Selected Highlights
63rd through 67th Legislatures

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SELECTED HIGHLIGHTS

63rd THROUGH 67th LEGISLATURES

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FOREWORD

This information report contains reviews of legislative activity during a period beginning with the convening of the 63rd Legislature in January, 1973, and ending with the adjournment of the 1st Called Session of the 67th Legislature in August, 1981. The report is divided into seven chapters, each devoted to a broad issue area and each drafted by a different member of the research staff. The researchers had discretion over the legislation selected for review and the organization of the reviews.

This report is not intended to be a comprehensive inventory of major legislation enacted since 1973, but its purpose is to be a convenient reference work that highlights important legislation under selected topical headings.
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AGRICULTURE

Agriculture contributed $37 billion to the state's economy in 1980. Agricultural abundance has also made Texas the number two producer in the nation, with a diverse variety of livestock and livestock products, crops, and fibers that account for 10 percent of total national production.

Statistics compiled in 1980 by the Texas Department of Agriculture and the United States Department of Agriculture further indicate the importance of the food and fiber industry in local, domestic, and export markets. Cash receipts from farm marketings totalled approximately $10 billion, with crops accounting for $3.7 billion, livestock and livestock products for $5.1 billion, and government payments for $231.8 million of the total cash receipts.

Texas leads the country in the production of cattle, calves, angora goats, spinach, mohair, cabbage, sheep, and upland cotton, and ranks second in the production of bell peppers, onions, carrots, grapefruits, peanuts, and sorghum.

The value of the state's share of agricultural exports, which include cotton, feed grains, wheat and flour, and rice, was $3.09 billion in 1980, a figure that represented 7.6 percent of the total national agricultural export market.

Agriculture in Texas has experienced significant economic, scientific, and technological changes over the past decade. Not only have these changes resulted in the tremendous growth of the state as a major food and fiber producer, but they also have greatly affected the agricultural and business operations of the modern farmer and rancher.

From 1971 to 1981, although the number of farms in Texas decreased, the average farm size and productivity of its acres and livestock herds increased. This growth in productivity has resulted from the development of pest- and disease-resistant seeds, better methods of controlling crop weeds and pests, improved livestock breeds, advances in veterinary science, and highly sophisticated farm machinery.
The Economic Problems of Texas' Agricultural Producers

As farms and ranches have become larger and more productive, they have also become more expensive to own and operate. Farm machinery represents a major investment for the agricultural producer and the current value of farm assets, including land and buildings, now averages $391,000.

The increasing price of oil and gas is becoming the single cost item determining the profit or loss for the entire farming operation, and it represents more of the overall operating cost than any other expense. In 1977 the Governor's Energy Advisory Council projected that by 1985, due to steadily rising energy costs, Texas will annually lose 13,000 agriculturally employed persons, $80 million in farm income, and 443,000 acres from agricultural production. Should this happen, it would be the small family rancher or farmer who is most severely affected.

Additionally, prime agricultural land has become valuable real estate for nonagricultural resort, residential, and investment purposes. As the market value has increased, taxes on the property have also gone up accordingly, creating a difficult situation for both the established agricultural producer and the person wishing to purchase acreage for agricultural use. The farmer or rancher, overburdened by higher taxation, has found it more profitable in many cases to sell his land. On the other hand, the prospective buyer either is finding a diminishing inventory of available lands, or is encountering the inflated cost of land on the real estate market, often priced far above the property's agricultural capacity to produce.

Higher property taxation and inflation of land prices, along with the increased operational costs and rising energy prices, have all affected the profitability of the state's farming and ranching business. These factors have also made it extremely difficult for young people to get started in agricultural production.

Although government agricultural policy is primarily determined at the federal level, the Texas Legislature has demonstrated considerable concern toward the problems and issues of the state's agricultural producers during the last five biennial sessions. Of major significance has been the legislative action taken to alleviate the troubled financial situation of the farmer and rancher; however, several other important agricultural issues
have also been dealt with.

The Farm and Ranch Loan Security Program

During the 1979 regular session, the 66th Legislature passed Senate Joint Resolution 13, a proposed constitutional amendment that would add Section 50c to Article III of the Texas Constitution, empowering the legislature to establish a program of state-guaranteed private loans to be used for the purchase of farm or ranch land.

The amendment, adopted by the voters on November 6, 1979, authorized $10 million in general obligation bonds, the proceeds of which were to be administered by the commissioner of agriculture without appropriation for the purpose of:

1. guaranteeing loans made by private lenders to individuals for the purchase of farmland;
2. acquiring mortgages or deeds of trust on land purchased under a guaranteed loan; and
3. advancing the borrower a percentage of the principal and interest due on a guaranteed loan.

The enabling legislation, House Bill 304, the Family Farm and Ranch Security Program, had been enacted during the 1979 regular session and became effective on voter approval of the amendment.

Under the program, loans made by private lenders to eligible borrowers for the purchase of farm or ranch land were guaranteed by the state. If the borrower defaulted, the state would purchase the mortgage or deed of trust from the lender for an amount equal to 90 percent of all sums due at the time of default. Following all appeals, the state would sell the property in a manner similar to foreclosure.

Eligibility for a guaranteed loan was limited to Texas residents who:

1. had the necessary education in the type of farming or ranching they wished to pursue;
(2) had, with spouse and dependents, a net worth of less than $100,000, excluding the value of a residential homestead; and

(3) intended to purchase the land for use by the applicant and family for farming or ranching purposes.

It was hoped that the establishment of this loan program would help ensure the continued viability of the small, independent family farm. When Senate Joint Resolution 13 was passed in 1979, the average age of Texas' agricultural producers was approaching 55. Although young men and women were interested in starting in the agricultural business, several factors tended to discourage them. Land was becoming increasingly more expensive to obtain and an extremely high down payment, averaging 29 percent at the time, was required. Larger corporations, at the same time, were gaining control of more agricultural land and the number of individual farm and ranch operations had dropped by 50 percent since 1940.

In December, 1980, the commissioner of agriculture announced that the $10 million in general obligation bonds to finance the program had been sold, and he projected that the fund would guarantee approximately $50 million in loans to qualified farmers and ranchers. The commissioner believed, however, that the $10 million in bonds was adequate only to finance the 90-percent loan guarantee, but was insufficient for the implementation of the payment adjustment provision of House Bill 304 without further alternative financing methods. (The payment adjustment provision authorized the commissioner of agriculture to pay to the lender on behalf of the borrower an amount equal to four percent of the outstanding balance of the loan, in effect reducing the payment made by the borrower to the lender.)

In 1981 the 67th Legislature addressed the issue of the loan program and passed House Bill 1234. The measure expanded the definition of "lender" under the law, allowed the commissioner of agriculture more discretion in investing the program's sustaining fund, and broadened the circumstances under which individuals could qualify for loans. Several provisions that would have increased funding of the program, including one pertaining to payment adjustments, were not in the final version of the bill.

Pending a resolution of the payment adjustment issue raised
by the commissioner of agriculture, the Family Farm and Ranch Security Program remains in operational abeyance. However, the 68th Legislature, which convenes in January, 1983, will have the opportunity to review the program and make necessary revisions.

**Tax Relief Measures**

Changes in the taxation of agricultural land have been significant ones to Texas' farmers and ranchers. At the same time that the agricultural producer has been receiving only stable or declining prices for his crops, livestock, and livestock products, his costs have risen substantially. Taxation, especially, has become a major financial problem. The inflated value of land has caused a high increase in taxes but has not given the rancher or farmer more income to use to pay the taxes. This situation has led many farmers to find it more profitable to sell their land, resulting in the decrease in small family farms statewide. The higher price of agricultural land, as has been previously mentioned, also has presented a problem for those wishing to enter the agricultural production business, but lacking the escalating capital needed to do so.

The 2nd Called Session of the 65th Legislature convened in 1978 and passed House Joint Resolution 1, entitled "The Tax Relief Amendment." It included provisions aimed at assisting the state's ranchers and farmers overburdened by escalating property taxes by providing for the assessment of agricultural land on the basis of its productivity, not its market value. The amendment was adopted by the voters in November, 1978, and implemented by the enactment of House Bill 1060 during the Regular Session of the 66th Legislature in 1979.

At the time House Joint Resolution 1 was passed in 1978, the Texas Constitution already had a provision for assessing agricultural land on its productivity value (Article VIII, Section 1-d), which had been adopted in 1966. Under Section 1-d, however, eligibility for the tax break is severely limited. Eligibility requirements prevented 90 percent of Texas' agricultural producers from qualifying for the tax-break benefits. Also, in appraising the land for tax purposes, local tax assessors were given no assessment guidance, and use formulas often bore little relation to the land's productivity value.
The constitutional provision adopted with the voter approval of House Joint Resolution 1 (Article VII, Section 1-d-1) did not replace the existing provision but supplemented it with a less restrictive provision. For a brief analysis of House Joint Resolution 1 and House Bill 1060 see the chapter on state and local taxation.

The 67th Legislature passed House Joint Resolution 5 during the 1981 regular session proposing a constitutional amendment exempting livestock and poultry from taxation. The voters approved the amendment on November 3, 1981. For a short analysis of House Joint Resolution 5, see the chapter on state and local taxation.

Marketing of Livestock and Livestock Products

The 64th Legislature enacted House Bill 318 to benefit and encourage those in the agriculture industry raising livestock and livestock products. The bill prohibited state agencies or subdivisions from purchasing beef imported from outside the United States.

The House Committee on Agriculture and Livestock reported in its interim findings to the 64th Legislature that foreign competition and excessive imports of cheaper beef were major factors contributing to the difficulties of the state's livestock producers, a business sector already hurt by inflation and recession. The committee members cited that for the first six months of 1974, the year the report was made, the total value for imported livestock products reached $1 million, an eight percent increase over the same period of 1973. The total beef imports were also estimated at seven to eight percent of total United States production.

House Bill 318 resulted from the committee's recommendation that the federal government purchase United States beef for contemporary consumption by such groups as the military, recipients in food programs, and children in the school lunch programs. The members also suggested that, since many foreign markets were closed to United States beef exports, the federal government should encourage voluntary restraints by other nations in the exports of beef and livestock products to this country.
The Fire Ant

The legislature first addressed itself to the growing problem of the fire ant by enacting House Bill 1109 during the Regular Session of the 63rd Legislature. The bill permits the commissioners court of any county to establish an eradication and control program and gave the court the authority to expend county funds for the program.

The 63rd Legislature was acting upon the recommendations made by the Joint Interim Committee on the Imported Fire Ant, a special study committee created by the 62nd Legislature. Its members reported that since 1956, the year the ant first infested Texas land in Hardin County, the insect pest had spread throughout the eastern and central counties of the state causing crop damage, death to young livestock and wildlife, and painful injuries to humans. The large mounds housing the ants, sometimes three feet high and three feet across, made it difficult to mow or harvest the infested fields and often damaged the farm machinery.

In the past decade, the fire ant, which has infested more than 40 million acres in 107 counties and now affects both rural and highly populated city areas, has become an extremely controversial issue. Recognizing the severity of the problem, the legislature continues to allocate annual appropriations to the Department of Agriculture to be used for the administration of technical services and distribution of equipment and chemical bait for those infested counties requesting assistance in establishing eradication programs. Additionally, funds have been made available to Texas A&M University for the research and development of more effective and environmentally safer methods of dealing with the ant.

Because of the existing controversy between the state's agricultural sector and its environmental protection advocates concerning past and current pesticide compounds used in the fire ant eradication programs, the research being conducted at Texas A&M University is being monitored closely. Mirex, the primary compound used to control the ants until 1978, was banned by the Environmental Protection Agency that year after tests showed that the pesticide might be linked to cancer or brain damage. The method now used, aerial spraying of Amdro, has received the endorsement of agricultural producers and the United States and Texas departments of agriculture. The EPA, however, has given it
only conditional approval, and concerned environmental groups are closely scrutinizing its possible carcinogenic side effects and contamination of sensitive aquatic areas.

The problem of dealing with the fire ant represents a situation often experienced by the agricultural community: the difficulty of finding methods that will effectively eradicate and control crop pests and diseases without producing harmful environmental side effects.

The Mediterranean Fruit Fly

The Mediterranean fruit fly problem generated another controversy in 1981, which was dealt with by the passage of House Bill 151, enacted during the 1st Called Session of the 67th Legislature. House Bill 151 amended existing law and enabled the commissioner of agriculture, without establishing a quarantine, to stop and inspect vehicles that might introduce or disseminate an insect or plant disease known to be dangerous to the state's horticultural or agricultural interests. The act also authorized the commissioner to treat or destroy any infested plant or plant product, to collect the subsequent cost of the treatment of destruction from the owner of the product, and to sue the owner for the cost if necessary.

The source of the controversy is an insect pest that attacks 200 varieties of fruits and vegetables. The female Mediterranean fruit fly lays its larvae, up to 200 eggs, under the skin of the host fruit. The eggs then develop into maggots that eat the interior flesh of the fruit and cause the immature produce to fall off the trees. Texas had an infestation of the pest in 1967 in the Rio Grande Valley, but the problem was eradicated by aerial spraying.

In June, 1980, the fruit fly infested nearly 500 square miles of the San Francisco Bay area in California, a state from which Texas imports about $100 million worth of produce annually. In January, 1981, California officials claimed that the problem was under control and that no fruit flies had been found since the 22nd of that month.

On March 1, following a new outbreak of the Mediterranean fruit fly in California, the Texas Department of Agriculture
instituted its own quarantine on 40 types of fruits and vegetables coming into the state unless the produce was first fumigated or put into cold storage. The reason cited for the imposed ban on California citrus fruit, eggplants, bell peppers, tomatoes, and avocados was the potential loss to Texas' produce industry if the fruit fly were to infest the state's crops. This loss could represent 30 percent of fruit and vegetable production and amount to a $200 million loss to Texas' economy.

The California growers immediately challenged the ban, unsuccessfully, in the United States Supreme Court. California's avocado producers and packers also initiated their own suit in federal district court in Dallas, and the quarantine was lifted on March 6. Although the Texas Department of Agriculture and the avocado interests mutually agreed to guidelines to monitor and control the infestations, this action only temporarily resolved the controversial situation between the two states.

In July the controversy continued to escalate when the governor of California endorsed ground spraying of malathion and diazinon to eradicate the fly but banned aerial spraying of these compounds, opposing this method on environmental grounds. Following the report of a possible quarantine by the United States Department of Agriculture on July 10, however, aerial spraying was begun over the infested areas.

Several days later, Texas and seven other affected southern states imposed their own quarantines on the California produce, setting up blockades against any incoming shipments that might be harboring the Mediterranean fruit fly. Under the ban, produce from areas not affected by the fly could enter the state if the California Department of Agriculture had certified the county of origin free of the fly for 30 days prior to certification. Shipments from affected counties had to have certification that they had been fumigated before crossing the state line, or they could be turned back or confiscated and destroyed.

The 67th Legislature, which convened on July 13 for its 1st called session, took steps to deal with the Mediterranean fruit fly problem. House Bill 151 was introduced on August 3, signed into law on August 14, and became effective immediately. The act increases the commissioner of agriculture's authority to impose a quarantine if Texas crops are threatened by an outbreak of the fruit fly by incoming produce already infested with the insect
pest. A special appropriation of $500,000 was also allocated to the Department of Agriculture to purchase and operate mobile inspection stations and to take any other actions necessary to detect the fruit fly.

Energy-Related Legislation

House Bill 2129 was enacted by the 65th Legislature in 1977 to give agricultural use priority in receiving natural gas supplies except to the extent that those supplies are required to maintain residences or hospitals or are required for other uses vital to public health and safety.

Although alternative energy sources are being developed, Texas' farmers and ranchers were, and still remain, critically dependent on conventional petroleum-based fuels. In 1974, the year the energy crunch hit especially hard, 54 percent of the energy purchased for farm use was in the form of natural gas.

The act recognized the importance of natural gas for use in irrigating purposes. Sixty percent of Texas' agricultural produce comes from irrigated land, and the pumps used for this vital purpose are almost entirely fueled by natural gas.

The 66th Legislature enacted House Bill 1986, entitled the Gasohol Permit Act, an important step toward the development of the gasohol industry in Texas. The law permits the issuance of local industrial alcohol manufacturing permits. It allows the permitholder to distill alcohol fuel from grain and other agricultural products for fuel or industrial products only.

House Bill 1986 should benefit Texas' agricultural producers for several reasons. Crops such as sugar cane, sugar beets, corn, and wheat can all be used in the production of fuel alcohol. Gasohol production will also provide a new market for the farmer's grain during periods of surplus as well as a profitable use for his inferior or damaged crops, heretofore considered a loss. Furthermore, as the gasohol industry is developed, research will inevitably be conducted to discover new crops with higher alcohol yields, providing an additional cash crop for the agricultural producer.

Senate Bill 228, passed by the 67th Legislature during its
regular session, authorizes the commissioner of agriculture to adopt rules establishing standards of quality and purity for industrial alcohol used as or in fuel.

The 67th Legislature passed another important measure relating to gasohol during its 1st called session. Senate Bill 14 created the gasoline and alcohol mixture fund, a clearance fund for general revenue transfers. Under the provisions of the bill, an amount equal to five cents per gallon of gasohol sold through 1986 will be transferred to the new fund. After this date and through 1990, the rate will decline one cent annually.

The purpose of the transfers is to furnish funds for tax credits to motor fuel distributors based on their taxable gallonage of gasohol. To compensate for these tax credits, funds from the gasoline and alcohol mixture fund will be transferred to the highway motor fuel tax fund. The tax credits are expected to reduce gross motor fuel tax collections by an estimated $97 million for fiscal years 1982 through 1986.
CRIMINAL LAW AND PROCEDURE

63rd Legislature

In addition to many laws defining new penal offenses and those clarifying pre-existing offenses, the 63rd Legislature passed three major bills dealing with criminal procedure and offenses.

The most extensive of the three was the new Texas Penal Code. The code was the product of seven years' work by a State Bar committee and one year's work by legislative committees. The new code was intended to organize, modernize, consolidate, simplify, and clarify the existing penal law.

Two of the significant changes in the new code were the clarification of the levels of guilt and the organization of offenses into four categories of felonies and three categories of misdemeanors.

A separate bill, House Bill 200, added to the new penal code a provision for the death penalty in certain cases of murder under aggravated circumstances. That bill was introduced in response to United States Supreme Court rulings that indicated that a well-defined and limited death penalty would be constitutional. The constitutionality of the Texas death penalty has since been upheld by the United States Supreme Court.

Although many persons have been convicted under the capital murder law, none has been executed. On August 31, 1981, the Department of Corrections reported 133 persons on death row.

The third major penal enactment of the 63rd Legislature was the passage of the Texas Controlled Substances Act, House Bill 447, which was based on the Uniform Controlled Substances Act and roughly paralleled federal drug law. The act reorganized and consolidated the laws governing possession, manufacturing, distribution and use of certain drugs based on an extensive, detailed classification system. The classification system grouped drugs according to their potential for abuse as well as their medical value.

Unlike the prior law, the new law distinguished the use of drugs from the sale of drugs, assigning higher penalties for the sale or delivery of a controlled substance than for simple possession of the same substance. Another significant change in the law was the lowering of penalties. Under the prior law, a conviction for possession or use of narcotic drugs, including marijuana, could result in a life sentence. The new law carried a
maximum penalty of 99 years' imprisonment for sale of opiates and
20 years for simple possession. The possible life sentence for
possession of two ounces of marijuana and delivery of less than
one-fourth ounce was dropped in favor of a maximum of 180 days in
jail and a $1,000 fine.

The 63rd Legislature also expressed its growing concern about
child welfare in two bills. House Bill 1414 made it a misdemeanor
for a person to knowingly fail to report observed child abuse. In
another bill, Senate Bill 708, the Department of Public Welfare was
given authority to file a complaint against a parent who fails to
provide for a child who was receiving assistance from the
department. Under that act, evidence of failure to provide support
gives rise to a presumption of wilful neglect.

64th Legislature

Two of the laws passed by the 64th Legislature were intended
to clarify points of criminal procedure.

For the first time in Texas, a law, House Bill 284, was
passed governing the admissibility of evidence concerning a rape
victim's past sexual conduct. Previously, case law had governed
the admissibility of such evidence. Under the statute, a defendant
wishing to introduce evidence of that nature must first convince
the court in a closed hearing that the proposed evidence is
material to an issue of fact, usually the consent of the victim,
and that its probative value outweighs its inflammatory or
prejudicial nature. While this statute closely resembled prior
court practice, it was thought to more strongly discourage the
introduction of that type of evidence.

The bill also added a new section to the Code of Criminal
Procedure allowing a rape conviction based on the uncorroborated
testimony of the victim, if the incident had been reported within
six months. That was a considerable departure from prior case law,
which had required a report four or five days after the incident to
support a conviction based on the victim's uncorroborated
testimony.

In another facet of criminal procedure, a 1974 federal
district court ruling found that parts of the Code of Criminal
Procedure dealing with the treatment and release of "criminally
insane" persons were unconstitutional. The court said that the
different treatment afforded to persons committed under criminal
procedures and persons committed under civil procedures was
unjustified and a denial of due process and equal protection
guarantees.
The 64th Legislature, in response to that court ruling, amended the Code of Criminal Procedure by revising the law on insanity. Senate Bill 901 carefully distinguished a defendant's competency to stand trial from the use of insanity at the time of the crime as a defense. Procedures for ascertaining competency to stand trial as well as for the examination, treatment, and release of the defendant were specified. The bill also added a new article to the code to specify procedures for raising the issue of insanity as a defense, for determining sanity, and for committing a defendant found not guilty by reason of insanity.

The court decision that led to this revision was eventually vacated by the United States Supreme Court.

Two laws passed by the 64th Legislature amended sections of the Texas Controlled Substances Act.

In response to increased abuse of over-the-counter codeine and codeine-derivative drugs, House Bill 1372 required more stringent regulation of those drugs. Under that act, those drugs can be dispensed only with a prescription or given directly to a patient by a physician. A prescription for those substances was limited to five refills and expires after six months.

The Texas Controlled Substances Act originally provided for notice to the property owner and a hearing on the disposition of any property, including controlled substances, that was seized under the act. Senate Bill 219 exempted controlled substances from those notice and hearing requirements and allowed a court to order a controlled substance summarily forfeited. The act also allowed the court, rather than the director of the Department of Public Safety, to direct a law enforcement agency to dispose of forfeited property.

65th Legislature

In response to Texas Organized Crime Prevention Council studies, the 65th Legislature passed Senate Bill 151, creating a new title to the Penal Code that deals with organized crime. Previously, there had been no penal provision that allowed for the prosecution of persons for organized criminal activity. The bill targeted organizations of five or more persons dealing in specified criminal activities. Those activities were limited to those that were thought to be the focus of organized crime: prostitution, gambling, dealing in firearms, burglary, murder, and kidnapping, among others. (Promotion of pornography and the employment of children in obscene sexual performances were added to the list in 1981.) The act increased punishment for those specified offenses.
when committed by an organization, and it created the offense of
conspiring to commit those enumerated offenses.

With regard to criminal procedure, the 65th Legislature
passed Senate Bill 157 to change the law concerning the
admissibility of oral statements made by the accused. In Texas,
oral statements made by criminal defendants while in police custody
generally have been considered to be inherently unreliable and thus
inadmissible in court. The 65th Legislature revised that rule to
permit the introduction of such statements under strictly limited
circumstances. Under the new rule, such statements were admissible
in court to impeach or discredit the defendant's testimony, if the
statements were electronically recorded on a reliable machine and
witnessed by at least two persons and if the recording indicated
the defendant's waiver of his rights and identification of all
voices on the recording. (In 1981, the legislature removed two
limitations: the requirement of two witnesses and the limited use
of the statements for impeachment only.)

Law review articles expressed some confusion over the effect
of this new law. The true effect will be made clear when the court
of criminal appeals has the opportunity to fully interpret the law.

The third major criminal enactment of the 65th Legislature
was in the area of corrections: Senate Bill 39 created the Texas
Adult Probation Commission. The commission was charged with four
duties: (1) to make probation services and community-based
programs and facilities available throughout the state; (2) to
improve the effectiveness of those services; (3) to provide
alternatives to incarceration; and (4) to establish uniform adult
probation administrative procedures.

The commission is composed of six district judges and three
citizens appointed by the chief judges in the state. It approached
its assigned tasks by first establishing uniform standards for
probation officers and offices, and then by standardizing
administrative procedures, program elements, and fiscal operations.
The data collected by the commission shows that in 1979 more than
120,000 adults were on probation at a cost of approximately
one-tenth that of incarceration. Those probationers were
supervised by more than 900 professional probation officers at more
than 100 locally autonomous probation departments.

Senate Bill 311, passed by the 65th Legislature, created the
criminal offense of solicitation of a child. The prohibited
behavior is the enticement of a child under 14 into an enclosed
structure for the purpose of engaging in sexual activity with the
child. Prior law had only prohibited the interference with the
lawful custody of the child, which was a Class B misdemeanor. The
solicitation offense was designated as a Class A misdemeanor unless the child was removed from his home county, in which case the offense was designated a third-degree felony. This legislation was passed in response to an incident involving solicitation of children that had occurred in Dallas earlier in the year.

House Bill 1269 added a new third-degree felony to the Penal Code, making it an offense to sell or distribute commercial obscenity showing a minor engaging in or observing sexual conduct.

66th Legislature

Since the 1973 United States Supreme Court landmark decision in Miller v. California, the Texas obscenity statute has undergone a series of amendments in an attempt to conform to the requirements laid out by the court in that decision. The court required a specific definition of the proscribed material, the use of community standards to determine its objectionability, and the absence of "serious, literary, artistic, political, or scientific value."

The original Penal Code provision was written before the Miller decision and used language derived from earlier court decisions. In 1975, the legislature amended the law to incorporate some of the Miller wording. Finally, in 1979, the state legislature passed House Bill 1741, amending the Texas obscenity statute to reflect the language of the Miller decision practically verbatim.

In addition to this most recent attempt to satisfactorily define proscribed material, the 1979 act made other substantive changes in the law through the creation of two presumptions. The possession of six or more similar or identical items now establishes a presumption of intent to promote them. While the simple possession of offensive material is not an offense, promotion or the intent to promote is. Insufficiently rebutted, this new presumption could support a conviction simply on the basis of possession. Furthermore, the 1979 act created a presumption that a person who promotes material that is found to be obscene was aware of the obscene nature of the material.

This area of the law is fraught with difficulties because of the potential conflict between the first amendment rights of individuals and society's right to ban obscene material. As the various state legislatures attempt different solutions, the high court will continue to refine its guidelines for the protection of individual and societal rights.
In response to the recommendations made by the House Select Committee on Child Pornography: Its Related Causes and Control, the 66th Legislature passed several laws dealing with the protection of children. The 65th Legislature had created the offense of selling or distributing commercial obscenity showing a minor engaging in or observing sexual conduct. In 1979, House Bill 1742 expanded that law to include the employment or inducement of a child to engage in a sexual performance, and the production or promotion of such a performance. A parent or guardian commits this same offense if he consents to the child's participation. This bill was a companion to House Bill 1741, which revised the general obscenity statute.

House Bill 43 expanded the Penal Code definition of sexual contact to include the fondling of the breast of any person, male or female, of any age. The previous definition was limited to the fondling of the breast of a female over 10 years old. That definition of sexual contact forms the basis for prosecution for public lewdness, indecency with a child, and several prostitution offenses.

The Penal Code provision for the offense of injury to a child had previously been limited to serious injury. Senate Bill 394 expanded that definition to include simple "bodily injury." With this amendment, the statute now includes unconscionable injuries that would not be serious enough to categorize as "serious bodily injury, serious physical or mental deficiency or impairment, or disfigurement or deformity."

67th Legislature

In 1981, the governor proposed several legislative packages for consideration by the legislature. Among these were the war-on-drugs package and the anti-crime package. The war-on-drugs package included five areas that were the result of H. Ross Perot's War on Drugs Task Force. Bills in all five of those areas were passed. Eight bills of the 10-part anti-crime package were passed.

Anti-Crime Package

House Bill 360, popularly known as the "wiretap bill," was a cornerstone of the anti-crime package. That act, aimed at drug trafficking, allowed law enforcement agencies to conduct electronic surveillance to obtain evidence of certain drug-related felonies. Prosecuting attorneys must obtain the approval of the director of the Department of Public Safety and a court order in order to install electronic surveillance equipment. This bill was aimed at
major drug dealers who fund and direct illegal drug operations, but who have been safe from prosecution because they are not directly involved in the transactions.

Senate Bill 121 changed the law that permitted the use of recorded oral statements made by an accused during custodial interrogation for purposes of impeachment only. That act amended the Code of Criminal Procedure, 1965, to allow introduction of such statements for other purposes. The act also eliminated the requirement that such statements be witnessed by two other persons and permits destruction of recordings after all appeals are exhausted.

The law governing shock probation, whereby a trial court may suspend the prison sentence for certain felons, was changed by Senate Bill 123. That act extended from 120 to 180 days a court's jurisdiction over convicted felons for the purpose of granting shock probation. It also increased the number of offenses that render a person ineligible for shock probation and changes some procedural requirements in the grant of and application for shock probation.

The Board of Pardons and Paroles was reorganized by Senate Bill 125. That act also required that in a probation revocation hearing the amount of restitution be entered in the sentence, so that restitution can later be made a requirement of parole. A halfway house program was established by the act, including a special pilot project for selected inmates over 55 years of age. The board was authorized to contract with the Texas Adult Probation Commission to hire probation officers to supervise parolees.

Senate Bill 127 created a criminal justice division and an advisory board in the governor's office to assist the governor in planning, monitoring, and coordinating criminal justice programs in the state. The governor, lieutenant governor, and comptroller sit as the executive funding committee of the criminal justice division. Additional criminal court taxes were imposed to take the place of federal Law Enforcement Assistance Administration funds and to continue the criminal justice planning fund. Ten percent of those taxes are to be retained by the county in which they were collected and the remainder is to be remitted to the state and reallocated to local governments for local criminal justice programs.

Two bills arising out of the governor's anti-crime package amended sections of the Penal Code dealing with sexual offenses. House Bill 364 redefined the compulsion element of the aggravated offenses of rape, rape of a child, sexual abuse, and sexual abuse of a child. The definition of "deviate sexual intercourse" was
expanded. In Senate Bill 126 the definitions of aggravated rape and aggravated sexual abuse were expanded to include rape and sexual abuse of a person younger than 14 years of age. Defenses stemming from the prior sexual conduct of the victim and a two-year age difference between victim and offender are not applicable in these aggravated offenses. In the offense of indecency with a child, the actor may assert an affirmative defense that there was less than two years' difference in the ages of the actor and the victim. An offense of indecency with a child that involves sexual contact was raised to a second degree felony. The penalties for intentional or knowing injury to a child were raised.

Senate Bill 727 strengthened the authority of county bail bond boards. It provided more specific licensing requirements, set out details of records that must be maintained by a bail bondsman, provided for additional financial and other information to be included on license applications, and provided additional requirements relating to security deposits. The act provided for biennial, rather than annual, license renewal and expanded the boards' authority relating to refusal, suspension, and revocation of licenses. The act also included sections relating to remittitur of forfeited bonds and effect of default by corporations, and it increased the specified actions subject to penalties.

War-on-Drugs Package

The Texas Controlled Substances Act, since its passage in 1973, has been amended by every legislature. For the most part those amendments have been refinements of the original act; however, a 1981 amendment constituted a major substantive revision of the law. Like the electronic surveillance act, House Bill 730 was largely aimed at traffickers. Possession or delivery of large quantities of drugs now carries higher penalties than the same offenses involving smaller quantities.

The Texas Controlled Substances Act, which had not previously included preparatory offenses, was expanded to include attempt, conspiracy, and solicitation to commit drug-related offenses. It also added a potential $1 million fine for investment in illegal drug traffic.

House Bill 733, modeled after the United States Drug Enforcement Administration's Model Drug Paraphernalia Act, was designed to crack down on "head shops" and to try to eliminate their promotion of drug use. The act made it a crime to possess or deliver a wide variety of items that are commonly used in preparing, transporting, or using controlled substances. For any of these crimes to be committed, the actor must have the intent
that the item be used for the preparation, transportation, or use of a controlled substance. The items that were classified as drug paraphernalia are subject to forfeiture under the controlled substances act. The act specified some of the circumstances that the trier of fact may consider to determine whether or not the requisite criminal intent was present. Heavier penalties were assigned for persons who have prior convictions and for persons who deliver drug paraphernalia to minors. The constitutionality of the act is being challenged in the courts.

Senate Bill 396 amended the professional licensing provisions for certain health care professionals to require automatic suspension of licenses on initial conviction of a drug-related felony and automatic revocation on final conviction. The act applies to persons licensed by the Texas State Board of Medical Examiners, the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, and the Texas State Board of Podiatry Examiners. Revocations on final convictions are permanent unless the licensing boards expressly find that reissue of the licenses is in the public interest as well as in the best interest of the practitioners. The act also required district clerks to maintain records of all persons convicted under the Texas Controlled Substances Act and to send copies of the records to the licensing boards.

Under Senate Bill 394, in an emergency or when a patient is admitted to a hospital, controlled substances may be administered to a patient without a written prescription. The act also sets out the triplicate prescription program requirements which are administered by the Texas Department of Public Safety. Under this program, each prescription form used to prescribe a controlled substance must be serially numbered and in triplicate and must contain certain information. The pharmacist retains one copy for a set period of time, and the Texas Department of Public Safety retains one copy where it will be available to certain state agencies as well as to officers of the DPS to use for drug-related criminal investigatory or evidentiary purposes. Safeguards have been incorporated into the act to limit improper access to this information and to provide a deadline on the removal of identities from the system. The act sets a penalty for the unauthorized disclosure of this information, and unless reenacted before December 31, 1985, the act will expire January 1, 1986.

A new first-degree felony offense was created by House Bill 729. That offense is the delivery of a controlled substance to a person 17 years of age or younger or to a person that the offender knows or believes will deliver the substance to a person 17 years of age or younger. The court may not grant probation or defer adjudication for an offense under the act. It is an affirmative
defense to prosecution under the act that the offender was either less than 18 years of age or less than 21 years of age and delivered less than one-quarter ounce of marijuana without remuneration.

Related Legislation

In addition to Senate Bill 126, which includes children less than 14 years old under the aggravated rape and aggravated sexual abuse offenses, protection of children was the object of House Bill 21 and House Bill 42. These two bills arose out of recommendations of the House Select Committee on Child Pornography: Its Related Causes and Control. House Bill 21 expanded the list of organized criminal activities in the Penal Code to include the promotion of obscene material and the unlawful employment or inducement of a child to engage in a sexual performance. That law will allow the prosecution of organizations engaged in the production of pornography involving children under the organized crime provisions of the code. House Bill 42 raised the offense for the sale or purchase of a child from a Class A misdemeanor to a third-degree felony. A subsequent offense was raised from a third-degree felony to a second-degree felony.
GOVERNMENT REFORM LEGISLATION

The government reform legislation implemented during the five legislative sessions reviewed contained as a dominant theme the issue of public accountability by the members of state government.

Laws requiring public access to government documents, strengthened laws pertaining to campaign contributions, and open-meeting requirements exemplify the legislative efforts made to assuage public cynicism and suspicion as to the credibility of government.

While it is uncertain to what extent the legislation reviewed herein minimized public stirrings, the efforts made to accomplish that task were nevertheless substantial.

63rd Legislature

House Bill 1, commonly referred to as "the ethics bill" (Article 6252-9b, Vernon's Texas Civil Statutes), contained several major features:

(1) All elected state officers, all candidates for state elective office, and certain high appointees and executives were required to make public disclosure of certain gifts, property holdings, income, and financial activities. Sworn statements were to be filed at designated times with the secretary of state.

(2) Appointees not covered by the requirements contained in (1) were required to file affidavits disclosing any substantial interest they had, acquired, or disposed of in any business entity subject to regulation by a state regulatory agency or doing business with the state.

(3) Any member of a board or commission in the executive department having a personal or private interest in any proposition before the body was required to disclose the interest and refrain from voting on the proposition.

(4) Members of the legislature were prohibited from representing persons for compensation before any state agency.

House Bill 2 (Article 6252-9c, Vernon's Texas Civil Statutes)
dealt with the regulation of lobbyists. The bill sought to regulate lobbying activities by requiring public disclosure of the identity, expenditures, and activities of certain persons who, by direct communication to officers of the government, engaged in efforts to persuade members of the legislative or executive branch to take specific actions.

The three categories of persons required to register under the law were: (1) persons making total expenditures of more than $200 in a calendar quarter (excluding travel, food, and lodging expenses) for communicating directly with a member of the executive or legislative branch to influence legislation; (2) persons compensated or reimbursed by another to communicate directly with a member of the executive or legislative branch; and (3) any person, other than a member of the judicial, legislative, or executive branch, who as part of his regular employment communicates directly with a member of the executive or legislative branch to influence legislation.

House Bill 3, the open meetings act (Article 6252-17, Vernon's Texas Civil Statutes), expanded the coverage of the then current law to include the legislature and its committees. Consequently, the public was allowed to attend meetings held by the legislature (or a legislative committee), with the exception of certain closed meetings and executive sessions.

In addition to the inclusion of the legislature under the open-meetings law, House Bill 3 broadened the scope of the information contained in notices of meetings. For example, a notice was required to state the hour at which the meeting was to be held and the subject matter to be considered. Additionally, governing bodies of cities were required to post notices at places convenient to the public in the city hall.

House Bill 4 amended a large portion of Chapter 14 of the Texas Election Code (campaign reporting and disclosure). Among the changes made by House Bill 4 were the following:

1. Political committees were authorized both to accept contributions and to make expenditures in behalf of or in opposition to candidates or measures.

2. The appointment of a campaign manager was made mandatory, and the appointment had to be made prior to any contribution being received or any expenditure made.

3. The total amount that an individual could spend,
acting independently of a campaign organization, increased from $25 to $100.

(4) Campaign contribution statements were required to show the full name and complete address of each contributor and payee.

(5) The prohibition against a civic or charitable association's expending for political purposes any money contributed to it by a corporation was extended to include money contributed to the association by a labor union.

House Bill 6 (Article 6252-17a, Vernon's Texas Civil Statutes) unified the laws governing access to public information into a comprehensive statute. All information collected, assembled, or maintained by a governmental body pursuant to law or ordinance or in connection with the transaction of official business was to be public information and was to be made available to the public during normal business hours of the governmental body (with certain exceptions).

"Governmental body" was defined as any board, commission, department, committee, agency, or office within the executive or legislative branch of the state government; the commissioners court of each county and the city council of each city in the state; and the board of trustees of each school district (among others).

Included in House Bill 6 as categories of public information were government reports, audits, evaluations, and investigations; names, sex, ethnicity, salaries, titles, and dates of employment of all employees and officers of governmental bodies; and the names of every official and the final voting record on all proceedings in those governmental bodies.

House Bill 8 (Article 5428a, Vernon's Texas Civil Statutes) dealt with the financing of the campaign for the office of speaker of the house. The bill provided that a candidate for the office of speaker would be required to file (with the secretary of state) a record of each contribution received by him in behalf of his campaign, the complete name and address of the contributor, and the date and amount of the contribution. A record of each loan made to the candidate, including the name of the lender, and the amount of the loan, was to be filed.

As a corollary, House Bill 9 (Article 5428b, Vernon's Texas Civil Statutes) prohibited a person seeking the speakership from promising or agreeing to appoint a person to a committee within the house of representatives or a committee whose positions were
appointed by the speaker. Promises of preference on legislation or of economic benefits, and threats not to appoint a person to a committee or to give unfavorable treatment to legislation were also prohibited.

64th Legislature

Senate Bill 485 (Article 6252-17, Vernon's Texas Civil Statutes) required that the notice of a meeting of a state board, commission, department, or office having statewide jurisdiction, other than the Industrial Accident Board or the governing board of an institution of higher education, be posted by the secretary of state at least seven days preceding the day of the meeting. (The previous requirement was 72 hours.)

House Bill 1217 amended Article 6252-9c, Vernon's Texas Civil Statutes (lobbying law), by providing for two additional groups of persons who would not be required to register with the secretary of state as lobbyists: (1) persons who encouraged or solicited others to communicate directly with members of the legislative or executive branch to influence legislation; and (2) persons whose only activity to influence legislation was compensating or reimbursing an individual registrant to act in their behalf to communicate directly with a member of the legislative or executive branch to influence legislation.

Senate Bill 319 created the Joint Advisory Committee on Government Operations, which included the lieutenant governor, the speaker of the house of representatives, and the secretary of state of Texas, three senators, three representatives, and nine citizen members appointed by the governor. The committee was charged with the following responsibilities:

1. to develop proposals to increase the effectiveness of the delivery of services to the state;

2. to provide for the improvement of the structure and administration of state government to assure the delivery of government services at the lowest possible cost;

3. to recommend policies and programs to minimize the creation of new departments and agencies of state government and to control the growth of existing departments and agencies; and

4. to propose recommendations for the elimination of government programs and services that duplicate or
exceed in cost those same services offered by private business.

Among the committee's proposals (submitted to Governor Briscoe and the legislature on January 10, 1977) was the recommendation that the legislature enact sunset legislation and, where appropriate, submit constitutional amendments requiring that certain state agencies and advisory committees automatically be terminated on a periodic basis, subject to renewal through positive legislation.

The committee recommended further that prior to the implementation of such legislation, guidelines be established to determine:

(1) the extent to which the agency performed a function that should be the responsibility of state government;

(2) the feasibility of other alternatives for performing the functions carried out by the agency;

(3) the extent to which the agency had considered management practices that would result in increased efficiency;

(4) the extent to which the agency's programs were operating at or near capacity;

(5) the degree to which functions were duplicative within the agency, resulting in ambiguity and conflict; and

(6) the degree to which the suggestions and recommendations of the advisory committee were utilized.

65th Legislature

As a result of the joint advisory committee's recommendations, the Sunset Advisory Commission was established by Senate Bill 54. The commission was entrusted with oversight of state agencies to determine whether each agency should be continued, modified in its operations, or abolished. Among the criteria to be used in this determination were:

(1) the efficiency of the agency's operations;
(2) the objectives intended by the agency;
(3) alternative or less restrictive methods of regulation;
(4) the existence of overlapping jurisdiction or duplicative programs;
(5) whether the agency had recommended statutory benefits inuring to the public rather than the industry it regulated;
(6) the promptness and effectiveness with which the agency disposed of complaints;
(7) the extent to which public participation was encouraged in making rules and regulations; and
(8) the agency's compliance with the open records act and the open meetings act.

66th Legislature

House Bill 239 amended the open records act (Article 6252-17a, Vernon's Texas Civil Statutes) by exempting the home addresses and home telephone numbers of peace officers (as defined in Article 2.12, Code of Criminal Procedure, 1965) from being considered public information. This legislation more carefully defined the information considered to be part of the public domain, and, in so doing, protected a segment of the law enforcement community from potential harassment.

House Bill 1219 amended the ethics law (Article 6252-9b, Vernon's Texas Civil Statutes) by providing that each time a person, other than the secretary of state or an employee of the office of the secretary of state acting on official business, requested to see a file regarding the financial affairs of a state official, the secretary of state would place in the file a statement of the person's name, address, whom the person represented, and the date of the request. The information was to remain in the file for a period of two years.

House Bill 1969 amended Article 6252-17a, Vernon's Texas Civil Statutes, by providing that a custodian of public records, or his agent, committed an offense if, with criminal negligence, he or his agent failed or refused to give access to, or to permit or provide copying of, public records to any person upon request.
The bill provided affirmative defenses to prosecution: (1) if the custodian believed the records in question were not required to be made public as a result of a court order or written interpretation; or (2) if an agent of the custodian acted upon the written instructions of the custodian not to disclose the public records requested.

Senate Bill 104 amended the open meetings act (Article 6252-17, Vernon's Texas Civil Statutes) by allowing bona fide members of the news media to begin an action either by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of the act by a governing body (note definition of governing body, House Bill 6, 63rd Legislature). By this action, the bill added a dimension to the concept of the public forum of government operations: media scrutiny.

The Texas Sunset Act, passed by the 65th Legislature in 1977, provided for the review and automatic termination of 178 state agencies and advisory committees at biennial intervals from 1979 to 1989. Twenty-six agencies were scheduled to expire on September 1, 1979, unless continued by legislative act. One of the 26, the Board of Managers of the Texas State Railroad, was abolished by the 65th Legislature.

In considering the fate of the remaining 25 agencies, the 66th Legislature had benefit of the report and recommendations of the Sunset Advisory Commission, which reviewed the agencies during the previous legislative interim. The legislature took no action to save seven agencies: the Pesticide Advisory Committee, the Pink Bollworm Commission, the Texas Stonewall Jackson Memorial Board, the Vehicle Equipment Safety Commission, the Texas Navy, Inc., the Battleship Texas Commission, and the Board of County and District Road Indebtedness.

The Texas Private Employment Agency Regulatory Board was abolished, and the regulation of personnel employment services was assigned to the commissioner of labor and standards. The Burial Association Rate Board was also abolished, and its duties were transferred to the State Board of Insurance. The State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors were merged. The Texas Board of Architectural Examiners and the Texas State Board of Landscape Architects were consolidated; however, the latter's regulation of irrigators will be assumed by a new Texas Board of Irrigators under the Texas Department of Water Resources.

In the legislation continuing the other 12 agencies, the legislature made numerous changes in their enabling statutes. The agencies created or continued will expire on September 1, 1991,
unless extended by the legislature. They will be reviewed during the legislative interim prior to the expiration date.

67th Legislature

House Bill 3 created the Public Servant Standards of Conduct Advisory Committee. The committee's functions are:

(1) to study the application of state laws relating to the conduct of public servants, including relevant provisions of Title 8, Penal Code;

(2) to report to the legislature any recommendations the committee may have concerning the revision of those laws necessary to make their application more clear and reasonable; and

(3) to adopt and publish interpretive guidelines to aid public servants in the day-to-day application of those laws.

The committee consists of two members from the senate and two members from the house, the chief justice of the Supreme Court of Texas, the presiding judge of the court of criminal appeals, the district attorney for Travis County, the chief executive officer of an association of public employees, and a member of the governor's staff.

House Bill 2176 amended the ethics law (Article 6252-9b, Vernon's Texas Civil Statutes) by changing from two years to one year the period of time the secretary of state was required to keep the name, address, and group represented by any person requesting to see the financial statements of a public official. (The two-year period had been provided for by House Bill 1219, 66th Legislature.)

House Bill 169 amended the lobby registration law (Article 6252-9c, Vernon's Texas Civil Statutes) by providing that the compensation or reimbursement a person received for communicating directly with a member of the legislative or executive branch to influence legislation would have to be in excess of $200 in a calendar quarter before the person was required to register as a lobbyist. Under previous law, any receipt of money, however small, required registration.

Authority for reporting noncompliance with the lobby registration law was delegated to the secretary of state by House Bill 169. Following proper notice and subsequent failure of a
lobbyist to file required documents, the secretary of state was directed to file a sworn complaint of the violation with the appropriate prosecuting attorney.

House Bill 172 amended Chapter 32 of the Human Resources Code (bringing Texas into compliance with U.S.C. Title 18) by requiring state officials or employees responsible for the expenditure of substantial amounts of funds under the state Medicaid plan to comply with federal conflict-of-interest provisions.

The bill prohibited:

(1) a former board member or commissioner from representing a person before an agency or court in matters related to the Medicaid program;

(2) a current board member or commissioner from participating in Medicaid matters in which he, his family, or his business partner has financial interest; and

(3) a business partner of a current board member or commissioner from representing a person before an agency or court in matters related to the Medicaid program.

Senate Bill 235 amended the nepotism law, Article 5996g, Vernon's Texas Civil Statutes, by allowing (1) the confirmation of appointees appointed to a first term on a date when no person related to the appointee within the prohibited degree was a member of or candidate for the legislature; and (2) the confirmation upon reappointment of the appointee to any subsequent consecutive terms.

House Bill 542 modified the composition of the Sunset Advisory Commission and its staff. The four senators and four house members were to continue to serve on the commission; however, the chairmanship and vice-chairmanship were to alternate every two years between the senate and house members.

The commission also obtained its own staff; the Legislative Budget Board was no longer to be utilized as the commission's staff.

House Bill 1903 amended Article 14.01 of the Texas Election Code by (1) prohibiting single contributions exceeding $100, except to general-purpose political committees; (2) prohibiting contributions from being made or accepted during the regular legislative session; (3) allowing corporations and organizations to contribute money for the purpose of aiding or defeating legislative
measures; and (4) requiring the names and addresses of persons making contributions over $50, and of those receiving expenditures of over $50, to be filed.

The 67th Legislature reviewed 28 agencies that were scheduled for renewal or expiration in 1981 under the Texas Sunset Act. The legislature renewed 22 of those agencies until 1993. The legislature did not introduce legislation for two agencies, the Board of Tuberculosis Nurse Examiners and the Commission for the Texas Civil Air Patrol, meaning that both expired September 1, 1981. The legislature in its regular session introduced but did not pass legislation for two other agencies, the Texas State Board of Medical Examiners and the Texas State Board of Examiners in Social Psychotherapy. The former was eventually renewed by the 1st called session, but the latter failed to be renewed in either session and consequently expired September 1, 1981. The legislature in its regular session expressly abolished two other agencies, the Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission and the State Board of Library Examiners, transferring their duties to the Texas Parks and Wildlife Department and the Texas State Library and Archives Commission, respectively.

Sunset renewal legislation passed in 1981 contains several standard provisions that apply, with a few exceptions, to reauthorized agencies. Most agency governing bodies, particularly the occupational regulatory boards, gain up to three public members. Qualifications for public members require that neither they nor their spouses be licensees of the agency, be employed by or participate in the management of a business regulated by the agency, or have more than a 10 percent interest in such a business. No member, public or otherwise, may be an officer, employee, or paid consultant of a trade association in the regulated occupation or industry. The same prohibition applies to certain relatives of the board member and to employees of the agency. A registered lobbyist may not serve as a board member or general counsel to the agency. Board members can be removed if they violate these restrictions, if they do not have or fail to maintain any statutory qualifications, or if they fail to attend at least half the board's regularly scheduled meetings during a year, not counting meetings prior to their appointment. A board action is not invalidated, however, simply because it was taken while there were appropriate grounds for a member's removal. Board members are to be appointed without regard to race, creed, sex, religion, or national origin. They are entitled to per diem and transportation expenses as provided in the general appropriations act.

Sunset renewal legislation passed in 1981 typically makes an agency expressly subject to the open meetings act and to the Administrative Procedure and Texas Register Act, particularly in
the latter case with regard to rulemaking and to disciplining of licensees. Most reauthorized agencies' rules are subject to potential repeal by the appropriate standing committees of both houses of the legislature. Agency rules may not unreasonably restrict advertising or competitive bidding by licensees. Other generally standard provisions prescribe fees to be charged by the agency, prescribe procedures to be followed in examining occupational license applicants, prescribe procedures for renewal and criteria for suspension of licenses, require the agency to distribute consumer information describing the agency's functions, require the agency to keep a file on complaints, direct the agency to develop a career ladder program and a performance evaluation system to be used in awarding employee merit pay, make the agency subject to an annual audit by the state auditor, and require the agency to file an annual report accounting for its use of funds.
HEALTH AND HUMAN SERVICES

Texas has a variety of state agencies that promote the health and welfare of the general public or that provide specific health or human services to a selected, needy clientele. The following table lists the major client-oriented agencies involved in the state's provision of health and human services.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Clients</th>
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<tr>
<td>Texas Department on Aging</td>
<td>Aged persons</td>
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<tr>
<td>Texas Commission on Alcoholism</td>
<td>Alcohol abusers</td>
</tr>
<tr>
<td>State Commission for the Blind</td>
<td>Blind persons</td>
</tr>
<tr>
<td>Texas Department of Community Affairs (TDCA)</td>
<td>Drug abusers</td>
</tr>
<tr>
<td></td>
<td>Job trainees</td>
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<tr>
<td></td>
<td>Low-income households needing weatherization, energy, rental assistance</td>
</tr>
<tr>
<td>Texas Commission for the Deaf</td>
<td>Deaf persons</td>
</tr>
<tr>
<td>Texas Employment Commission (TEC)</td>
<td>Unemployed and underemployed persons</td>
</tr>
<tr>
<td>Texas Department of Health (TDH)</td>
<td>Persons with certain specific diseases or health problems</td>
</tr>
<tr>
<td>Texas Housing Agency</td>
<td>Persons needing low-income housing</td>
</tr>
<tr>
<td>Texas Department of Human Resources (TDHR)</td>
<td>Low-income families, especially with dependent children</td>
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<tr>
<td></td>
<td>Foster children</td>
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<tr>
<td></td>
<td>Abused and neglected children</td>
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<tr>
<td></td>
<td>Victims of family violence</td>
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<tr>
<td></td>
<td>Aged, blind, and disabled persons</td>
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<tr>
<td></td>
<td>Victims of disasters</td>
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Health and Human Service Licensing

Texas, as alluded to above, has a number of state boards that license various health and human service occupations. Practically all of those boards were subject to review in 1979 or 1981 under the Texas Sunset Act. That act, passed by the 65th Legislature in 1977 (Senate Bill 54), provides for the cyclical termination or statutory renewal of specified state agencies and other state governmental bodies.

The Texas Board of Licensure for Nursing Home Administrators, renewed by the 66th Legislature in 1979 (Senate Bill 276), was the only occupational licensing board in the realm of health and human services that was up for review that year. The 1981 sunset cycle, however, touched on a number of health occupations. The 67th Legislature, in its regular session, renewed the Board of Nurse Examiners (Senate Bill 575), the Board of Vocational Nurse Examiners (Senate Bill 827), the Texas State Board of Pharmacy (House Bill 1628), the State Board of Dental Examiners (Senate Bill 335), the Texas Board of Chiropractic Examiners (Senate Bill 753), the Texas State Board of Podiatry Examiners (Senate Bill 866), the Texas Board of Physical Therapy Examiners (Senate Bill 750), the Texas Optometry Board (Senate Bill 109), the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids (Senate Bill 604), and the Texas State Board of Examiners of Psychologists (Senate Bill 359). In its 1st called session, the same legislature renewed the Texas State Board of Medical Examiners (Senate Bill 5). Abolished through inaction of the 67th Legislature were the Board of Tuberculosis Nurse Examiners and the Texas State Board of Examiners in Social Psychotherapy. The latter, a short-lived licensing board, had been created by the 64th Legislature in 1975 (House Bill 247).

In addition to licensing occupations, the state also licenses, certifies, or accredits certain types of institutions. The legislature since 1973 has added a mixture of licensing laws of both types in the realm of health and human services. A 1973 act
of the 63rd Legislature (House Bill 115), for example, created the Advisory Council on Youth Camp Safety and authorized the Texas Department of Health (TDH) to license youth camps and establish appropriate safety standards with advice from the council. The Texas Kidney Health Care Act, enacted by the same legislature (Senate Bill 386, since amended by House Bill 1581, 64th Legislature, and by House Bill 1999, 67th Legislature), provides for TDH's accreditation of facilities for treatment of chronic kidney disease. Other aspects of this latter measure are covered in a later section of this report.

The 63rd Legislature in 1973 also provided (Senate Bill 180) for the licensing of child-care administrators, although it did not create a separate occupational licensing board for that purpose. Instead, TDH licenses the administrators with consultation from a special advisory council. TDH also licenses and regulates child-care centers, under a law enacted by the 64th Legislature in 1975 (Senate Bill 965).

The 65th Legislature in 1977 provided for the licensing, by the Texas Commission on Alcoholism, of alcoholic care facilities (House Bill 321). The 66th Legislature two years later passed laws providing for the licensing and regulation of adult day-care centers (Senate Bill 828, since amended by Senate Bill 170, 67th Legislature), and home health care agencies (Senate Bill 767, since amended by Senate Bill 594, 67th Legislature). The latter law established the Home Health Services Advisory Council to assist the Texas Department of Health in setting licensing standards. Another body, the Council for Social Work Certification, was created by the 67th Legislature in 1981 to advise the Texas Department of Human Resources with regard to the certification of social workers (Senate Bill 623). The 67th Legislature also created a new occupational licensing board, the Texas State Board of Examiners of Professional Counselors (Senate Bill 606).

**General Health Legislation**

The 64th Legislature, which met in 1975, enacted three major pieces of general health care legislation. The Texas Health Planning and Development Act (House Bill 2164) was enacted in response to the National Health Planning and Resources Development Act of 1974, signed by President Ford shortly before the legislature convened. The intent of the reorganization mandated by the federal act was (1) to better match the supply of health professionals and health facilities to actual health needs, and (2) to control federal funding in support of health care. (1) Under the 1975 Texas act as amended (Senate Bill 894, 65th Legislature; House Bill 868, 66th Legislature; Senate Bill 191, 67th
Legislature), the Texas Department of Health is the state agency that is delegated the responsibility for promulgating a state health plan to be approved by the United States Department of Health and Human Services.

The role of the Texas Department of Health at the state level is complemented at the regional level. Under the reorganization, the state is divided into 12 health service areas, and in each area a health systems agency is created for purposes of regional health planning. The health systems agency investigates the status of health care delivery systems in the area, gathers data on the area's health resources, develops a health service plan for the area, reviews and approves federal grants within the area that are related to health, and makes recommendations regarding local projects for construction and modernization of health facilities. The health systems agency may be a public body or a private nonprofit organization, but in either case it is governed by a board composed of both consumers and health care providers. [2] Regional councils of government serve as health systems agencies in four of the areas. The other eight areas have private, nonprofit corporations serving in that capacity. [3]

The other main component of the revised state health planning system is the Texas Health Facilities Commission (THFC). A full-time, three-member commission, THFC reviews applications for new construction, expansion, or modifications of hospitals, nursing homes, and other major health care facilities. If the commission finds that a proposed project is warranted, having reviewed the evidence in favor and in opposition (including the recommendation of the appropriate health systems agency), then it issues a certificate of need authorizing the project. The Texas Health Facilities Commission is linked by interagency agreement to the Texas Department of Health in order to establish sufficient coordination at the state level as required by federal law.

The second major piece of general health care legislation enacted by the 64th Legislature in 1975 was the Texas Health Maintenance Organization Act (Senate Bill 180, since amended by Senate Bill 747, 66th Legislature, and by House Bill 1774, 67th Legislature). This act provides for the establishment, certification, organization, and regulation of health maintenance organizations (HMO's). An HMO is an organization that provides or delivers health services to a voluntarily enrolled group in a defined geographic area on a prepaid, contractual basis. [4] Under the Texas Health Maintenance Organization Act and the previously cited Texas Health Planning and Development Act, approval of an HMO and/or certain of its operations is shared by the state commissioner of insurance, the Texas Department of Health, and the Texas Health Facilities Commission.
A third measure from 1975, the Hospital Project Financing Act (Senate Bill 243), dealt with hospital construction. It authorized hospital authorities, counties, and cities to issue revenue bonds to finance hospital projects undertaken by nonprofit corporations. Bonds issued under the act are tax-exempt.

Tax-exempt status reduces interest costs for hospital bonds by about two to four percent per year, compared with conventional financing. Many privately operated community health facilities are not organized under the state's general nonprofit corporation act, however, and hence they are ineligible for tax-exempt financing under the 1975 law cited above. In 1981, the 67th Legislature remedied this deficiency through passage of a new measure, the Health Facilities Development Act (Senate Bill 766). The act authorized hospital districts, counties, and cities to incorporate and fund "nonprofit health facilities development corporations" with powers to provide new health facilities or to expand existing ones. In effect, the 1981 act extends tax-exempt financing to previously ineligible health facilities.

Specific Medical and Health Problems

Since 1973, the legislature has devoted its attention to a number of specific medical or health problems. An example, from the 63rd Legislature of that year, was an act dealing with emergency medical care (Senate Bill 855). The act established the basis for a state program for emergency medical transportation and treatment. The program encompasses central communications centers, helicopter rescue services, designated trauma centers, and training in emergency medical treatment.

The 63rd Legislature also enacted the Texas Kidney Health Care Act (Senate Bill 386), mentioned previously. Under the act as amended (House Bill 1581, 64th Legislature, and House Bill 1999, 67th Legislature), the Texas Department of Health assumes a large portion of the costs of dialysis and other treatment for eligible individuals suffering from kidney disease. Persons with end-stage renal disease (an irreversible and permanent condition requiring dialysis or transplant), for example, need contribute no more than five percent of their adjusted gross annual income toward the cost of kidney care. [5]

Availability of vital organs such as kidneys for purposes of transplant was a subject addressed by the 64th Legislature in 1975. A measure enacted that year (House Bill 916) required that a form be printed on the reverse side of driver's licenses allowing a driver to give permission, upon his or her death, for the use of specified organs as anatomical gifts. A lesser-known measure
enacted by the 65th Legislature two years later (House Bill 307) dealt with a closely related subject, the donation of corneal tissue from eyes for transplant or research purposes. On the request of certain medical authorities and on the condition that there is no objection from certain relatives or other parties, a justice of the peace conducting an inquest may authorize the removal of corneal tissue from a dead person so long as the removal does not interfere with any subsequent investigation or autopsy. Meanwhile, the 65th Legislature amended requirements for the driver's license form so as to facilitate emergency medical service to an injured or stricken license holder. It enacted a measure (House Bill 1184) requiring that space be left on the form to note any allergies to drugs that the holder might have.

Publicity surrounding sudden infant death syndrome led the 65th Legislature in 1977 to pass a measure (Senate Bill 821) supporting clinical studies of the syndrome. Under the measure, the state bears the cost of an autopsy performed on any child under the age of two who dies suddenly of an unknown cause. The Texas Department of Health (TDH) is directed to undertake a program of consultation and public education about the syndrome. Meanwhile, another measure from the same legislature (Senate Bill 676, since amended by Senate Bill 1046, 66th Legislature) addressed the problem of hypothyroidism among newborn infants. It established a diagnostic laboratory within TDH to conduct screening for the condition, which consists of a deficiency in thyroid activity resulting in a lowered metabolic rate and loss of vigor.

Finally, the 65th Legislature passed legislation (Senate Bill 120) to assist persons afflicted with hemophilia. Similar to the kidney program, the hemophilia program provides financial support to pay costs of continuing treatment with blood, blood derivatives, and pharmaceutical products. The program is administered by TDH with assistance from a special hemophilia advisory committee.

Cancer, the second leading cause of death in Texas, claims over 20,000 victims annually throughout the state. [6] In 1979 the 66th Legislature passed the Texas Cancer Control Act (House Bill 853), mandating the establishment of a statewide cancer registry to ensure an accurate and continuing source of data concerning the incidence of the disease. Collected information goes to a central data bank to aid medical authorities in the prevention, early recognition, control, and possibly even cure, of cancer. [7]

The 66th Legislature also extended programs dealing with health examinations for Texas schoolchildren. The 63rd Legislature in 1973 had established a pilot program for general health examinations (Senate Bill 593). The Texas Children's Vision Screening Act of 1979 (House Bill 2096), in turn, requires that
children enrolling in Texas schools for the first time be examined for visual defects.

Two other significant health measures passed by the 66th Legislature dealt with the use of controlled substances. The R. B. McAllister Drug Treatment Program Act (House Bill 1209), named after a former state representative from Lubbock, established the Texas Department of Community Affairs' comprehensive drug dependence treatment and rehabilitation program. The program includes prevention, day-care, and out-patient services aimed at educating potential drug users and at enabling persons dependent on drugs to live productively in society. A second piece of legislation (Senate Bill 877) established a controlled substance therapeutic research program to study the use of tetrahydrocannabinols (THC) for medical and research purposes. THC, a component of marijuana, has therapeutic value in the treatment of cancer and glaucoma. The measure in effect legalized the medicinal use of the substance as a supplement to conventional treatment.

The 67th Legislature contributed two major measures that intervened against specific health problems. One of those (House Bill 1685) authorized the Texas Department of Health (TDH) to establish an epilepsy program to provide diagnostic services, treatment, and support to eligible epileptics. The other (House Bill 2129) directed TDH to accumulate information about veterans exposed to chemical defoliants or herbicides. The measure applies particularly to "Agent Orange," an herbicide used in the Vietnam War that many veterans blame as having caused debilitating and fatal ailments among themselves as well as birth defects among their children. Exposed veterans are entitled to assistance from TDH and from medical institutions affiliated with The University of Texas. They also are entitled to class-action representation by the Texas attorney general in a suit for release of military records relating to their exposure.

General Human Services Legislation

The 63rd Legislature in 1973 passed a pair of measures in the area of child welfare dealing with the issue of parents who refuse or fail to make required child support payments. The first measure (Senate Bill 708) authorized a county or district attorney, or the Texas Department of Human Resources, in cases of children to whom TDHR is furnishing assistance, to institute charges and file complaints against such parents. Failure of a parent to provide support for a period of 60 consecutive days, where the parent is shown to have the ability to pay, constitutes a rebuttable assumption of refusal or neglect to provide support. The second
measure (Senate Bill 709) required TDHR to provide full assistance in support of dependent children without any deductions in consideration of child support payments that are due but not made. It authorized the TDHR to take whatever legal measures are necessary to initiate child support payments from the parent and to seek reimbursement for any assistance that it has provided in lieu of withheld child support payments.

The 64th Legislature in 1975 focused on the education of handicapped persons. One of its acts (House Bill 1673) assured equal educational opportunity for handicapped children by requiring school districts to spend the same average amount per handicapped student as they spend per normal student. The act also expanded the number and type of educational services directed toward handicapped students. A second act (Senate Bill 759) authorized the State Board of Education (governing board for the Texas Education Agency) to provide for the education of all multiply-handicapped persons, including the provision of associated transportation. Services of this type previously had been directed only toward certain categories of multiple handicaps.

The Employment Incentive Act (Senate Bill 1189), enacted by the 65th Legislature in 1977, placed certain conditions on the receipt of aid to families with dependent children (AFDC). It directed the Texas Employment Commission (TEC) to establish an employment program for AFDC recipients. Unless they are exempt under federal law, recipients can forfeit AFDC payments by failing to register with TEC or by not accepting suitable employment when it is offered. A related measure, the AFDC Education and Employment Act (House Bill 1755), established a pilot project to assist AFDC recipients in obtaining vocational training and gainful employment. The project is managed by the Texas Department of Human Resources.

Other legislation of the 65th Legislature dealt with architectural barriers that impede movement by handicapped persons. Under a new law (Senate Bill 773), requirements of architectural accessibility were extended for the first time to certain privately financed buildings. Private facilities subject to the law include shopping centers, transportation terminals, theaters, hospitals, large professional office buildings, and other buildings built after 1977 that are open to certain types of public uses and that are located in counties of population 50,000 or more.

Texas has some 29,000 cases of child abuse annually, involving about 160,000 persons. [8] State laws against child abuse were augmented in 1979 by the 66th Legislature's passage of a measure (House Bill 673) to facilitate the identification of cases of child abuse. The measure directed that special forms be
distributed among hospitals and hospital personnel for purposes of reporting suspected cases. The reports, which are confidential, form a basis for investigating whether or not an instance of child abuse has in fact occurred.

That measure was not the only one dealing with the issues of domestic abuse and violence. The 66th Legislature also established a pilot program to provide temporary shelter and services to battered wives and other victims of family violence (House Bill 1075). In 1981, the 67th Legislature repealed the pilot program and established in its place an ongoing program having similar purposes (House Bill 1334). In addition, the 67th Legislature dealt with the abuse of elderly persons, passing an act (House Bill 1087) directing the Texas Department of Human Resources to investigate reports of elderly persons suffering from abuse, exploitation, or neglect. TDHR is further authorized to provide or contract for protective services for the elderly persons involved. Its responsibilities under the act are to be transferred to the Texas Department on Aging in September, 1983.

In an action similar in thrust to the Employment Incentive Act passed four years earlier (Senate Bill 1189, 65th Legislature, previously cited), the 67th Legislature in 1981 tightened restrictions concerning payment of unemployment compensation. Under state law, a claimant can be temporarily disqualified from collecting unemployment benefits if the claimant left his or her last job without good cause, has been discharged from the last job for reasons of misconduct, or has failed to apply for or to accept suitable work when it is offered. Before 1981, the Texas Employment Commission had discretion to establish the length of the disqualification period. With the new law (Senate Bill 2), however, the claimant is disqualified from receiving benefits for the period of unemployment until six weeks after returning to work.

Another enactment in 1981 was that (Senate Bill 630) creating the Interagency Council on Early Childhood Intervention Services. The council includes one appointee of the governor plus one representative each from the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the Texas Education Agency. The council is charged with developing and implementing a state plan for intervention services directed toward the assistance of developmentally delayed children under the age of three.

Lastly, in its 1st called session in 1981, the 67th Legislature passed one of the nation's most progressive pieces of legislation pertaining to alcoholism. The act (Senate Bill 26) requires group health insurers to offer coverage for treatment of alcohol and drug dependency. With its passage, Texas becomes the
first state to have extended mandatory insurance coverage into this area of health care. [9]

Rights, Immunities, and Standards

One cluster of measures enacted since 1973 has dealt with the guarantee of certain rights and immunities, or with the clarification of certain standards, governing the areas of health and human services. Included among these measures are several items of consumer legislation. The category is somewhat broader, however, extending not only to the protection of consumers and other recipients of health or human services, but also to the protection of those who provide the services.

A pair of laws concerning emergency medical care illustrates the dual thrust of such legislation. On the one hand, the 63rd Legislature in 1973 passed a measure (Senate Bill 285) that reduced a physician's liability with respect to emergency medical care rendered outside his or her specialty. On the other hand, the 64th Legislature two years later enacted a measure (House Bill 446) prohibiting officials of a public hospital from denying emergency treatment to a seriously ill or injured person solely on the grounds of the person's inability to pay.

Another measure enacted by the 64th Legislature (Senate Bill 59) reflected a right increasingly asserted by nonsmokers, namely the freedom from the deleterious effects of smoke generated by others. The measure prohibited smoking in public places such as public schools, hospitals, libraries, museums, theaters, elevators, airplanes, trains, or buses, except in specially designated areas.

Legislation of the 64th and 65th Legislatures dealt with the rights of the physically and mentally handicapped. An act of the 64th Legislature in 1975 (Senate Bill 271) prohibited employment discrimination against a handicapped person if the person is otherwise qualified and his or her ability to perform the job is not impaired by the handicap. As mentioned earlier, the 64th Legislature also enacted legislation to ensure equal educational opportunity for handicapped children (House Bill 1673), including the multiply-handicapped (Senate Bill 759).

In 1977 the 65th Legislature took additional steps to broaden the rights of the handicapped. The Mentally Retarded Persons Act of 1977 (Senate Bill 700, since amended by several measures and codified in Vernon's Texas Civil Statutes, Article 5547-300), which reflected greatly enlightened views toward the mentally retarded, made substantial revisions to state law regarding their legal rights. Particularly, it enhanced due process protections
regarding the institutional placement, treatment, and discharge of the mentally retarded. A second measure (Senate Bill 836) made substantial revisions to state law concerning the rights of the physically handicapped. Also, as stated earlier, the 65th Legislature extended handicapped persons' right of architectural accessibility to certain privately constructed buildings in the urban areas of the state (Senate Bill 773).

Medical malpractice was the subject of a major act passed the same year. Rising costs of malpractice insurance had greatly inflated the costs of medical care for Texas citizens. The legislature's response was a comprehensive act (House Bill 1048) that revised state laws regarding recovery of damages for malpractice, the availability of malpractice insurance, and the discipline of incompetent physicians. Under the act, civil liability for malpractice damages is in most cases limited to $500,000, exclusive of expenses for necessary medical, hospital, or custodial care.

Enactments of the 65th and 66th Legislatures touched on another medical subject, that of death, from the standpoint of both the patient and the physician. The Natural Death Act, enacted by the 65th Legislature in 1977 (Senate Bill 148, since amended by House Bill 571, 66th Legislature), established procedures by which an individual may execute a directive to withhold life-sustaining procedures in the event of his or her terminal illness. The 66th Legislature in 1979 set a standard for the official determination of death (House Bill 12), based on the irreversible cessation of spontaneous brain activity. A physician who makes a determination of death in accordance with the standard is neither liable for damages in any civil case nor subject to prosecution in any criminal proceeding.

Civil and criminal procedures were also affected by an act of the 66th Legislature (House Bill 1521) extending the rights of deaf persons. Under the act, a qualified interpreter must be appointed for a deaf person involved in a civil, criminal, or administrative proceeding, including appearance before the governing body of a state agency or political subdivision.

Important consumer legislation resulted from sunset renewal acts of the 66th and 67th Legislatures, particularly those acts renewing the licensing boards for various types of health occupations. The 12 renewal measures, enumerated in an earlier section of this report, as a rule enlarged each licensing board through the addition of up to three public members. In most cases, the new enabling provisions for these boards require them to keep a file on complaints lodged against their licensees. In order that patients or customers know to whom they can direct complaints,
licensees are required in many cases to display in their offices prominent signs indicating the address and telephone number of the licensing board.

Consumer legislation has focused particularly on relationships between doctors and patients and on transactions between pharmacists and their customers. As part of the 1977 revisions to state malpractice laws, the 65th Legislature created the Texas Medical Disclosure Panel to determine what types of medical risks doctors must disclose to their patients (House Bill 1048, since amended by Senate Bill 292, 66th Legislature). Disclosure of medical information was also affected by the Medical Practice Act (Senate Bill 5) passed by the 1st Called Session of the 67th Legislature in 1981. That act, which renews the Texas State Board of Medical Examiners, specifies procedures by which a patient or guardian may give written consent for release of confidential medical records to the patient or to some other designated person. The physician, on receiving a proper request for release, is obliged to furnish copies of the records or to furnish a summary or narrative of the records.

Another sunset renewal law of the 67th Legislature, the Texas Pharmacy Act (House Bill 1628), was designed to reduce the cost of pharmaceutical products. It incorporated a generic drug provision that had long been sought by consumer groups. The provision directs a pharmacist to substitute less expensive generic drugs for brand-name products whenever possible, unless the prescribing physician or patient chooses otherwise.
References


2. Ibid., p. 4.

3. Texas Legislature, House of Representatives, Committee on Health Services, Interim Report to the 67th Texas Legislature, 1980, p. 35.


7. A legislative enactment from two years earlier, the value of which remains subject to dispute, legalized the use of laetrile in the treatment of cancer (H.B. 1574, 65th Legislature).


NATURAL RESOURCE LEGISLATION

This chapter, reviewing natural resource legislation enacted by the Texas Legislature over the last five biennial sessions since 1973, begins in a noteworthy year. The Arab oil embargo that occurred in October, 1973, heightened Americans' recognition of what has been an ongoing, if sometimes latent, energy crisis. Texas, despite its tradition as a leading energy-producing state, has not escaped that crisis. Recent projections indicate, for example, that by 1990 even Texas could become a net importer of energy. [1]

Energy is just one of many natural resources, the uncertain future adequacy of which gives cause for concern. In Texas, the availability of water has long been a problem, particularly in the arid western portions of the state. Even the air, a basic component of everyday natural surroundings that until recently has been treated as a free resource, can no longer be taken for granted. Selected biological resources have also been seen as endangered or threatened. In at least some respects, enactments of the last five legislatures have touched on all of these resource issues.

Natural Resource Administration

Prior to 1973, although Texas had many state agencies with jurisdiction over natural resource matters, the only state governmental body that cut across agency lines in this field was the Interagency Council on Natural Resources and the Environment (ICNRE). Created pursuant to a 1967 statute authorizing the governor's appointment of interagency planning councils, [2] ICNRE was composed of the administrative heads of some 20 state agencies and institutions. [3] During the early 1970's, it had a special role in studies related to the Gulf Coast and Texas' submerged land. [4] When the state began development of a coastal program pursuant to the federal Coastal Zone Management Act of 1972, however, recommendations were made that ICNRE be reorganized. ICNRE had served primarily as a communication forum, but was without any policymaking powers and without sufficient authority to ensure interagency cooperation. [5] Consequently, the 65th Legislature in 1977 enacted Senate Bill 576 creating the Natural Resources Council (NRC) as a successor to ICNRE. (References are to the regular session unless otherwise noted.) Unlike ICNRE, NRC contained representatives from the various governing boards of the participating natural resource agencies rather than just the administrative heads of those agencies. Also unlike ICNRE, it had its own independent staff.
Meanwhile, in 1973, Governor Dolph Briscoe by executive order had created the Governor's Energy Advisory Council (GEAC). [6] Two years later, through Senate Bill 519, the Energy Policy Planning Act of 1975, the 64th Legislature gave GEAC a statutory basis and authorized the hiring of an executive director and staff. The backing that the bill received was based on the contention that a clearinghouse agency with policymaking authority was needed to act as liaison between the state and the federal government. Approval was by a slim majority, however, and thus a compromise provided that GEAC would expire in 1977. [7] GEAC's 10 voting members consisted of the governor, lieutenant governor, speaker of the house, attorney general, chairman of the railroad commission, land commissioner, agriculture commissioner, comptroller, and one senator and one representative appointed by the lieutenant governor and speaker, respectively.

During its two years of life, GEAC produced a variety of reports investigating the state's energy situation and outlining additional research needs. In 1977 the 65th Legislature renewed the agency for another two years (Senate Bill 1172) but reorganized its governing membership and changed its name to the Texas Energy Advisory Council (TEAC). The new agency, although it largely continued the direction of GEAC, was more a creature of the legislature than of the governor. In place of the governor and comptroller, for instance, the act creating TEAC substituted a member of the public utility commission. The governor's office was not removed from the energy scene, however, because an internal reorganization there resulted in the establishment of the Governor's Office of Energy Resources (GOER). [8] TEAC formulated the state's energy policy, while GOER acted as liaison with the federal government and administered funds for federal energy conservation and extension programs.

These successive reorganizations culminated in 1979 with the 66th Legislature's passage of Senate Bill 921 creating the Texas Energy and Natural Resources Advisory Council (TENRAC). The new agency, as may be surmised from its acronym, constituted a merger of TEAC and NRC and also absorbed the functions of GOER. TENRAC is responsible for the adoption and continual reassessment of a state energy policy and a state natural resource policy, for the associated recommendation of legislation at the national and state levels, for the maintenance of an energy data base, and for the coordination and support of energy conservation activities, among other functions. The membership of TENRAC, as amended in 1981 by the 67th Legislature (House Bill 1278), is shown in Table 1.
TABLE 1. TEXAS ENERGY AND NATURAL RESOURCES ADVISORY COUNCIL

1. Governor
2. Lieutenant Governor
3. Speaker of the House of Representatives
4. Attorney General
5. Member of the Railroad Commission of Texas, designated by the commission
6. Member of the Public Utility Commission of Texas, designated by the commission
7. Chairman of the Texas Air Control Board
8. Chairman of the Texas Water Development Board
9. Chairman of the Parks and Wildlife Commission
10. Commissioner of Health
11. Commissioner of the General Land Office
12. Commissioner of Agriculture
13. Comptroller of Public Accounts
14. Director of the Bureau of Economic Geology of the University of Texas at Austin
15-16. Senators appointed by the Lieutenant Governor
17-18. Representatives appointed by the Speaker
19-22. Citizens appointed by the Governor

Source: Vernon's Texas Civil Statutes, Article 4413(47c), as amended by House Bill 1278, 67th Legislature, Regular Session, 1981.
Energy Resources

Until recently, Texas' status as an energy-producing state has been built on its bountiful endowment of oil and natural gas. Through 1980, oil and gas and associated petroleum liquids accounted for 98.1 percent of the state's past energy production. [9] Figures for 1980 indicate that even now, with domestic oil and gas supplies diminishing, these sources still comprise about 89.3 percent of the state's annual energy production. [10] Oil and gas not only fuel the Texas economy, but they also contribute significantly to state government coffers. Between fiscal years 1972-73 and 1980-81, with prices for oil and gas increasing dramatically, annual collections from the state's 4.6 percent crude oil production tax and 7.5 percent natural gas production tax swelled from $332.6 million to $2,192.9 million. The two taxes currently account for over 16.3 percent of total state revenue. Income from state-owned land, which is derived primarily from oil and gas leases and which is funneled primarily into the permanent school and permanent university funds, accounts for another 5.8 percent of state revenue. In fiscal year 1980-81, public land income amounted to $784.1 million. [11]

Oil and gas reserves are declining, however, meaning that the future composition of Texas' energy production will differ markedly from past years. The state's oil and gas production levels peaked in 1972 at 7.55 and 8.93 quads (i.e., quadrillion British thermal units), respectively, and have diminished ever since (see Table 2), despite incentives occasioned by escalating prices. Proven reserves of the two resources peaked much earlier, with year-end oil reserves reaching a high of 88.7 quads in 1951 and year-end gas reserves reaching a high of 129.4 quads in 1967. In each case, reserve additions roughly matched production between 1952 and 1967, but since then, additions to reserves have fallen far short of production. [12] Even expanded offshore oil and gas activity has not reversed this trend, representing in 1979 only 2.3 percent of the state's total drilling footage and a mere 0.8 percent of successfully completed wells. [13] By 1981 known measured oil reserves were down to 41 quads; natural gas reserves, to 51 quads. Together with associated petroleum liquids, they now comprise only 37.1 percent of the state's known measured energy reserves. [14]

Although the bulk of recent legislation affecting oil and gas, including the decontrol of energy prices, has been at the federal level, a few significant measures have been enacted at the state level. The 1st Called Session of the 63rd Legislature, meeting in December, 1973, at a time of worrisome gasoline shortages, enacted Senate Bill 1, which indirectly empowered the State Highway and Public Transportation Commission to set speed limits at 55 miles per hour. Another fuel conservation measure,
<table>
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<th>Year</th>
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<th>Lignite</th>
<th>Uranium</th>
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<td>7.725</td>
<td>0.154</td>
<td>0.240</td>
<td>0.016</td>
<td>15.222</td>
</tr>
<tr>
<td>1976</td>
<td>6.899</td>
<td>7.422</td>
<td>0.197</td>
<td>0.283</td>
<td>0.009</td>
<td>14.819</td>
</tr>
<tr>
<td>1977</td>
<td>6.600</td>
<td>7.277</td>
<td>0.222</td>
<td>0.304</td>
<td>0.012</td>
<td>14.415</td>
</tr>
<tr>
<td>1978</td>
<td>6.238</td>
<td>6.758</td>
<td>0.270</td>
<td>0.704</td>
<td>0.008</td>
<td>13.968</td>
</tr>
<tr>
<td>1979</td>
<td>5.873</td>
<td>6.678</td>
<td>0.320</td>
<td>1.008</td>
<td>0.008</td>
<td>13.513</td>
</tr>
<tr>
<td>1980</td>
<td>5.477</td>
<td>6.595</td>
<td>0.345</td>
<td>1.088</td>
<td>0.008</td>
<td>13.513</td>
</tr>
</tbody>
</table>

2000 | 4.195     | 5.233       | 2.905   | 1.024   | 0.008 | 13.365

*Projected

Notes: The figures above exclude solar, wind, and certain other alternative energy resources, whose historical use has been negligible and whose future potential is calculated separately by TENRAC. Alternative energy projections for the year 2000 are somewhat speculative, according to TENRAC, with an upper limit of about two quads, given extremely favorable market conditions. The figures above also exclude energy imports. For sake of comparison, Texas' energy demand in 1980 was about 7.3 quads, resulting in a net surplus of energy supplies of about 5.8 quads.

House Bill 1499, passed by the 67th Legislature in 1981, provided the governor with authority and administrative mechanisms by which to respond to energy emergencies. In the event of temporary shortages of oil or liquid fuels, the governor could take steps to reduce demand or to allocate supply. On the production side of the energy equation, a pair of minor measures--House Bill 1159, enacted by the 63rd Legislature in 1973, and House Bill 1457, enacted by the 67th Legislature in 1981--have facilitated the leasing of land for oil and gas when the surface owner is either unknown or absentee. The former affected strictly private land; the latter, "Relinquishment Act" land for which the state owns the mineral interest.

The energy resources with the most growth potential over the next 20 years are lignite and uranium. Lignite occurs in three geological formations, [15] stretching in several belts from approximately Eagle Pass and Laredo to the Louisiana border in the vicinity of Texarkana, Marshall, and Lufkin. The most extensive and better grade deposits are found in East Texas, and consequently most mining operations are situated in that area. Electric power generation, the main energy output associated with lignite, is necessarily tied very closely to the mine sites because the energy value of lignite is not high enough to make its long-distance transportation economical. Figure 1 shows the location of current and planned lignite-fired power plants.

Uranium, discovered in Texas in 1954, occurs in six regions scattered throughout the state. Virtually all proven reserves, however, are found in South Texas. [16] Uranium recovery operations are now under way or anticipated in seven counties. [17] Texas now has nuclear power plants being constructed in Matagorda and Somervell counties, with another planned for Waller County. [18] The state's current production of uranium would easily suffice to supply these plants, with enough left over for export out of state. [19] Figure 1 also shows the location of uranium recovery operations and the three planned nuclear power plants.

As depicted in Table 2, production of lignite and uranium was virtually zero at the beginning of the 1970's. By the end of the century, though, according to TENRAC projections, lignite and uranium will have supplanted a large share of the energy supply formerly provided by oil and gas. The 2.905-quad and 1.024-quad figures for the two fuels represent a combined 29.4 percent of the Texas energy supply for the year 2000. Since as recently as 1977, while oil and gas reserves have steadily decreased, combined reserves (i.e., known measured reserves) of lignite and uranium have grown from 111 to 165 quads. [20]
FIGURE 1. LIGNITE AND NUCLEAR ENERGY IN TEXAS

LEGEND
○ Lignite Plants
○ Nuclear Plants
□ Counties with Uranium Recovery

Texas also has minor deposits of bituminous coal, located in the Rio Grande, trans-Pecos, and North Central Texas areas. [21] These deposits have thin seams and a high sulfur content, [22] which preclude their playing as major a role as lignite and uranium in the overall Texas energy picture. Known measured reserves amount to only seven quads. [23] Most coal used for electric generation in Texas will instead come from Wyoming, Montana, and perhaps other areas, depending on relative severance taxes and transportation rates. Senate Bill 185, passed by the 65th Legislature in 1977, nominally influenced the transportation of coal from western states by granting coal slurry pipelines passing through Texas the right of eminent domain. The measure has had little practical effect, however, because of perceived shortages of water in the shipping states with which to mix the coal slurry.

Development of Texas' own lignite, uranium, and coal reserves has entailed legislation to regulate their mining, and particularly to regulate surface mining that requires adequate land reclamation measures. East Texas lignite is recovered via strip mining, much as is the case with western coal, but with the advantage of more plentiful rainfall which better lends itself to revegetation of the reclaimed land. Recovery of South Texas uranium, found in a drier area of the state, is conducted only partly by means of conventional surface mining. Since 1975, there has been some shift toward an alternative recovery method for uranium, "in situ" mining. In this process, which minimizes surface disturbance and has certain other economic advantages, a chemical solvent is pumped into the underground ore via injection wells and the resulting uranium-laden solution is then extracted via separate withdrawal wells. [24] Potential exists for use of similar in situ methods with regard to lignite, particularly those "deep-basin" deposits lying below strip-mining depth. In this instance, the lignite itself is not extracted. Rather, a gaseous mixture is introduced into the lignite seam, combustion occurs underground, and volatile gases are then withdrawn to be used for generation of electric power or other purposes. [25]

Enactments by the last five legislatures cover these various recovery methods. Aware that lignite and uranium mining in the state would be expanding, the 63rd Legislature in 1973 created a Joint Interim Surface Mining Operations Study Committee (House Concurrent Resolution 16). After extensive deliberations, the committee reported to the 64th Legislature a proposed bill that formed the basis for eventual passage in 1975 of Senate Bill 55, the Texas Surface Mining and Reclamation Act. That act, affecting the exploration and mining of lignite, coal, and uranium, placed associated permitting and regulatory authority within the Railroad Commission of Texas.
The state's 1975 surface mining act preceded federal legislation on the subject, but in 1977 Congress enacted the national Surface Mining Control and Reclamation Act. The federal legislation necessitated amendments to the Texas law, in order for the railroad commission to gain approval from the United States Department of the Interior for state administration of a surface mining regulatory program. The federal law pertained only to coal and lignite, not to uranium. It required more rigorous reclamation standards than the state law and contained certain other provisions, including a requirement that mined land be restored to its original condition or to some "higher and better" use.

In response, the 66th Legislature in 1979 enacted a set of three bills (House Bills 1424, 1368, and 1814) revising the state's surface mining and reclamation laws. The first of these, House Bill 1424, enacted an entirely new Texas Surface Coal Mining and Reclamation Act in conformity with federal requirements. It included provision for regulation of surface activities associated with in situ lignite operations. Based on the new act, Texas received approval for its regulatory program on February 11, 1980, becoming the first state to do so. [26]

House Bill 1368 and House Bill 1814 amended the Texas Surface Mining and Reclamation Act of 1975 to limit its uranium surface mining. Under the Uranium Surface Mining and Reclamation Act (House Bill 1368), as the former legislation was retitled, the railroad commission retained regulatory authority over surface mining of uranium. It did not retain authority over in situ extraction, which was expressly excluded from the act's coverage. This regulatory gap was filled two years later, by the 67th Legislature's passage of legislation expanding the state's authority over injection wells. Under House Bill 1379, enacted in 1981, regulation of injection wells used for in situ mining of uranium fell to the Texas Department of Water Resources.

Lignite is one of six energy resources encouraged by the 65th Legislature's passage of House Bill 1799, the Texas Energy Development Act of 1977. That act created an energy development fund to support research in and development of solar, geothermal, lignite, biomass, wind, conservation, and other alternative energy resources. It authorized $5 million in fund expenditures for these purposes.

The energy development fund was placed originally under the control of TEAC but was transferred to TENRAC when the latter agency was created in 1979. TEAC established five criteria for energy projects to be supported by the fund. They (1) had to be specifically applicable to the Texas energy situation; (2) had to bring alternative energy technology closer to commercialization;
Texas has considerable potential for the development of renewable and other (i.e., geothermal energy, which is not entirely renewable) alternative energy resources. TENRAC projects that by 1990 solar radiant energy, wind energy, biomass, geothermal energy, and hydropower will supply about 0.251 quads per year on a statewide basis. Major markets for these energy resources consist of: (1) residential, commercial, and industrial water heating; (2) space heating and cooling; (3) production of electricity; and (4) production of transportation fuel. Energy demand for such purposes is much higher than the cited supply figure, and if renewable resources make a major penetration of the four markets, their use statewide could increase to as much as two quads per year by the end of the century. [29]

Insolation, a measure of solar radiation, varies from place to place depending on relative cloud cover and varies from season to season depending on the angle at which the sun's rays strike the earth's surface. In Texas, average annual insolation increases progressively from east to west, from a minimum of about 5.73 million Btu's to a maximum of about 7.76 million Btu's per square meter of land surface. The El Paso area, with its sunny skies, is the state's most favorable location for exploitation of solar radiant energy. [30]

The amount of wind energy varies with the cube of the wind speed, which in turn is influenced by topography, height above the ground, and other factors. The Texas Panhandle, with its flat, unobstructed plains, is among the most favorable sites in the entire nation for the development of wind energy. Estimated annual wind energy potential near Amarillo, for example, exceeds 6.55 million Btu's per square meter of vertical collection area, compared to about one-third that amount in an arc-shaped region including El Paso, San Antonio, and much of East Texas. The region immediately southeast of the Panhandle, including Wichita Falls, is also an above-average location for the harnessing of wind energy, as is the breezy Gulf Coast from Brownsville to Port Lavaca. [31]

Biomass, including organic waste matter generated by municipal, industrial, and agricultural sources, has received
TABLE 3. ENERGY DEVELOPMENT FUND:

Research and Development Expenditures, Fiscal Year 1980-81

<table>
<thead>
<tr>
<th>Projects</th>
<th>TENRAC Funding</th>
<th>Other Funding</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation</td>
<td>$199,478</td>
<td>$93,203</td>
<td>$292,681</td>
</tr>
<tr>
<td>Solar</td>
<td>346,474</td>
<td>169,333</td>
<td>515,807</td>
</tr>
<tr>
<td>Wind</td>
<td>85,034</td>
<td>183,400</td>
<td>268,434</td>
</tr>
<tr>
<td>Biomass</td>
<td>464,926</td>
<td>810,814</td>
<td>1,275,740</td>
</tr>
<tr>
<td>Geothermal</td>
<td>27,907</td>
<td>163,924</td>
<td>191,831</td>
</tr>
<tr>
<td>Lignite</td>
<td>438,122</td>
<td>163,064</td>
<td>601,186</td>
</tr>
<tr>
<td>University Coal Lab</td>
<td>56,349</td>
<td>50,000</td>
<td>106,349</td>
</tr>
</tbody>
</table>

$1,618,290 $1,633,738 $3,252,028

increasing attention as an energy resource. Texas produces roughly .350 quads of biomass waste per year, including about .270 quads of agricultural crop residues that are normally left in the field after harvest. [32] Texas farmers in particular have emphasized the potential for converting these residues to ethanol (i.e., ethyl alcohol) and blending the ethanol with gasoline to form gasohol. Agricultural residues, an indirect form of solar energy, could thereby buffer the effects of depletion of Texas' nonrenewable oil supplies. In the future, special agricultural crops might also be grown solely for their energy content.

The state's main geothermal energy resources are found in geopressure regions of the coastal plain, seaward of a line running approximately from Zapata to Silsbee. Geopressure resources in this region consist of the hydrothermal energy of saline water heated up to 400 degrees Fahrenheit, the hydraulic energy due to the water’s pressurization, and the stored chemical energy of methane dissolved in the water. Recent estimates indicate that ultimate production might equal 65 quads, although test drilling efforts have been somewhat unfavorable and the potential for economic recovery in the near future remains speculative. Minor, purely hydrothermal resources, with water ranging from about 150 degrees to 350 degrees Fahrenheit, are found elsewhere in Texas. These resources could be tapped locally for direct water or space heating. [33] The geopressure energy resources located along the coast and the high-temperature hydrothermal resources located in extreme West Texas are essentially nonrenewable. The low-temperature hydrothermal resources located in other parts of the state have their waters recharged continually from the surface and are therefore renewable. [34]

Recent legislatures have encouraged the development of all of these alternative energy sources. House Bill 546, enacted by the 64th Legislature in 1975 and amended slightly by the 65th Legislature two years later (House Bill 858), established several tax breaks designed to promote the use of solar and wind energy devices. Such devices were exempted from the sales tax; corporations manufacturing, selling, or installing them were exempted from the corporate franchise tax; and other corporations using them were allowed to deduct their value from taxable capital subject to the franchise tax. Following this lead, the 65th Legislature in 1977 adopted Senate Joint Resolution 53 proposing a constitutional amendment to exempt solar and wind energy devices from any taxation whatsoever. Texas voters approved the amendment in November, 1978, and consequently the 66th Legislature in 1979 via Senate Bill 204 broadened the exemption to include local and state property taxes.

Two 1981 measures affecting the state's energy development
fund provided for special demonstration programs related to thermal applications of solar radiant energy. Senate Bill 691, enacted by the 67th Legislature, removed the original $5 million ceiling on the fund. It authorized a program to demonstrate the solar generation of heat to be used for industrial purposes. House Bill 1154, meanwhile, authorized a program to demonstrate the solar generation of steam to be used in an electric power plant. In both cases, the necessary high temperatures would be attained by a field of mirrors focusing on a central receiver and heat exchanger.

The manufacture of fuel alcohol from biomass was illegal under Texas liquor laws until 1979. In that year the 66th Legislature enacted House Bill 1986 authorizing the Texas Alcoholic Beverage Commission to issue local alcohol manufacturer's permits under which a permit holder could produce alcohol for fuel or industrial purposes. A related measure from the same legislature, House Bill 1803, allowed the Texas Industrial Commission to make loans of up to $500,000 for the establishment of plants to produce alcohol from agricultural products. Senate Bill 228, passed by the 67th Legislature in 1981, authorized the commissioner of agriculture to establish standards of quality and purity for alcohol used in motor fuel. Senate Bill 14, enacted during the 1st called session of the 67th Legislature, established a declining temporary exemption from motor fuel taxes for sales of gasohol. It provided for a full five-cent tax credit from 1982 through 1986, with the credit then decreasing by one cent a year through 1990 and expiring at the beginning of 1991. The 1979 property tax exemption for solar energy devices, which was made applicable to biomass energy, provided yet another incentive to Texas' fledgling gasohol industry. As of late 1980, the state had issued 160 local industrial alcohol manufacturer's permits, and about 25 alcohol plants were in various stages of planning, construction, or operation. [35]

The Geothermal Resources Act of 1975, enacted by the 64th Legislature (Senate Bill 685), dealt with the last-mentioned alternative energy resource. It charged the Railroad Commission of Texas with regulating, for purposes of conservation and protection of correlative rights, the exploration, development, and production of geothermal energy on public and private land. The commission's geothermal responsibilities, added to those associated with surface mining of lignite and uranium, gave it two new energy-related duties beyond its traditional concern with oil and gas.
Water Resources

Precipitation, which produces surface runoff as well as recharge of underground aquifers, is the ultimate source of Texas' renewable water resources. Precipitation varies widely within the state, ranging from an annual average of 56 inches near Orange to an annual average of only 8 inches near El Paso. [36] This steep decline from east to west, together with the southeasterly flow of most Texas rivers, means that water is a particularly precious commodity in the western portions of the state.

Statewide, yearly precipitation averages about 28 inches. [37] Resultant runoff, collected in 15 major river basins and 8 coastal basins, produces about 49 million acre-feet of surface water annually. Only some of this amount is directly usable, its availability being dependent on storage in surface reservoirs. Currently, Texas has some 174 major reservoirs, plus another 10 under construction. When completed, these reservoirs will have a combined storage capacity for conservation purposes of 32.3 million acre-feet. Reserve storage capacity, if necessary for purposes of flood control, will equal another 17.5 million acre-feet. [38]

The most telling statistic with regard to surface water resources, however, is the firm or dependable supply. This amount, defined as the uniform annual yield that can be withdrawn even in the event of an extended drought, equals approximately 11 million acre-feet statewide. Construction of an additional 65 potential reservoirs identified by state water officials would raise the firm supply to 15.3 million acre-feet. [39]

Groundwater storage in Texas greatly exceeds surface water storage, yet the firm supply based on annual average effective recharge is lower. The state has 7 major aquifers and 17 minor ones, with a total storage that has not been completely determined but that is well in excess of 400 million acre-feet. The firm supply from these aquifers is 5.1 million acre-feet, for a total firm supply of 16.1 million acre-feet including both surface water and groundwater resources. Construction of the 65 proposed reservoirs would increase this amount to 20.4 million acre-feet, [40] as shown in Table 4.

The distribution and size of groundwater resources depends not only on relative precipitation and resultant recharge, but also on relative surface or subsurface characteristics that may favor or retard the collection of water. It is possible, based on such geologic characteristics, for an aquifer to hold a large volume of water while simultaneously allowing only a minimal amount of effective recharge. The prime example in Texas is the mammoth
<table>
<thead>
<tr>
<th></th>
<th>Surface Water</th>
<th>Groundwater</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Firm Supply:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current</td>
<td>11.0</td>
<td>5.1</td>
<td>16.1</td>
</tr>
<tr>
<td>With Proposed Reservoirs</td>
<td>15.3</td>
<td>5.1</td>
<td>20.4</td>
</tr>
<tr>
<td><strong>Current Use:</strong></td>
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<tr>
<td>Irrigation</td>
<td>2.70</td>
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</tr>
<tr>
<td>Municipal</td>
<td>1.68</td>
<td>1.68</td>
<td>3.36</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>1.25</td>
<td>0.54</td>
<td>1.79</td>
</tr>
<tr>
<td>Steam-Electric Power</td>
<td>0.33</td>
<td>0.12</td>
<td>0.45</td>
</tr>
<tr>
<td>Livestock</td>
<td>0.18</td>
<td>0.14</td>
<td>0.32</td>
</tr>
<tr>
<td>Mining</td>
<td>0.06</td>
<td>0.20</td>
<td>0.26</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>6.20</td>
<td>13.08</td>
<td>19.28</td>
</tr>
</tbody>
</table>

Notes: The firm or dependable water supply equals the safe annual yield. In the case of surface water, it is the amount that is available even in drought years. In the case of groundwater, it is the amount that is available based on aquifer recharge rates and certain other factors. Recent newspaper articles on the proposed constitutional amendment (i.e., the water trust fund), citing a potential future surface-water supply of 22 million acre-feet, use a definition other than the firm supply.

Ogallala formation situated beneath the High Plains. Over the geological and historical past, it achieved saturation levels as high as about 400 million acre-feet, [41] but because of the relative impermeability of overlying soils, effective recharge averages only 298.2 thousand acre-feet annually. [42]

Low recharge rates notwithstanding, the very presence of sizeable groundwater deposits encourages their intensive use, particularly for agricultural purposes in areas of low rainfall. Consequent withdrawals of groundwater in excess of replenishment rates explain an anomaly in Table 4, namely that current water use in Texas exceeds the firm supply. About 8 million acre-feet of the water used for irrigation, in fact, is taken from the Ogallala Aquifer. [43] The inevitable depletion of this groundwater resource, at a rate more than 25 times the effective recharge, mirrors the depletion of the state's nonrenewable energy reserves such as oil and gas.

Use of surface water, in contrast to the situation with groundwater, falls well short of the firm supply. The current figure of 6.20 million acre-feet represents only about 56 percent of the available amount. This apparent statewide surplus of 4.80 million acre-feet, however, may hide localized shortages. Moreover, a significant portion of the surplus is committed to meet future growth in nonirrigation water needs. [44]

Water use for purposes other than irrigation totals about 6.18 million acre-feet, almost exactly equal to the current supply of surface water. Municipal withdrawals constitute the largest nonirrigation use of water, equalling 3.36 million acre-feet or 17.5 percent of total use. This amount represents approximately 211 gallons per Texan per day, based on 1980 census figures. [45] Manufacturing ranks second among the nonirrigation use categories, followed by steam-electric power. The latter, which consumes only about 450,000 acre-feet annually, may be expected to expand due to cooling and other water requirements associated with development of lignite, coal, and nuclear power. The anticipated statewide capacity of lignite-fired, coal-fired, and nuclear power plants in the year 2000 is 51,250 megawatts, requiring 852,000 acre-feet of water per year. [46] Water use for livestock and mining purposes trails that of the other categories, representing only a combined three percent of total use.

Intertwined with the issue of water quantity is the issue of water quality. Recent water-quality legislation at the federal level includes the Federal Water Pollution Control Act of 1972, the Safe Drinking Water Act passed in 1974, and the Clean Water Act of 1977. At the state level, responsibility for protection of water quality is vested primarily in the Texas Department of Health and
the Texas Department of Water Resources. The former protects the purity of drinking water, while the latter is responsible generally for water quality management and pollution abatement. Certain other state agencies also have authority in this area, notably the Railroad Commission of Texas, the State Soil and Water Conservation Board, the Texas Parks and Wildlife Department, and the General Land Office. [47]

Major water legislation during the last five biennial sessions has dealt primarily with reorganization of state water administration and with financing of water-development and water-quality projects. Impetus for administrative reorganization arose as a result of studies by the Joint Advisory Committee on Government Operations (the "Hobby-Clayton Commission") and by the House Committee on Natural Resources. Recommendations of the two committees, presented to the 65th Legislature in 1977, differed somewhat from one another. Their common design, however, was to (1) separate water rights adjudication from other aspects of water administration; (2) simplify the water permit process; and (3) reduce duplicative water-related personnel and functions. [48]

The result of these efforts was the 65th Legislature's passage of Senate Bill 1139 consolidating the state's several water agencies into a unified Texas Department of Water Resources. Under the realignment, the powers of the department are divided into legislative, judicial, and executive functions, although the authorities responsible for those functions all literally share the same roof. The part-time, six-member Texas Water Development Board exercises legislative-type functions related to water development and water quality, the full-time, three-member Texas Water Commission exercises judicial-type functions related to adjudication of water rights, and the executive director of the department exercises executive-type functions related to administration of policies, regulations, and orders set by the board and commission.

State financing of water projects was authorized by successive constitutional amendments dating back to 1957. Under Article III, Sections 49-c and 49-d, of the Texas Constitution, as amended through 1966, the Texas Water Development Board was authorized to issue up to $400 million in bonds for purposes of funding water development projects. Under Section 49-d-1 of the same article, as added in 1971, the board was authorized to issue an additional $100 million in bonds for purposes of water quality enhancement.

In 1975 the 64th Legislature proposed two constitutional amendments to double these respective amounts. An amendment proposed by Senate Joint Resolution 49, which would have increased
the maximum for water development bonds by another $400 million, was rejected by Texas voters in 1976. In contrast, voters approved an amendment proposed by House Joint Resolution 99, which increased the maximum for water-quality enhancement bonds by an additional $100 million. Thus, under its present constitutional authorization, the Texas Water Development Board may issue bonds for the latter purpose in amounts up to $200 million.

By 1981 the state had issued $281.3 million in water-development bonds and $100 million in water-quality bonds. Further issuance was stalled by a constitutional provision limiting interest rates on the bonds to 6 percent per annum. Pending, moreover, was about $44.2 billion worth of proposed reservoirs, well field development projects, and conveyance and treatment facilities, primarily to support municipal and industrial uses of water. [49]

Based on these perceived needs, the 67th Legislature during its 1st called session adopted House Joint Resolution 6, proposing a constitutional amendment to augment state funding of water projects. The proposed amendment, together with enabling legislation contained in House Bill 8, would have dedicated part of the state's biennial surplus revenue to special funds to be used to support water development, water conservation, water quality enhancement, and flood control. In November, 1981, however, Texas voters rejected the proposed amendment, leaving water financing rather high and dry for the moment and in search of an alternative approach.

The legislature dealt more successfully with local water-related problems afflicting the Houston-Galveston vicinity. Heavy dependence on groundwater in that area, leading to compaction of subsurface strata as the water was withdrawn, had by 1973 caused considerable subsidence, or sinking, of the land surface. Subsidence centered at Pasadena, for example, had lowered the land surface by as much as 7.5 feet over the preceding 30 years. Such a trend left low-lying coastal areas more susceptible to catastrophic flooding during a hurricane, and even prone to minor flooding from the normal fluctuation of the tide. Decline of the underground water table also foretold possible future water shortages. [50]

The 63rd Legislature in 1973 responded by enacting House Bill 935 authorizing the creation of underground water districts for purposes of preventing subsidence and enacting House Bill 705 directing an investigation of the problem that would assist in formulating a solution. Two years later, after additional study, the 64th Legislature in House Bill 552 created the Harris-Galveston Coastal Subsidence District. The district, empowered to limit groundwater pumpage and to regulate the spacing of wells, received
substantial cooperation from local industries and by 1979
subsidence in the most heavily afflicted areas had been reduced to
negligible amounts. Meanwhile, the city of Houston embarked on a
program to improve access to alternative, nearby surface-water
resources. [51]

As for the Ogallala Aquifer and the High Plains, that area is
the subject of a six-state study authorized by the federal Water
Resources Development Act of 1976 and being undertaken by the
United States Army Corps of Engineers. [52] A recent report by the
corps has investigated the possibility of importing replacement
water supplies from Arkansas, [53] a variation on importation
schemes that have been proposed throughout the last 15 years. The
66th Legislature in 1979 established part of the institutional
framework for such a scheme, enacting House Bill 2205 authorizing
the creation of an Ogallala Water Import Authority contingent on
approval by a local election and the meeting of certain other
criteria.

Another means of West Texas water augmentation, weather
modification, was similarly left to the discretion of the local
electorate. Although state law regulated persons engaged in
weather modification by requiring them to secure a permit, concern
had arisen among affected residents and farmers that modification
efforts that conferred advantages in one area might cause
offsetting adverse reactions in surrounding areas. Senate Bill
632, enacted by the 65th Legislature in 1977, therefore required
that voters in a proposed weather modification area approve the
issuance of the permit.

Atmospheric Resources

No less vital to human well-being than an adequate,
reasonably pure supply of water is an adequate, reasonably pure
supply of air. Each day, in the course of normal respiration, the
average Texan breathes about 30 pounds of air. [54] Unlike
drinking water, there is no way to clean this air at centralized
treatment plants prior to its consumption. Thus, preservation of
air quality requires controls at the sources generating pollutants.

It is only in recent decades that the atmosphere has come to
be regarded as other than a free, self-sustained resource. Temporary episodes of pollution and their immediate health effects are not the only problem affecting the earth's air. Since the early 1970's, scientists have voiced increasing concern over buildup of atmospheric carbon dioxide, with possible adverse consequences to the climate, and over attrition of the upper atmospheric ozone layer that protects against ultraviolet
radiation.

In terms of national and state law, though, the focus of attention has been the conflict between the use of the atmosphere and its oxygen for breathing and the use of the atmosphere and its cleansing rainfall cycle for disposal of pollutants by industries and motorists. As increased controls have been placed on the latter in order to preserve the former, the appropriation of atmospheric resources has begun to resemble the more traditional appropriation of water resources.

The basic legal framework for protection against air pollution consists of the national ambient air quality standards promulgated by the United States Environmental Protection Agency (EPA). These standards, which cover six pollutants, are listed in Table 5. The table also cites those locales in Texas where there have been difficulties in attaining the standards. Nationwide attainment by the end of 1982 is a goal of the federal Clean Air Act.

Prior to 1973, air pollution monitoring and regulation was the responsibility of the Texas Air Control Board, then a division within the state health agency. In 1973, though, the 63rd Legislature enacted House Bill 739 establishing the Texas Air Control Board (TACB) as a fully independent state agency. The TACB is responsible for the development and maintenance of a state implementation plan, consistent with federal statutes, for protection of air quality.

Amendments to the federal Clean Air Act in 1977 necessitated certain modifications to the TACB's authority. Those modifications were accomplished through the 66th Legislature's passage of House Bill 726 in 1979. This measure constitutes Texas' most recent legislation in the field of air-quality protection.

A special issue that challenged the legislature and TACB in 1979 was the problem of ozone pollution in Houston. Although the EPA had relaxed the ozone standard in February of that year, [55] and although progress regarding ozone pollution is being made in other areas of the state, Houston is unlikely to meet the 1982 deadline for attainment of the standard. The TACB requested and was granted an extension by EPA until 1987 to provide additional time to accomplish needed emission reductions. Under federal law, however, an extension is conditioned on the implementation of a mandatory vehicle inspection and maintenance program in the area, with the risk of certain sanctions in the event of nonimplementation. [56]

Based on enabling legislation contained in House Bill 726,
<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Standards*</th>
<th>Problem Areas in Texas, 1979</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Type</td>
<td>Amount</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>P(AAM)</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>P(24H)</td>
<td>365</td>
</tr>
<tr>
<td></td>
<td>S(3H)</td>
<td>1,300</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>P(AGM)</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>S(AGM)</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>P(24H)</td>
<td>260</td>
</tr>
<tr>
<td></td>
<td>S(24H)</td>
<td>150</td>
</tr>
<tr>
<td>Carbon monoxide</td>
<td>P(8H)</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>S(8H)</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>P(1H)</td>
<td>40,000</td>
</tr>
<tr>
<td></td>
<td>S(1H)</td>
<td>40,000</td>
</tr>
<tr>
<td>Ozone</td>
<td>P(1HX)</td>
<td>235</td>
</tr>
<tr>
<td></td>
<td>S(1HX)</td>
<td>235</td>
</tr>
<tr>
<td>Nitrogen dioxide</td>
<td>P(AAM)</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>S(AAM)</td>
<td>100</td>
</tr>
<tr>
<td>Lead</td>
<td>P(QAM)</td>
<td>1.5</td>
</tr>
<tr>
<td></td>
<td>S(QAM)</td>
<td>1.5</td>
</tr>
</tbody>
</table>

*All standards are in micrograms per cubic meter.

P - Primary standard (health)
S - Secondary standard (other adverse effects)
(AAM) - Annual arithmetic mean
(AGM) - Annual geometric mean
(QAM) - Maximum arithmetic mean averaged over a calendar quarter
(1H) - Maximum 1-hour concentration, not to be exceeded more than once per year
(1HX) - Maximum hourly average concentration, not to be exceeded more than one day per year
(3H) - Maximum 3-hour concentration, not to be exceeded more than once per year
(24H) - Maximum 24-hour concentration, not to be exceeded more than once per year

the state conducted a pilot vehicle-testing program in Harris County from 1979 to 1981. Findings from the pilot program led the TACB to recommend against a mandatory program, [57] a position that the 67th Legislature effectively endorsed in 1981 by not further amending the state's clean air act. Whether this stance will result in sanctions depends on possible revisions to the federal law, which was scheduled for reauthorization in 1981.

**Biological Resources**

Besides the domesticated animals, agricultural crops, and forests tended and harvested systematically for food and fiber, there are hosts of other biological resources that thrive in a somewhat wilder state of nature. These resources, despite their relative wildness, are in no way insulated from human activity. Rather, they serve a variety of important functions, even if on a daily basis those functions sometimes pass unnoticed. Selected game animals and fish species supplement food supplies, while birds and certain other animals prey on insect pests. Plants, via transpiration, replenish atmospheric oxygen while consuming carbon dioxide. Obscure plant species lie undisturbed for decades waiting for their economic potential to be realized, as with the desert guayule plant native to South Texas, which may be tapped as a source of natural rubber. [58] Texas, in keeping with its tradition as the winter nesting ground for the endangered whooping crane, has an obvious, vested interest in the conservation of its biological resources.

Management of animal and plant wildlife at the state level is the general responsibility of the Texas Parks and Wildlife Department. The department regulates the hunting and taking of many game and commercial species, including the shrimp and oysters that are so important to the state's fishing industry.

The state's coastal management program, mentioned at the beginning of this report, highlighted several issues related to the protection of coastal biological resources. Though the Texas program never reached full fruition and has dissolved in the face of discontinued federal funding, it nonetheless contributed to the passage of several related pieces of legislation. The Texas Dune Protection Act of 1973, Senate Bill 268 enacted by the 63rd Legislature, was directed to the preservation of dune-stabilizing vegetation that contributes indirectly to the shielding and protection of the coastal shorefront. The act authorized the establishment of dune protection lines and the designation of critical dune areas for purposes of evaluating building permit applications in protected dune areas. Also, Senate Bill 137, enacted by the 64th Legislature in 1975, directed state water
agencies (since consolidated as the Texas Department of Water Resources) to study the contribution of freshwater inflows to biological activity in coastal bays and estuaries, and to take these contributions into account when granting permits for upland diversions of surface water. Rivers flowing into coastal areas, far from being a waste of unused surface water, provide certain nutrients and flushing actions that are vital to the maintenance of the state's saltwater fisheries. [59] Senate Bill 578, enacted by the 65th Legislature in 1977, authorized state acquisition of coastal wetlands likewise deemed valuable to coastal biological productivity.

The 63rd Legislature in 1973 enacted a general measure to protect endangered species, House Bill 260. Other, more specifically focused measures, while not necessarily directed toward species that were actually endangered, have been directed toward animals and plants reduced in number by aggressive human exploitation. The 67th Legislature, in particular, passed three such measures in 1981. House Bill 1000, following on the heels of earlier, less stringent legislation, [60] placed a moratorium on the commercial fishing of redfish and speckled sea trout. Inventories by the Texas Parks and Wildlife Department had indicated sharp declines in the catch of these fish since the mid-1970's, while offsetting increases in the value of the catch had exacerbated the fishing pressures affecting them. [61] House Bill 1831, meanwhile, expanded the department's management authority with respect to fur-bearing animals, owing to a fivefold increase since 1972 in the harvest of animal pelts and a tenfold increase in the number of licensed fur trappers. [62] Finally, as a response to the "rustling" of cactus plants in West Texas, [63] House Bill 2102 authorized the compilation of a statewide list of endangered, threatened, or protected native plant species, and a prohibition against the taking of these plants for commercial purposes from public or private (without the owner's consent) land. Such biological conservation measures comprise an important component of the natural resource legislation enacted in Texas between 1973 and 1981.
References

2. Vernon's Texas Civil Statutes, Article 4413(32a), Section 3.
5. General Land Office, op. cit., pp. 34, 81.
10. TENRAC, op. cit., p. 103.
17. TENRAC, op. cit., p. 25; "Uranium Production in Texas", p. 7; University of Texas at Austin, Bureau of Economic Geology, South Texas Uranium Province: Geology and Extraction, 1976, p. 3.
18. TENRAC, op. cit., p. 27.
19. "Uranium Production in Texas", p. 7. The Texas Energy Report's claim of excess uranium supplies is based on a projected 6 million pounds of uranium oxide in 1980. This is less than the 1.088 quads cited in Table 2, which equals approximately 6.8 million pounds based on the
conversion factors in TENRAC, op. cit., p. 95.
29. TENRAC, op. cit., pp. 30-31, 73.
30. Robert J. King, Alternatives to the Energy Crisis, Governor's Energy Advisory Council, 1977, pp. 15-18; TENRAC, op. cit., pp. 30, 32. The figures are converted from those of King, given in Btu's per square foot per day.
31. King, op. cit., pp. 19-20; TENRAC, op. cit., pp. 34-36. The Amarillo figure is converted from that of King, given in kilowatt-hours per square meter per year.
34. Christopher Caran, University of Texas at Austin, Bureau of Economic Geology.
35. Texas Legislature, House Committee on Agriculture and Livestock, Interim Report to the 67th Legislature, 1980, p. 76.
37. Ibid.
39. Ibid., p. 5.
41. The estimated recoverable storage of the Ogallala Aquifer in 1974 was 281.7 million acre-feet. TDWR, *Ground Water Availability*, p. 2. However, withdrawals have exceeded five million acre-feet annually since at least 1958 and have probably exceeded one million acre-feet since the late 1940's. Conway Chris Kuykendall, *Agricultural Implications of Groundwater Depletion in the Texas High Plains*, independent research report, University of Texas at Austin, Lyndon B. Johnson School of Public Affairs, 1978, pp. 46-47. These withdrawals contrast with the much lower recharge rate referenced in note 42 below.
42. TDWR, *Ground Water Availability*, p. 2.
53. Houston Post, October 8, 1981.
55. 44 Fed. Reg. 8202 (February 8, 1979).
57. Ibid., pp. 12-13, 27-32.
58. Fort Worth Star-Telegram, February 5, 1981.
60. The Red Drum Conservation Act, Senate Bill 624 enacted by the 65th Legislature in 1975, established special permits for a major type of redfish. Senate Bill 64, enacted by the 66th Legislature in 1979, placed seasonal limitations on trawling for redfish or speckled sea trout.


PUBLIC AND HIGHER EDUCATION

Introduction

Financing Texas public and higher education systems and providing high-quality education for minority students have been the two major issues in the fields of public education and higher education throughout the five legislative sessions between 1973 and 1981.

Public school finance was a major controversy faced by the 63rd, 64th, 65th, and 66th legislatures, and disagreement on the matter resulted in a special session in 1977. (Unless otherwise indicated, sessions referred to are regular sessions.) Senate Bill 350, passed by the 66th Legislature, provides a major revision in the Foundation School Program that includes a method for upgrading the quality of education of students in school districts with a low tax base and little local money supporting public education.

Bilingual education programs also were the subject of major criticism and underwent major changes throughout the five sessions. State support for local programs in grades 1 through 6 was initiated in 1973, the requirements were changed to grades 1 through 3 in 1975, related bills were introduced in both 1977 and 1979, and the program was expanded in 1981 to provide state funds and support for students in kindergarten through 12th grade.

In other important areas relating to public education, the legislature initiated or substantially expanded programs in adult education and community education, programs for the handicapped, programs for gifted and talented students, and programs and procedures, including competency testing for students and teachers, to improve the quality of a basic public primary and secondary school education in Texas. The legislature also returned the operation of school districts to the semester system.

In the area of higher education, providing funds for the state system was again an important issue. The legislature, however, has not been as successful in addressing the problem, and currently 17 state universities have no funds for major construction and repair of facilities on their campuses. At the same time, the state's permanent university fund, which supports construction at The University of Texas and Texas A&M systems, has
grown into the richest endowment fund in the United States with more than $1.5 billion in investments and more than 2 million acres of land in West Texas.

The state is also facing a major problem in determining the best method to provide high-quality college educations for black and other minority students and in improving the facilities and programs offered by Prairie View A&M University and Texas Southern University.

Important accomplishments in the field of higher education include increased state support for loan and grant programs for students, increased salaries for professors, and increased support for medical education. Texas has a critical shortage of doctors in many poor and rural counties, and the legislature has responded by creating a new program of aid for family practice residency training, the State Rural Medical Education Board, and important financial incentives for medical school graduates who begin their practices in areas with doctor shortages. Of more than $4 billion that the state will spend for higher education during the 1982-83 biennium, more than $1 billion will go for support of medical education programs.

Acts that are summarized in the following pages are generally included in order by year, with bills relating to public education preceding bills relating to higher education. Legislation relating to public school finance and bilingual education, however, is summarized separately. Higher education financing is also discussed, although major legislation in the area has not passed.

Public School Finance

In 1971 in a lawsuit brought by Demetrio Rodriguez against the San Antonio Independent School District, a United States district court in San Antonio ruled that the "system of financing public education in Texas discriminates on the basis of wealth by permitting citizens of affluent districts to provide a higher quality education for their children, while paying lower taxes . . . ." The state was given until the 1973 session of the legislature to devise a new plan for school finance to provide that the resources for educating each child be a function of the wealth of the entire state, rather than of an individual school district.
The Rodriguez case was overturned by a United States Supreme Court decision in 1973, in which the majority (the vote was 5 to 4) held that education is not a fundamental right guaranteed under the United States Constitution. In a postscript to the decision, however, the court wrote that the "need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax...but the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them."

The United States Supreme Court decision was handed down on March 21, 1973, during the 63rd legislative session, and while much of the support for reform remained, the pressure caused by the district court's deadline was removed. The conference committee version of the school finance bill died in the house on the last night of the session by a vote of 70-70, with Speaker Daniel declining to vote to break the tie. That measure would have provided $44 million in additional state funds, but would have allocated the money to rich as well as poor districts. It also would have called for a two-year study to arrive at a plan that would "effectively provide equal educational opportunities for all school children in the state based on the ability of each school district to provide financial support" for its program.

Restructuring the school finance system continued to be a major issue facing the legislature during the next three sessions. House Bill 1126 was passed by the 64th Legislature. It revised the Foundation School Program and introduced the concept of state equalization aid for poor school districts. That act, however, allowed tax assessments to be based on the market value of property, and local property taxes in many areas were increased greatly. No school finance bill or change in the school finance system was passed during the 65th regular session, but during the 1st called session the legislature enacted Senate Bill 1, which included provisions granting tax relief by lowering local contributions to the Foundation School Program; tax relief, rather than equalization aid, was the primary intent of the bill. During the 1979 session the controversy between supporters of equalization aid for poor districts and supporters of tax relief, especially for the rural areas that had suffered the sharpest tax increases, was again the focus of much attention during the 1979 session. The 66th Legislature passed Senate Bill 350, a measure that included substantial aid for local school districts and increased equalization aid money.
1975--House Bill 1126 (64th Legislature)

The first of the bills to change the method of school financing during this period, House Bill 1126 included major revisions in the Foundation School Program and an approximate $650 million increase in state support for education.

The act allowed school district contributions to the Foundation School Program to be determined by the market value of taxable property. It also introduced a state equalization aid component into state appropriations in order to provide enrichment support for the state's property-poor districts. The aid was to be allotted to districts that had local fund assignments of less than 125 percent of the total statewide local fund assignment. The ceiling on this money was $50 million per year, however, and no district received more than $56 per pupil from the funds.

Minimum salaries for teachers and other professional personnel were raised; the method for allocating personnel was changed to allow local districts more flexibility but to maintain an overall average ratio of not less than one teacher for each 25 students in average daily attendance; the allocations for maintenance and operating expenses were raised; and funding for regional educational service centers was increased.

A report by the governor's office, "Public School Finance," dated February, 1977, explained other changes as follows: "The new law eliminated the multi-factor, highly inequitable County Economic Index and replaced it with a single-factor index based on the value of taxable property in the districts. . . . . The index was used to determine the required level of local support for the FSP . . . . The use of the single-factor index was a major improvement because it gave practical recognition to the fact that, based on taxable wealth, abilities to support educational programs vary tremendously. . . . . The changes required by House Bill 1126 had a significant impact on the state funding available to many districts. In an effort to ease the transition from the old formulas to the new, the Legislature built into the law several save-harmless provisions to be effective over the first biennium of the bill's operation."

The state policy as set out by the act was "that each student enrolled in the public school system shall have access to programs and services that are appropriate to his educational needs and that
are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

In other areas, the bill extended the benefits of the available school fund to all children who were citizens of the United States or legally admitted aliens and who were between the ages of 5 and 21. This change excluded illegal aliens from free public education but expanded the programs that were available for mentally retarded students.

It provided that by September 1, 1977, no school district could receive state funds without being accredited by the Texas Education Agency. It also authorized state funds, $25.4 million, for programs for educationally disadvantaged children.

The bill extended bilingual education programs to kindergarten, but provided that instead of continuing the program through the sixth grade, school districts were required to offer bilingual education in the second grade by the 1975-76 school year and in the third grade by the 1976-77 school year, could offer the programs in fourth and fifth grades to students who had not progressed sufficiently to participate in the regular school curriculum, and would not be eligible for any state aid for programs offered beyond the fifth grade.

1977--Senate Bill 1 (65th Legislature, 1st C.S.)

The legislature failed to pass a school finance bill during the 65th regular session, in large part because of disagreement concerning methods of providing local school districts with money to compensate for increased local costs resulting from provisions in House Bill 1126 and the need for increased funds for equalization aid. Public education financing was the first subject of the call for the 1st Called Session of the 65th Legislature.

Senate Bill 1 reduced school districts' local share of the Foundation School Program by approximately $341 million for the 1978-79 biennium. It established the School Tax Assessment Practices Board to determine district property values and continued the market value assessment for taxable property in a district. The purpose for the board was to provide uniformity in the tax appraisal and assessment practices and procedures of school district tax offices, improvement in the administration and
operation of school district tax offices, and greater competence among persons appraising and assessing school district taxes. (The board was replaced by the State Property Tax Board, created by the 66th Legislature.)

Through a restructured formula, state funds for equalization aid were increased by $85 million a year to total $270 million for the biennium. School districts with average property value per student of less than 110 percent of the total statewide average property value per student were eligible for state equalization aid for the enrichment of programs beyond the level guaranteed under the Foundation School Program. In the 1977-78 school year, funds were allocated to 495 school districts serving 70 percent of the students in Texas public schools.

The state policy, as changed under Senate Bill 1, was that the "provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources, so that each child shall have the opportunity to develop to his/her full potential. It is further the policy of this state that the value assigned to each school district for the purpose of determining the district's local share of its guaranteed entitlement under the Foundation School Program shall be equitably determined, notwithstanding the various types of wealth within each district, so that no class of property is unfairly treated."

1979--Senate Bill 350 (66th Legislature)

The issue of public school finance (Senate Bill 350) was closely tied to the issue of property tax reform (House Bill 1060) in the 66th legislative session. House Bill 1060 implemented provisions of a state constitutional amendment and provided for state payments to school districts in the 1980-81 biennium to replace taxes lost because of state-mandated reduction of the ad valorem tax base resulting from homestead exemptions and special treatment of agricultural and timber land.

While trying to protect local school districts against major losses in revenues, Senate Bill 350 also placed added emphasis on equalization aid for poor school districts. The statement of state policy was again amended, this time to express both concerns. It provided that "the provision of public education is a state
responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

The changes in the financing of public education brought about by Senate Bill 350 were primarily intended to provide equal educational opportunity for all students, to equalize per-student expenditures, and to resolve past disparities between urban and rural districts. Major provisions of the bill included (1) a 5.1 percent increase in teacher salaries; (2) numerous changes in the comprehensive special education program to conform to federal law and court decisions relating to the rights of the handicapped; (3) modified eligibility requirements and increased support for educationally disadvantaged students; (4) a requirement that the Texas Education Agency administer tests to determine the basic skills competencies of students at various grade levels; (5) new state aid for fast-growing school districts (1982-83 appropriations for this item were vetoed by Governor Clements); (6) increased state funding for maintenance and operating costs; (7) increased equalization aid for poor and moderately wealthy districts; and (8) reduced rates for calculating the local share of Foundation School Program costs.

The total state expenditure for the 1980-81 biennium under Senate Bill 350 was approximately $1.2 billion more than was spent during the preceding biennium. The total appropriated included $252 million for equalization aid and $479 million for local school districts to compensate for revenues lost because of tax exemptions in House Bill 1060. It also included a $350 million increase over the amount appropriated for the 1978-79 biennium for teacher salaries and a $5 million new appropriation for state support for programs for gifted and talented students.

1981 (67th Legislature)

The method of public school finance underwent no major revision during the 67th regular session. For the first time, appropriations for public schools were included in the General Appropriations Act. More than $8 billion was appropriated for the
Texas Education Agency and the state's public education system. Of that total, almost $500 million was appropriated for equalization aid. Sections of House Bill 1060 relating to state payments to replace school taxes lost because of state-mandated reduction of the ad valorem tax base expired August 31, 1981, and to make up for the loss of funds to local school districts, the state greatly increased its appropriations for current operating costs. State payments for this factor were $128 and $139 per pupil in average daily attendance in 1980 and 1981; payments are $220 and $237 per pupil in 1982 and 1983. The state also appropriated about $47 million more in minimum aid because the distribution of funds on a per-pupil basis differs significantly from the distribution for tax relief.

Texas Assessment of Basic Skills (Competency Testing)

Senate Bill 1 (65th Leg., 1st C.S.) also included an appropriation to implement Senate Concurrent Resolutions 29 and 30 as passed at the Regular Session of the 65th Legislature. The resolutions directed the State Board of Education to improve its management information system to ensure that the information available for state and local planning was accurate, relevant, and nonduplicative; to revise its accreditation standards to require school districts to evaluate their educational programs in terms of the goals of public education; to assess student proficiency in basic learning areas; and to provide corrective measures as necessary. These directives led to the establishment of the Texas Assessment Project, the first statewide effort to measure the achievement of public school students in the four curriculum areas of reading, mathematics, citizenship, and writing (composition). A preliminary test of 110,000 randomly selected students was completed in 1978.

The 66th Legislature continued to show support for the concept of skills testing and, in Senate Bill 350, directed the Texas Education Agency to "administer appropriate criterion-referenced assessment instruments [tests] designed to assess minimum basic skills competencies in reading, writing, and mathematics." The act also required each school district to use "the student performance data resulting from the assessment instruments . . . to implement appropriate compensatory instructional services for students in the district's schools . . . ." The Texas Assessment of Basic Skills (TABS) was
developed in response to these directives. Its purposes are to assess the achievement of third, fifth, and ninth grade students in reading, composition, and mathematics and to help school districts develop programs for improving that achievement. The first TABS tests were administered to about 433,000 fifth and ninth graders in February and March, 1980. Of the ninth graders, 70 percent attained the mastery level established by the State Board of Education for mathematics and reading; only 59 percent attained the mastery level for the writing test. The tests, however, have received criticisms from numerous sources because of alleged differences in grading criteria and because of alleged bias against nonwhite students.

Bilingual Education

In 1972, 22 percent of the students and only 5 percent of the teachers in Texas schools were Spanish-speaking. A 1968 Governor's Committee on Public School Education reported that 80 percent of the Mexican-American children who entered first grade failed to complete high school. Language difficulties were considered a strong contributing factor, and bilingual education was considered a vital aid to addressing the problem.

The Texas Legislature authorized local school districts to initiate bilingual education programs in 1971, but did not allocate state money for the purpose. Programs that were operating were primarily funded from Title VII Elementary and Secondary Education Act federal funds, and only a small percentage of pupils who could benefit from the programs were able to participate.

In 1973, the 63rd Legislature passed Senate Bill 121, relating to bilingual education programs and to state funding for those programs in the public schools. The following section is included in the act as "state policy":

The legislature finds that there are large numbers of children in the state who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The legislature believes that a compensatory program of bilingual education can
meet the needs of these children and facilitate their integration into the regular school curriculum.

As originally proposed, the bill would have required all school districts with populations of 10 percent or more students with Spanish surnames to begin bilingual programs with the 1973-74 school year and to add one grade level to the program each year until bilingual education was offered in all elementary grades.

As passed, Senate Bill 121 required all school districts with 20 or more students of limited English-speaking ability in the same grade level to initiate bilingual programs beginning with the 1974-75 school year. The local school boards were directed to begin the program with the first grade, then to add one grade each year until bilingual instruction was offered in each grade up to the sixth. The legislature appropriated $2.7 billion for the program during the 1974-75 biennium.

The act established the content of bilingual education programs to be full-time instruction in all required subjects, given in the native language of the children and in English; in the comprehension, speaking, reading, and writing of the native language and of English; and in the history and culture associated with the native language and of the United States. Children enrolled in the program were to participate in regular classes in predominantly nonverbal subjects (such as art and physical education) and in all extracurricular activities.

In a somewhat related area, the legislature also passed a measure (Senate Bill 464) prohibiting school districts from assigning students to special education classes on the basis of intelligence tests administered in a language other than the primary home language of the child.

Following the granting of state funds for kindergarten programs, funds for bilingual education in kindergarten were also approved by the legislature in 1975 (House Bill 1125). A trade, however, was made and bilingual programs in the fourth and fifth grades were made optional and state support for sixth grade programs was ended. Legislation was introduced in both the 65th and 66th Legislatures to expand the state's bilingual program, but the measures did not pass.

In January, 1981, United States District Judge William Wayne
Justice of Tyler, in U.S. v. Texas, found the state's bilingual education program wholly inadequate for Mexican-American students and instructed the state to implement a plan of equal education for all Spanish-speaking students at all grade levels within the next six years.

Although the state appealed the decision and that appeal is still under way (January 1982), the legislature responded to the need to revise and expand programs for students of limited English proficiency by passing Senate Bill 477. The act:

(1) requires districts with a minimum of 20 students of limited English proficiency in the same language classification in the same grade to offer bilingual education (this criterion was also in the 1973 law and was criticized strongly by Judge Justice) in kindergarten through the elementary grades; bilingual education, instruction in English as a second language, or other transitional language instruction in post-elementary grades through grade 8; and instruction in English as a second language in grades 9 through 12;

(2) directs the State Board of Education to identify districts required to offer the programs and to establish standardized criteria for identifying and classifying students with limited English proficiency; these criteria must take into consideration the language that the student uses at home and the results of proficiency tests in English and in the student's primary language;

(3) requires bilingual education programs to be full-time programs of dual-language instruction that provide for learning basic skills in the primary language of the students enrolled, for carefully structured and sequenced mastery of English, and for incorporating cultural aspects of students' backgrounds; requires teachers of English as a second language to be specially trained; and provides for pilot programs for alternative methods of instruction;

(4) requires parental consent for enrollment of students in the programs and allows a maximum of 40 percent of the students enrolled to be proficient in English;

(5) adds extended time programs to a section of previous law authorizing preschool and summer school programs;
(6) provides for additional regulations and compensation relating to bilingual education and special language program teachers, including requiring writing ability for certification in bilingual education; authorizes certain teacher training programs and requires a comprehensive plan for meeting teacher supply needs created by the bilingual programs;

(7) sets minimum limits for the special allowance allotted school districts operating the programs and expands the uses of the funds;

(8) directs the Texas Education Agency to monitor compliance with state rules relating to the programs and provides guidelines for the monitoring;

(9) requires districts with bilingual programs to establish language proficiency assessment committees and lists responsibilities of the committees; and

(10) provides for an appeal by parents of a child in a bilingual program concerning the district's failure to comply with the law or regulations or concerning the student's placement in the program.

The legislature appropriated approximately $17.9 billion for bilingual education during the 1982-83 biennium, with local school districts to receive $50 per student for bilingual classes and $12.50 per student for English-as-a-second-language classes.

1973--63rd Legislature

Adult Education

In 1972 Texas ranked second nationally in the number of functionally illiterate adults, with approximately 3,060,636 citizens over the age of 25 who did not have high school diplomas, 1,758,413 who had not completed eighth grade, and 176,676 who had not completed first grade. Until the 63rd Legislature, there were no state funds for adult education programs.

House Bill 147 authorized adult education programs to be provided by public school districts, public junior colleges, and
public universities. The Texas Education Agency was directed to administer a program designed to eliminate illiteracy in Texas and to meet the total range of needs for adult education and related skill training. The legislature appropriated $4.3 million to implement the program.

The Texas Education Agency reported that in 1980 the number of Texans age 16 and older who had less than a secondary education was more than 4 million. During the 1978-79 and 1979-80 school years, adult education programs were offered by 48 school districts, education service centers, and junior or community colleges. Approximately 140,000 people were enrolled in the programs during each of the two years.

Community College Programs

Several bills further expressing the legislature's concern about adult Texans who lack high school educations or who are disadvantaged educationally, economically, socially, or culturally were passed during the 63rd Legislature. The action, in part, stemmed from recommendations made by the Coordinating Board's 1971 Compensatory Education Project and the Senate Interim Committee on Public Junior Colleges.

The legislature passed Senate Bill 218 to authorize the board of trustees of any junior college district to substitute "community" for "junior" in the official name of the district. The action was in recognition of the potential of the public two-year colleges to serve the community through occupational programs and courses of community interest as well as through programs that follow lower-division university work.

Senate Bill 358 set out the purposes of public community colleges. The purposes include the provision of (1) technical and vocational programs leading to certificates and employment; (2) freshman and sophomore courses in arts and sciences; (3) continuing adult education; (4) compensatory education programs for disadvantaged students; and (5) educational counseling and guidance.

Most junior or community colleges had some form of admission requirements; frequently, these standards discriminated against persons whose access to traditional educational institutions was
limited. The legislature passed Senate Bill 356 to allow students who had been deprived of full educational opportunities to attend junior colleges that developed programs to compensate for prior economic and educational deprivation and that would accommodate different learning rates. The stated purpose of the act was to enable junior colleges to provide useful and meaningful educational programs for adults, regardless of prior educational experience, cultural background, or economic resources.

To aid community and junior colleges in establishing such programs, the legislature passed Senate Bill 357. The act directed the Coordinating Board to plan, initiate, and finance training programs for teachers who instruct educationally, economically, socially, and culturally disadvantaged students in public junior colleges. No funds were appropriated for this purpose, however.

Rural Medical Education

In 1972 there were 23 counties in Texas, with approximately 30,750 residents, that had the services of no resident medical doctors. While the problem of medical service in the rural and poor areas of the state remains a problem, the 63rd Legislature took steps to close this gap in delivery of medical services. House Bill 683 created the State Rural Medical Education Board and established a medical education scholarship program for medical students who agreed to practice in rural areas for at least two years. For each year the recipient practices in a county with less than 25,000 people, he or she may receive a credit equal to one-fifth of the amount of the loan and interest on the repayment of the loan.

1975--64th Legislature

Community Education

Senate Bill 366, passed by the 64th Legislature, broadened the definition of community education and authorized pilot programs to demonstrate the effectiveness of the community education concept. In setting out the purpose of the bill, the committee report stated that every neighborhood school has the potential of becoming a community center with a broad range of educational,
recreational, and social services and activities that can be provided for citizens of all ages. While many communities have taken advantage of limited available local, state, and federal resources, public school facilities have continued to be under-used after school hours and on weekends. Enactment of the bill provided the authority for expanded noneducational as well as educational programs and for increased efficiency in utilizing already existing resources.

During the 1978-79 and 1979-80 school years, 194,212 adults participated in community education programs throughout the state. The 67th Legislature appropriated more than $3 million to continue support of these programs in 1982 and 1983.

County School Administration

In 1973 the Texas Education Agency indicated that, as a result of school district reorganization and a decrease in the number of common school districts, there were many Texas counties in which few actual duties and responsibilities remained for elective and ex officio county school superintendents and county boards of school trustees. It was also felt that the establishment of regional education service centers offered good supportive programs and services to small school districts and therefore enlarged the range of available educational opportunities. Because of these changes, serious questions were raised about the cost-effectiveness of maintaining two types of service.

The legislature responded to the questions and passed House Bill 226, which eliminated state support for county school administration after December 31, 1978, in counties that contained no common school districts, rural high school districts, or independent school districts with less than 150 students in average daily attendance. The offices of county superintendent and county school boards were abolished on that date in the affected counties unless the offices were supported entirely out of local funds. House Bills 548 and 715 also related to procedures for authorizing abolition of the office of county school superintendent in certain other circumstances. The Legislative Budget Board certified that the abolition of state support for county school administration would save $3.4 billion each year beginning with the 1979 fiscal year.
Coordinating Board Authority

The Coordinating Board, Texas College and University System, was established in 1965 to coordinate the state's system of public higher education to ensure effective and efficient use of resources and to eliminate costly duplication in program offerings, faculties, and physical plants.

Senate Bill 706, passed by the 64th Legislature, strengthened the board's authority in several important areas. It increased the authority for approval of construction to include all new major construction and repair and rehabilitation of all buildings and facilities financed from any source other than ad valorem tax receipts of public junior colleges, regardless of the proposed use of the facilities, unless the project had been specifically approved by the legislature. It also gave the Coordinating Board authority to (1) approve off-campus credit courses; (2) approve inclusion of additional subject matter courses in approved degree and certificate programs; (3) establish regulations for adult and continuing education activities; (4) contract with the State Board of Vocational Education to assume the leadership role and state-level administrative duties relating to technical-vocational education programs; and (5) make recommendations to the legislature with regard to maximum enrollment limits at state institutions of higher education.

Student Financial Aid

The 64th Legislature enacted the Student Financial Assistance Act of 1975 (House Bill 688) to establish financial assistance programs to enable qualified students to receive a postsecondary education.

The act established the Texas Public Educational Grants Program to provide money to students whose educational expenses are not met in whole or in part from other sources and to provide institutions of higher education with funds to supplement and add flexibility to existing financial aid programs. Funds for the program are to be generated from students' tuition charges, and grants are made on the basis of financial need. In addition to making awards directly to students, each institution is authorized to transfer any or all of the funds set aside for Texas public educational grants to the Coordinating Board to be used for
matching federal or other grant funds for awarding to students attending that institution. The number of grants awarded to students through the program or through matching funds programs has increased from 2,600 students in 1976 to 4,371 students in 1980.

The act also established the Texas Assistance Grants Program, but that program has never been funded.

Medical Education

In 1975 the legislature further addressed the continuing problem of providing medical services in Texas.

House Bill 570 authorized the Coordinating Board to cancel Hinson-Hazlewood loans received by students who earn doctor of medicine or doctor of psychology degrees and who are employed for four years by the Texas Youth Council, State Department of Public Welfare (Department of Human Resources), Texas Department of Corrections, or the Texas Department of Mental Health and Mental Retardation.

House Bill 2136 required Texas medical schools to establish rules providing for the admission of students who contract with the State Rural Medical Education Board to engage in a general or family medical practice in small towns or rural areas for a period of four years after licensing and medical residency. The act also provided that such students will receive a $100 monthly stipend while enrolled in medical school.

1977--65th Legislature

Investment of the Permanent School Fund

During the 65th regular session, the legislature passed Senate Bill 911, relating to investment of the permanent school fund, to improve the efficiency and flexibility of the state's management of its funds. The act provided that the State Board of Education may invest the permanent school fund in debentures and obligations, as well as in corporate bonds, of certain United States corporations. It also removed the limitation on selling or exchanging government securities held by the permanent school fund.
for less than the amount paid for the securities.

Family Practice Residency Training Program

Again in response to the state's need for increased medical services in rural areas, and in recognition of recommendations by the Joint Advisory Committee on Government Operations, the 65th Legislature passed House Bill 282, relating to family practice residency training programs. It is the stated purpose of the act that these programs further the goal of distributing family physicians and improving medical care in under-served urban and rural areas and, insofar as possible and prudent, encourage these physicians to permanently locate in under-served areas. The act authorized the Coordinating Board to contract with medical schools, licensed hospitals, and nonprofit corporations so that state funds can be used for the establishment and operation of family practice residency training programs. The legislature also appropriated $3,280,632 for the program during the 1978-79 biennium. The appropriations have increased to $13.8 million during the 1982-83 biennium. A total of 338 residency positions were approved for 1981 funding, which is 19 more than in 1980 and 103 more than in 1977 when the program began. An indication of the success of the program is that, out of 75 family practice residents completing their postgraduate training in 1980, 55 established a practice in Texas and only 15 went out of state. Others entered the military, public health services, or medical school faculties.

Uniform Grade Point Average

Prior to action taken by the 65th Legislature, each state college and university was free to calculate grade point averages in any way it chose. In an effort to provide more consistency in quality, the legislature passed House Bill 1410, which directed the Coordinating Board to establish a mandatory uniform method of calculating the official grade point average of a student enrolled in or seeking admission to a graduate or professional school of an institution of higher education.
University Expansion

In continuing to address the state's massive responsibilities for providing high-quality higher education within available resources, the 65th Legislature created a University of Houston System and University System of South Texas with House Bill 188 and House Bill 944, respectively. It also followed the recommendations of the Joint Advisory Committee on Government Operations and did not authorize the creation of any new institutions. Because of the leveling of the number of students attending universities, there was some concern during the 1970's that Texas would overbuild its institutions of higher education. The legislature, during that period, discontinued its practice of authorizing the creation of institutions in response to local need and, instead, began to emphasize the improved coordination of statewide services.

1979--66th Legislature

Discipline in Public Schools

The 66th Legislature passed two important measures in the area of school discipline to better protect teachers and to bring about better order and a better atmosphere for learning in the classroom.

House Bill 8, supported by the Texas State Teachers Association, permitted teachers to remove a student from class in order to maintain effective discipline in the classroom. It permitted removal and recommendation for suspension if a student assaulted a teacher or repeatedly interfered with the teacher's ability to communicate effectively with a majority of students in the class. It also provided procedures for hearing and actions that may be taken on recommendations for suspension.

House Bill 901 increased the penalty for assaults on teachers from a Class C misdemeanor to a Class B misdemeanor. The change applies to circumstances in which a classroom teacher, counselor, principal, or other similar instructional or administrative employee of an accredited primary or secondary school is assaulted while performing educational duties.
Student Financial Aid

In an important development in higher education, the 66th Legislature authorized the establishment of a state guaranteed student loan program to give middle income students greater access to financial assistance.

During the past decade, private lenders have been involved in the federally guaranteed state loan program through two approaches. In approximately half of the states, state agencies exist to guarantee student loans. These agencies are reinsured by the federal government. In states without guarantee agencies, lenders receive guarantees directly from the federal government. Concern in Texas has grown over the management and operations of the federal program because of the relatively high default rate as well as the general dissatisfaction of participating lenders. As lenders have withdrawn from the federal program, the pool of capital for students from families with low and middle incomes who might attend college has diminished. It has been estimated that three times the number of students presently participating in the guaranteed student loan programs nationwide would like and need to get loans to go to college.

Through House Bill 38, legislators established a new program in Texas to provide student loans for college students in accordance with the federal Higher Education Act of 1965. The program is to be administered by a public nonprofit corporation, the Texas Guaranteed Student Loan Corporation, which will use its funds to guarantee loans made by eligible private lenders. The act transferred $1.5 million from the federal lender's allowance of the Coordinating Board for initial expenses and loan guarantees, but it required that future expenses of the corporation be paid from the income on the loans guaranteed by the corporation. The state is not liable for debts of the corporation.

In order to provide a mechanism to help solve the problem of high default rates faced by other programs of state and federal student loans, the act required the corporation to bring suit against defaulting borrowers as soon as practicable and prohibited the comptroller of public accounts from issuing a warrant to any person in default on a loan guaranteed by this corporation.

Enactment of this legislation followed a comprehensive study of guaranteed student loan programs in the other states by the
Coordinating Board in contract with Touche Ross and Company. The report from the study recommended the establishment of the state program.

Recognizing the need of part-time students for additional state aid, the 66th Legislature also passed Senate Bill 356. This act allowed students who are enrolled for half of a full course load required in their degree plans to be eligible for tuition equalization grants.

The act also changed the maximum grant under the tuition equalization grant program from $600 to 50 percent of the average state appropriation per full-time student at public senior colleges and universities during the preceding biennium. This effectively raised the grant ceiling for the 1980-81 biennium to $1,136. During the 1980 fiscal year, tuition equalization grants were awarded to 18,747 students at 44 private colleges and universities. The average grant was $687. The total appropriation for the program for the 1982-83 biennium was approximately $36 million.

Foreign Students

The 66th Legislature passed two bills affecting citizens of other countries who are attending state colleges and universities in Texas.

Senate Bill 284 reflects the concern in Texas about the incidents of violence that were taking place in the United States involving foreign students. The act allowed the governing boards of public institutions of higher education to expel foreign students who are attending school under nonimmigrant visas and who have been finally convicted of certain offenses, including some types of disorderly conduct, disruptive behavior, and specified property damage.

Senate Bill 530 revoked the authority of governing boards and the Coordinating Board to set tuition fees for foreign students at rates lower than for other out-of-state students. Previously, students with financial need or students from countries charging United States students tuition of less than $200 per semester were eligible to pay tuition fees of a minimum of $14 per hour or $200 per semester. Texas residents pay $4 per semester hour and students from other states pay $40 per semester hour. Senate Bill
raised the tuition rates for approximately 90 percent of the students from other countries attending Texas colleges and universities.

1981--67th Legislature

Public School Curriculum

In 1905 the legislature adopted an act, separate from the measure generally setting out courses of study in schools, requiring the primary grades of public schools to give instruction "with regard to kindness to animals and the protection of birds and their nests and eggs." Following legislatures required schools to offer courses in the United States and Texas constitutions, agriculture, industrial arts, home economics, other vocational studies, dangers of crime and narcotics, intelligent patriotism, and essentials and benefits of the free enterprise system.

The 66th Legislature considered but did not pass a bill dividing all required courses into either basic or work/life skills categories and requiring that a certain percentage of courses be taught in each of the categories. A resolution calling for an interim study of public school curriculum did pass. The State Board of Education recommended that the legislature require all school districts to offer a well-balanced curriculum and to consider repealing laws mandating courses, subjects, or elements to be included in the curriculum "so that curriculum decisions may be made in a pedagogically sound manner." The board also recommended a list of 11 courses that local school districts should be required to offer (courses (1) through (11) in House Bill 246).

The 67th Legislature followed the recommendations of the board by enacting House Bill 246, which repealed the laws calling for special courses and required that, to be accredited, school districts offering kindergarten through 12th grade classes must offer courses in (1) English, (2) other languages, (3) mathematics, (4) science, (5) health, (6) physical education, (7) fine arts, (8) social studies, (9) economics, with emphasis on the free enterprise system, (10) business education, (11) vocational education, and (12) Texas and United States history. The State Board of Education was directed to designate the essential elements of each subject and to designate subjects comprising a well-balanced curriculum in
other school districts. Optional subjects were authorized and districts were encouraged to exceed the minimum requirements set out by the act.

Teacher Certification and Competency Testing

The 1979 legislature created the Commission on Standards for the Teaching Profession and charged the commission with conducting a study of classes of teacher certification, duration of certifications, and teacher competency testing. The commission reported that it found a very high interest across the state for the need to improve the quality of teachers in Texas.

Two important changes were made by the 67th Legislature in laws relating to teachers. One instituted the practice of competency testing for teachers. The other is a 26.6 percent pay raise that the legislature approved for public school teachers for the 1982-83 biennium.

Senate Bill 50 directed the State Board of Education to prescribe rules for types, durations, and requirements of issuance of initial and renewal teaching certificates. The board is directed to require satisfactory performance on a competency examination in order for an individual to be admitted to an approved teacher education program, to be certified after graduation, and to be certified as a superintendent or other administrator.

Desegregation of Texas Higher Education

On January 15, 1981, the United States Department of Education notified Texas that the state must submit a detailed plan for the desegregation of Texas higher education by June 15, 1981. The plan was to include the enhancement of predominantly black university programs and facilities, goals for enrollment and graduation of minorities, and identification of specific roles for institutions of higher education. In Senate Bill 1020, the legislature appropriated $70,000 for the Coordinating Board to develop the statewide plan.

In a related area, the legislature enacted Senate Bill 1171 that designated Prairie View A&M University as a statewide
special-purpose institution for assisting students with latent aptitude, talents, and abilities and of diverse economic, ethnic, and cultural backgrounds; for assisting small and medium-sized communities; and for assisting small and medium-sized agricultural, business, and industrial enterprises.

Higher Education Financing

Construction and major repair and renovation at most public institutions of higher education in Texas have been funded by one of two methods. The University of Texas and Texas A&M University receive money from the available university fund, dedicated to retire bonded indebtedness, with any remaining funds to be used for excellence and academic enrichment at the Austin and College Station campuses. Institutions not eligible for these funds have been funded, until recently, by state ad valorem taxes and are prohibited by the constitution from receiving other state funds for construction.

The state property tax was the subject of much criticism in the late 1970's because of the wide differences in methods of valuing property and in assessing and collecting the taxes. The legislature has considered the problem during the past two sessions, but has been unable to agree on proposed amendments to the constitution to abolish the ad valorem tax and to replace it with a new fund for financing university construction.

The 66th Legislature considered Senate Joint Resolution 7, which proposed a constitutional amendment to repeal the state property tax and to create the state higher education assistance fund (SHEAF) as a dedicated building fund for the schools previously funded by the ad valorem taxes. The resolution died in conference committee.

House Bill 1060, implementing the approved constitutional amendment relating to state property tax reform, was passed by the legislature and provided that, instead of using county assessment ratios, the assessment ratio for the state ad valorem tax would be 0.0001 percent. The House Study Group reported on May 15, 1981, that since the provision became effective, on January 1, 1980, the tax had generated less than $200. Because of the constitutional prohibition against using other state funds, the following schools have been left with virtually no money for construction:
The University of Texas at Arlington
Texas Tech University
North Texas State University
Lamar University
Texas A&I University
Texas Woman's University
Texas Southern University
Midwestern State University
University of Houston
Pan American University
East Texas State University
Sam Houston State University
Southwest Texas State University
West Texas State University
Stephen F. Austin State University
Sul Ross State University
Angelo State University

Members of the 66th Legislature did approve a concurrent resolution setting up an interim committee to study the financing of the higher education system in Texas, giving special emphasis, among other items, to facility financing. Recommendations of the committee included raising faculty salaries, raising tuitions, and adopting and funding an organized research formula. The committee also recommended "that Article VII, Section 17, be repealed and Article VII, Section 18, be amended . . . [and] that revenues from the tuition increases, less the percentage set aside for scholarships, be deposited to a special fund to be appropriated to public senior colleges and universities not eligible to participate in the Permanent University Fund. In addition, the committee recommended that the building maintenance formula rates be increased."

The 67th Legislature considered House Joint Resolution 111, by Clayton et al., but this proposal died in conference committee. House Joint Resolution 111 would have repealed the state ad valorem tax and restructured the use of the permanent university fund, but the house and senate versions differed on the restructuring. In addition, the house version created a higher education endowment fund (HEEF) to fund all schools formerly financed by state ad valorem taxes. The senate version created a permanent higher education fund (PHEF) that would have received 25 percent of the annual income from land dedicated to the permanent school fund.
STATE AND LOCAL TAXATION

This report reviews legislative activity from 1973 through 1981 relating to state and local taxation. During that period, the state tax structure changed very little. The state has continued to rely primarily on three taxes: the limited sales tax, the oil production tax, and the natural gas production tax. In fiscal 1981, those three taxes produced 66.8 percent of total state tax collections (see Tables 1 and 2). One significant attribute of the state tax structure is the absence of a personal or corporate income tax. Texas is one of only four states that levies neither tax, a fact often cited as a major reason for the state's favorable business climate. Texas is the only major industrial state and the only state in the neighboring five-state region that levies no tax on income.

The four percent state sales tax is the major source of tax dollars, with fiscal 1981 receipts of $2.98 billion constituting 38.5 percent of total tax collections. Over the last five years, sales tax receipts have grown at an annual rate of 15.3 percent. The sales tax rate, however, has not been increased since 1971, and the tax is one of the most limited in the country, with consumer exemptions including food, prescription medicine, and home utility sales.

State government also imposes selective taxes on the sale of motor fuel, alcoholic beverages, tobacco products, and motor vehicles. Together, these taxes produced about 20 percent of the state tax revenue in 1981.

Texas relies heavily on natural resource taxes. In 1979, only Alaska, Louisiana, New Mexico, and Wyoming were more dependent on natural resource taxes. Texas oil and gas taxes are the nation's most productive, although tax rates on oil (4.6 percent of value, which was set in 1951) and natural gas (7.5 percent of value, which was set in 1969) are among the nation's lowest. Texas collected a record $2.19 billion in severance taxes on oil and natural gas in 1981, accounting for 28.3 percent of the total tax revenue.

Oil production and regulation taxes were the second largest source of state tax revenue in 1981, with receipts totaling $1.29 billion. That amount represents a 64.3 percent increase over 1980 receipts. Higher oil prices under complete decontrol instituted by the Reagan administration in January, 1981, are the principal reason for the increase. The taxable crude oil production in Texas has steadily declined since 1973.
**TABLE 1**

NET REVENUE(1) BY SOURCE, 1978-1981

| All Funds | Year Ended August 31 |

<table>
<thead>
<tr>
<th></th>
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<tr>
<td>Sales Tax(2)</td>
<td>$2,023,720,941</td>
<td>$2,174,266,409</td>
<td>$2,521,373,858</td>
<td>$2,982,857,569</td>
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<td>Oil Production Tax</td>
<td>437,206,035</td>
<td>466,662,597</td>
<td>785,690,969</td>
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<td>Natural Gas Production Tax</td>
<td>517,844,242</td>
<td>554,353,786</td>
<td>734,246,517</td>
<td>901,931,450</td>
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<td>Motor Fuels Taxes(Gasoline, Diesel, LPG)</td>
<td>477,687,977</td>
<td>499,495,933</td>
<td>608,695,116</td>
<td>808,779,530</td>
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<td>Motor Vehicle Sales and Rental Taxes(2)</td>
<td>461,053,174</td>
<td>433,334,261</td>
<td>437,877,835</td>
<td>511,067,594</td>
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<td>Corporation Franchise Tax</td>
<td>264,679,407</td>
<td>293,609,954</td>
<td>360,776,937</td>
<td>417,433,436</td>
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<td>Alcoholic Beverage Taxes</td>
<td>164,062,501</td>
<td>181,594,067</td>
<td>200,464,618</td>
<td>236,521,732</td>
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<td>Insurance Companies Taxes</td>
<td>147,433,197</td>
<td>166,502,539</td>
<td>176,107,433</td>
<td>199,166,302</td>
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<td>Utility Taxes</td>
<td>92,955,377</td>
<td>103,725,907</td>
<td>111,526,194</td>
<td>154,634,916</td>
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<td>Inheritance Tax</td>
<td>79,113,982</td>
<td>73,747,577</td>
<td>75,588,848</td>
<td>96,359,998</td>
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<td>Telephone Tax</td>
<td>94,789,586</td>
<td>52,442,527</td>
<td>59,709,770</td>
<td>66,605,059</td>
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<td>Hotel and Motel Tax(3)</td>
<td>20,761,860</td>
<td>24,645,750</td>
<td>29,613,644</td>
<td>35,595,348</td>
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<tr>
<td>Other Taxes(3)</td>
<td>60,930,893</td>
<td>66,467,095</td>
<td>68,267,132</td>
<td>76,543,375</td>
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<td><strong>TOTAL TAX COLLECTIONS</strong></td>
<td><strong>$5,032,274,299</strong></td>
<td><strong>$5,390,313,009</strong></td>
<td><strong>$6,343,785,161</strong></td>
<td><strong>$7,742,032,894</strong></td>
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<tbody>
<tr>
<td>Tax Collections</td>
<td><strong>$5,032,274,299</strong></td>
<td><strong>$5,390,313,009</strong></td>
<td><strong>$6,343,785,161</strong></td>
<td><strong>$7,742,032,894</strong></td>
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<tr>
<td>Federal Funding</td>
<td>2,052,940,590</td>
<td>2,299,730,814</td>
<td>2,627,936,577</td>
<td>2,877,186,699</td>
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<td>Interest Income</td>
<td>681,906,603</td>
<td>838,232,910</td>
<td>1,043,804,625</td>
<td>1,278,547,694</td>
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<td>Licenses and Fees</td>
<td>414,565,065</td>
<td>408,209,750</td>
<td>477,979,336</td>
<td>501,476,026</td>
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<td>Land Income: Rents, Royalties, Sales</td>
<td>405,179,579</td>
<td>377,549,021</td>
<td>550,522,243</td>
<td>603,265,173</td>
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<td>Other Revenue Sources(4)</td>
<td>64,776,251</td>
<td>88,031,486</td>
<td>137,393,108</td>
<td>218,749,876</td>
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<td><strong>TOTAL NET REVENUE</strong></td>
<td><strong>$6,651,622,367</strong></td>
<td><strong>$9,402,051,990</strong></td>
<td><strong>$11,101,462,060</strong></td>
<td><strong>$13,421,269,632</strong></td>
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</table>

(1) Excludes some revenue not cleared through the Comptroller's Office.
(2) Sales Tax (Limited Sales and Use Tax) and Motor Vehicle Sales Tax are shown separately.
(3) The Hotel and Motel Tax was formerly classified under the Other Taxes category. The Other Taxes category now includes the Ad Valorem Tax which was formerly identified separately; other occupation taxes not separately identified: the Bedding Tax and the Sulfur Tax.
(4) Includes patient collections, grants, donations and miscellaneous revenue.

**SOURCE:** 1981 Annual Financial Report
Comptroller of Public Accounts

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### Table 2

**NET REVENUE BY SOURCE**
**PERCENT OF TOTAL, 1978-1981**
**ANNUAL PERCENT CHANGE, 1979-1981**
**ALL FUNDS**

<table>
<thead>
<tr>
<th>TAX COLLECTIONS BY MAJOR TAX</th>
<th>Percent of Total</th>
<th>Percent Change From Prior Year</th>
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</thead>
<tbody>
<tr>
<td>Sales Tax</td>
<td>40.2%</td>
<td>40.3%</td>
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<tr>
<td>Oil Production Tax</td>
<td>8.7</td>
<td>8.7</td>
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<tr>
<td>Natural Gas Production Tax</td>
<td>10.3</td>
<td>10.3</td>
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<tr>
<td>Motor Fuels Taxes (Gasoline, Diesel, LPG)</td>
<td>9.5</td>
<td>9.1</td>
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<tr>
<td>Motor Vehicle Sales and Rental Taxes</td>
<td>8.0</td>
<td>8.0</td>
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<tr>
<td>Corporation Franchise Tax</td>
<td>5.3</td>
<td>5.4</td>
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<tr>
<td>Cigarette and Tobacco Taxes</td>
<td>5.9</td>
<td>5.7</td>
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<tr>
<td>Alcoholic Beverage Taxes</td>
<td>3.3</td>
<td>3.4</td>
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<td>Insurance Companies Taxes</td>
<td>2.9</td>
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<td>Utility Taxes</td>
<td>1.8</td>
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<tr>
<td>Inheritance Tax</td>
<td>1.6</td>
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</tr>
<tr>
<td>Telephone Tax</td>
<td>0.9</td>
<td>1.0</td>
</tr>
<tr>
<td>Hotel and Motel Tax</td>
<td>0.4</td>
<td>0.5</td>
</tr>
<tr>
<td>Other Taxes</td>
<td>1.2</td>
<td>1.2</td>
</tr>
<tr>
<td><strong>TOTAL TAX COLLECTIONS</strong></td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

**REVENUE BY SOURCE**

<table>
<thead>
<tr>
<th></th>
<th>Percent of Total</th>
<th>Percent Change From Prior Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Collections</td>
<td>58.2%</td>
<td>57.3%</td>
</tr>
<tr>
<td>Federal Funding</td>
<td>23.7%</td>
<td>24.5%</td>
</tr>
<tr>
<td>Interest Income</td>
<td>7.9%</td>
<td>8.9%</td>
</tr>
<tr>
<td>Licenses and Fees</td>
<td>4.8%</td>
<td>4.4%</td>
</tr>
<tr>
<td>Land Income: Rents, Royalties, Sales</td>
<td>4.7%</td>
<td>4.0%</td>
</tr>
<tr>
<td>Other Revenue Sources</td>
<td>0.7%</td>
<td>0.9%</td>
</tr>
<tr>
<td><strong>TOTAL NET REVENUE</strong></td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

**SOURCE:** 1981 Annual Financial Report
Comptroller of Public Accounts
The natural gas production tax brought in $901.9 million in 1981, a 22.8 percent increase above 1980. Increased access to intrastate gas by interstate markets and higher energy prices because of phased decontrol under the Natural Gas Policy Act of 1978 are generally responsible for the revenue increase.

The following are sources of information about Texas severance taxes on natural resources:


During the period under review, state tax collections have increased dramatically. Total collections for fiscal 1974 were $3,020,047,986; the total collected in fiscal 1981 was $7,742,032,894. The large increase in tax revenue was not the result of tax rate increases. The last rate increase for a major state tax was enacted in 1971. The rise in collections is the result of the state's economic growth, federal oil and gas policy, and continuing inflation.

Although tax revenues have more than doubled since fiscal 1974, the tax burden has remained relatively low. In 1979, Texas had the lowest per capita state tax burden among the major industrial states and the four states that border Texas. Only three states had lower per capita state tax burdens (see Tables 3 and 4). Per capita tax collections, however, have increased significantly over the last 10 years, but the rapid growth of state tax collections has closely paralleled increases in total personal income (see Table 5). It should be noted that ranking Texas among the states in terms of tax burden cannot be done with statistical precision and can be misleading. For analyses of the tax burden in Texas, see the following publications:


### TABLE 3
STATE TAX COLLECTIONS PER CAPITAL, 1979
(Ranked Lowest to Highest)

<table>
<thead>
<tr>
<th>RANK</th>
<th>STATE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>New Hampshire</td>
<td>$298</td>
</tr>
<tr>
<td>2</td>
<td>South Dakota</td>
<td>356</td>
</tr>
<tr>
<td>3</td>
<td>Tennessee</td>
<td>421</td>
</tr>
<tr>
<td>4</td>
<td>TEXAS</td>
<td>429</td>
</tr>
<tr>
<td>5</td>
<td>Ohio</td>
<td>431</td>
</tr>
<tr>
<td>6</td>
<td>Missouri</td>
<td>446</td>
</tr>
<tr>
<td>7</td>
<td>Arkansas</td>
<td>456</td>
</tr>
<tr>
<td>8</td>
<td>Alabama</td>
<td>464</td>
</tr>
<tr>
<td>9</td>
<td>Nebraska</td>
<td>472</td>
</tr>
<tr>
<td>10</td>
<td>Georgia</td>
<td>478</td>
</tr>
<tr>
<td>11</td>
<td>Florida</td>
<td>484</td>
</tr>
<tr>
<td>12</td>
<td>Virginia</td>
<td>483</td>
</tr>
<tr>
<td>13</td>
<td>Indiana</td>
<td>484</td>
</tr>
<tr>
<td>14</td>
<td>North Dakota</td>
<td>494</td>
</tr>
<tr>
<td>15</td>
<td>Mississippi</td>
<td>497</td>
</tr>
<tr>
<td>16</td>
<td>Kansas</td>
<td>501</td>
</tr>
<tr>
<td>17</td>
<td>Maine</td>
<td>505</td>
</tr>
<tr>
<td>18</td>
<td>Utah</td>
<td>508</td>
</tr>
<tr>
<td>19</td>
<td>New Jersey</td>
<td>509</td>
</tr>
<tr>
<td>20</td>
<td>Montana</td>
<td>510</td>
</tr>
<tr>
<td>21</td>
<td>Idaho</td>
<td>515</td>
</tr>
<tr>
<td>22</td>
<td>South Carolina</td>
<td>519</td>
</tr>
<tr>
<td>23</td>
<td>Colorado</td>
<td>520</td>
</tr>
<tr>
<td>24</td>
<td>North Carolina</td>
<td>524</td>
</tr>
<tr>
<td>25</td>
<td>Oklahoma</td>
<td>524</td>
</tr>
<tr>
<td>26</td>
<td>Iowa</td>
<td>541</td>
</tr>
</tbody>
</table>

### TABLE 4

<table>
<thead>
<tr>
<th>Tax Type</th>
<th>TEXAS</th>
<th>U.S. AVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and use tax</td>
<td>$152.26</td>
<td>$180.03</td>
</tr>
<tr>
<td>Motor fuel</td>
<td>96.67</td>
<td>45.48</td>
</tr>
<tr>
<td>Alcoholic beverages</td>
<td>13.57</td>
<td>10.94</td>
</tr>
<tr>
<td>Tobacco products</td>
<td>23.11</td>
<td>16.59</td>
</tr>
<tr>
<td>Insurance</td>
<td>12.44</td>
<td>13.38</td>
</tr>
<tr>
<td>Public Utilities and Other</td>
<td>46.70</td>
<td>23.71</td>
</tr>
<tr>
<td><strong>Total Sales Taxes</strong></td>
<td>$295.64</td>
<td>$290.14</td>
</tr>
</tbody>
</table>

| Other Taxes               |       |              |
| Individual Income         | 0     | $149.38      |
| Corporate Net Income      | 0.9   | 55.27        |
| State Property            | 3.08  | 11.35        |
| Death, Gift, and Inheritance | 5.51  | 8.59        |
| Severance                  | 7.62  | 13.18        |
| Other                      | 7.43  | 4.43         |
| **Total Other Taxes**     | $85.83 | $242.50     |

| License Fees              |       |              |
| Motor vehicles            | $16.75 | $21.78      |
| Motor vehicle operators   | 1.66   | 1.71         |
| Corporations in general   | 22.73  | 5.75         |
| Alcoholic beverages       | 1.75   | 7.37         |
| Other                      | 7.37   | 7.37         |
| **Total License Fees**    | $47.27 | $37.43      |

**Total, All Taxes and Fees**: $428.72 $570.17

*Source: U.S. Department of Commerce, Bureau of the Census, State Governmental Tax Collections in 1979, January 1980*
<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>State Tax Collections</th>
<th>Resident Population</th>
<th>Per Capita Tax Collections</th>
<th>Percent Change</th>
<th>Taxes as a Percent of Personal Income(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>$2,341,326.235</td>
<td>11,644,000</td>
<td>$201.08</td>
<td>--%</td>
<td>4.99%</td>
</tr>
<tr>
<td>1973</td>
<td>2,562,903.255</td>
<td>11,653,000</td>
<td>217.91</td>
<td>8.4</td>
<td>4.89</td>
</tr>
<tr>
<td>1974</td>
<td>3,026,705.043</td>
<td>12,049,000</td>
<td>251.20</td>
<td>15.3</td>
<td>4.98</td>
</tr>
<tr>
<td>1975</td>
<td>3,367,751.883</td>
<td>12,293,000</td>
<td>273.96</td>
<td>9.1</td>
<td>4.90</td>
</tr>
<tr>
<td>1976</td>
<td>3,913,827.072</td>
<td>12,571,000</td>
<td>311.34</td>
<td>13.6</td>
<td>4.99</td>
</tr>
<tr>
<td>1977</td>
<td>4,419,881.616</td>
<td>12,801,000</td>
<td>345.28</td>
<td>10.9</td>
<td>4.99</td>
</tr>
<tr>
<td>1978</td>
<td>5,032,274.299</td>
<td>13,047,000</td>
<td>385.70</td>
<td>11.7</td>
<td>4.97</td>
</tr>
<tr>
<td>1979</td>
<td>5,390,313.009</td>
<td>13,380,000</td>
<td>402.86</td>
<td>4.4</td>
<td>4.57</td>
</tr>
<tr>
<td>1980</td>
<td>6,343,785.161</td>
<td>14,228,000r</td>
<td>445.87</td>
<td>10.7</td>
<td>4.66</td>
</tr>
<tr>
<td>1981</td>
<td>7,742,032.894</td>
<td>14,500,000a</td>
<td>533.93</td>
<td>19.8</td>
<td>4.86a</td>
</tr>
</tbody>
</table>

**SOURCE:** Tax collection data were compiled from Texas Comptroller of Public Accounts, ANNUAL FINANCIAL REPORT (Austin: various years). Population data are shown in Table A in this report; personal income data are shown in Table B in this report; 1981 population and personal income estimates are taken from Chase Econometric Associates Regional Forecasts, August 24, 1981.

(1) Data have been revised to reflect the 1980 comprehensive National Income and Product account revisions of the BEA.

- e = estimated
- r = revised

**SOURCE:** 1981 Annual Financial Report
Comptroller of Public Accounts
In addition to state taxes, more than 3,600 local governments—cities, counties, school districts, and special districts—collect taxes. For local governments, the property tax is the major source of revenue. In 1980 property taxes accounted for 83.5 percent of local government tax collections in Texas. Property taxes in Texas are relatively low in comparison to other states. In 1980 property taxes were equal to 3.4 percent of personal income, a figure below the national average. Property taxes, however, have been increasing. Per capita revenue in 1972 was $153; in 1978 the figure was $253. This sharp increase resulted in taxpayer demands for relief.

The administration of the property tax system has also been criticized as being unfair to some taxpayers. During the period under review, the legislature enacted measures to provide both property tax reform and relief.

Major Legislation

63rd Legislature, Regular Session

House Bill 564 required businesses that collect $750 or more of sales taxes each month to turn the money in on a monthly, rather than quarterly, basis. The act was estimated to add $15 to $18 million to state revenue during the 1974-75 biennium.

Also relating to sales tax collections, House Bill 433 required businesses collecting sales tax to obtain a security bond. That was expected to result in fewer defaults in tax payments, and on the basis of the bill's enactment, the comptroller of public accounts was able to certify an additional $30 million in revenues for the state.

Among the tax exemptions provided through legislation of the 63rd session were exemptions from the property tax and from the franchise tax for certain nonprofit corporations providing homes for the handicapped or elderly (House Bill 361); exemptions for volunteer fire departments from property tax and exemptions for sales tax receipts from the sale, lease, or rental of tax items to volunteer fire departments (House Bill 96); exemptions from the property tax of museums or galleries charging admission and museum schools maintained and operated in connection therewith (House Bill 1289); exemptions from the limited sales, excise, and use tax of ileostomy, colostomy, and ileal bladder appliances and related supplies (House Bill 958) to bring those items within the group of exemptions already provided by law on appliances for other physical impairments; and property tax exemptions for property held by a nonprofit corporation for use in the development of a medical center or a medical education facility (Senate Bill 67).
House Bill 546, the Omnibus Tax Reduction Bill, amended in one bill several state and local taxes to provide exemptions or to repeal certain taxes or license fees. The following taxes were repealed: (1) the law requiring the licensing of persons selling tickets at a higher charge than the stated ticket price (scalping); (2) the law requiring the licensing of persons selling performance rights to copyrighted musical compositions; (3) the express company gross receipts tax; and (4) the gross receipts tax on sleeping, palace, or dining car companies.

House Bill 546 provided the following exemptions: (1) commercial and fishing vessels having a displacement of eight tons or more, from the sales and use tax; (2) youth athletic organizations, from the sales and use tax; (3) the amount of federal excise taxes on tires and fishing equipment, from the sales price of those items for the purpose of figuring the sales and use tax; (4) the face value of United States coins, from the sales price on the sale of the coins for the purpose of figuring the sales and use tax; (5) the lease of motor vehicles to governmental agencies, from the motor vehicle sales tax; (6) materials, machinery, and supplies that are used for the printing and distribution of newspapers, from the sales and use tax; (7) food products, including candy, when sold by a person under 18 years of age as a part of an organizational fund-raising drive, from the sales and use tax; (8) food products, including candy, when sold by the P.T.A., from the sales and use tax; (9) airplanes, when sold to persons who train pilots, from the sales and use tax; (10) youth athletic organizations, from property taxes; (11) disabled veterans, or surviving minor children of disabled veterans, and widows of persons who die on active duty, partially from property taxes; (12) solar energy devices, from the sales and use tax, and corporations, a deduction from franchise taxes for the purchase of solar energy devices; (13) motorcycle racing, from the admissions tax; (14) bicentennial organizations, from the sales and use tax; and (15) historic sites and structures, from property taxes under certain circumstances.

The act also changed the rate of taxation for skating rinks under the admissions tax, and the tax rate of certain cigars. It revised significant portions of the franchise tax, allowed the comptroller to prescribe filing deadlines for taxes other than the sales and use tax, and allowed payments for cigarette tax stamps by the use of stamp meters to be carried over into the next state fiscal year under certain circumstances.

The Texas Research League estimated the revenue loss from implementing House Bill 546 at about $3.5 million during the 1976-77 biennium. See the following table.
<table>
<thead>
<tr>
<th>Changes in Tax Laws</th>
<th>1976-77 Revenue Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Tax Exemptions</td>
<td>$1,670,980</td>
</tr>
<tr>
<td>Franchise Tax Changes</td>
<td>1,122,900</td>
</tr>
<tr>
<td>Admissions Tax Changes</td>
<td>496,000</td>
</tr>
<tr>
<td>Property Tax Exemptions</td>
<td>8,600</td>
</tr>
<tr>
<td>Cigar Tax Reduction</td>
<td>100,000</td>
</tr>
<tr>
<td>Taxes Repealed</td>
<td>92,870</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$3,491,350</td>
</tr>
</tbody>
</table>

The legislature reversed an opinion of the attorney general that required the collection of the sales tax on certain tips (House Bill 613). House Bill 2195 exempted from the sales tax certain farm machinery and supplies. House Bill 1011 imposed a use tax on automobile dealers for the registration of demonstrator cars in lieu of other taxes. Senate Bills 889 and 890 permitted taxpayers to file for extensions of time for filing reports and paying certain taxes and allowed the comptroller of public accounts to waive penalties and interest when taxes were not paid on time if the taxpayer made a diligent effort to make payment on time.

65th Legislature, Regular Session

Property Taxes:

The preferential assessment of farmland has been advocated as a means to relieve the problems of a growing burden of property taxes and rapid conversion of farmland to other uses. Senate Joint Resolution 1 and House Bill 22 were introduced to provide relief through tax valuation of open-space land on the basis of income-producing ability. Few farmers had qualified for a similar tax break under Article VIII, Section 1-d, of the Texas Constitution. The joint resolution did not pass, but the enabling bill, House Bill 22, was enacted. The constitutionality of the measure was an issue of contention among state officials. The act was eventually repealed in 1979 by the act implementing "The Tax Relief Amendment."

Senate Bill 1078 provided that property owned by a nonprofit corporation or association for use of its members must be assessed at nominal value for ad valorem tax purposes if all members have an irrevocable right to use the property and that right is appurtenant to real property owned by the members. However, the enhancement of the value of individual properties owned by the members because of the appurtenant right to use the corporation's or association's property must be taken into account in assessing those properties.
House Bill 1203 modified the types of private leaseholds in publicly owned property that are exempt from ad valorem taxation and modified the rules for valuing private leaseholds in public property that are taxable. Standards for determining the value for tax purposes of nonproducing minerals that are removed by surface mining or quarrying were prescribed by Senate Bill 815. House Bill 972 authorized the property tax on property in a planned unit development that is owned by an association composed of the owners of individual parcels in the development to be assessed proportionately against the individual members if requested by the association.

Senate Bill 626 exempted from property taxation property owned by a nonprofit corporation and devoted to preservation of wildlife. However, the act stipulated that not more than 1,000 acres in any one county might qualify. Local governments were authorized to exempt from taxation property that is designated as a Recorded Texas Historical Landmark by the Texas Historical Commission and property designated as historically significant by local ordinance under provisions of Senate Bill 595. The bill became effective on the adoption of Senate Joint Resolution 5 by the Texas electorate in November, 1977. House Bill 1330 exempted from ad valorem taxation property owned by nonprofit corporations and held for exclusive use in biomedical educational research or in biomedical research for the public benefit.

The procedure for voluntarily restricting one's land to recreational, park, and other open-space uses was prescribed by House Bill 1076, which also provided that land that is restricted for 10 or more years to those uses and is actually devoted to those uses must be assessed for ad valorem tax purposes on the basis of its value for recreational use rather than its market value.

Sales Taxes:

The rates of the state sales tax and the motor vehicle sales tax were not changed by the 65th Legislature; however, several laws provided exemptions from the assessment or collection of those taxes. Exempted from the general state sales tax were mandatory tips charged for food service if reasonable and if the amount of the tip is stated separately from the price of the food, by Senate Bill 59; all property sold at not more than one "tax-free" sale a year conducted by a religious, charitable, or educational organization, by Senate Bill 382; syringes and hypodermic needles sold for medical purposes, by Senate Bill 110; film, recording tape, photographs, transparencies, and other graphic arts materials when sold to or by a licensed radio or television station to be used in the operations of the station, by House Bill 1831; magazines sold by subscription and handled by second class mail, by House Bill 694; leases of motion pictures to movie theaters, by
House Bill 1262; all property sold to or used by a nonprofit corporation organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, to promote athletics, or to prevent cruelty to children or animals, by House Bill 2080; and equipment purchased by a volunteer fire department that also provides emergency medical services, by House Bill 407.

Exempted from the motor vehicle sales tax were ambulances and vehicles used for emergency medical services provided by a volunteer fire department, by House Bill 407; vehicles sold to orthopedically handicapped individuals, by Senate Bill 366; and buses used to carry persons to and from religious services when purchased by a church or religious society, by House Bill 190.

In addition to exemptions from taxation, the 65th Legislature substantially rewrote the motor vehicle sales tax as it relates to the taxation of motor vehicle rentals. The act, House Bill 1703, retained the four percent tax on rental but clarified and simplified the law on collection of the tax.

Senate Bill 605 allowed a retailer not to pay the sales tax on bad debts and, if the tax had been paid, permitted reimbursement.

Other Taxes:

To encourage the development of alternative energy sources, House Bill 858 exempted from the state franchise tax a corporation that manufactures, sells, or installs solar energy devices.

Senate Bill 193 exempted from the state inheritance tax the value of certain annuities created from community property or by individual retirement accounts where those annuities are exempted from the federal estate tax.

65th Legislature, 1st Called Session

The legislature convened on July 11, 1977, to tackle the controversial and complex issue of school finance reform, which was left unresolved from previous sessions. The enacted school finance legislation, Senate Bill 1, significantly increased state school aid. It was hoped that the increase in state aid would permit many local school districts to reduce the property tax burden or at least to moderate the rate of increase in school property taxes. The act also contained provisions relating to local school tax administration. It created the School Tax Assessment Practices Board to oversee local administration and estimate the taxable value of property in each school district for state aid purposes.
65th Legislature, 2nd Called Session

The rapid growth of revenue from existing taxes had produced record surpluses at the state level. Local governments in Texas had doubled their property tax receipts in seven years, usually without rate increases. The impact of inflation on existing property had greatly enlarged the tax base for many local governments. These facts and the "tax revolt" generated by passage of California's Proposition 13 stimulated demands in Texas for tax limitations, relief, and reform. Governor Briscoe called the legislature into special session on July 10, 1978, to consider tax measures based on those demands.

House Bill 1, enacted during that session, provided utility sales tax and inheritance tax relief. The inheritance tax exemption level was raised from $25,000 per beneficiary to $200,000, effective September 1, 1978. The exemption will increase to $250,000 for fiscal years 1983 through 1985 and thereafter will be $300,000. It was estimated that the exemption would reduce state revenues by about $15 million in fiscal 1979.

The act exempted residential sales of gas and electricity from the four percent state sales tax. The exemption was expected to result in a reduction of state revenues of $126 million in fiscal 1979. The act also provided for the optional exemption of such sales from the one percent city sales tax.

The most notable achievement of the special session was the adoption of House Joint Resolution 1, "The Tax Relief Amendment." Its main purpose was to provide property tax relief for homeowners and those owning open-space land dedicated to agriculture and timber production. The next legislature was given wide discretion in determining the specifics of the relief measure and therefore its eventual impact. The amendment also included provisions relating to tax administration and limits on state spending. See Attachment No. 1 for a short analysis of the amendment, which was approved by voters on November 7, 1978.

66th Legislature, Regular Session

Most provisions of "The Tax Relief Amendment" either required or authorized implementation by the legislature. To accomplish this, the legislature enacted one omnibus measure, House Bill 1060. See Attachment No. 2 for a summary of the act.

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During the 1975 and 1977 regular sessions and the 1978 special session, concerted efforts were made to pass a comprehensive property tax reform bill. Those efforts were successful in the 1979 regular session with the passage of Senate Bill 621, a complete recodification of property tax laws. It significantly changed property tax administration and incorporated the tax relief provisions of House Bill 1060. See Attachment No. 2 for a summary of Senate Bill 621.

The legislature also proposed a constitutional amendment, House Joint Resolution 98, to make mandatory county government participation in the single appraisal districts provided by Senate Bill 621. The amendment was approved by voters on November 4, 1980.

For a critical review of the property tax relief and reform measures of 1978 and 1979, see House Study Group Special Report No. 61, November 10, 1980.

Other Tax Legislation:

Senate Bill 204 exempted from all property taxes the value of assessed property arising from the construction or installation of any solar energy device.

In April, 1979, a tornado extensively damaged portions of Wichita Falls. As a measure to assist some victims of that and future disasters, the legislature passed Senate Bill 1257. It authorized the comptroller of public accounts to grant any person who is a victim of a natural disaster an extension of not more than 90 days to make or file a tax return or pay an imposed tax. The comptroller may also assist any taxpayer in reconstructing business records that are damaged or destroyed by natural disaster.

The act additionally provided that the governing body of a political subdivision located in a declared natural disaster area may authorize reappraisal of all property damaged at its value immediately after the disaster. The governing body may provide for prorating the ad valorem taxes on the reappraised property for the year in which the disaster occurred. That provision does not apply to ad valorem taxes imposed for state purposes.

67th Legislature, Regular Session

Property Taxes:

The legislature proposed two constitutional amendments relating to property taxation. House Joint Resolution 49 proposed
an amendment to exempt from taxation livestock and poultry held by
the producer. See Attachment No. 3 for a short analysis of the
amendment, which was approved by voters on November 3, 1981.

House Joint Resolution 81 proposed an amendment authorizing a
new local-option residence homestead exemption on a percentage
basis. Its purpose was to allow local governments to cushion the
blow of sharp tax increases resulting from reappraisals by new
single appraisal districts in each county. See Attachment No. 4
for a short analysis of the amendment, which was approved by voters
on November 3, 1981.

Other Tax Legislation:

House Bill 872 eliminated the Omnibus Tax Clearance Fund
established by the 47th Legislature in 1941 as an accounting device
through which funds would be transferred to assure funding for
the clearance fund to the general revenue fund and established a
system for priority allocations from the general revenue fund to
the teacher retirement system, state highway fund, foundation
school fund, farm-to-market roads, and other authorized transfers
and withdrawals. The act changed the membership of the Foundation
School Budget Committee, which henceforth is to be composed of the
governor, lieutenant governor, and comptroller of public accounts.
The act permitted the comptroller to create and use suspense
accounts and provided that revenue be first deposited in the
general revenue fund and then transferred on a monthly basis to the
available school fund or to other appropriate funds. The act
amended existing law regarding allocation of insurance premium tax
revenue and allocation of the motor fuels tax.

Existing law exempts from the sales and use tax specified
medical equipment and devices. House Bill 254 broadened the
exemption to include therapeutic appliances and devices, as well as
therapeutic supplies designed for those appliances and devices, if
those items are dispensed or prescribed by a licensed practitioner
of the healing arts. In order to qualify for the exemption,
however, an item must be purchased and used by the person for whom
it is dispensed or prescribed. Those provisions took effect
October 1, 1981. A second part of the act, which took effect
September 1, 1981, clarified existing law regarding the exemption
from the motor vehicle sales and use tax of motor vehicles designed
for, and used to transport, orthopedically handicapped persons.
The act allowed the comptroller to apply the tax retroactively if a
vehicle should not have been exempted.

House Bill 696 exempted from the sales and use tax receipts
for the taxable items bought by certain organizations qualifying
for a federal income tax exemption. Those organizations include
nonprofit city leagues operated exclusively for the promotion of social welfare; local employee associations devoted exclusively to charitable, educational, or recreational purposes; veterans organizations or auxiliary units, societies, trusts, or foundations; and fraternal societies operating under the lodge system that either provide life, accident, and health insurance for members or are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, but not both. The act further exempted receipts of a chamber of commerce that is not organized for profit. It exempted receipts for tangible items manufactured or assembled by a person 65 years or older and sold at a fund-raising drive held or sponsored by a nonprofit organization solely to provide assistance to elderly persons. An organization's exemption is limited to four such fund-raising drives a year totalling not more than 20 days. The act also required that items bought by educational, charitable, or eleemosynary organizations, in order to be exempt from the tax, must be related to the purpose of the organization.

House Bill 189 exempted nonprofit homeowners' association corporations from payment of franchise tax. The associations that were included under the act are associations of owner-controlled condominiums or residential real estate developments. House Bill 2311 exempted from the state franchise tax nonprofit corporations organized solely for and engaged exclusively in providing emergency medical services, including rescue and ambulance services.

House Bill 1576 increased from $15 to $1,500 the annual occupation tax on coin-operated machines designed exclusively for showing motion pictures.

67th Legislature, 1st Called Session

A major enactment of the special session was House Bill 30, which made extensive revisions in the Property Tax Code of 1979. The code needed to be brought into conformity with the constitutional amendment approved in 1980 requiring mandatory county participation in appraisal districts. Implementation of the code had also indicated a need to change various administrative requirements and procedures provided by the code. See Attachment No. 5 for a summary of the act.

Texas imposes a motor fuel tax of five cents per gallon on the first sale or use of gasoline in the state. Senate Bill 14 established a declining exemption from the tax for sales of gasohol, as an incentive to that industry in Texas. Under the act's provisions, distributors receive a full five-cent tax credit on gasohol sales from calendar 1982 through 1986; the credit then declines by one cent a year from calendar 1987 through 1990 and expires at the beginning of 1991. The credit is applicable to all
fuel that contains at least 10 percent ethyl alcohol if the alcohol when added is at least 192 proof, if the alcohol has been produced or distilled from a renewable source, and if it has been produced or distilled wholly in Texas or in a state that provides a reciprocal type of credit for Texas-produced gasohol. To compensate for losses to highway funding that is supported by the motor fuel tax, the act directs the comptroller to make transfers from the general revenue fund to the gasoline and alcohol mixture fund, and subsequently to the highway motor fuel tax fund, in amounts equal to the allowed credit. The tax credits are expected to reduce gross motor fuel tax collections by an estimated $97 million for fiscal years 1982 through 1986.
THE TAX RELIEF AMENDMENT

H.J.R. NO. 1,
65th Legislature, 2nd Called Session

[Providing for tax relief for residential homesteads,
elderly persons, disabled persons, and agricultural
land; for personal property exemptions; for truth in
taxation procedures, including citizen involvement;
for a redefinition of the tax base; for limitations
on state spending; and for restrictions
on property tax administration]

The proposed amendment would make several changes in the constitution.
One change is a limitation on growth in state spending; all the others affect the
property tax system in Texas. All these changes are described in detail below.

[For full text of the resolution proposing this amendment, see appendix.]

Background

Texas is one of many states feeling the reverberations
of "Proposition 13," also referred to as the "Jarvis-Gann
Amendment," adopted by California voters in June,
1978, after being placed on the ballot by the "initiative" process. Proposition 13
makes drastic cutbacks in the levels of property taxation in California, limits
future increases to two percent a year, and imposes other restrictions on the
increase of state and local taxes. The long-term effects of the measure on state
and local governments are not yet known.

In the context of a potential "taxpayer's revolt," the situation in Texas differs
from the one in California in two important respects. First, the burden of
property taxes is much less in Texas although in recent years many property
owners have felt the sting of revaluations that reflect several years of inflation
in real estate prices. Second, the initiative, which is a process that allows the
electorate to force a statewide vote on tax relief or other matters, does not
exist under the Texas Constitution. In this state, constitutional change can be
initiated (proposed to the voters) only by the legislature; and H.J.R. No. 1 is the
Texas Legislature's attempt to initiate the kind of constitutional tax relief the
voters of Texas might accept.
H.J.R. No. 1 proposes seven specific constitutional changes:

Taxation of Intangible Property

Although Article VIII, Section 1, of the constitution requires that all property be taxed (with certain exceptions not relevant here), intangible property for the most part has been omitted from local tax rolls. Included in this class of property are bank accounts, stocks and bonds, life insurance policies, retirement benefits, and similar paper assets. The proposed amendment would bring the constitution more closely in line with current practice by removing intangible property from the constitutionally required property tax base. The legislature by general law would be permitted to provide for the taxation of intangible property. (Until the legislature enacts a law on the subject, existing law will probably continue to require intangibles to be taxed. See, for example, Article 7145 of the Civil Statutes.) While removing intangibles from required taxation might be seen as merely ratifying the status quo, doing so would eliminate one ground on which the property tax has been attacked in court, that is, the failure of local taxing units to follow the constitutional mandate regarding the taxation of this type of property.

Personal Property Exemptions

Article VIII, Section 1, of the constitution presently exempts from taxation $250 worth of “household and kitchen furniture” belonging to each family. The amendment would change this exemption by requiring the legislature by general law to exempt “household goods” and “personal effects” not held or used for the production of income—with no limit as to amount—and by authorizing the legislature to exempt all or part of the “personal property homestead” of a family or single adult, the latter term being defined as the personal property exempt by law from forced sale for debt. At first glance, the proposed change seems to provide sweeping tax relief. Without limit, apparently, all personal property not held or used for business or investment purposes would henceforth avoid ad valorem taxation. Furthermore, the legislature in its discretion could exempt all the personal property that is or might be exempted from forced sale for debt. (Under Article 3836 of the Civil Statutes, this includes home furnishings, agricultural implements, tools of trade, two vehicles, certain animals, livestock and fowls, life insurance policies, and current wages.) However, this kind
of property is presently untaxed by most units of local government. Therefore, except for the possibility that one or two family cars might be exempted by law, the proposed change will not be noticeable to most taxpayers.

Taxation of Agricultural Land

When urban or resort areas intrude into farming, ranching, or timber-producing areas, land previously suitable only for agricultural use becomes suitable for urban or resort development. The amount a farmer, rancher, or timber producer is willing to pay for the land is determined by the income he expects to earn from using it for his agricultural purposes. A real estate developer, however, might reasonably anticipate substantially more income from that same land by converting it to urban or resort uses. Consequently, its market value increases to more than an agricultural producer is willing to pay. Because the constitution requires property taxes to be based on market value in the absence of an express constitutional exception, when urban or resort pressure increases the market value of land devoted to farming, ranching, or timber production, property taxes go up accordingly. Eventually the farmer or rancher finds it uneconomical to continue farming or ranching the land.

In 1966 the voters adopted a constitutional amendment intended to minimize the pressures on agricultural producers to sell to real estate developers that property taxes cause. The amendment requires taxation of qualified land to be based on the income-producing capability (or productive capacity) of the land. Under the current constitution, only agricultural land owned by an individual qualifies, and agriculture must be the primary occupation and source of income of the owner. Timberland apparently is excluded entirely.

Proposed Section 1-d-1 will not replace the current constitutional provision on agricultural land but will supplement it with a less restrictive provision. If the proposed section is adopted, the legislature will decide whether some or all timberland, corporate-owned agricultural land, and agricultural land owned by individuals who do not qualify under the current constitution may qualify for valuation on the basis of productive capacity. Property owners whose land qualifies for taxation under both the earlier agricultural use amendment and a law enacted under the new amendment may choose to have their land taxed under either provision.
Residential Homestead Exemptions

The amendment would make several changes affecting taxation of residential homesteads.

1. Exemptions determined by local option. Presently, under Article VIII, Section 1-b, Subsection (b), of the constitution any political subdivision may adopt an exemption of "not less than $3,000" of the assessed value of residence homesteads of persons 65 years of age or older. This may be done by action of the governing body or mandated by election. Some political subdivisions have adopted higher exemptions such as $5,000 or $10,000.

The proposed amendment would authorize taxing units to extend this exemption to persons who are "under a disability for purposes of payment of disability insurance benefits under federal Old-Age, Survivors, and Disability Insurance." It also requires that the exemption be based on market value rather than assessed value, and that an exemption already adopted be recalculated to achieve the same reduction in taxes. Finally, an eligible disabled person who is 65 or over may receive only one exemption if both are adopted by the taxing unit.

The effect of the amendment is unclear in two respects. First, few if any taxing units have figures representing "market value" for any property. "Assessed value" might or might not represent a fixed percentage of "appraised value," even within one taxing authority. If it does, "appraised value" is often far below market value, and the relation between appraised value and market value may not be known or may be different for different properties. The new provision requires that the exemption be subtracted from market value but gives no guidance toward determination of market value. (The same problem exists with the new mandatory school tax exemption and the new legislative exemption for the elderly and disabled, discussed below.)

The other problem concerns the meaning of the language, "under a disability for purposes of payment of disability insurance benefits...." Does this mean that, to qualify for the tax exemption, a person must be actually receiving Social Security Disability Insurance (SSDI) benefits, or does it mean that the person only needs to satisfy the disability standards for benefits under that program? Persons generally familiar with the SSDI program think receipt of benefits is probably required.
As of September 30, 1977, according to the staff of the Texas Rehabilitation Commission, there were approximately 224,000 SSDI recipients in Texas, of which about 20 percent were in institutions. Of the remainder, it is not known what percentage own their homes and could take advantage of the exemption, but the percentage is thought to be low. It is also noted that about 95,000 disabled Texans under 65 receive benefits under the Supplemental Security Income (SSI) program rather than the SSDI program and would fail to qualify for the exemption.

2. Mandatory school tax exemption. The amendment would exempt $5,000 of the market value of every residential homestead from taxation "for general elementary and secondary public school purposes." (This mandatory exemption would be in addition to any optional exemption adopted by a school district for the elderly and disabled.) If taxes are currently being levied to pay off previously incurred debt, the school district may continue levying the full amount of the tax required to pay the debt if failure to do so would impair the contract creating the debt.

3. Legislative school tax exemption for the elderly and disabled. In addition to the mandatory exemption described above, the proposed amendment would authorize the legislature to exempt from school district taxation an amount up to $10,000 of the market value of the homestead of an elderly or disabled person. The legislature may base the amount of and eligibility for this exemption on economic need. A person who is both elderly and disabled could receive only one of these exemptions. Although an eligible person would be entitled to both the mandatory school tax exemption of $5,000 and any optional exemption adopted by a school district (described in paragraph 1, above), the legislature would decide whether he or she could get both the optional school district exemption and the exemption required by the legislature for the elderly and disabled.

Another feature of the amendment is that if a person receives the exemption required by the legislature for elderly persons, a "freeze" is placed on the total amount of taxes imposed for school purposes—that is, the taxes may not be increased by the school district as long as the property is the residence homestead of the eligible elderly person or his or her spouse. An exception is made in the case of improvements, other than repairs or improvements made to comply with governmental requirements.
4. Protection of school districts against lost revenue. One of the most controversial aspects of the movement to provide property tax relief was the question of how to treat the revenue loss that will be suffered by school districts as a consequence of the newly created homestead exemptions and special treatment of agricultural land. Proposals ranged from a mandated "full reimbursement" to total silence on the issue. The latter course would have left the matter completely to the discretion of the legislature. A compromise was reached with the statement that "the legislature shall provide for formulas to protect school districts against all or part of the revenue loss,..." Thus the problem remains completely in the hands of the legislature, although it may be argued that the legislature has a mandate to reimburse at least part of the loss. (With enactment of H.B. No. 57, the legislature set aside $450 million of the state surplus to be used for this purpose in the 1979-80 and 1980-81 school years, but the method of allocating the money is yet to be determined.)

"Truth in Taxation"

A feature of California's Proposition 13 that received a great deal of national attention was a restriction on local property tax increases. Although similar restrictions were proposed during the consideration of H.J.R. No. 1, none of these proposals was included in the final document. What was included is a provision (a new Section 21 of Article VIII of the constitution) that will require local governments to provide notice of increases in property taxes before they are adopted. Subject to exceptions prescribed by general law, a local government will have to give notice and conduct a public hearing if it proposes to increase the total amount of property taxes it imposes over the amount it imposed in the previous year. Increases that result from the addition of new territory or from the construction of new improvements are not included in computing whether there is an increase in taxes. The new section further requires that, with "reasonable exceptions" provided by law, a property owner whose property is revalued is entitled to notice of the amount by which the revaluation will increase his or her taxes if the prior year's tax rate and assessment ratio are continued in effect. A revaluation notice must be given before notice and hearing procedures for a tax increase may be instituted. Procedures such as those proposed in this new section could be required by statute even if the constitution were not amended. The amendment has the effect of requiring the legislature to enact such a statute. House Bill No. 18, enacted at the called session at which this amendment was proposed, will implement this amendment if the amendment is adopted, but will take effect even if the amendment is not adopted. (The new law requires the notice and hearing only if the local governing body proposes a tax increase of over three percent.)
State Spending Limitation

The proposed amendment would add a new provision to limit the growth of state spending. It would limit the rate of growth of "appropriations from state tax revenues" to the rate of growth of the state's economy. Revenues dedicated by the constitution, such as the motor fuel tax (three-fourths for highway construction and one-fourth for the Available School Fund), are excluded from the limitation. The legislature would be required to provide procedures to implement this new limitation.

The proposal allows the legislature to avoid the limitation by passing a resolution (by majority record vote of the members of each house) declaring an emergency, identifying the nature of the emergency, and specifying the amount of the excess expenditures needed.

Property Tax Administration

A matter that received much discussion during the the consideration of H.J.R. No. 1 was whether to include a provision requiring statewide administration of standards governing local property tax procedures. The final proposal does not contain such a provision. Instead, it contains language that will restrict, to some extent, any statute on property tax administration the legislature may enact in the future. A new Section 23 of Article VIII of the constitution will prohibit statewide appraisal of real property for ad valorem tax purposes, although it will allow "formula distribution" of tax revenues to political subdivisions. (Recent legislative proposals for property tax reform have not included provision for statewide appraisals, so this language will not prevent these proposals from being resubmitted.) The new section would also require that "administrative and judicial enforcement of uniform standards and procedures" for ad valorem tax appraisals "originate" in the county where the tax is imposed, with exceptions allowed for political subdivisions located in more than one county. This will insure, among other things, that boards of equalization (bodies that adjust property appraisals for tax purposes) be located in the county where the taxable property is located. The provision does not govern appeals, however, and they could be required to be held outside the county where the property is located.

SOURCE: Texas Legislative Council
Nine Proposed Constitutional Amendments Analyzed, 1978

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Senate Bill 621 enacts a new Property Tax Code. It will be Title I of the Tax Code, which eventually will contain all statutes relating to taxation. The Property Tax Code is divided into basic units of subtitles, chapters, and sections. Beginning in 1982, it will replace all existing statutes on property taxation with two exceptions. The laws prescribing limits on tax rates and the laws governing whether a particular taxing unit may have its own assessor-collector or must use the assessor-collector for another taxing unit are not revised.

Under the code, property will be appraised for tax purposes by an appraisal district that will be established in each county. The code will permit the county assessor-collector to make a separate appraisal for the county's taxes, but it will also permit a county to join the district by contract and dispense with the need for appraisals by the county assessor-collector. With the exception of county taxes, all property taxes, including state taxes and special taxes that are now based on the county assessor's appraisals, will be based on the district's appraisals. Thus, duplicate and often conflicting appraisals by as many as four or five different local tax offices will be reduced.

Normally, the appraisal district's boundaries will be the same as the county's, but a city, school district, junior college district, or, in many cases, water and irrigation district that overlaps two or more counties may choose to participate in a single district so that a single office will appraise all property that the jurisdiction taxes. The cost of operating the district will be allocated among the cities, school districts, special districts, and, if the county joins the district, the county, in proportion to the revenue each obtains from property taxes. The district is governed by a five-member board of directors appointed by the governing bodies of the cities and school districts and, if the county joins, by the commissioners court. Each district will have its own staff, or it can contract for the performance of its duties with a unit of local government in the district or with another appraisal district.

A taxpayer will be notified of any increase in his or her property's value and can protest to the commissioners court in the case of county values, and to a separate local review board in other cases, if the value appears erroneous or illegal. If not satisfied with the disposition of his or her protest, a taxpayer may file suit in district court.

Under the new system of appraisal required by the code, the
amount of local property tax revenue will be frozen and may not be increased except by deliberate action of local governing bodies after notice and public hearing.

Beginning January 1, 1981, the code prohibits the prevailing practice of assessing property for taxation at a fraction of its market value. Instead, it requires property to be assessed at 100 percent of its market value. The single exception to that prohibition involves the state ad valorem tax of 10 cents per $100 of assessed value. Beginning in 1980, the assessed value for purposes of the state tax will be one ten-thousandth of one percent of market value—a negligible amount that effectively eliminates the tax.

The existing School Tax Assessment Practices Board is converted to the State Property Tax Board. This board will provide appraisal manuals, technical and legal information, and on-site assistance to local appraisal districts. The part-time board has general rulemaking authority but does not have any power to overrule or replace local appraisals or personnel.

The code does not change local government tax sources or legal limits. Except for the laws governing administration of property taxes, the code retains existing law. It is organized into a logical, consistent format containing all the law, including that now found in the constitution, statutes, court opinions, and attorney general opinions. The code modernizes the law, however, modifying it when desirable to facilitate administration or to make its application uniform among different kinds of taxing units.

The code does add a few new features designed to increase taxpayer awareness and understanding of how property taxes work. For example, the code requires notices of increases in value, of granting or denial of applications for exemptions or appraisal on the basis of productivity (in the case of agricultural or timber land), of filing requirements, and of increases in effective tax rates. The code also requires tax offices to deliver a tax statement to each taxpayer and to include in the statement all the information the alert taxpayer needs to understand how the tax amount was developed. Most of that information has not been included in tax statements in the past.

Finally, the code provides a procedure to give taxpayers greater control over increases in local ad valorem taxes. If the effective tax rate for a particular district increases by more than five percent over the preceding year's rate (not including taxes imposed to service debt), the voters, by petition, can require an election on the question of reducing the tax rate to a level that amounts to only a five percent increase.

The code does not take effect fully until January 1, 1982, so that local governments have enough time to prepare for its implementation. Prior to 1982, the state will provide technical and financial assistance for local planning and establishment of the appraisal districts.

House Joint Resolution 98, if approved by the voters, would
remove a constitutional roadblock preventing the legislature from requiring county appraisal operations to merge with the appraisal districts created in the new Property Tax Code. The proposed constitutional amendment would require a single appraisal of all property subject to ad valorem taxation and would provide for a single board of equalization within each county. The constitutional requirement that the county commissioners court sit as a board of equalization would be eliminated, and elected officials of the county or governing body of the taxing unit would be prohibited from serving as members of the board of equalization.

On November 7, 1978, Texas voters approved "The Tax Relief Amendment," proposed by the 65th Legislature, Second Called Session. Most provisions of the amendment either required or authorized implementation by the legislature. The 66th Legislature accomplished this task by enacting one omnibus measure, House Bill 1060. The act makes both optional and mandated changes in property tax law and implements a state spending limitation required by the amendment. The property tax provisions apply to all jurisdictions that impose the tax, except for the provisions relating to residential homestead exemptions, which apply only to school districts.

1. Taxation of Agricultural Land

Article VIII, Section 1-d-1, of the Texas Constitution, added by The Tax Relief Amendment, directs the legislature to provide for taxation of open-space land devoted to farm or ranch purposes on the basis of productive capacity rather than market value. House Bill 1060 defines the open-space land that qualifies for this special valuation and sets out the method of assessing qualified land on the basis of its productive capacity. To qualify, land must be currently devoted principally to agricultural use and have a history of agricultural use during at least five of the preceding seven years. Land located inside the corporate limits of a city or town must have been devoted principally to agricultural use continuously for the preceding five years. Land owned by nonresident aliens or foreign governments or by a corporation or other business entity controlled by foreign interests is not considered qualified open-space land.

If land that has qualified for the agricultural-use valuation is later diverted to a use other than agriculture, an additional tax (sometimes called a rollback tax) is imposed based on the preceding five years and including seven percent interest. This tax is triggered by change of use and not by a sale of the land.

The School Tax Assessment Practices Board (to become the State Property Tax Board under the new property tax code) is directed to prepare appraisal manuals for all tax jurisdictions and to develop application forms for taxpayers. An application for agricultural-use valuation must be filed during a taxing jurisdiction's rendition period; however, in 1979, House Bill 1060
provides that an application is considered timely if filed within 45 days after May 31, 1979.

This method of assessment for farm and ranch land applies to taxes for 1979 unless the taxing jurisdiction formally postpones implementation until 1980 or the jurisdiction's tax roll has been certified prior to May 31, 1979.

2. Taxation of Timber Land

Article VIII, Section 1-d-1, of the constitution also authorizes the legislature to provide for taxation of open-space land devoted to timber production on the basis of its productive capacity. House Bill 1060 implements the optional timber-use valuation for open-space land. Implementation is similar to that for agricultural-use valuation. One major difference is a provision that establishes a minimum value for timber land at the value indicated on the 1978 tax roll.

3. Taxation of Intangible Property

Adoption of The Tax Relief Amendment removed intangible property from the constitutionally required property tax base. The legislature, however, is permitted to provide for the taxation of such property.

House Bill 1060 exempts from ad valorem taxation all intangible property except bank stock and certain intangible property now taxed effectively.

4. Personal Property Exemptions

Article VIII, Section 1, of the Texas Constitution, as amended by The Tax Relief Amendment, requires the legislature by general law to exempt from ad valorem taxation "household goods" and "personal effects" not held or used for the production of income. The section also now authorizes the legislature to exempt all or part of the "personal property homestead" of a family or single adult, the term being defined as the personal property exempt by law from forced sale.

House Bill 1060 implements the exemption of "household goods" and "personal effects," and defines the terms.

In regard to the "personal property homestead," the act exempts from ad valorem taxation all nonbusiness automobiles owned by a family or individual not a member of a family. A taxing jurisdiction, however, may continue taxation of all automobiles by formal action of its governing body.

5. Residential Homestead Exemptions

The Tax Relief Amendment granted a $5,000 market value exemption from school taxes to every residential homestead. In addition this mandatory exemption authorizes the legislature to
exempt from school taxes up to $10,000 of the market value of the residential homestead of an elderly or disabled person.

House Bill 1060 defines "residence homestead" and provides that all persons 65 years of age or older or disabled are entitled to an additional exemption of $10,000 of the market value of the homestead. An elderly disabled person may receive only one $10,000 exemption. The act also sets out the procedure to carry out the required tax freeze on a residential homestead of an elderly person receiving the additional $10,000 exemption.

The $5,000 and $10,000 residential homestead exemptions are in addition to any homestead exemption for persons 65 years of age or older granted at the option of a school district under Article VIII, Section 1-b, Subsection (b) of the constitution. The act also states a legislative finding that a local taxing jurisdiction may reduce or repeal a residential homestead exemption adopted under the subsection.

A person may apply for the additional $10,000 exemption for the 1979 tax year. The application must be made within 45 days after May 31, 1979.

6. Reimbursement to School Districts

The legislature was directed by The Tax Relief Amendment to "provide for formulas to protect school districts against all or part of the revenue loss" resulting from homestead exemptions and special treatment of agricultural and timber land.

House Bill 1060 sets out the method of reimbursing school districts for revenue loss and authorizes that $220 million from the School Taxing Ability Protection Fund be used for reimbursement during the forthcoming fiscal biennium. To receive an allotment of the funds, school districts must file an application with the School Tax Assessment Practices Board by November 1 of each year, and the board is required to calculate the amount due each school district by January 1 of each year. Increases in state financial support under the new school finance act will reduce the calculated revenue loss of a school district in determining the amount of direct reimbursement.

7. State Spending Limitation

The Tax Relief Amendment provides that the rate of growth of appropriations from state revenue not dedicated by the constitution may not exceed the estimated rate of growth of the state's economy. The legislature was directed to provide by general law procedures for implementation of the limitation.

House Bill 1060 establishes these procedures for determining a binding limit on appropriations from state tax revenues not dedicated by the constitution. The legislature, as authorized in the constitution, may exceed the limit by adopting a resolution to override it.
8. Other Provisions

School districts may issue tax bond indebtedness voted prior to August 31, 1979, notwithstanding the 10 percent tax bond indebtedness limitation imposed in the Education Code. In addition, any taxes pledged by school districts for the payment of debt may continue to be levied and collected against the value of residential homesteads exempted under this act if cessation of the levy would impair the obligation of the contract by which the debt was created.

House Bill 1060 is effective May 31, 1979, except the provision relating to the state spending limitation and a provision amending the new property tax code, which are effective on January 1, 1980.

SOURCE: Texas Legislative Council
Summary of Enactments, 66th Legislature
House Joint Resolution 49, proposing a constitutional amendment providing for the inclusion of livestock and poultry with farm products as exempt from taxation.

The proposed amendment of Article VIII, Section 19, of the Texas Constitution, approved by the 67th Legislature, Regular Session, 1981, exempts from taxation livestock and poultry in the hands of the producer. The amendment is self-executing, and no enabling legislation is necessary to make the exemption effective. Once adopted, the exemption for livestock and poultry is effective until otherwise directed by legislation approved by a two-thirds vote of the members of each house of the legislature.

Article VIII, Section 19, presently exempts from taxation farm products in the hands of the producer. Section 11.16, Property Tax Code, codifies this constitutional exemption. Although it is clear that the current constitutional exemption applies to agricultural crops, legal opinion differs on whether livestock and poultry are also covered. The proposed amendment, if adopted, would settle the current legal uncertainty by providing an express constitutional tax exemption for livestock and poultry in the hands of the producer. The adoption of the amendment will also assure the constitutionality of the exemption from property taxation for livestock and poultry in the hands of the producer provided by H.B. 911, 67th Legislature, Regular Session, 1981, which amends Section 11.16, Property Tax Code, effective January 1, 1982, to define farm products to include livestock and poultry.

BACKGROUND

Article VIII, Section 19, was added to the Texas Constitution in 1879 to offset the harsh effects of an economic depression in Texas by providing tax relief to farmers and other Texas citizens. It exempts from taxation farm products in the hands of the producer as well as family supplies for home and farm use. Neither Article VIII, Section 19, nor any other provision of the Texas Constitution defines "farm products" or "family supplies" for purposes of exemption from taxation.

A constitutional provision expressly exempting farm products
or livestock and poultry is required because the Texas Constitution prohibits the exemption from taxation of any property not expressly exempt by some provision of the constitution; no other provision of the constitution exempts from taxation farm products, livestock, or poultry.

Since its adoption in 1879, the constitutional exemption for farm products has been construed by the Texas attorney general to include various agricultural crops or their by-products such as rice, wool, cottonseed oil, wheat, and sugar cane or molasses [e.g., Tex. Att'y Gen. Op. Nos. M-632 (1970) (cottonseed oil), V-511 (1948) (wheat)]. The constitution, however, does not provide a guide to construction of the meaning of "farm products." As a general rule, exemptions from taxation are narrowly construed with all doubts being resolved against exemption from taxation [Kirby Lumber Corp. v. Hardin Independent School District, 351 S.W.2d 310, 312 (Tex. Civ. App.-Waco 1961, writ ref'd n.r.e.)]. In 1976, the Texas attorney general construed the exemption for farm products narrowly so as not to include livestock and poultry in the hands of the producer [Tex. Att'y Gen. Op. No. H-898 (1976)]. Governmental units that impose property taxes have recognized the difference in exemption from taxation of agricultural crops and livestock and poultry and have imposed property taxes on livestock and poultry that they have been able to locate and list on their tax rolls.

SOURCE: Texas Legislative Council
Analysis of Proposed Constitutional Amendments Appearing on the November 3, 1981, Ballot

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House Joint Resolution 81, proposing a constitutional amendment to authorize certain property tax relief for owners of residence homesteads and to change certain property tax administrative procedures.

The proposed amendment, by adding Subsection (e) to Article VIII, Section 1-b, of the Texas Constitution, would authorize the governing body of a political subdivision to exempt from property taxation a percentage of the market value of all residence homesteads. The exemption, if granted, would have to conform to certain percentage and monetary restrictions. The percentage of the exemption could not exceed 40 percent for 1982 through 1984, 30 percent for 1985 through 1987, and 20 percent for 1988 and subsequent years. The monetary amount of the exemption in any year would have to be at least $5,000. The legislature, however, would have authority to prescribe by general law other monetary restrictions. Consequently, future legislation could provide a different monetary minimum or could establish a monetary maximum on the amount of the exemption. The proposed exemption would be in addition to other applicable exemptions provided by law.

If the exemption would impair the ability of a political subdivision to pay a debt incurred before the exemption was granted, the political subdivision could impose taxes on the homestead without regard to the exemption until the debt was paid.

The proposed amendment would also change the "truth in taxation" requirements of Article VIII, Section 21, Subsection (c), of the constitution. Under the current provision, a political subdivision is required to formally notify a property owner whose property is revalued for tax purposes of the amount of taxes that would be imposed on his property according to the new value if neither the tax rate nor the assessment ratio for the preceding year was changed. Under the proposed amendment, instead of this information, the political subdivision would have to inform the property owner of the total amount of property taxes that would be imposed on his property if total property taxes imposed by the political subdivision were not increased over the amount imposed in the preceding year.
Optional Residence Homestead Exemption

In 1978, Texas voters approved a tax relief amendment that amended Article VIII, Section 1-b, of the Texas Constitution to increase the number of exemptions from property taxation available to owners of residence homesteads. The exemptions were to provide property tax relief to homeowners who were experiencing higher property taxes as inflationary rises in real estate prices were reflected on tax rolls as a result of reappraisals.

The property tax relief provided in 1978 to homeowners may be offset by higher property taxes caused by reappraisal, which has had the practical effect of shifting part of the tax burden in a political subdivision away from commercial and industrial property and to residential property. A 1981 analysis of tax shifts that will result from reappraisal, based on data prepared by the State Property Tax Board, shows an average increase of 27.5 percent in the tax burden carried by residential property in school districts and an average decrease of 6 percent in the burden borne by commercial and industrial property. Several Texas cities have recently completed reappraisals of property. Their reappraisals have caused a substantial increase in the tax burden placed on residential property and a shift of the burden away from business property. This shift in the tax burden is especially likely to occur with reappraisals in political subdivisions that historically appraised residential property less frequently or at a lower percentage of market value than business property. A shift in the tax burden may also reflect a greater inflationary rise in recent years in the value of homes than in the value of business inventory or equipment.

The proposed amendment would authorize a political subdivision to offset a shift in the tax burden to residential property by adopting a percentage exemption for all residence homesteads for 1982 and any year after 1982. The permissible percentage of value exempted from property tax decreases from 40 percent to 20 percent by 1988, but the minimum value exempted must be at least $5,000 in any year. By future legislation, other monetary restrictions may be added. The flexibility allowed the political subdivisions in setting the percentage, however, should enable the subdivisions to offer property tax relief locally.

Content Of Notices Of Reappraisal

In 1978, Texas voters approved the addition to the
constitution of Article VIII, Section 21. Subsection (c) of Section 21 presently requires a political subdivision, subject to reasonable exceptions, to give notice to a property owner in a reappraisal notice of the reappraised value of his property and the amount of taxes that would result from the reappraised value if neither the tax rate nor assessment ratio for the preceding year is reduced. Procedures for a reappraisal notice and notice of the effect on property taxes from reappraised value could have been required by statute without accompanying constitutional authority. Subsection (c) had the effect of compelling the legislature to enact a statute that required reappraisal notices which complied with the express terms of Subsection (c). As a result, the statutory provisions enacted under the present language of Article VIII, Section 21, Subsection (c), require political subdivisions to mail notices of reappraisal that include the amount of property taxes that would be imposed on the reappraised value on the basis of the tax rate and assessment ratio for the preceding year.

Reappraisal notices that include amounts for property taxes for the current year based on the rate for the preceding year may be misleading if a significant portion of the property in the political subdivision is reappraised. The resulting large increase in the total value of property on the tax rolls of the subdivision would allow the subdivision to reduce the tax rate for the current year and still generate the same total amount of property tax revenue as generated for the preceding year. Several Texas cities have recently completed major reappraisals of property. They have experienced some difficulty with the constitutional notice requirement of Subsection (c) and the companion statutory provisions that the amount of property taxes to be imposed on reappraised value be included in reappraisal notices on the basis of the tax rate for the preceding year. In the case of reappraisals that doubled the value of property, the cities had to notify the property owner that property taxes on his property would double even though the cities intended to lower the tax rate for the current year and thereby offset the impact of reappraised value.

The experience of these cities shows that the present notice requirement based on the use of the tax rate for the preceding year may confuse a taxpayer rather than reasonably inform him of the property taxes to be imposed on his property for the current year. The proposed amendment to Subsection (c) would eliminate the present requirement that the tax rate for the preceding year be used. Instead, the proposed amendment substitutes the requirement that a political subdivision give notice to a property owner of a reasonable estimate of the amount of property taxes that would be
imposed on his property as a result of reappraised value if the total amount of property taxes for the subdivision for the current year is not increased above the total amount for the preceding year. The 67th Legislature, 1st Called Session, 1981, included a provision in H.B. 30, contingent on the adoption of the proposed amendment to Subsection (c), that eliminates the requirement that reappraisal notices include the amount of property taxes to be imposed on reappraised value on the basis of the tax rate for the preceding year. If the proposed amendment is adopted, the statutory change in requirements for reappraisal notices is effective January 1, 1982.

SOURCE: Texas Legislative Council
Analysis of Proposed Constitutional Amendments Appearing on the November 3, 1981, Ballot
House Bill 30 revises the Property Tax Code, Title 1 of the Tax Code, by amending various provisions concerning property tax and its administration. House Bill 30 was enacted in response to comments on and experience with the Property Tax Code. The code was enacted by the 66th Legislature, Regular Session, 1979, as a tax reform measure. The code established an appraisal district and an appraisal review board in each county to provide single appraisals of property and single equalization of property values effective January 1, 1982. The code also established the State Property Tax Board to assist appraisal districts, appraisal review boards, and Texas taxpayers in understanding and complying with the provisions of the new law. As enacted in 1979, the code required all taxing units imposing property taxes except counties to participate in the appraisal districts and use the appraisal review boards for appraisal and equalization purposes.

The 66th Legislature, Regular Session, 1979, also proposed House Joint Resolution 98 as a tax reform measure. In great part, the resolution was submitted to Texas voters to eliminate the constitutional impediment to requiring mandatory county participation in appraisal districts and use of appraisal review boards by removing from Article VIII, Section 18, of the Texas Constitution the requirement that county commissioners courts sit as boards of equalization for county tax purposes. The resolution also amended Article VIII, Section 18, to require the single appraisal of property and a single board of equalization in each county for property tax purposes. Texas voters adopted the resolution in November, 1980, and many of the amendatory sections of House Bill 30 implement the changes in the constitution made by the resolution. To do so, those sections of the bill amend the Property Tax Code to provide for mandatory county participation in appraisal districts and use of appraisal review boards in the same manner as that required of other taxing units by the provisions of the code enacted in 1979.

In addition to implementing House Joint Resolution 98, House Bill 30 changes a substantial number of the dates in the tax calendar created by the Property Tax Code for the performance of duties or the exercise of rights by taxpayers, taxing units, and appraisal districts. Generally, duties may be performed or rights exercised by a date up to a month later in the year than the date provided by the relevant provision of the code enacted in 1979. For example, taxpayers will have until May 1 rather than April 1 to submit applications for property tax exemptions or for special valuation methods such as agricultural productivity, taxing units will have until June 1 rather than May 1 to file petitions with appraisal review boards challenging certain appraisal decisions, and chief appraisers of appraisal districts will have until July 25 rather than June 25 to certify appraisal rolls to all taxing units participating in their districts. House Bill 30, however, does not change the October 1 date for the mailing of tax bills and does not alter the February 1 date by which tax bills must be paid or taxes become delinquent and begin to incur penalties and interest. Several dates in the tax calendar are changed by more than a month.

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Chief appraisers of appraisal districts will have to prepare proposed budgets for their districts and submit copies of the proposed budgets to taxing units by June 15 rather than October 1, and the boards of directors for the appraisal districts will have to approve final budgets for the next year by September 15 rather than by December 1 of the current year.

Besides implementing House Joint Resolution 98 and modifying the tax calendar, House Bill 30 amends the Property Tax Code to enhance certain rights of taxpayers, simplify taxpayer protests of appraisals before appraisal review boards, increase penalties and interest on delinquent taxes, and codify existing civil statutes providing for refunds of overpayments or erroneous payments of property taxes. With the enactment of House Bill 30, taxpayers will be able to file notices of protests rather than formal petitions with appraisal review boards, taxpayers will be able to rely when challenging appraisals of property on annual studies prepared in 1984 and subsequent years by the State Property Tax Board on the weighted average levels of appraisals for each major kind of property in appraisal districts, and taxpayers will not have to authorize in writing others to act as their agents at appraisal review board hearings. Written orders of appraisal review boards determining taxpayer protests will not have to provide formal findings of fact or conclusions of law. Delinquent taxes will incur interest at 1 percent for each month or portion of a month the taxes are delinquent and certain delinquent taxes will incur a penalty of 12 percent rather than 8 percent as provided by the relevant provision of the code enacted in 1979. A new section of the code, Section 31.11, will allow a refund of an overpayment or erroneous payment if application for the refund is made within three years after the date of the payment.

House Bill 30 makes other numerous and varied changes to the Property Tax Code. Section 115 of the bill adds a section to the code, Section 26.011, which will limit the application of reappraised values of property in the years 1982 through 1985, certain sections of the bill amend Section 25.19 of the code to change the content of notices of reappraisal of property, and many initial sections of the bill modify the provisions of the code that govern the local administration of appraisal districts and appraisal review boards. In general, the amendments to the local administrative provisions change or add eligibility requirements for and methods of selecting the members of the appraisal district board of directors, methods of allocating and approving appraisal district costs, and methods of disapproving certain actions of the appraisal district board of directors. Other amendatory sections of the bill change the code to require the reappraisal rather than the review of property and to provide for the reappraisal of real property every four years rather than five years as provided by the provisions of the code enacted in 1979. Sections 119 and 120 of
the bill amend the provisions of the code concerning rollback elections to permit elections to control increases in tax rates if a taxing unit adopts a rate that exceeds the rate calculated under Section 26.04 of the code by more than eight percent rather than five percent as provided by the terms of the rollback provisions enacted in 1979. Sections 119 and 120 of the bill also eliminate the current requirement that 25 percent of the qualified voters in taxing units participate in rollback elections for the outcome of the elections to affect tax rates.

In addition to the many changes that are made by the amendatory sections of House Bill 30, significant changes are made in property taxes and property tax administration by the several nonamendatory sections of the bill. Section 161 of the bill provides for the postponement of single appraisal of property in an appraisal district until 1983 or 1984, Section 164 of the bill prohibits the employment of appraisers by taxing units effective January 1, 1984, except as provided by Section 6.05(b) of the code, and Section 165 of the bill clarifies the rights of certain elderly homeowners to have their 1982 school district taxes limited to the amounts they would have paid in 1979 if they had received the $10,000 elderly residence homestead exemption and the freeze in school district taxes.

The changes to the Property Tax Code and additions to the law governing the property tax system mentioned in this summary are only some of the many modifications made by House Bill 30. The amendatory and nonamendatory sections of House Bill 30 should be read along with the provisions of the code enacted in 1979 to determine the present state of any particular aspect of the law governing property taxes and property tax administration. Certain parts of the Property Tax Code have taken effect since its enactment in 1979, and the remaining provisions of the code are scheduled to take effect on January 1, 1982. For the most part, amendments by House Bill 30 to provisions of the code already in effect became effective on August 14, 1981, the date the governor signed the bill into law. Amendments to provisions that take effect on January 1, 1982, will as a rule become effective on January 1, 1982. Section 168 of House Bill 30 provides details on the effective dates of the various amendments to the code. That section should be consulted when studying a particular aspect of the property tax system.

SOURCE: Texas Legislative Council Summary of Enactments, 67th Legislature