for TRS members who retired or died before Sept. 1, 1986 with 10 or more years of service, by 4 to 16 percent, depending on the date of retirement or death, but the total increase cannot be more than $100 per month.

The state would increase the contribution rate for 1992-93 if necessary to keep the TRS funding period shorter than 31 years.

Supporters of the bill said the reduction in the state contribution rate to the Teacher Retirement System would not affect its actuarial soundness and would save the taxpayers millions of dollars. Allowing TRS members to retire at 55 with 30 years service would provide another retirement option for those teachers with high seniority who started teaching at an early age. TRS retirees are due for a benefit increase since they have only had three in the last eight years.

Opponents said lowering the state contribution to the TRS would continue the bad practice of legislative raids on the funds used to pay retired teachers in order to help balance the state budget. Good pension policy calls for a stable contribution rate, but the state contribution rate has been lowered every session beginning in 1983. Pension systems make long-term commitments, and contribution rates should be determined on a long-term basis as well.

Legislative History: The House passed the bill by 136-0 on March 30 (Journal page 757). The Senate amended the bill to lower the state contribution rate from 7.75 percent of payroll for fiscal 1990-91 to 7.65 percent of payroll through Aug. 31, 1993, then passed it by 27-0 on May 4 (Journal page 1135). The House concurred with Senate amendments on May 15 by 144-1 (Journal page 1795).

The HRO analysis of the bill appeared in the March 29 Daily Floor Report.
Shifting cash and accelerating spending
[HB 1279 by Hury]

Effective on Aug. 31, 1989

HB 1279 shifts money among various funds in the State Treasury and changes the timing of the distribution of state money, in order to increase the amount of certifiable revenue available for spending during fiscal 1990-91. Most of the revenue, $733 million, will come from a one-day transfer into the General Revenue Fund of the cash balance of every fund in the State Treasury except statutory trust funds and constitutionally dedicated amounts. Other bookkeeping measures will increase available revenue by another $225 million. The comptroller will postpone monthly payments from the General Revenue Fund to the Teacher Retirement System for June, July and August of 1991 until Sept. 1, 1991, freeing another $199.6 million for spending in fiscal 1990-91. The total revenue gain from HB 1279, including other minor provisions, will be $1.173 billion.

Supporters of the bill said it would allow the Legislature to continue state services at current levels without raising taxes. The bill would free existing funds by amending laws governing state financial procedures without compromising the state's fiscal integrity. All of the money involved would be state money -- the complex system of multiple state funds allows many small funds to hold unused cash surpluses, and HB 1279 would simply allow the state to "borrow" from itself in order to use those balances to provide essential state services.

Opponents said the bill was an imprudent attempt to circumvent the constitutional requirement of a balanced state budget and could undermine the soundness of the State Treasury. It would use "smoke and mirrors" to create the illusion of more money without collecting a single new dollar in state revenue, increasing the likelihood of a tax increase in 1991.

Legislative History: The House amended the bill to specify the date and rate of repayment to the Teacher Retirement System, then passed it by nonrecord vote, four members recorded voting nay, on March 16 (Journal page 591). The Senate passed the bill by voice vote, two members recorded voting nay, on April 6 (Journal page 680).

The HRO analysis of the bill appeared in the March 15 Daily Floor Report.
Transfers to State Highway Fund
(HB 1356 by Cain)

Effective June 2, 1989

HB 1356 directs the comptroller to return, on Aug. 31, 1989 or as soon as possible thereafter, any money borrowed from the State Highway Fund during fiscal 1988-89 and not previously repaid. Payments must represent principal only and cannot include accrued interest. Temporary provisions for monthly allocation of gasoline, diesel fuel and liquefied gas taxes, which were due to expire Aug. 31, 1990, are made permanent. Allocation of unclaimed refundable taxes on gasoline used in motorboats, which was not subject to the temporary provisions, will change from quarterly to monthly.

Supporters of the bill said it would improve cash flow to the highway fund, which has diminished to the point that the highway department is behind in payments to contractors, and allow the fund to resume its role in the state's economic recovery. Paying back $150 million still owed the fund --but without interest -- and making monthly allocations permanent would be a fair way to undo problems caused by recent attempts to balance the state budget by borrowing highway money. The state needs an efficient and well-maintained highway system backed by a dependable source of long-term funding.

Opponents said the bill would siphon $150 million from the General Revenue Fund to the State Highway Fund at a critical point in the state budgeting process and also deprive other state programs of $3.5 million a year in interest for years to come. Transfers of unused money from the highway fund, which were called off early, were intended to benefit Texas school children and could have helped equalize education funding. Many other state needs are more pressing than a few more miles of concrete.

Legislative History: The House passed the bill by 139-0 on May 18 (Journal page 2025). The Senate passed it by 31-0 on May 26 (Journal page 2488).

The HRO analysis of the bill appeared in the May 15 Daily Floor Report.
Dividing State Highway Fund into two accounts  
(HB 2061 by Russell)

Died in Senate committee

HB 2061 would have divided the State Highway Fund into two accounts: a constitutional account to receive amounts dedicated by the Texas Constitution and a statutory account to receive all other amounts credited to the fund.

Money in the constitutional account could have been appropriated only for purposes provided in the Constitution. Money in the other account could have been appropriated for any powers or duties authorized or required of the State Department of Highways and Public Transportation, the Department of Public Safety or their governing commissions. All current provisions of the statute creating the highway fund and directing appropriations from the fund would have been repealed.

Supporters of the bill said it would help budget-watchers identify which amounts in the fund are limited to constitutional purposes and which are statutory and thus available for interfund borrowing, interest accrual to general revenue and appropriations for other purposes. HB 2061 also would provide a basis for evaluating how the highway department spends its statutory money.

Opponents said the bill would create an administrative burden without justification. Labeling each expenditure based on its funding source would be a time-consuming and needlessly expensive accounting procedure. Other opponents said the bill might allow highway officials to shield statutory money from appropriation for non-highway purposes and interfund borrowing. The department would likely spend statutory money first and constitutional money last.

Legislative History: The House passed the bill by nonrecord vote on May 18 (Journal page 2027). The Senate Finance Committee considered the bill after a May 25 hearing but rejected by 2-9 a motion to report it favorably.

The HRO analysis of the bill appeared in the May 16 Daily Floor Report.
Emergency appropriations for fiscal 1989
(SB 338 by Caperton)

Effective June 1, 1989

SB 338 made emergency appropriations totaling $157.3 million for fiscal 1989. The largest appropriations were $75 million to the Texas Department of Mental Health and Mental Retardation for costs involved in complying with court orders, $38 million to redeem bonds issued to finance Sematech improvements, $24 million to community and junior colleges as reimbursement for money spent on staff health insurance, $10 million for a dock for the Formosa Plastics plant in Calhoun County, $8.7 million to the Attorney General's Office for enforcing child support orders, and $7.4 million to the State Preservation Board for restoration of the State Capitol. It also requires the State Preservation Board to award a certain percentage of contracts to disadvantaged businesses.

Supporters of the bill said the emergency appropriations were necessary to comply with court orders, support economic development, reimburse colleges for lost revenues, prosecute child support enforcement orders and restore the State Capitol.

Opponents said the promise to redeem the Sematech bonds should not be binding on the Legislature. State revenue should not be used to subsidize private ventures, such as Sematech and Formosa Plastics. Junior and community colleges should pay staff group insurance premiums from their current allocations.

Legislative History: The Senate passed the bill by 25-2 on Feb. 23 (Journal page 314). The House considered a committee substitute that added the appropriations to TDMHMR and the Attorney General's Office and several smaller appropriations, and deleted the appropriation to the State Preservation Board. On April 20 the House tabled by 74-61 an amendment to delete the Preservation Board contract goals (Journal page 1065) and defeated a motion divide the question by 58-66 (Journal page 1066). On April 25 the House adopted an amendment making the appropriation to the State Preservation Board, then passed the bill by 129-15 (Journal page 1121). The Senate refused to concur, by voice vote, on April 28 (Journal page 1040), and a conference committee was appointed. On May 22 the Senate by unanimous consent refused to adopt the conference committee report, and new Senate conferees were appointed (Journal page 1917). The House adopted the conference report by 124-8 on May 25 (Journal page 2561) and the Senate adopted it by 31-0 on May 26 (Journal page 2524).

The HRO analysis of the bill appeared in the April 20 Daily Floor Report.

- 226 -

House Research Organization
General Revenue transfer to Rainy Day Fund in 1989
(SB 872 by Caperton)

Effective June 14, 1989

SB 872 requires the transfer to the Economic Stabilization ("Rainy Day") Fund of one-half of any unencumbered positive balance in the General Revenue Fund on Aug. 31, 1989. Prior law would have required the transfer of the entire general-revenue balance.

Supporters of the bill said it would amend the statutory provision for transferring unspent state money to the Rainy Day Fund in order to reconcile it with the constitutional provision. The constitutional provision requires transfer of only the unencumbered general-revenue balance -- the amount not required to cover any remaining bills that have not yet been paid under the state's cash accounting system. The state is expected to have a cash surplus at the end of fiscal 1989, but it will be less than state's outstanding obligations. SB 872 would make the cash surplus available for spending for pressing state needs rather than storing away in the Rainy Day Fund more money than was intended when the fund was created.

Opponents said the bill would change the rules to reduce the amount of money saved in the Rainy Day Fund before it even has had a chance to work. The more money that is available for future emergencies, the less will have to be cut from state spending or raised by higher taxes at the time of the emergency.

Legislative History: The Senate passed the bill by 29-0 by March 14 (Journal page 489). The House passed the bill by 134-0 on May 26 (Journal page 2727).

STATE TAXATION

Tax on marijuana and controlled substances
(HB 24 by Clemons, et al.)

Effective Sept. 1, 1989

HB 24 imposes a tax of $3.50 per gram on sales of marijuana and $200 per gram on controlled substances. Possession of a taxable drug on which the tax had not been paid is a third-degree felony (maximum penalty a $10,000 fine and 10 years in prison); the unpaid tax also must be paid. Information supplied by a person paying the tax is confidential and may not be used in a criminal prosecution.

Supporters of the bill said it would help deter drug dealing by allowing the state to punish drug dealers the same way Elliot Ness finally put Al Capone behind bars -- for tax evasion. The threat of a tax levy large enough to wipe out any illegal profits, which would be due even if the dealer escaped criminal conviction on some technicality, should add to the deterrent value of a prison sentence and criminal fine.

Opponents said the bill would add nothing to the enforcement of laws against drug dealing, since the Controlled Substances Act already levies large fines against drug dealers. The state should not receive any tax benefit from the sale of illegal substances. Other opponents said the Legislature should decriminalize marijuana and tax it at a reasonable rate, generating badly needed revenue from this large crop. Decriminalization would allow law enforcement agencies to devote their resources to fighting more dangerous drugs.

Legislative History: The House passed the bill by nonrecord vote on May 10 (Journal page 1608). The Senate passed the bill by voice vote, one member recorded voting nay, on May 28 (Journal page 2823).

The HRO analysis of the bill appeared in the May 9 Daily Floor Report.
Revised sales tax phase-out on plant equipment, aircraft parts
(HB 112 by Schlueter, et al.)

Effective Aug. 28, 1989

HB 112 replaces previously scheduled sales tax credits on production machinery and equipment with sales tax refunds and reductions. In addition, the bill extends the tax refunds and reductions to machinery and equipment used to overhaul and repair jet turbine aircraft engines, but limits them to the state sales tax only, not to sales taxes imposed by political subdivisions. Businesses will get a refund of 25 percent on the sales tax paid on purchases made in 1990 and 1991. Beginning in 1992, the sales tax will be reduced by 25 percent in 1992, 50 percent in 1993, 75 percent in 1994 and 100 percent in 1995. Companies must request refunds in the year after the year in which the taxes were paid. The total amount of tax refunds for which the state will be liable before Aug. 31, 1991 is limited to $57 million, although the comptroller may make additional refunds if money is available.

Supporters of the bill said it would change the schedule for phasing out the sales tax on production machinery and equipment to provide additional stimulus to the state economy. Major new manufacturing facilities locating here next year could boost state revenue in future years, but the state needs to accelerate the sales tax reduction already scheduled in order to compete with other states in attracting new business. The overall effect of the bill on sales tax revenues would be neutral and would put Texas on the same footing with other states in attracting new business.

Opponents said the bill is a special-interest measure tailored to cater to Formosa Plastics, American Airlines and other large manufacturers by providing them a refund on their 1990 sales taxes. The state should rethink the notion of tax giveaways for economic development. Study after study has shown that tax laws do very little to lure business to a state. Special tax breaks only reduce the revenue available to provide needed government services like education, which are more essential to the state's future economic development.

Legislative History: The House passed the bill by voice vote on March 15 (Journal page 570). The Senate amended the bill to include a phase-out of the sales tax on equipment and machinery used to overhaul jet aircraft engines, then passed it by 24-6 on May 1 (Journal page 1078). The House concurred with Senate amendments by nonrecord vote on May 8 (Journal page 1500).

The HR0 analysis of the bill appeared in the March 15 Daily Floor Report.

- 229 -

House Research Organization
Tax reduction for enhanced oil recovery projects
(HB 428 by Perry)
(HB 40 by Perry, first called session)

Effective Aug. 2, 1989

HB 428 reduces the tax on oil produced from an enhanced recovery project from 4.6 percent to 2.3 percent of its market value. To qualify for the tax reduction, an enhanced oil project and the area it will cover must be approved by the Railroad Commission. The exemption will apply only to projects that begin active operation on or after Aug. 2, 1989 (see HB 40, below) and for which applications are received before Jan. 1, 1994.

To qualify for the exemption, the projects must produce oil within three years of the application date for secondary production projects or within five years for tertiary projects. The reduced rate will then be in effect for 10 years after certification or until termination of the enhanced recovery project.

Supporters of the bill said it would help stimulate the oil and gas industry in Texas by providing a tax incentive to recover oil that otherwise is too costly to produce. Even at the reduced tax rates, the bill could generate additional revenue from oil that would not have been produced without the incentive the bill would provide and from wells that would continue to produce after the 10-year tax reduction period ends. The bill's restrictions would ensure that the tax break would not become a loophole for the oil industry. The process of granting the tax break would be overseen at several steps along the way by the Railroad Commission and the comptroller.

Opponents said the bill would drain state revenue for the sake of a program promising results that are uncertain at best. The oil industry has not specifically committed itself to launching projects if it gets the tax break, and the state would be giving up revenue on projects that would be launched regardless. The companies that profit from oil should be funding these projects without depending on tax breaks from the state.

Legislative History: The House amended the bill to extend the application deadline to Jan. 1, 1994, and to make the effective date Jan. 1, 1990 (Journal page 1208), then passed the bill on May 1 by nonrecord vote (Journal page 1242). The Senate passed the bill by 30-0 on May 16 (Journal page 1489).


Enforcement of motor-fuels-tax laws
(HB 1155 by Hury)

Effective Sept. 1, 1989

HB 1155 amends numerous Tax Code provisions on the collection of motor-fuel taxes, sets new or increased penalties for avoiding tax payment, and changes the requirements for bonds, permits and seizure of property to satisfy tax liability.

Supporters of the bill said it would expand the comptroller's motor-fuel-tax enforcement powers in order to stop bootleggers who cheat the state out of gasoline and diesel-fuel taxes. It would increase fiscal 1990-91 major fund revenues by an estimated $31 million.

Opponents said elimination of all tax-free sales of diesel fuel and gasoline would be a better way to eliminate tax fraud. Other opponents said the tougher enforcement provision would create more paperwork for agricultural users.

Legislative History: The House passed the bill by nonrecord vote, 17 members recorded voting nay, on April 13 (Journal page 961). The Senate adopted a committee substitute similar to the House version and passed the bill by voice vote on May 8 (Journal page 1196). The House concurred with the Senate amendments by nonrecord vote on May 10 (Journal page 1631).

The HRO analysis of the bill appeared in the April 12 Daily Floor Report.
Revision of corporate franchise tax  
(HB 1306 by Hury)  

Effective March 2, 1989

HB 1306 specifies that the pre-acquisition retained earnings of a subsidiary corporation must be included in the base of its parent corporation in calculating the parent corporation's franchise tax.

HB 1306 also repeals a section of the Tax Code that permitted the comptroller to allow corporations to use additional factors in calculating the proportion of their total taxable capital that is allocated to Texas for franchise tax purposes. Gross receipts is the only factor that will be considered in allocating a corporation's taxable capital to Texas.

Supporters of the bill said it would clarify certain provisions of the corporate franchise-tax law and eliminate certain deficiencies that have already cost the state hundreds of millions of dollars and threaten to cause even more revenue losses during the next budget period. The bill would codify long-standing practice regarding taxation of pre-acquisition earnings of corporate subsidiaries and close the "three-factor" loophole that has allowed out-of-state companies to avoid paying their fair share of Texas taxes. HB 1306 would increase major fund revenues for fiscal 1990-91 by $289.8 million.

Opponents said the bill was a disguised tax hike that would increase the amount of franchise tax paid by corporations doing business in Texas by almost $150 million a year. The bill would allow the comptroller to return to certain practices in assessing the franchise tax that have not withstood past judicial scrutiny and could be invalidated in the future.

Legislative History: The House passed the bill by 142-3 on Feb. 28 (Journal page 398). The Senate passed it by 30-1 on March 1 (Journal page 352).

The HRO analysis of the bill appeared in the Feb. 27 Daily Floor Report.
Property and casualty insurance tax revision
(HB 1421 by Hury)
(HB 29 by Hury, first called session)

Effective June 12, 1989

HB 1421 requires the State Board of Insurance to use the 3.5 percent base tax rate in calculating the retaliatory tax paid by out-of-state property and casualty insurance companies. (The retaliatory tax is higher for out-of-state companies whose home states tax Texas companies at a higher rate than home-state companies.) The minimum gross-premium tax paid by insurance companies is raised from 1.2 percent to 1.6 percent. The tax rate paid by surplus lines and unauthorized companies is raised from 3.85 percent to 4.85 percent. Reciprocal insurance exchanges pay a flat 1.7 percent tax, rather than graduated rates linked to Texas investments. The tax changes were effective for taxes collected starting Jan. 1, 1989.

HB 29 changed the effective date of the tax changes affecting surplus-lines insurance to July 1, 1989.

Supporters of the bill said it embodied the terms of the settlement of a lawsuit against the state by out-of-state property and casualty insurance companies. The settlement would free $246.4 million in revenue for the fiscal 1990-91 budget -- money the comptroller has earmarked for refunds of back taxes and for potential tax revenue lost as a result of the lawsuit and therefore is off limits for spending purposes without this bill.

Opponents said the bill would be a significant tax hike on property and casualty insurance companies. The only reason for the increase would be to maintain a revenue windfall that the state gained under its mistaken interpretation of the retaliatory tax statute.

Legislative History: The House amended the bill to use the base rate, rather than the actual rate, for retaliatory tax calculations (Journal page 569), then passed it by 128-3 on March 16 (Journal page 590). The Senate amended the bill to delete a provision that would have required plaintiffs to accept a refund of 20 percent of the tax payments paid under protest, then passed it by 31-0 on April 4 (Journal page 647). The House concurred with the Senate amendments by 139-0 on May 22 (Journal page 2230).

The House passed HB 29 by 136-0 on July 7 (Journal page 227). The Senate passed it by 27-0 on July 12 (Journal page 286).

Increased cigarette tax for Medicaid match  
(HB 1608 by Hurry/SB 1062 by Glasgow)

Died in committee

HB 1608 and its companion, SB 1062, would have increased the cigarette tax from 26 cents per pack to 33 cents per pack. The additional revenue would have been appropriated to the Department of Human Services as matching money for federal health care grants.

Supporters of the bill said the cigarette tax increase would have raised $166 million in new state revenue, plus $274 million in federal matching funds. This money could have been used to raise Medicaid eligibility levels, expand services covered by Medicaid, raise the eligibility limits for nursing home care, raise hospital or doctor reimbursement rates, or increase payments to families with dependent children.

Opponents said the governor had pledged not to raise taxes of any kind. Individuals who choose to include smoking in their lifestyle should not be singled out for a tax increase. Cigarette taxes are paid disproportionately by those with lower incomes.

Legislative History: The House Ways and Means Committee considered HB 1608 at a public hearing on April 26; no further action was taken. The Senate referred SB 1062 to the Finance Committee on March 13, and no further action was taken.
Premium tax on life, accident and health insurance  
(HB 1954 by Hury)  

Effective Aug. 28, 1989

HB 1954 phases out the link between a life, accident and health insurance company's Texas investments and its gross-premiums-tax rate, over the next six years. Starting in 1995, all life, accident and health insurance companies and health maintenance organizations will pay a flat tax of 1.75 percent of gross premiums.

Supporters of the bill said it would settle a lawsuit filed by out-of-state life, accident and health insurance companies, increasing revenue available for spending in fiscal 1990-91 by $467.8 million. The 1.75 percent flat tax would lower taxes paid by most out-of-state companies, since they currently pay the maximum 2.5 percent rate. The largest Texas insurance companies, which do most of their business outside the state, also would save money, since the lower tax paid by out-of-state companies would in turn lower the retaliatory taxes paid by Texas companies to other states. Other Texas companies would have time to adjust to the new tax rate, which would be phased-in over six years.

Opponents said the bill would increase the taxes paid by most Texas life, accident and health insurance companies, which may not be strong enough to face increasing taxes for the next six years. The link between a company's Texas investments and its tax rate provides a reasonable incentive for insurers to invest in Texas. The demand for bonds issued by Texas governmental units would decline if the tax credit for investments in Texas were eliminated.

Legislative History: The House passed the bill by 139-0 on May 17 (Journal page 2018). The Senate adopted a substitute that was essentially identical to the House version, then passed the bill by 31-0 on May 26 (Journal page 2532). The House concurred with the Senate amendment by nonrecord vote, three members recorded voting nay, on May 28 (Journal page 3103).

Gas-utility administration tax
(HB 2945 by Hury)

Effective Oct. 1, 1989

HB 2945 increases the gas-utility administration tax from 0.25 percent to 0.5 percent. The bill also imposes the tax on the gross income of a gas utility. Gross income is defined as gross receipts minus the cost of purchasing, treating and storing natural gas or gathering and transporting natural gas to the utility's facilities.

Supporters of the bill said that it would increase general revenue by $9.8 million in fiscal 1990-91 by resolving a legal challenge to the gas-utility administration tax. Outright repeal, rather than revision, of the tax would give gas pipelines a competitive advantage over electric utilities. The natural gas brokers with whom the gas utilities allegedly compete often are subsidiaries of the same parent corporation that owns the gas utility.

Opponents said the gas utility administration tax should be repealed, as recommended by the Select Committee on Tax Equity. The gas utilities that are subject to the tax are at a competitive disadvantage to brokers of natural gas sales that do not pay the tax.

Legislative History: The House passed the bill by nonrecord vote on May 18 (Journal page 2022). The Senate made technical changes, then passed the bill by voice vote on May 25 (Journal page 2274). The House concurred with the Senate amendments by nonrecord vote on May 26 (Journal page 2846).

The HRO analysis of the bill appeared in the May 15 Daily Floor Report.
Electronic tax payments and Treasury investments
(SB 245 by McFarland)

Effective May 11, 1989

SB 245 requires certain large taxpayers to make their payments to the state by electronic funds transfer. The bill also gives the state treasurer the option of investing in banker's acceptances, commercial paper and covered call options. The treasurer is prohibited from investing in companies doing business in South Africa, except companies with certain performance ratings that do not supply strategic products to the South African government.

Supporters of the bill said it would increase state revenue by $8.7 million. The state Treasury would have quicker access to tax payments and could begin earning interest on payments a few days earlier. Interest earnings would also be increased by the greater range of investment options the bill would give the Treasury. The Treasury would avoid future investment in South Africa, cutting off support to the immoral system of apartheid.

Opponents said that the state Treasury should not attempt to influence U.S. foreign policy on South Africa or any other issue, regardless of how deplorable or repugnant a foreign government's policy might be.

Legislative History: The Senate by 27-1 amended the bill to add the ban on certain investments in South Africa, then passed the bill by 28-0 on March 2 (Journal page 367). The House Financial Institutions Committee deleted the South Africa provision, but the House restored it as a floor amendment without objection (Journal page 1309). The House rejected proposed amendments that would have prohibited from being a state depository a bank in which the Federal Deposit Insurance Corporation held an interest or a bank whose loans in the state were less than 90 percent of its loan portfolio (Journal pages 1309-12), then passed the bill by 134-5 on May 4 (Journal page 1417). The Senate concurred with the House amendments by 27-0 on May 8 (Journal page 1184).

The HRO analysis of the bill appeared in the April 20 Daily Floor Report.
Corporate and bank franchise tax revisions  
(SB 1000 by Carriker)  

Effective Jan. 1, 1990  

SB 1000 permits a close corporation or subchapter S corporation to elect to compute its corporate franchise tax based on federal income tax accounting methods, rather than generally accepted accounting principles. Bank franchise tax revenue will be allocated among a bank's principal office and its branches, according to the total deposits in each facility.

Supporters of the bill said it would permit certain closely held corporations to avoid needless accounting expenses by keeping a single set of books for both the state franchise tax and federal income taxes. SB 1000 also would correct the current method of allocating bank franchise tax revenues that have unfairly withheld revenue from small towns where new branches are located.

Opponents said that the bill would allow a small number of wealthy individuals to lower the franchise taxes on their family corporations by choosing a more favorable accounting method than other corporations are permitted to use. The bill also would deprive taxing units in major cities where bank principal offices are located of bank franchise tax revenue they have been anticipating under current law.

Legislative History: The Senate passed the bill by 31-0 on the Local and Uncontested Calendar. The House amended the bill without objection to add the provision concerning close corporations and subchapter S corporations and a provision concerning tax credits for title insurance holding companies (Journal page 2239-40), then passed the bill by nonrecord vote on May 22 (Journal page 2241). The Senate concurred with the House amendments by voice vote, one member recorded voting nay, on May 25 (Journal page 2117).

The HRO analysis of the bill appeared in the May 18 Daily Floor Report.
Sales-tax exemption for aircraft repair or maintenance
(SB 1481 by Glasgow)

Effective Sept. 1, 1989

SB 1481 exempts from the sales tax remodeling and maintenance services to airplanes operated by certificated carriers and repair, remodeling and maintenance services to engines and parts of these airplanes. The bill also exempts from the sales tax machinery, tools and equipment used or consumed in this repair, remodeling and maintenance and tangible personal property permanently attached as a component part of a carrier's airplane.

Supporters of SB 1481 said it would encourage American Airlines to invest $400 million in a new maintenance base at Fort Worth Alliance Airport, rather than in Oklahoma City. The base would employ some 4,500 people by 1994, which would multiply into a total of 11,300 new jobs and $800 million in economic activity in the area.

Opponents said the bill was part of a package of giveaways for the American Airlines maintenance facility that included tax breaks, tax-free financing and a new interstate highway interchange. To attract new investment to Texas, the state should be spending money on better schools and job-training rather than on costly lures to large corporations.

Legislative History: The Senate passed the bill, which originally revised the tax law in response to certain court decisions, by 30-0 on May 24 (Journal page 2065). The House on May 26 adopted without objection a floor amendment adding the provisions concerning aircraft repair (Journal page 2670), then passed the bill by nonrecord vote on May 27 (Journal page 2903). The Senate concurred with the House amendment by voice vote on May 28 (Journal page 2955).

The HRO analysis of the bill appeared in the May 26 Daily Floor Report.

- 239 -

House Research Organization
Revenue from certain taxes paid under protest
(SB 1573 by Caperton)

Effective Sept. 1, 1989

SB 1573 requires that all taxes not collected by the comptroller and being paid under protest (e.g. insurance taxes) be deposited in the General Revenue Fund, rather than in suspense funds. The bill allows the state to delay the refund of protested insurance taxes until the two-year budget period following the one in which a refund was ordered.

Supporters of the bill said it would allow the comptroller to reduce the amount set aside from the revenue estimate as a reserve for lawsuits challenging collection of state taxes. The delayed refunds would allow the Legislature to budget for any revenue loss from a successful challenge to the insurance-tax laws.

Opponents said the bill would expose the state budget to the risk of a sudden drain if the money set aside to cover any potential refund from a loss in pending tax cases were spent in the current budget period.

Legislative History: The Senate passed the bill by voice vote on April 20 (Journal page 878). The House adopted an amendment making technical changes, then passed the bill by nonrecord vote on May 2 (Journal page 1286). The Senate concurred with the House amendment by voice vote on May 19 (Journal page 1732).

The HRO analysis of the bill appeared in the May 1 Daily Floor Report.
Prohibiting traffic ticket quotas for peace officers
(HB 729 by R. Lewis)

Effective Sept. 1, 1989

HB 729 prohibits a political subdivision or state agency from requiring a peace officer to issue a specific number of traffic citations. Formal or informal plans in which peace officers are evaluated, promoted, disciplined, or paid based on traffic citation quotas also are prohibited. Elected officials who violate the act are subject to removal from office, and non-elected officials are subject to removal from their position.

Supporters of the bill said traffic citation quotas emphasize numbers at the expense of quality law enforcement. This amounts to harassment of the public and undermines respect for the law. Ticket quotas are a clumsy means of evaluating officers for promotions and discipline. Quotas often are set to raise additional revenue, but can be used in inappropriate ways against officers.

Opponents said some objective criteria such as the number and type of tickets written is necessary to evaluate the overall performance efforts of police officers. Although it may not be the intent of the bill, it implies that supervisors could not even ask how many citations an officer has issued. This would prevent the compilation of information important to effective law enforcement.

Legislative History: The House passed the bill by nonrecord vote on April 12 (Journal page 934). The Senate passed the bill by 31-0 on May 4 (Journal page 1123).

The HRO analysis of the bill appeared in the April 11 Daily Floor Report.

- 241 -

House Research Organization
Deregulating natural gas as a vehicle fuel
(HB 1878 by Perry)

Effective Aug. 28, 1989

HB 1878 exempts sellers of natural gas for use as a vehicle fuel from the definition of "gas utility" or "utility" under the Gas Utility Regulatory Act. The exemption includes sales to those who later sell natural gas for use as a vehicle fuel or who own or operate equipment or facilities to sell or transport natural gas for ultimate use as a vehicle fuel.

Supporters of the bill said expanding this use of natural gas not only would help bolster the state economy but also help in the fight against air pollution. HB 1878 would promote the use of compressed natural gas as a vehicle fuel by making it easier and cheaper to sell. Currently anyone wishing to buy natural gas as a vehicle fuel must purchase it from a regulated utility. Those who might be interested in selling compressed natural gas as a vehicle fuel are discouraged due to regulatory red tape and the expense of becoming a utility. Additionally, utilities are required to sell the gas at a weighted cost average that makes it too expensive for many uses. This bill would lower regulatory costs and facilitate the development of retail stations to sell compressed natural gas, which would ultimately reduce the costs for consumers. The bill would create a new competitive market, not displace an old one.

Opponents said regulation of gas utilities was established as a substitute for competition in an area where natural monopolies exist. A comprehensive regulatory effort is needed to assure that rates, operations and services are just and reasonable to consumers and the utilities. To deregulate gas sales in one area could open the door to monopoly control down the line should sales of compressed natural gas for vehicles become attractive. The ultimate result could be higher prices for consumers.

Legislative History: The House passed the bill by nonrecord vote on May 2 (Journal page 1289). The Senate passed the bill on the Local and Uncontested calendar by 31-0 on May 15 (Journal page 1395).

The HRO analysis of the bill appeared in the May 1 Daily Floor Report.
Uniform commercial driver's licenses
(HB 1935 by Carter)

Effective April 1, 1990

HB 1935 adds requirements for licensing, testing and disqualifying commercial drivers, implementing the federal Commercial Motor Vehicle Safety Act of 1986. The requirements apply to drivers of vehicles used to transport persons or property if they have gross weight ratings of 26,001 or more pounds, are designed to transport 16 or more people, including the driver, or are used to transport certain hazardous materials. The list of exemptions includes agricultural vehicles and all vehicles not used in the operations of common and contract carriers.

The new commercial licenses will be available only to Texas-domiciled drivers who pass knowledge and skills tests that comply with federal standards. DPS may not issue licenses or permits to any driver whose license has been suspended, revoked or canceled in any state. Drivers licensed in other states must surrender all licenses and permits.

Supporters of the bill said it would enhance safety and ensure compliance with federal standards necessary to retain full federal highway funding after Oct. 1, 1993. Law officers would be able to catch those who keep several licenses in an attempt to obscure poor driving records. Texas may lose $28 million the first year and $56 million thereafter if it does not comply by April 1, 1992. The April 1, 1990 effective date is necessary so that the DPS can begin testing the almost one million drivers expected to need new commercial licenses.

Opponents said the Legislature should not rush to implement this federal program without further examination to ensure that Texas businesses are not unnecessarily burdened by the requirements. The program need not be operational for three years, and the federal government might alter its requirements in the meantime. The bill should at least stipulate that Texas law will be no more stringent than federal law requires.

Legislative History: The House added a requirement that compliance instructions be in "plain simple English," then passed the bill by nonrecord vote on May 26 (Journal page 2666). The Senate removed the provision on instructions, then passed the bill by voice vote on May 28 (Journal page 2824). The House concurred with the Senate amendment by nonrecord vote on May 29 (Journal page 3296).

The HRO analysis of the bill appeared in the May 23 Daily Floor Report.
Mandatory helmet use by adult motorcycle riders
(SB 41 by Lyon)

Effective Sept. 1, 1989

SB 41 expands the requirement of helmet use by motorcycle riders younger than 18 to apply to riders of all ages. An exception is allowed for riders 18 and older who obtain 10-day medical exemptions for acute head or facial injuries that would be worsened by wearing protective headgear.

Supporters of the bill said reinstating the all-ages helmet requirement would prevent deaths and injuries. The under-18 helmet law is nearly impossible to enforce. Federally sponsored studies have demonstrated that helmets reduce the risk of head injuries without causing neck injuries or impairing hearing or vision. Texas motorcycle fatalities increased markedly after the 1976 repeal of the all-ages helmet requirement. Costs of caring for injured motorcyclists are passed on to taxpayers and consumers. Concerns that approval of this law might alleviate the need to enact other motorcycle safety measures were answered with the approval during the regular session of an expanded training program (SB 589 by Carriker).

Opponents said motorcyclists who decide not to wear helmets have been unfairly singled out as the cause of a much broader traffic safety problem involving young, inexperienced and inebriated riders. Increased training and stricter licensing would prevent many accidents and lessen the severity of others, but extending the helmet law would do nothing of the kind. Helmets do no good at higher speeds and may actually contribute to accidents by restricting vision or exacerbating neck injuries. Mandatory helmet laws impair motorcyclists' freedom and may even violate the constitutional right to privacy. Other opponents said motorcycle helmets are not safe for anyone. The law requiring use by riders younger than 18 should be repealed.

Legislative History: The Senate passed the bill by 17-13 on March 21 (Journal page 542). The House added the medical exemption provision, then passed the bill by nonrecord vote, 10 members recorded voting nay, on April 6 (Journal page 866). On April 11 the Senate defeated a motion not to concur with the House amendment by 14-16, then adopted the motion to concur by voice vote, four members recorded voting nay (Journal pages 714-715).

The HRO analysis of the companion bill, HB 320 by McKinney, appeared in the April 5 Daily Floor Report.
Use of open-bed vehicles to carry children  
(SB 170 by Parker)

Effective Sept. 1, 1989

SB 170 makes it an offense to operate an open-bed pickup or tow an open flatbed truck or trailer at a speed of more than 35 mph when a child younger than 12 is occupying the truck bed or trailer. Offenses are punishable by a fine of $25-200. A defense to prosecution is allowed for operating or towing in an emergency.

The bill also repeals a provision for dismissal of certain charges under the child restraint law upon subsequent proof of acquisition of a child safety seat. It adds defenses in case of emergencies and valid law enforcement purposes. These defenses apply to all child restraint charges, while the repealed provision applied only to cases in which safety seats are required.

Supporters of the bill said riding in the back of trucks or trailers is simply not safe and cannot be justified by claims that it is "traditional" or required by economics in rural parts of the state. Also, awareness of the child restraint law and availability of seats for purchase or loan are widespread enough that the acquisition defense is no longer needed. The emergency and law enforcement defenses would be strictly limited.

Opponents said the bill would place economic burdens on migrant workers and other poor Texans, without significantly improving safety. It would be difficult to enforce a ban that runs so much against the grain of Texas tradition. Driving slowly limits mobility by requiring drivers to stay off roads with posted minimum speeds and would pose a greater safety hazard. The number of people killed and injured in truck-bed accidents is small, and most victims were in age groups not covered by the bill. Also, the child's safety-seat acquisition defense serves an educational purpose and should be retained.

Legislative History: The Senate passed the bill by voice vote, four members recorded voting nay, on March 13 (Journal page 441). The House amended the bill to allow an exemption for speeds under 40 mph and to add a defense for persons owning only one vehicle. The House initially did not pass the bill on second reading, by nonrecord vote, five members recorded voting nay, on May 25. The House reconsidered its vote, adopted by 75-61 an amendment exempting persons whose pickup truck is the only vehicle they own, then passed the bill on May 26 by nonrecord vote, five members recorded voting nay (Journal page 2729). The Senate refused to concur with the House amendments on May 27 (Journal page 2661), and a conference committee was appointed. On May 29 the House adopted the conference report by nonrecord vote, 11 members recorded voting nay (Journal page 3429), and the Senate adopted it by voice vote (Journal page 3604).


- 245 -

House Research Organization
Public vehicle natural gas conversion
(SB 740 by Henderson)

Effective Aug. 28, 1989

SB 740 requires certain school districts, state agencies and mass transit authorities to purchase vehicles capable of using compressed natural gas or other alternative fuels. It also requires these entities to convert their vehicle fleets, according to a conversion schedule. The bill applies to county or local district school boards operating more than 50 vehicles for transporting school children, to state agencies operating more than 15 vehicles, and to metropolitan, regional and city transit authorities.

These entities may not purchase or lease a motor vehicle after Sept. 1, 1991 unless it is capable of running on compressed natural gas or other alternative fuels. These entities also are required to convert their vehicle fleets to use compressed natural gas or alternative fuels. Thirty percent of the fleet must be converted by Sept. 1, 1994, and 50 percent in two more years. If a Texas Air Control Board review by Dec. 31, 1996 determines that the program is reducing emission in an area, 90 percent of the fleet must be converted by Sept. 1, 1998.

The State Purchasing and General Services Commission may make exceptions to the purchase or lease or conversion requirements based on financial and supply constraints.

Supporters of the bill said increased use of natural gas would be an economic and environmental boon to the state and its citizens. Increasing the consumption of natural gas could create new jobs and boost personal income, increase the royalty revenues from public lands and improve the economy. Using these cleaner burning fuels would reduce harmful emissions and help urban areas meet federal air quality standards.

Opponents said the cost of conversion is high in some cases and uncertain in others. The technology to address these concerns is still in question. Although natural gas currently is less expensive than fuel oil, an increase in the consumption of gas could increase its price, offsetting the initial benefits. Some entities that have converted vehicles to use natural gas have experienced problems with acceleration, which could raise safety concerns, particularly for school buses and larger transit vehicles operating on highways.

Legislative History: The Senate passed the bill by 27-1 on April 21 (Journal page 911). The House amended the bill to require that school districts certify any exemption from conversion requirements, rather than require the State Purchasing and General Services Commission to

- 246 -

House Research Organization
document the claims and to delete school districts from the fuel conversion requirements, then passed the bill by nonrecord vote on May 27 (Journal page 2913). The Senate refused to concur with the House amendments by voice vote on May 27 (Journal page 2768), and a conference committee was appointed. On May 29 the Senate adopted the conference committee report by a voice vote (Journal page 3421), and the House adopted it by nonrecord vote, four members recorded voting nay (Journal page 3431).

The HRO analysis of the bill appeared in the May 26 Daily Floor Report.
High speed rail authority
(SB 1190 by Whitmire)

Effective June 16, 1989

SB 1190 creates the Texas High-Speed Rail Authority, which is to choose a private franchisee to build and operate a high-speed (more than 150 mph) rail system. The authority is given broad statewide powers that will be transferred to the franchisee. Public funds may be used only for planning. Public entities may lease, lend, and grant property to the high-speed rail authority. Competitive bidding will not be a criteria for awarding the franchise. The board will solicit letters of intent for proposals, which may include a $100,000 nonrefundable fee. Proposals for a franchise are to be received, along with a nonrefundable $500,000 fee, by March 30, 1990; the 50-year franchise will be awarded 60 days later. The rail authority is subject to sunset review and will be abolished Sept. 1, 2001 if not continued by the Legislature.

Supporters of the bill said it would acknowledge the need for an alternative mode of transportation between Texas' largest cities. A high-speed rail project would help the economy and create jobs. A project of this magnitude requires a state agency to oversee the planning and to cut through bureaucratic red tape. Construction of the rail system would not cost any public funds, other than a minimal amount for planning; the financial risks would be borne by private enterprise.

Opponents said high-speed rail cannot compete with airlines and automobiles. Although this bill would not require the state to help finance the rail line initially, it would plant the seed for a future state-subsidized rail line. The authority eventually may seek financial assistance from the state or industrial revenue bond authority to bail out the project and subsidize it operation.

Legislative History: The Senate passed the bill by 28-3 on May 23 (Journal page 1968). The House passed the bill by 127-13-2 on May 27 (Journal page 2903).

The HRO analysis of the bill appeared in the May 26 Daily Floor Report.
Motor carrier safety rules
(SB 1204 by Dickson, Carriker)

Effective Aug. 28, 1989

SB 1204 adds exemptions and other conditions to the authority of the Department of Public Safety (DPS) to adopt motor carrier safety rules. Farm vehicles of less than 48,000 pounds gross weight and other vehicles of less than 26,000 pounds are exempted from the state requirements, but the exemptions do not apply to passenger vehicles designed to transport 15 or more passengers, including the drivers, nor to vehicles used to transport certain hazardous materials. Other exemptions apply to certain oil and water well servicing and drilling equipment and to mobile cranes.

Regulations may not prevent intrastate drivers from driving up to 12 hours following eight consecutive hours off. Within a 150-mile air radius of drivers' work reporting locations, drivers must be allowed to substitute certain business records for separate records documenting their hours of service. Certain Texas intrastate drivers are exempted from federal medical standards.

The Public Safety Commission is prohibited from adopting regulations more stringent than those of the federal government. Federal regulations are to prevail in case of conflict.

Supporters of the bill said it represents a carefully crafted compromise to resolve a dispute that forced the DPS to delay implementation of motor carrier safety rules. Texans who share the road with motor carriers would be adequately protected, and the state would regain eligibility for a federal grant program. Many of the concerns raised by legislators and businesses during the interim would be addressed without threatening public safety.

Opponents said the delayed DPS rules should be allowed to go into effect as scheduled. Texas still leads the nation in truck accidents, deaths and injuries. Whatever costs these regulations require of businesses must be weighed against the enormous costs of property damage, deaths and injuries. Other opponents said the bill did not go far enough to relieve cost and paperwork burdens on private carriers who are not in the trucking business.

Legislative History: The Senate passed the bill on the Consent Calendar by 31-0 on May 9 (Journal page 1207). The House added several provisions, including the 150-mile exemption and the stipulation that state rules be no stricter than federal regulations, then passed the bill by nonrecord vote on May 27 (Journal page 2905). The Senate concurred with the House amendments by voice vote on May 28 (Journal page 3088).

Regulation of city-owned utilities  
(HB 911 by T. Smith)  

Effective Aug. 28, 1989

HB 911 subjects a municipally owned electric utility to a number of regulations if, as a result of customer appeals, the Public Utility Commission (PUC) ordered the city to cut the amount of nonfuel revenue by over 10 percent or $25 million, whichever was greater, and if the PUC found that the rates paid by a particular customer class were out of proportion to cost of service by 50 percent or more. The PUC will have appellate jurisdiction over the rates set by such a city (Austin) for 10 years, during which ratepayers both inside and outside the city limits may appeal rates. The bill gives the PUC power to review the city's rate-setting practices and, if it finds these to be unjust or unduly preferential to any customer class, it may order the city to implement reasonable rate-setting methods. The bill gives detailed instructions about the maximum permissible rate of return and procedures for moving customer classes toward cost-of-service levels. It requires the city to hold public hearings at which affected ratepayers may demand party status, which will allow them to invoke PUC jurisdiction. Ratepayers outside the city limits may appeal any city action affecting their rates by submitting a petition for review and an itemized budget showing the scope and expected cost of the appeal, which will be funded by a one-time, per capita surcharge on the electric bills of the out-of-town customer-appellants after the PUC's final order.

HB 911 requires city-owned electric utilities to disclose on request the number of ratepayers who live outside the city limits. Within two weeks of setting electric rates, these cities must issue a written report stating how the rates would affect each class of customer. Out-of-town customers will have 45 days, instead of 30, from the date the report was issued to file a petition for review with the PUC.

The bill gives any city-owned utility affected by the act (Austin) until Jan. 1, 1990 to comply with its provisions and forbids increases in base rates for independent school districts before that date.

The bill contains a severability clause, which states that if any provision of the act is held invalid, remaining provisions that can be given effect will be valid.

Supporters of the bill said it would grant to the PUC the power to oversee municipal utilities that have abused their rate-setting privileges. The PUC already safeguards the interests of ratepayers of investor-owned utilities and is equipped to do this for city-owned-utility ratepayers as well. The bill would rectify past abuses and discourage further wrongdoing by the City of Austin, which
has consistently overcharged its largest customers and has refused to put new rates into effect despite a PUC ruling.

Opponents said that this bill, part of an "Austin-bashing" package, is just an attempt to tell home-rule cities how to run their business by sticking state regulation into the local government process. The bill would mainly benefit Austin's four largest power consumers, who backed this bill because they could not force the elected city council to do what they wanted -- lower their own utility rates and raise everyone else's. Austin's rate structure encourages conservation; the city is entitled to make economic decisions that reflect its commitment to environmental quality.

The bill would open the door to further state interference with local decision making. San Antonio, Lubbock, Brownsville, and other cities with municipally owned utilities would suffer if the Legislature ever decided to lower the threshold for PUC regulation.

Legislative History: The House passed the bill by nonrecord vote on May 11 (Journal page 1667). The Senate amended the bill and passed it by 31-0 on May 27 (Journal page 2720). The House refused to concur with the Senate amendments, and a conference committee was appointed. The conference committee made substantial changes in the bill, including the addition of provisions drawn from HB 316 by T. Smith, which died in the Senate. On May 29 the Senate adopted the conference report by 31-0 (Journal page 3613), and the House adopted it by nonrecord vote on May 29 (Journal page 3558).

Setting public utility rates to reflect tax savings and expenses
(HB 1573 by Robnett)

Died in Senate committee

HB 1573 would have required that public utility rates reflect federal
income tax savings that utilities receive due to business writeoffs,
but only to the extent that ratepayers actually had paid for the
losses written off through their utility bills. It also would have
prevented the Public Utility Commission (PUC) from balancing a
utility's income tax savings against its tax expenses to reduce the
amount of tax that could be counted as cost of service, unless the PUC
earlier had included the savings or loss when it set the rates.

Supporters of the bill said it would help Texas utility customers by
heading off large increases in rates that will result from the PUC's
ratesetting practices. Texas utilities are bound to pay higher
borrowing costs in the future because the PUC can prevent utilities
from recouping certain costs and investments. The bill would forbid
utilities from charging their ratepayers for increases in their income
tax liability, but it also would not allow ratepayers to reap the
benefit of a tax savings if they had not paid as part of their the
money that led to the profit or loss in the first place. The bill
also would help avoid violations of federal tax law by requiring
utilities and the PUC to treat transactions consistently.

Opponents said the bill would let utilities recover from ratepayers
hypothetical taxes that never were paid. Taxpayers should not have to
pay higher rates to make up for taxes that a utility did not owe.
Neither should they have to pay for the losses that led to the tax
break, because the utility's shareholders should be responsible for
such losses. The bill would result in immediate rate increases.
Current Texas law does not and would not conflict with federal tax
rules.

Legislative History: The House on May 18 recommitted HB 1573 on a
procedural point of order. On subsequent consideration it tabled by
84-48 a proposed amendment to make the bill apply only to future rate
cases, then passed the bill by nonrecord vote, six members recorded
voting nay, on May 26 (Journal page 2702). The Senate referred the
bill to the State Affairs Committee, where no further action was
taken.

The HRO analysis of the bill appeared in the May 22 Daily Floor
Report.
Public utility self-insurance
(SB 600 by Lyon)

Effective Sept. 1, 1989

SB 600 allows public utilities to insure themselves against potential liability or catastrophic property losses. It requires the Public Utility Commission (PUC) to approve self-insurance plans that meet certain criteria and to let self-insurance costs be passed on to ratepayers. Ratepayers will pay higher rates if claims made on the self-insurance account exceed the funds on deposit, and they will receive rate reductions if the balance in the account exceeds claims made against it. Utilities may not self-insure nuclear plant investment.

Supporters of the bill said it would help lower utility rates by letting utilities save money that otherwise would be profit for a commercial insurance company. Requiring the PUC to let utilities pass on self-insurance costs would ensure that self-insurance premiums are always treated just like commercial insurance premiums.

Opponents said the bill would remove the PUC's discretionary power to allocate self-insurance costs. The PUC already permits utilities to fund self-insurance accounts, but it does not allow utilities to raise rates in order to pass on reserve shortages. The bill would not require sequestration of reserve account funds, which would allow the utility to use, and possibly lose, its insurance money. The bill should have a provision requiring regular review of reserve accounts at the utility's expense in order that the PUC can monitor the fund balances.

Legislative History: The Senate passed the bill by voice vote, two members recorded voting nay, on May 3 (Journal page 1116). The House amended the bill to remove provisions requiring the PUC to approve a self-insurance plan under certain conditions and requiring regular PUC review of self-insurance funds at the expense of the utility, then passed it by nonrecord vote on May 20 (Journal page 2131). The Senate refused to concur in the House amendments by voice vote on May 24 (Journal page 2066), and a conference committee was appointed. The conference committee restored the Senate requirement that the PUC approve self-insurance plans that meet certain conditions, but otherwise retained the House version of the bill. The House adopted the conference report by nonrecord vote on May 28 (Journal page 3145), and the Senate adopted it by voice vote on May 29 (Journal page 3350).

The HRO analysis of the bill appeared in the May 18 Daily Floor Report.
Utility management audits
(SB 1757 by Edwards)

Died in conference committee

SB 1757 would have permitted the Public Utility Commission (PUC) to hire consultants to conduct management audits of utilities. The PUC could have paid each consultant from funds appropriated for that purpose or could have required the audited utility to pay. The utility could not have been involved in drafting the request for proposal or in selecting the consultant. If the consultant's work product were made available to the utility involved in a rate case, it would have been made available to all parties to the case. Any changes made in the work product would have been noted in an appendix to the work product.

Supporters of the bill said it would codify the current PUC practice of hiring consultants to perform audits. It would guarantee credible audits by prohibiting utilities from influencing the choice of consultants, changing the content of reports or drafting the contract that determined the scope of the audit. Whether the taxpayers paid for audits through appropriations or ratepayers bore the cost through an expense to the utility, audits carried out under these restrictions would be worth paying for.

Opponents said it is more appropriate for utilities to pay for audits than to use taxpayer dollars for this purpose. Since the utility foots the bill, it should be able to reject an unsatisfactory consultant or object to errors in the work product.

Legislative History: The Senate passed the bill by 20-8 on May 16 (Journal page 1484). The House approved a committee substitute requiring that the utility pay for the cost of the consultant and eliminating restrictions on the utility's involvement in drafting the request for proposals or selecting the consultant and passed the bill on the Consent Calendar on May 26 (Journal page 2647). The Senate refused to concur with the House amendments by voice vote on May 27 (Journal page 2640), and a conference committee was appointed; no further action was taken.
<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 3</td>
<td>126</td>
</tr>
<tr>
<td>HB 5</td>
<td>43</td>
</tr>
<tr>
<td>HB 15</td>
<td>1</td>
</tr>
<tr>
<td>HB 18</td>
<td>102</td>
</tr>
<tr>
<td>HB 24</td>
<td>228</td>
</tr>
<tr>
<td>HB 29(1)</td>
<td>233</td>
</tr>
<tr>
<td>HB 33</td>
<td>96</td>
</tr>
<tr>
<td>HB 40(1)</td>
<td>230</td>
</tr>
<tr>
<td>HB 42(1)</td>
<td>127</td>
</tr>
<tr>
<td>HB 65(1)</td>
<td>44</td>
</tr>
<tr>
<td>HB 67(1)</td>
<td>132</td>
</tr>
<tr>
<td>HB 82</td>
<td>155</td>
</tr>
<tr>
<td>HB 85</td>
<td>222</td>
</tr>
<tr>
<td>HB 94(1)</td>
<td>201</td>
</tr>
<tr>
<td>HB 95(1)</td>
<td>156</td>
</tr>
<tr>
<td>HB 101</td>
<td>34</td>
</tr>
<tr>
<td>HB 112</td>
<td>229</td>
</tr>
<tr>
<td>HB 116(1)</td>
<td>2</td>
</tr>
<tr>
<td>HB 141</td>
<td>97</td>
</tr>
<tr>
<td>HB 164</td>
<td>45</td>
</tr>
<tr>
<td>HB 174</td>
<td>4</td>
</tr>
<tr>
<td>HB 183</td>
<td>67</td>
</tr>
<tr>
<td>HB 240</td>
<td>101</td>
</tr>
<tr>
<td>HB 243</td>
<td>157</td>
</tr>
<tr>
<td>HB 291</td>
<td>144</td>
</tr>
<tr>
<td>HB 318</td>
<td>104</td>
</tr>
<tr>
<td>HB 347</td>
<td>35</td>
</tr>
<tr>
<td>HB 362</td>
<td>56</td>
</tr>
<tr>
<td>HB 369</td>
<td>57</td>
</tr>
<tr>
<td>HB 428</td>
<td>230</td>
</tr>
<tr>
<td>HB 430</td>
<td>146</td>
</tr>
<tr>
<td>HB 501</td>
<td>175</td>
</tr>
<tr>
<td>HB 504</td>
<td>6</td>
</tr>
<tr>
<td>HB 507</td>
<td>46</td>
</tr>
<tr>
<td>HB 520</td>
<td>36</td>
</tr>
<tr>
<td>HB 558</td>
<td>129</td>
</tr>
<tr>
<td>HB 571</td>
<td>176</td>
</tr>
<tr>
<td>HB 574</td>
<td>147</td>
</tr>
<tr>
<td>HB 588</td>
<td>93</td>
</tr>
<tr>
<td>HB 613</td>
<td>58</td>
</tr>
<tr>
<td>HB 698</td>
<td>37</td>
</tr>
<tr>
<td>HB 729</td>
<td>241</td>
</tr>
<tr>
<td>HB 791</td>
<td>105</td>
</tr>
<tr>
<td>HB 850</td>
<td>177</td>
</tr>
<tr>
<td>HB 863</td>
<td>202</td>
</tr>
<tr>
<td>HB 884</td>
<td>178</td>
</tr>
<tr>
<td>HB 911</td>
<td>250</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 914</td>
<td>7</td>
</tr>
<tr>
<td>HB 925</td>
<td>148</td>
</tr>
<tr>
<td>HB 976</td>
<td>8</td>
</tr>
<tr>
<td>HB 983</td>
<td>180</td>
</tr>
<tr>
<td>HB 987</td>
<td>106</td>
</tr>
<tr>
<td>HB 1023</td>
<td>158</td>
</tr>
<tr>
<td>HB 1039</td>
<td>130</td>
</tr>
<tr>
<td>HB 1111</td>
<td>59</td>
</tr>
<tr>
<td>HB 1116</td>
<td>39</td>
</tr>
<tr>
<td>HB 1155</td>
<td>231</td>
</tr>
<tr>
<td>HB 1232</td>
<td>98</td>
</tr>
<tr>
<td>HB 1237</td>
<td>204</td>
</tr>
<tr>
<td>HB 1279</td>
<td>223</td>
</tr>
<tr>
<td>HB 1285</td>
<td>172</td>
</tr>
<tr>
<td>HB 1292</td>
<td>181</td>
</tr>
<tr>
<td>HB 1306</td>
<td>232</td>
</tr>
<tr>
<td>HB 1345</td>
<td>107</td>
</tr>
<tr>
<td>HB 1356</td>
<td>224</td>
</tr>
<tr>
<td>HB 1421</td>
<td>233</td>
</tr>
<tr>
<td>HB 1458</td>
<td>68</td>
</tr>
<tr>
<td>HB 1477</td>
<td>24</td>
</tr>
<tr>
<td>HB 1513</td>
<td>38</td>
</tr>
<tr>
<td>HB 1546</td>
<td>69</td>
</tr>
<tr>
<td>HB 1753</td>
<td>252</td>
</tr>
<tr>
<td>HB 1588</td>
<td>70</td>
</tr>
<tr>
<td>HB 1608</td>
<td>234</td>
</tr>
<tr>
<td>HB 1665</td>
<td>63</td>
</tr>
<tr>
<td>HB 1698</td>
<td>182</td>
</tr>
<tr>
<td>HB 1777</td>
<td>47</td>
</tr>
<tr>
<td>HB 1779</td>
<td>25</td>
</tr>
<tr>
<td>HB 1806</td>
<td>88</td>
</tr>
<tr>
<td>HB 1862</td>
<td>72</td>
</tr>
<tr>
<td>HB 1878</td>
<td>242</td>
</tr>
<tr>
<td>HB 1923</td>
<td>205</td>
</tr>
<tr>
<td>HB 1935</td>
<td>243</td>
</tr>
<tr>
<td>HB 1954</td>
<td>235</td>
</tr>
<tr>
<td>HB 2061</td>
<td>225</td>
</tr>
<tr>
<td>HB 2098</td>
<td>108</td>
</tr>
<tr>
<td>HB 2178</td>
<td>64</td>
</tr>
<tr>
<td>HB 2260</td>
<td>100</td>
</tr>
<tr>
<td>HB 2335</td>
<td>26</td>
</tr>
<tr>
<td>HB 2385</td>
<td>131</td>
</tr>
<tr>
<td>HB 2434</td>
<td>109</td>
</tr>
<tr>
<td>HB 2565</td>
<td>131</td>
</tr>
<tr>
<td>HB 2566</td>
<td>183</td>
</tr>
<tr>
<td>HB 2608</td>
<td>110</td>
</tr>
<tr>
<td>HB 2736</td>
<td>206</td>
</tr>
<tr>
<td>HB 2803</td>
<td>60</td>
</tr>
<tr>
<td>HB 2853</td>
<td>132</td>
</tr>
<tr>
<td>HB 2945</td>
<td>236</td>
</tr>
<tr>
<td>HB 2959</td>
<td>166</td>
</tr>
<tr>
<td>HB 2979</td>
<td>73</td>
</tr>
<tr>
<td>HB 2988</td>
<td>207</td>
</tr>
<tr>
<td>HB 3187</td>
<td>160</td>
</tr>
<tr>
<td>HJR 2</td>
<td>162</td>
</tr>
<tr>
<td>HJR 4</td>
<td>163</td>
</tr>
<tr>
<td>HJR 6</td>
<td>208</td>
</tr>
<tr>
<td>HJR 13</td>
<td>164</td>
</tr>
<tr>
<td>HJR 19</td>
<td>48</td>
</tr>
<tr>
<td>HJR 32</td>
<td>101</td>
</tr>
<tr>
<td>HJR 40</td>
<td>209</td>
</tr>
<tr>
<td>HJR 51</td>
<td>61</td>
</tr>
<tr>
<td>HJR 52</td>
<td>39</td>
</tr>
<tr>
<td>HJR 69</td>
<td>210</td>
</tr>
<tr>
<td>HJR 101</td>
<td>29</td>
</tr>
<tr>
<td>HJR 102</td>
<td>211</td>
</tr>
<tr>
<td>SB 1</td>
<td>112</td>
</tr>
<tr>
<td>SB 1(2)</td>
<td>150</td>
</tr>
<tr>
<td>SB 2</td>
<td>74</td>
</tr>
<tr>
<td>SB 5</td>
<td>76</td>
</tr>
<tr>
<td>SB 12(1)</td>
<td>50</td>
</tr>
<tr>
<td>SB 35</td>
<td>113</td>
</tr>
<tr>
<td>SB 40</td>
<td>185</td>
</tr>
<tr>
<td>SB 41</td>
<td>244</td>
</tr>
<tr>
<td>SB 47</td>
<td>134</td>
</tr>
<tr>
<td>SB 54</td>
<td>32</td>
</tr>
<tr>
<td>SB 55</td>
<td>51</td>
</tr>
<tr>
<td>SB 61</td>
<td>85</td>
</tr>
<tr>
<td>SB 62(1)</td>
<td>173</td>
</tr>
<tr>
<td>SB 64(1)</td>
<td>135</td>
</tr>
<tr>
<td>SB 67(1)</td>
<td>89</td>
</tr>
<tr>
<td>SB 75</td>
<td>10</td>
</tr>
<tr>
<td>SB 80(1)</td>
<td>52</td>
</tr>
<tr>
<td>SB 86</td>
<td>12</td>
</tr>
<tr>
<td>SB 90</td>
<td>142</td>
</tr>
<tr>
<td>SB 115</td>
<td>114</td>
</tr>
<tr>
<td>SB 116</td>
<td>213</td>
</tr>
<tr>
<td>SB 120</td>
<td>115</td>
</tr>
<tr>
<td>SB 122</td>
<td>136</td>
</tr>
<tr>
<td>SB 151</td>
<td>186</td>
</tr>
<tr>
<td>SB 152</td>
<td>187</td>
</tr>
<tr>
<td>SB 170</td>
<td>245</td>
</tr>
</tbody>
</table>

- House Research Organization -
<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 171</td>
<td>90</td>
</tr>
<tr>
<td>SB 188</td>
<td>91</td>
</tr>
<tr>
<td>SB 191</td>
<td>13</td>
</tr>
<tr>
<td>SB 192</td>
<td>30</td>
</tr>
<tr>
<td>SB 193</td>
<td>62</td>
</tr>
<tr>
<td>SB 208</td>
<td>40</td>
</tr>
<tr>
<td>SB 245</td>
<td>237</td>
</tr>
<tr>
<td>SB 246</td>
<td>188</td>
</tr>
<tr>
<td>SB 253</td>
<td>137</td>
</tr>
<tr>
<td>SB 255</td>
<td>14</td>
</tr>
<tr>
<td>SB 276</td>
<td>53</td>
</tr>
<tr>
<td>SB 307</td>
<td>93</td>
</tr>
<tr>
<td>SB 328</td>
<td>165</td>
</tr>
<tr>
<td>SB 330</td>
<td>94</td>
</tr>
<tr>
<td>SB 338</td>
<td>226</td>
</tr>
<tr>
<td>SB 370</td>
<td>77</td>
</tr>
<tr>
<td>SB 404</td>
<td>174</td>
</tr>
<tr>
<td>SB 407</td>
<td>39</td>
</tr>
<tr>
<td>SB 413</td>
<td>16</td>
</tr>
<tr>
<td>SB 415</td>
<td>17</td>
</tr>
<tr>
<td>SB 417</td>
<td>189</td>
</tr>
<tr>
<td>SB 427</td>
<td>153</td>
</tr>
<tr>
<td>SB 429</td>
<td>138</td>
</tr>
<tr>
<td>SB 437</td>
<td>18</td>
</tr>
<tr>
<td>SB 442</td>
<td>20</td>
</tr>
<tr>
<td>SB 443</td>
<td>65</td>
</tr>
<tr>
<td>SB 444</td>
<td>78</td>
</tr>
<tr>
<td>SB 452</td>
<td>21</td>
</tr>
<tr>
<td>SB 457</td>
<td>139</td>
</tr>
<tr>
<td>SB 479</td>
<td>214</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 481</td>
<td>215</td>
</tr>
<tr>
<td>SB 482</td>
<td>116</td>
</tr>
<tr>
<td>SB 487</td>
<td>117</td>
</tr>
<tr>
<td>SB 489</td>
<td>216</td>
</tr>
<tr>
<td>SB 538</td>
<td>218</td>
</tr>
<tr>
<td>SB 546</td>
<td>219</td>
</tr>
<tr>
<td>SB 600</td>
<td>253</td>
</tr>
<tr>
<td>SB 607</td>
<td>220</td>
</tr>
<tr>
<td>SB 631</td>
<td>79</td>
</tr>
<tr>
<td>SB 647</td>
<td>141</td>
</tr>
<tr>
<td>SB 650</td>
<td>192</td>
</tr>
<tr>
<td>SB 740</td>
<td>246</td>
</tr>
<tr>
<td>SB 769</td>
<td>81</td>
</tr>
<tr>
<td>SB 832</td>
<td>118</td>
</tr>
<tr>
<td>SB 872</td>
<td>227</td>
</tr>
<tr>
<td>SB 907</td>
<td>169</td>
</tr>
<tr>
<td>SB 911</td>
<td>119</td>
</tr>
<tr>
<td>SB 916</td>
<td>54</td>
</tr>
<tr>
<td>SB 951</td>
<td>193</td>
</tr>
<tr>
<td>SB 959</td>
<td>120</td>
</tr>
<tr>
<td>SB 985</td>
<td>221</td>
</tr>
<tr>
<td>SB 1000</td>
<td>238</td>
</tr>
<tr>
<td>SB 1019</td>
<td>195</td>
</tr>
<tr>
<td>SB 1062</td>
<td>234</td>
</tr>
<tr>
<td>SB 1112</td>
<td>198</td>
</tr>
<tr>
<td>SB 1117</td>
<td>87</td>
</tr>
<tr>
<td>SB 1154</td>
<td>55</td>
</tr>
<tr>
<td>SB 1190</td>
<td>248</td>
</tr>
<tr>
<td>SB 1204</td>
<td>249</td>
</tr>
<tr>
<td>SB 1212</td>
<td>82</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 1342</td>
<td>170</td>
</tr>
<tr>
<td>SB 1379</td>
<td>42</td>
</tr>
<tr>
<td>SB 1416</td>
<td>123</td>
</tr>
<tr>
<td>SB 1461</td>
<td>83</td>
</tr>
<tr>
<td>SB 1480</td>
<td>154</td>
</tr>
<tr>
<td>SB 1481</td>
<td>239</td>
</tr>
<tr>
<td>SB 1509</td>
<td>124</td>
</tr>
<tr>
<td>SB 1519</td>
<td>84</td>
</tr>
<tr>
<td>SB 1540</td>
<td>172</td>
</tr>
<tr>
<td>SB 1551</td>
<td>66</td>
</tr>
<tr>
<td>SB 1573</td>
<td>240</td>
</tr>
<tr>
<td>SB 1668</td>
<td>199</td>
</tr>
<tr>
<td>SB 1678</td>
<td>125</td>
</tr>
<tr>
<td>SB 1695</td>
<td>23</td>
</tr>
<tr>
<td>SB 1698</td>
<td>95</td>
</tr>
<tr>
<td>SB 1757</td>
<td>254</td>
</tr>
<tr>
<td>SJR 4</td>
<td>32</td>
</tr>
<tr>
<td>SJR 5</td>
<td>85</td>
</tr>
<tr>
<td>SJR 11</td>
<td>166</td>
</tr>
<tr>
<td>SJR 16</td>
<td>168</td>
</tr>
<tr>
<td>SJR 22</td>
<td>39</td>
</tr>
<tr>
<td>SJR 34</td>
<td>169</td>
</tr>
<tr>
<td>SJR 44</td>
<td>87</td>
</tr>
<tr>
<td>SJR 53</td>
<td>193</td>
</tr>
<tr>
<td>SJR 59</td>
<td>170</td>
</tr>
<tr>
<td>SJR 74</td>
<td>142</td>
</tr>
</tbody>
</table>