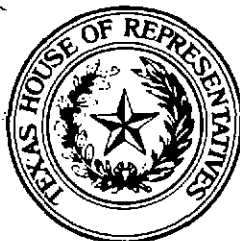


HOUSE RESEARCH ORGANIZATION

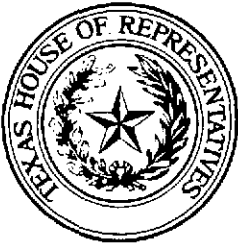
—special legislative report—

MAJOR ISSUES OF THE 70th LEGISLATURE

October 7, 1987



Number 139



HOUSE RESEARCH ORGANIZATION

P.O. BOX 2910 • AUSTIN, TEXAS 78769 • (512) 463-0752

Tom Whatley, Director

October 7, 1987

No. 139

MAJOR ISSUES OF THE 70th LEGISLATURE

The 70th Legislature passed 1,186 bills and 23 joint resolutions during its regular session, plus another six bills during its first called session and another 77 bills and four joint resolutions during its second called session. This report, prepared by the House Research Organization staff, provides a summary of many of the major issues of the regular session and the first and second called sessions. It includes legislation that failed to pass along with bills and proposed constitutional amendments that were approved. The purpose of this report is to provide an overview of the issues faced by the 70th Legislature and to anticipate some issues that might be considered in future sessions.

The House Research Organization recently published additional reports examining certain issues of the 70th Legislature: State Finance Report No. 70-8, The General Appropriations Act and New Revenue for Fiscal 1988-89 (July 28, 1987); Special Legislative Report No. 137, Vetoes of Legislation -- 70th Legislature (June 29, 1987); Special Legislative Report No. 138, 1987 Constitutional Amendments and Referendum Propositions (Aug. 17, 1987).

A handwritten signature in black ink that reads "Anita Hill".

Anita Hill
Chairman

A handwritten signature in black ink that reads "Ed Watson".

Ed Watson
Vice Chairman

Steering Committee:

Anita Hill, Chairman
Ed Watson, Vice Chairman

Tom Craddick
Larry Evans
Bruce Gibson

Ernestine Glossbrenner
Juan Hinojosa

Cliff Johnson
Al Luna
Jim McWilliams

Al Price
Jim Rudd

Ashley Smith
Terral Smith
Tom Waldrop

70th LEGISLATURE, REGULAR SESSION

	<u>Introduced</u>	<u>Passed</u>	<u>Percent passed</u>
House bills	2,632	711	27%
Senate bills	1,547	475	31%
TOTAL bills	4,179	1,186	28%
HJR's	114	12	11%
SJR's	57	11	19%
TOTAL joint resolutions	171	23	13%

COMPARISON OF 1985 AND 1987 REGULAR SESSIONS

	<u>1985</u>	<u>1987</u>	<u>Percent Change</u>
Bills Filed	4,021	4,179	+ 4%
Bills Passed	1,024	1,186	+16%
Bills vetoed	44	51	+16%
Joint Resolutions Filed	132	171	+30%
Joint Resolutions Passed	16	23	+44%
Measures sent or transferred to Calendars Committee	1,071	1,137	+ 6%
Measures sent to Local and Consent Calendars Committee	613	728	+19%

Source: Legislative Information System

70th LEGISLATURE, FIRST AND SECOND CALLED SESSIONS

	<u>Introduced</u>	<u>Passed</u>	<u>Percent Passed</u>
House bills	189	49	26%
Senate bills	112	34	30%
TOTAL bills	201	83	41%
HJRs	20	1	5%
SJRs	9	3	33%
TOTAL joint resolutions	29	4	14%

CONTENTS

* Enacted
 ** Vetoed

(1) first called session
 (2) second called session

Page

ALCOHOL/DRUNKEN DRIVING

*HB	655	Denton	Motor-vehicle breath analyzers	1
*HB	1652	Millsap	Liability of alcohol providers	2
*HB	1963	Wilson	Limited liability of employers	3
*SB	521	Sarpalius	Ban on drinking while driving	4

BUSINESS REGULATION

*HB	49	Watson	Membership camping resorts	5
*HB	662	Glossbrenner	Trench safety	6
*HB	834	Granoff	Use of deceased person's likeness	7
*HB	1953	Shaw	Vehicle sales locations	8
HB	2279	Gibson	Homestead loans for tax break	9
*SB	20 (2)	Armbrister	Sports agent regulation	10
*SB	95	Blake	Funeral service regulation	11
*SB	229	Montford	Long-distance phone regulation	12
SB	1048	Green	Non-profit groups' records	13
SJR	18/			
SB	421	Glasgow	Home-equity loans	14

CONSTITUTIONAL AMENDMENTS

*HJR	2	Schlueter	Rainy day fund	200
HJR	3 (2)	Wright	Malpractice damage limit	137
*HJR	4	Colbert	Bonds for business aid	66
*HJR	5	A. Smith	Public aid for businesses	67
*HJR	5 (2)	Schlueter	Texas Growth Fund	68
HJR	7	Wilson	State lottery	221
HJR	9 (2)	Schlueter	Income-tax ban	222
*HJR	18	Williamson	Jail districts	21
*HJR	35	Yost	County treasurers	161
*HJR	48	Schlueter	Spouse's homestead tax exemption	223
HJR	55	Patterson	Official state language	187
*HJR	60	Leonard	Rural fire-district tax	162
*HJR	65	Cain	State turnpike spending	233
*HJR	83	Stiles	County work for others	163
*HJR	88	A. Luna	Bonds for super collider	69
*HJR	96	Stiles	Tax break for idle rigs	224
*HJR	104	Waterfield	Grain warehouse guarantee	70
*HJR	112	Finnell	Four-year House terms	188

CONSTITUTIONAL AMENDMENTS (cont.)

Page

SJR 2	Farabee	Judicial selection changes	36
SJR 5	Parmer	Annual legislative sessions	191
*SJR 5 (2)	Sarpalius	Randall County hospital district	167
*SJR 6 (2)	Lyon	JPs per precinct limits	168
*SJR 8 (2)	Montford	Highway Fund dedication	207
*SJR 9	Brown	Legislator ineligibility	192
*SJR 12	McFarland	"Freeport" exemption	227
*SJR 12	McFarland	Personal-property tax exemption	228
*SJR 17	Farabee	Speaker on executive committees	194
SJR 18	Glasgow	Home-equity loans	14
*SJR 26	Montford	Municipal liability limits	145
*SJR 27	Blake	Emergency-services districts	169
*SJR 34	Montford	State right of appeal	56
*SJR 35	Caperton	Spouses' survivorship rights	109
*SJR 53	Edwards	Lame-duck appointments	195
*SJR 54	Montford	Bonds for water projects	92
*SJR 55	Parmer	Bonds for local facilities	208
*SJR 56	McFarland	Bonds for TDC, TYC, TDMHMR	209

CORRECTIONS

*HB 80 (2)	Lucio	Private municipal jails	15
*HB 83	P. Hill	Adult Probation Commission sunset	16
*HB 146 (2)	Ceverha	Local financing of state prisons	17
**HB 484	Melton	Counseling for sex offenders	18
*HB 527	Stiles	Use of force by prison guards	19
*HB 680	Morales	Award of good-conduct time	20
*HJR 18	Williamson	Jail districts	21
*SB 215	McFarland	Prison population cuts	22
*SB 245	McFarland	Department of Corrections sunset	24
*SB 251	McFarland	Private prisons and county jails	25
*SB 341	Farabee	Parole board sunset	26

COURTS

*HB 65	L. Evans	Race-based juror challenges	27
*HB 142 (2)	Hury	Appeals by disciplined judges	28
*HB 288	Smithee	Disclosing appeals court actions	29
**HB 959	Hinojosa	Judicial pay raise	30
*HB 1879	C. Evans	Municipal courts of record	31
*HB 2449	Colbert	Continuances for holy days	32
HB 2538	C. Evans	Bond for judgment pending appeal	33
*SB 687	Farabee	Court administration revisions	34
*SB 1108	Farabee	Appointed counsel for indigents	35
SJR 2/			
SB 12	Farabee	Judicial selection changes	36

CRIMINAL LAW

Page

HB	13	L. Evans	Accomplice death-penalty ban	37
*HB	23	Roberts	Speedy Trial Act changes	38
**HB	151	Finnell	Cruelty to animals	39
*HB	161	Danburg	Sexual assault by spouse	40
HB	438	Blackwood	Class C misdemeanor penalty	41
HB	512	Riley	Late return of rent equipment	42
*HB	538	Richardson	Children's ID records	43
HB	553	Ovard/		
HB	574	Richardson	Life without parole	44
*HB	571	Valigura	Keeping a vicious dog	45
*HB	682	T. Smith	Juvenile offenders	46
*HB	683	T. Smith	Evidence of juvenile offenses	47
HB	686	Hury	Court costs for Crime Stoppers	48
*HB	705	Heflin	False driver's license	49
HB	1047	Wilson	License to carry handgun	50
*SB	1	Brown	Exception to evidence exclusion	51
*SB	43	Farabee	Punishment retrial after appeal	52
*SB	66 (2)	Parmer	Videotaped testimony of children	53
SB	126	Lyon	Search warrants by telephone	54
SB	768	Glasgow	Grand jury procedures	55
*SJR	34/			
*SB	762	Montford	State right of appeal	56

ECONOMIC DEVELOPMENT

*HB	3	Hackney	Economic planning commission	57
*HB	4	A. Smith	Department of Commerce	58
*HB	5	Hackney	Cutting state red tape	59
*HB	49 (2)	Harrison	State aid for agriculture	60
*HB	440	Hinojosa	Small business court costs	61
**HB	707	R. Lewis	State product preference	62
*HB	1405	Richardson	UT, A&M commercialization labs	63
*HB	1909	A. Luna	State aid for super collider	64
*HB	2085	Stiles	Local aid for super collider	65
*HJR	4	Colbert	Bonds for business aid	66
*HJR	5	A. Smith	Public aid for businesses	67
*HJR	5 (2)	Schlueter	Texas Growth Fund	68
*HJR	88	A. Luna	Bonds for super collider	69
*HJR	104	Waterfield	Grain warehouse guarantee	70
*SB	1428	Edwards	Super collider sites	71

ELECTIONS

*HB	28 (2)	C. Evans	Uniform election-date changes	72
*HB	613	Perez	Birthplace on voter registration	73
*HB	1412	Hackney	Electronic voting systems	74
*HB	1818	Hilbert	Campaign finance recodification	75
HB	1962	R. Smith	Primaries in single location	76
**SB	884	Edwards	Written aid at polling place	77

ENVIRONMENT/WATER

Page

HB	210	Guerrero	Drink-container return deposit	78
*HB	734	T. Smith	Water financing authority	79
*HB	1896	McDonald	Agricultural workplace chemicals	80
*SB	13	Brown	Fishing license exemption	81
*SB	62 (2)	Zaffirini	Low-level radioactive waste site	82
*SB	410	Montford	Agricultural water conservation	83
*SB	504	Lyon	Hunter safety education	84
*SB	611	Lyon	Permanent School Fund land access	85
*SB	683	Montford	Bay and estuary studies	86
SB	702	Santiesteban	River conservation	87
SB	761	Montford	State groundwater jurisdiction	88
*SB	807	McFarland	Water pollution control funding	89
SB	967	Santiesteban	Groundwater management standards	90
SB	1033	Santiesteban	Groundwater quality protection	91
*SJR	54	Montford/		
*HB	72 (2)	T. Smith	Bonds for water projects	92

ETHICS

*HB	790	Eckels	County financial disclosure	93
*HB	1948	Robnett	Conflicts of interest	94
*SB	168	Caperton	Open Meetings Act revision	95
SB	197	Edwards	Legislators as lobbyists	96
*SB	497	Caperton	Judicial candidates' conduct	97
*SB	1081	Henderson	Lobbyist registration, fees	98

FAMILY

*HB	113	Collazo	Kidnapping by a parent	99
*HB	317	Tallas	Parental consent to marry	100
*HB	500	S. Hudson	State day-care centers	101
*HB	617	C. Evans	Joint-custody agreements	102
*HB	1213	Arnold	Waiting period to marry	103
HB	2020	Roberts	Licensing children's homes	104
SB	409	Farabee	Support of grandchildren	105
SB	532	Caperton	Spousal maintenance	106
SB	842	Caperton	Marital property agreements	107
*SB	1123	Armbrister	Establishing paternity	108
*SJR	35	Caperton	Spouses' survivorship rights	109

HEALTH AND HUMAN SERVICES

*HB	344	Leonard	Indigent health care	110
HB	401	Guerrero	Preventing teen pregnancy	111
*HB	410	Millsap	Limiting abortions	112
*HB	843	C. Evans	In vitro fertilization coverage	114
*HB	1066	C. Evans	Alzheimer's council	115

HEALTH AND HUMAN SERVICES (cont.)				Page
*HB	1829	McDonald	AIDS control	116
*HB	2560	Wright	Physician regulation	118
*SB	16	Farabee	Organ donor protocols	119
*SB	66 (2)	Parmer	Sex offender AIDS tests	120
SB	165	Brooks	Smoking in public places	121
*SB	257	Farabee	TDMHMR sunset	122
*SB	298	Edwards	DHS sunset	123
*SB	1035	Tejeda	Limiting steroid use	125
*SB	1371	Brooks	Mammography insurance coverage	126
*SB	1405	Brooks	Blood bank AIDS tests	127

HIGHER EDUCATION

*HB	2181	G. Lewis	Higher education reform	128
*HB	2182	Delco	Student basic-skills test	130
*HB	2183	Delco	Core curriculum	131
*SB	24	Barrientos	Hazing prohibition	132
*SB	643	Montford	Violating NCAA rules	133

INSURANCE/TORT REFORM

HB	5 (2)	Wright	Malpractice damage limits	134
*HB	620	Dutton	Insurance "redlining" ban	135
*HB	2320	C. Evans	Assumption-of-risk defense	136
HJR	3 (2)	Wright	Malpractice damage limit	137
*SB	2 (1)	Jones	Liability insurance changes	138
*SB	5 (1)	Montford	Tort reform	139
*SB	6 (1)	Montford	Prejudgment interest limit	140
*SB	7 (1)	Montford	Venue for railroad suits	141
*SB	8 (1)	Farabee	State risk management	142
*SB	9 (1)	Farabee	Nonprofit groups' insurance	143
*SB	260	Henderson	Corporate director liability	144
*SJR	26	Montford	Municipal liability limits	145

LABOR/PUBLIC EMPLOYEES

**HB	8	Leonard	State employee sick-leave pool	146
*HB	10 (2)	Kuempel	Limits on OPS	147
HB	15 (2)	Earley	State personnel office	148
*HB	21 (2)	Kuempel	ERS contribution/benefits	149
*HB	33 (2)	T. Smith	State worker legal costs	150
*HB	426	Granoff	Campaigning by city workers	151
*HB	824	Barton	City-employee residency	152
*HB	1141	Russell	State early retirement	153
HB	1565	R. Smith	Workers' compensation repeal	154
*HB	2090	Criss	Unemployment fund bonds	155
*HB	2623	C. Harris	TRS contribution/benefits	156
**SB	545	Uribe	Banning stoop labor	157
*SB	601	Santiesteban	Farm minimum wage	158
SB	990	Parker	Early teacher retirement	159
SB	1280	Parmer	State worker parental leave	160

LOCAL GOVERNMENT

Page

*HJR 35	Yost	County treasurers	161
*HJR 60	Leonard	Rural fire-district tax	162
*HJR 83	Stiles	County work for others	163
*SB 408	Uribe	Limiting colonias	164
*SB 481	Johnson	Building repair by cities	165
*SB 962	Barrientos	City-annexation limits	166
*SJR 5 (2)	Sarpalius	Randall County hospital district	167
*SJR 6 (2)	Lyon	JPs per precinct limits	168
*SJR 27	Blake	Emergency-services districts	169

PUBLIC EDUCATION

*HB 173 (2)	Haley	Teacher appraisals	170
*HB 177 (2)	Hammond	Foundation School Program	171
HB 226	Delco	Sex education training	172
*HB 723	A. Hill	Expulsion from school	173
*HB 1010	Martinez	Dropout reduction	174
HB 1285	Haley	School lease-purchase	175
*HB 1758	Culberson	Posting school-district data	176
HB 2495	Haley	Class size with aide	177
HB 2572	Rudd	School funding formulas	178
*SB 68 (2)	Montford	Reallocation to school fund	179
*SB 86 (2)	Parker	State school board selection	180
SB 232	Sarpalius	No pass/no play change	181
*SB 335	Parker	Subject testing repeal	182
SB 793	Parker	Education Code revision	183
*SB 994	Parker	Teacher degree standards	184

STATE GOVERNMENT

*HB 1169	Gibson	State building purchases	185
HJR 55	Patterson	Official state language	187
HJR 112	Finnell	Four-year House terms	188
*SB 485	Johnson	MLK birthday holiday	189
SB 664	McFarland	Citations for Texas laws	190
SJR 5/			
SB 38	Parmer	Annual legislative sessions	191
*SJR 9	Brown	Legislator ineligibility	192
*SJR 17	Farabee	Speaker on executive committees	194
*SJR 53	Edwards	Lame-duck appointments	195

STATE FINANCE					Page
*HB	7	(2)	Hollowell	Budget execution authority	196
*HB	1637		Millsap	Donations to Legislature	198
*HB	1785		Williamson	Uniform state accounting	199
*HJR	2		Schlueter	Rainy day fund	200
*SB	33	(2)	Jones	Oil overcharge revenue	201
*SB	52	(2)	Montford	Sale of state land	202
*SB	56	(2)	Farabee	Cash management notes	203
*SB	789		Farabee	Cash management committee	204
*SB	1027		Farabee	Bond Review Board	205
*SB	1407		McFarland	Bonds for TDC, TDMHMR	206
*SJR	8	(2)	Montford	Highway Fund dedication	207
*SJR	55		Parmer	Bonds for local facilities	208
*SJR	56		McFarland	Bonds for TDC, TYC, TDMHMR	209
TAXES/REVENUE					
*HB	2		Schlueter	Tax Equity Committee	210
*HB	61	(2)	Morales	State revenue increase	211
*HB	62	(2)	Stiles	Motor-fuels tax increase	213
*HB	63	(2)	Schlueter	Highway fund transfers	214
*HB	176	(2)	Morales	Revenue bills' effective date	215
*HB	979		Criss	Unemployment fund tax	216
*HB	1043		Criss	Bingo tax	217
*HB	1606		Schlueter	Publication tax exemption	218
HB	2438		Schlueter	Transit authority tax limit	219
*HB	2445		Berlanga	Tax cut for new houses	220
HJR	7		Wilson	State lottery	221
HJR	9	(2)	Schlueter	Income-tax ban	222
*HJR	48		Schlueter	Spouse's homestead tax exemption	223
*HJR	96/				
*HB	2082		Stiles	Tax break for idle rigs	224
*SB	58	(2)	Jones	Cap on local sales tax	225
*SB	299		Farabee	Local sales tax revision	226
*SJR	12		McFarland	"Freeport" exemption	227
*SJR	12		McFarland	Personal-property tax exemption	228
TRANSPORTATION					
*HB	390		Parker	Nonresident auto insurance	229
*HB	943		Wilson/		
*SB	79	(2)	Henderson	Mass transit authorities	230
*HB	1364		Cain	Joint turnpike projects	232
*HJR	65		Cain	State turnpike spending	233
SB	144		Lyon	Helmets for motorcyclists	234
SB	270		Green	School-bus safety belts	235
SB	353		Tejeda	Children in truck beds	236
*SB	595		Parmer	Trucking rate flexibility	237
INDEX					238

ALCOHOL/DRUNKEN DRIVING

Motor-vehicle breath analyzers for DWI offenders (HB 655 by Denton)

Effective Sept. 1, 1987

HB 655 allows courts to require certain DWI offenders to equip their motor vehicles, at their own cost, with a breath-analysis device that will not allow the vehicle to be operated if ethyl alcohol is detected in the driver's breath. Drivers whose licenses have been suspended after two or more convictions of DWI or DWI-involuntary manslaughter and who request an "essential need" driver's license and drivers placed on probation after two or more convictions may be restricted to driving only motor vehicles that are equipped with a breath-analysis device.

Supporters said that Texas Department of Public Safety statistics show that in 1986, 1,304 people died and 33,793 people were injured in the 41,012 Texas traffic accidents reported as involving drunken drivers. Most often, those involved in alcohol-related traffic accidents are the problem drinkers who have been repeatedly convicted of DWI. HB 655 would get some of these drunken drivers off the road. The cost of the breath-analysis device, estimated to be about \$1.33 per day over a year, would not be unreasonable.

Opponents said many convicted DWI offenders would not be able to afford the cost of these devices. The drivers who are restricted by courts to driving cars equipped with breath-analysis devices would have to pay the manufacturer approximately \$400 all at once. Since the devices would make a car more difficult to start, they could be dangerous in an emergency.

Legislative History: The House passed the bill by nonrecord vote on April 9 (Journal page 1003). The Senate made several clarifying changes and passed it by voice vote, two members recorded voting nay, on May 25 (Journal page 1808). The House concurred with the Senate amendments by nonrecord vote on May 27 (Journal page 3664).

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

Liability of providers of alcoholic beverages
(HB 1652 by Millsap)

Effective June 11, 1987

HB 1652 creates an exclusive statutory cause of action against a person who sells or serves an alcoholic beverage, under a state license or permit, for damages resulting from the intoxication of the person served. A party suing a provider of alcoholic beverages must prove that it was apparent to the provider that the drinker was intoxicated to the extent that the person was a danger and that the intoxication of the drinker was a proximate cause of the damages. The bill does not affect the right of any person to bring a common law cause of action against the intoxicated person who caused the damages. HB 1652 also allows suspension or cancellation of an alcohol permit for conviction of an offense involving discrimination or violation of civil rights.

Supporters said recognition of a new statutory duty for providers of alcoholic beverages would encourage commercial providers to take greater care in serving alcoholic beverages. The bill would allow injured third parties to recover against those who are partially responsible for the intoxication that caused the injury.

Opponents said people should be held accountable for their own actions. If an intoxicated person causes injury or damage to a third person, the intoxicated person should be held legally responsible for paying for that injury or damage. Imposing liability on those who provide alcohol would radically expand their potential liability and increase their liability insurance premiums. Other opponents said that the extent of liability of third party providers of alcohol should be left to the courts.

Legislative History: The House passed HB 1652 on the Local and Consent Calendar by 138 to 0 on April 23 (Journal page 1293). The Senate amended the bill to add the provisions for statutory liability of alcohol providers, then passed the bill on May 27 by 29 to 1 (Journal page 1912). The House refused to concur with the Senate amendments on May 30 by nonrecord vote (Journal page 2384), and a conference committee was appointed. The conference committee report included the Senate provision on liability of alcohol providers. On June 1 the House adopted the conference report by 142 to 1 (Journal page 4312), and the Senate adopted it by 29 to 2 (Journal page 2702).

The HRO Senate amendments analysis of HB 1652 appeared in the May 30 Daily Floor Report.

Limiting the liability of alcoholic beverage employers
(HB 1963 by Wilson)

Effective Sept. 1, 1987

HB 1963 adds a new section to the Texas Alcoholic Beverage Code providing that the actions of an employee, for the purposes of the code provisions concerning the sale or provision of alcoholic beverages to minors and intoxicated persons, will not be attributable to the employer. An employer can take advantage of this special immunity only if: (1) the employer requires its employees to attend a Texas Alcoholic Beverage Commission-approved seller training program; (2) the employee involved had attended such a training program; and (3) the employer did not encourage the employee to violate the law.

Supporters said bars, restaurants and liquor stores should not be responsible for the actions of their employees as long as they take certain precautions. Now that licensed providers of alcoholic beverages are civilly responsible for the consequences of serving alcohol to already intoxicated persons, they need some protection against lawsuits.

Opponents said employers are generally civilly responsible for their employees' actions conducted within the course and scope of their employment. HB 1963 would carve out an exception in this long-standing legal principle for the benefit of one class of business -- alcoholic beverage sellers. Persons injured as a result of the negligence of an employee of a bar operator would not have the same access to judicial redress as persons injured as a result of the negligence of an employee of a car manufacturer. Holding providers of alcohol ultimately responsible for their negligence in serving alcohol to an already intoxicated person makes those providers much more reluctant to serve intoxicated persons. A judgment against an employee alone would likely be uncollectible.

Legislative History: The House passed HB 1963 on the Local and Consent Calendar by nonrecord vote, two members recorded voting nay, on April 30 (Journal page 1597). The House version of the bill provided that a person does not commit the offense of selling an alcoholic beverage to a minor if the minor falsely represents that he or she is 21 and displays a Texas driver's license or identification card issued by the Department of Public Safety. The Senate amended the bill to add the liability waiver for sellers of alcoholic beverages if their employees attend a training course. It passed HB 1963 by 30 to 0 on May 21 (Journal page 1412). The House initially refused to concur with the Senate amendments, but reconsidered its vote and concurred by nonrecord vote, one member recorded voting nay, on May 28 (Journal page 3716).

Ban on drinking alcohol while driving
(SB 521 by Sarpalius)

Effective Aug. 31, 1987

SB 521 makes it a Class C misdemeanor (maximum fine of \$200) to consume an alcoholic beverage while operating a motor vehicle in a public place and being seen doing so by a police officer. If the arresting officer is not required to take the driver before a magistrate for violation of some other law, SB 521 requires the officer to issue a written notice to appear in court. The driver must sign a written promise to appear in court.

Supporters said Texas Department of Safety records show that in 1986, 1,304 people died and 33,793 people were injured in the 41,012 Texas traffic accidents reported as involving drunken drivers. Prohibiting drivers from drinking while driving would help reduce Texas' high number of traffic accidents and save lives. By permitting drivers to drink while driving, the state is encouraging drunken driving and fostering the mistaken belief that drinking while driving is acceptable behavior. Law enforcement officers believe that a law prohibiting drinking while driving, like seat-belt and child restraint laws, would be largely self-enforcing.

Opponents said Texas already has a strict law that prohibits people from driving while intoxicated. The penalties for a DWI conviction are increased if the driver possessed an open container of alcohol when arrested. A drinking ban would be difficult to enforce. Drivers would become adept at holding their drinks below the car door window, drinking only when a patrol car is not in sight or disguising their drinks. The law would just give certain law enforcement officers one more excuse to harass drivers.

Legislative History: The Senate passed SB 521 on March 9 by voice vote (Journal page 281). The House passed SB 521, as amended, by nonrecord vote, three members recorded voting nay, on April 23 (Journal page 1297). The Senate concurred with the House amendments by voice vote on April 27 (Journal page 1341).

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

BUSINESS REGULATION

Regulation of membership camping resorts (HB 49 by Watson)

Effective Sept. 1, 1987

HB 49 requires businesses that sell membership interests in camping resorts to register with the Texas Department of Labor and Standards and follow guidelines for advertisements and prizes used to promote the sale of memberships. Any membership contract must include a rescission clause that states that a purchaser who has not seen the campgrounds before signing may cancel a contract any time before the fourth business day after the contract is made.

Supporters said the bill would protect consumers from businesses that use unethical selling tactics in promoting membership camping resorts by requiring these businesses to follow specific guidelines in advertising and drafting contracts.

Opponents said the bill was unnecessary and assumes that all membership camping businesses are dishonest. They said the Deceptive Trade Practices Act already prohibits false and misleading business practices.

Legislative History: The House divided the vote on the bill -- the section requiring registration fees to be placed in a special fund to cover administration of the act passed by 136 to 0, and the remainder of the bill passed by nonrecord vote on May 12 (Journal page 2063). The Senate passed the bill by 30 to 0 on May 29 (Journal page 2030).

The HRO analysis of the bill appeared in the May 11 Daily Floor Report.

Trench safety at construction sites
(HB 662 by Glossbrenner)

Effective Sept. 1, 1987

HB 662 requires trench-safety plans for construction projects of the state and its political subdivisions. The plans are required when trench excavation will be more than five feet deep. The contractor must submit plans to prevent trench collapse. The plans would have to meet or exceed safety standards mandated by the federal Occupational Health and Safety Administration (OSHA). Pipeline construction, regulated by the Texas Railroad Commission, is excluded.

Supporters said Texas has the highest rate in the nation of construction accidents, injuries and deaths. Trench cave-ins are a major cause of those construction deaths. A general safety requirement in public construction contracts would ensure that honest, safety-oriented contractors are not undercut by low bids from contractors who choose to ignore the safety of their workers.

Opponents said the bill was unnecessary and probably unenforceable. The safety of construction workers is clearly the responsibility of OSHA, and these proposed safety plans would not ensure that a given contractor will abide by them. The bill would burden many construction companies with extra "red tape."

Legislative History: The House passed the bill on May 12 by nonrecord vote (Journal page 2062). The Senate passed the bill by voice vote on May 27 (Journal page 1901).

The HRO analysis of the bill appeared in the May 11 Daily Floor Report.

Commercial use of deceased person's likeness
(HB 834 by Granoff)

Effective Sept. 1, 1987

HB 834 creates a property right in the name, voice, signature, photograph or likeness of deceased persons for 50 years after their death. The right is transferable and can be registered with the Secretary of State's Office by certain relatives. Owners of the right can sue anyone making unauthorized commercial use of the name and other protected material for commercial purposes. Several unauthorized uses involving art and media are explicitly permitted, with the exception of certain commercially related uses.

Supporters said the bill would protect families of famous persons who leave behind a valuable name. Because Texas law has not clearly addressed the issue, relatives have faced frequent and difficult litigation to protect these assets and to block offensive uses. Generous exemptions for media and artistic use would provide substantial protection for First Amendment rights. Concern about this law's interaction with divorce law are misplaced; if problems arise, they should be dealt with in the Family Code. The federal protection of interstate commerce would not limit the effectiveness of this law because articles unpacked and sold in Texas legally are not in interstate commerce.

Opponents said the bill would create more rights for deceased persons than for the living, who must rely on court decisions to protect use of their names. The provision on commercially sponsored broadcasts and articles could be interpreted in a way harmful to First Amendment freedom of expression. Questions remain regarding whether the bill would apply to divorces and whether it violates the federal prohibition against state restrictions on interstate commerce.

Legislative History: The House passed the bill on April 13 by nonrecord vote, one member recorded voting nay (Journal page 1071). The Senate amended the bill and passed it by voice vote on May 7 (Journal page 1013). The House concurred with the Senate amendments by nonrecord vote on May 11 (Journal page 2007).

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

Regulating location of motor vehicle sales
(HB 1953 by Shaw)

Effective June 18, 1987

HB 1953 requires vehicle dealers, when applying for general distinguishing numbers from the Highway Department for each type of vehicle they sell, to swear that they intend to remain regularly and actively engaged in business as a dealer for at least one year at a specified location. The general distinguishing number under which a dealer operates is restricted to the location where the dealer conducts business. Civil penalties ranging from \$50 to \$1,000 are provided for persons who violate the general distinguishing number requirements.

Supporters said the bill would protect consumers from unethical vehicle dealers who were circumventing a 1985 statute that requires them to operate from permanent places of business and be regularly and actively engaged in business at those locations.

Opponents said that current law was adequate to protect against fly-by-night dealers without adding restrictions calculated to exclude used car sales by rental companies and credit unions. They called the bill a poorly disguised attempt to protect certain vehicle dealers at the expense of consumers, rental companies and others.

Legislative History: The House passed the bill on May 7 by 142 to 0 (Journal page 1866). The Senate passed the bill on May 18 by 29 to 0 (Journal page 1256), after adding several amendments. Among the Senate changes were provisions establishing civil penalties, requiring auctioneers who hold general distinguishing numbers to hold the auction only at the location for which the number was issued, and giving the Highway Department the discretion to decide whether to cancel a number if violations occur, rather than making cancellations mandatory. The House concurred with the Senate amendments on May 20 by 139 to 1 (Journal page 2799).

The HRO analysis of the bill appeared in the May 4 Daily Floor Report.

Homestead loans and federal tax deduction
(HB 2279 by Gibson)

Died in Senate committee

HB 2279 would have enabled lenders to make loans by executing a deed of trust upon a borrower's homestead in order for the borrower to obtain a federal income-tax deduction on the loan interest payments. The lender would have to notify the borrower that the deed of trust would not be enforceable and that upon the borrower's request, the lender would release the borrower from the deed. The lender and borrower would have jointly executed an affidavit affirming that the primary purpose of the deed was to obtain the mortgage interest tax deduction for the borrower.

Supporters said that since the new federal income tax law allows consumer interest deductions only for loans secured by the borrower's homestead, and the Texas Constitution prohibits foreclosure on homesteads on default of such loans, some other means must be found so that Texans can take advantage of the tax deduction. Under the consumer loan arrangement permitted by HB 2279, the borrower's home, while technically used as collateral, would remain exempt from seizure. The lender would use alternate means of collection should the borrower fall behind in payments, sell or transfer the home, or default. The loan involved would be similar to a personal or signature loan based on the borrower's income or earning capacity yet would allow Texans to enjoy one of the few remaining tax deductions under the new tax law.

Opponents said that HB 2279 would be a backdoor device to circumvent the state's long-standing homestead protection. This "legal fiction" has been tried in certain other states, with varying success. Certain state courts had ruled that such "unenforceable deeds" could actually be used to foreclose upon the pledged property. Also, there would be no guarantee that the IRS would recognize the validity of this device as a mortgage and allow the sought-after federal tax deduction. Other opponents said that rather than resorting to a convoluted scheme to allow mortgage interest deductions, the state should simply amend the Texas Constitution to allow true second mortgages.

Legislative History: The House initially rejected the bill by 63 to 81, two present, not voting on May 12 (Journal page 2076). It later reconsidered the bill and passed it on May 19 by 88 to 55 (Journal page 2620). The bill was referred to the Senate Economic Development Committee, where on May 29 it failed to receive a sufficient number of votes to report it favorably to the full Senate.

The HRO analysis of the bill appeared in the May 12 Daily Floor Report.

Regulation of sports agents
(SB 20 by Armbrister, second called session)

Effective Oct. 20, 1987

SB 20 requires all sports agents who directly or indirectly contact student athletes in Texas to register annually with the Secretary of State's Office. Applicants must provide certain business information in the registration form and deposit a \$100,000 surety bond. Any representation or financial services contract used by the agent must be drawn from a form or format approved by the secretary of state. Agent advertising, personal contacts and interviews with athletes are restricted. SB 20 provides civil and criminal penalties, as well as administrative sanctions, for violations.

Supporters said the bill would prevent many blatant abuses in the sports agent field. NCAA rules have no deterrent effect upon the more unscrupulous sports agents, who know that only the school and the athlete can be punished for violations. The bill would also limit harassment of athletes.

Opponents said the bill would not solve the basic problems in amateur sports that cause college athletes to sign "future contracts" with professional sports agents. The bill's limits concerning contract terms may be challenged in court as an interference with the right to contract.

Legislative History: The Senate passed the bill by voice vote on July 6 (Journal page 54). The House passed the bill by nonrecord vote on July 18 (Journal page 504).

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

Regulation of funeral services
(SB 95 by Blake)

Effective Sept. 1, 1987.

SB 95 changes the name of the State Board of Morticians to the Texas Funeral Service Commission. The commission may assess administrative fines ranging from \$100 to \$5,000 against those violating state law or commission rules. An unlicensed worker is allowed to pick up or transfer a corpse without the personal supervision of a funeral director when there is no reasonable probability that family members of the deceased will be present.

Supporters said the bill would strengthen the regulation of funeral homes and protect consumers from unethical businesses. Allowing the commission to fine businesses that violate the law would ensure that penalties fit the violation and that existing loopholes regarding penalties would be closed. Allowing unlicensed workers to pick up corpses at the hospital or morgue when relatives are not present could save consumers money and free licensed funeral directors to oversee funeral arrangements.

Opponents said allowing unlicensed workers to retrieve corpses would benefit funeral-home operators at the cost of reducing the quality of service provided to the public. Funeral directors would more likely pocket additional profits than pass on any resulting savings to the consumer.

Legislative History: The Senate passed the bill by voice vote on Feb. 17 (Journal page 154). The House deleted a provision requiring that a licensed funeral director personally supervise the first-call pick up of a corpse, then passed the bill by nonrecord vote on April 23 (Journal page 1298). The Senate refused to concur with the House amendments by voice vote on April 27 (Journal page 812), and a conference committee was appointed. The conference committee included the provision allowing unlicensed personnel to pick up corpses under certain conditions. On May 19, the House adopted the conference committee by nonrecord vote (Journal page 2722, and the Senate adopted it by voice vote (Journal page 1289).

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

PUC regulation of long-distance telephone companies
(SB 229 by Montford)

Effective Sept. 1, 1987

SB 229 puts all long-distance telephone companies that are not the dominant carrier under the limited regulatory authority of the Public Utility Commission (PUC) starting on Dec. 31, 1988. For these companies, the PUC will have the limited authority to require that statewide average rates are maintained, that the quality of service provided protects the public interest and that each local area have access to long-distance service. The bill requires the PUC to determine in an evidentiary hearing by Dec. 31, 1988 if any long distance company is dominant in any particular service market. The PUC may fully regulate a long distance company in any service market where it finds that company to be dominant.

Supporters said the bill would promote economic development and protect consumers. Since AT&T long-distance rates are regulated by the PUC and other long-distance carriers are not, AT&T has been placed at an unfair disadvantage to other companies that set their own rates and operate freely without answering to any governmental watchdog.

Opponents said it would be unfair to regulate other long distance companies in addition to AT&T because its prior monopoly position continues to make it the dominant long-distance carrier.

Legislative History: The Senate added amendments that removed the PUC's limited authority over non-dominant long distance companies and that allowed AT&T to reduce rates under certain conditions without regulatory review, then passed the bill by voice vote, five members recorded voting nay, on April 8 (Journal page 573). The House added amendments that put AT&T and all other long distance carriers under limited PUC regulatory authority on Dec. 31, 1988 (Journal page 3402), and passed the bill on May 26 by nonrecord vote, three members recorded voting nay (Journal page 3496). The Senate refused to concur with the House amendments by voice vote on May 29 (Journal page 2081), and a conference committee was appointed. The conference committee added amendments that allowed the PUC to determine which long distance companies would be subject to limited regulatory authority and which companies would be subject to full regulatory authority. On June 1 the Senate adopted the conference report by voice vote (Journal page 2703), and the House adopted it by nonrecord vote, two members recorded voting nay (Journal page 4342).

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

Limiting access to records of non-profit organizations
(SB 1048 by Green)

Died in the House

SB 1048 would have exempted non-profit corporations operated, supervised, or controlled by a church or its auxiliary organizations from requirements to keep detailed financial records, prepare annual reports and make annual financial reports available to the public. It would also have exempted corporations whose directors or trustees are appointed by a church or its auxiliary organizations and institutions of higher education recognized by a regional accrediting organization. (Private colleges and universities certified by the Texas Higher Education Coordinating Board are already exempt.)

Supporters said the intent of the original public disclosure act was to police fly-by-night operators, not legitimate religious hospitals. Forcing church-owned hospitals to disclose their financial activities puts them at a disadvantage with private hospitals, which do not have to make such disclosures.

Opponents said that having to make an annual report of financial activities is a small price to pay for having tax-exempt status. No one has come up with a single example of any real harm done by this reporting requirement. On the other hand there are questions being raised about the way that church-run hospitals use their money that could not be investigated without the reporting requirement.

Legislative History: The Senate passed this bill on the Local and Uncontested Calendar on April 15 (Journal page 628). After the House Business and Commerce Committee reported the bill, the House voted to move it from the Local and Consent Calendars Committee to the Calendars Committee. When the bill was considered on second reading, a procedural point of order was raised and sustained (Journal page 2240). The bill was placed on the General State Calendar a second time on May 28 but was not considered by the House.

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

Home-equity loans and lender foreclosures
(SJR 18/SB 421 by Glasgow)

Died in Senate committee

SJR 18 proposed a constitutional amendment to allow Texas homeowners to borrow against the equity or value of their homestead (a "second mortgage"). It would have changed the current portion of the Texas Constitution that permits a creditor to force sale of a homestead only to pay off a first mortgage, a home-improvement loan, or delinquent taxes.

SB 421 would have allowed a homeowner to take out a second mortgage for any purpose, as long as the total debt (first and second mortgages, plus any home-improvement debt) did not exceed 80 percent of the appraised value of the homestead and at least \$10,000 of the equity was left unencumbered. The bill also would have prohibited foreclosures against homeowner/borrowers over 65 years of age, required that both spouses approve the transaction in writing, required a three-day "cooling off" period for borrowers to change their minds, prohibited second mortgages on homes of less than \$50,000 in value and allowed only certified financial institutions, such as banks, savings and loan institutions, credit unions and licensed loan companies, to make second mortgage loans.

Supporters said that second mortgages give homeowners the ability to use their most valuable asset, the value of their home, as loan collateral. Under the current restrictions homeowners can obtain the value of their home equity only by selling their home. The injection of consumer capital from equity loans would give the state economy a needed boost. The state should not prohibit prudent homeowners from taking advantage of a financial tool that all other states currently allow in some form. Also, the new federal income tax will only allow a deduction for consumer credit interest from home equity mortgages.

Opponents said that the homestead protection in our Constitution has served Texas well during the last 150 years, preventing widespread home foreclosures during economic downturns. Permitting second mortgages would mainly benefit large financial institutions, especially those from out-of-state that already have extensive home equity loan operations. The homestead protection promotes a stable economic climate by providing a financial cushion for those who might otherwise pledge their home as security for a short-sighted investment.

Legislative History: The Senate State Affairs Committee considered SB 421, SJR 18 and other proposals for home-equity loans but took no action.

CORRECTIONS

Municipal authority to contract for private jails (HB 80 by Lucio, second called session)

Effective Aug. 3, 1987

HB 80 authorizes municipalities to contract with private firms or counties for financing, design, construction, leasing, purchase, operation, maintenance or management of jails and other corrections facilities. Contracts must require adherence to standards of the Texas Commission on Jail Standards, on-site inspections by cities, posting of certain bonds, acceptance of liability, adequate insurance, plans for transfer in case of bankruptcy and comprehensive standards for conditions of confinement.

Competitive bidding is required for contracts involving property improvement. Contracted jails may not hold more than an average of 500 inmates daily. Correctional facilities operated or built by cities before the bill took effect may not be converted into privately operated facilities. Private vendors and counties may not locate facilities within one-half mile of a public school, church or institute of higher education within the city of Houston.

Supporters said municipalities should have jail contracting authority like that granted to counties and the state. Many cities need to catch up with rapid population growth and the accompanying increase in crime. Use of private contractors would help cities stymied by failed bond issues. Inmates could be housed at a lower cost. City monitoring, application of state standards and required insurance would provide the necessary protections.

Opponents said the claimed cost advantage of private jails is overrated. Savings at private jails often result from elimination of rehabilitation programs. Privately run jails tend to pay employees less, which compromises security. This and other building initiatives could create a glut of jail space. The bill has no safeguards to prevent favoritism in awarding of contracts.

Legislative History: The House passed the bill by 135 to 4 on July 16 (Journal page 330). The Senate passed the bill by 21 to 6 on July 18 (Journal page 203). (A similar bill, HB 2119 by Lucio, had been enacted by the Legislature during the regular session but was vetoed by the governor. The governor said he objected to a Senate amendment that would have prohibited Houston from housing prisoners overnight. That provision was not included in HB 80.)

The HRO analysis of HB 80 appeared in the July 15 Daily Floor Report.

Texas Adult Probation Commission sunset
(HB 83 by P. Hill)

Effective Sept. 1, 1987

HB 83 continues the Adult Probation Commission through Sept. 1, 1999. It combines restitution centers and residential treatment centers into one type of center called a "community rehabilitation center." The bill allows electronic monitoring devices to be attached to a probationer as a possible probation condition.

Supporters said the TAPC has met its goals and objectives in an efficient and effective manner and should be continued. Combining residential treatment centers and restitution centers into one type of center would allow funding for the two centers to be combined. Electronic monitoring is a cheap and secure way to keep probationers under surveillance and should be made available as a probation option.

No apparent opposition

Legislative History: The House passed the bill by nonrecord vote on May 15 after adding several amendments including a provision prohibiting violent offenders from being placed in community rehabilitation centers (Journal page 2454). The Senate passed the bill on May 23 by voice vote after adding several clarifying amendments (Journal pages 1649). The House concurred with the Senate amendments by nonrecord vote, one member recorded voting nay, on May 27 (Journal page 3662).

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

City and county financing of state prisons
(HB 146 by Ceverha, second called session)

Effective Aug. 4, 1987

HB 146 authorizes Texas counties and home-rule cities, or nonprofit corporations acting on their behalf, to issue certificates of obligation or participation, execute credit agreements or issue revenue bonds to finance the construction of correctional facilities. The certificates and revenue bonds can be secured by revenue from leasing the facility to the state if the Legislature has authorized the specific project -- cities and counties cannot levy property taxes to pay for the bonds. HB 146 also provides authority for the state to contract for the financing, construction, operation, maintenance or management of criminal justice facilities.

Supporters said the bill would allow counties and home-rule cities to issue bonds and other financial instruments to finance new prisons that could be leased to the state. This would increase the number of prison beds available in the state while bringing new construction and prison-guard jobs to areas willing to support new prisons.

Opponents said the bill would continue the dangerous trend of borrowing to support current needs, rather than maintaining Texas' pay-as-you-go tradition. Allowing local governments to float revenue bonds to pay for prison construction that the state would pay for through a leasing arrangement would eventually cost the state more than would a direct appropriation of general revenue or even issuance of state general-obligation bonds. Interest payments can double the total cost of a project, and revenue bonds issued by local governments require higher interest payments than general-obligation bonds backed by the full faith and credit of the state.

Legislative History: The House passed the bill on July 18 by 142 to 5 (Journal page 488). The Senate added amendments permitting nonprofit corporations to finance prison construction and to require specific legislative authorization of leases used to secure bonds and passed the bill on July 19 by 29 to 0 (Journal page 229). The House refused to concur with the Senate amendments on July 21 (Journal page 552), and a conference committee was appointed. The conference committee retained the Senate amendments. On July 21 the House adopted the conference report by 140 to 5 (Journal page 659), and the Senate adopted it by 31 to 0 (Journal page 351).

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

Treatment program for sex offenders
(HB 484 by Melton)

Vetoed

HB 484 would have authorized the Texas Department of Corrections (TDC) to create a program for the rehabilitation of inmates charged with sexual offenses. The program of psychological counseling and therapy would have been targeted at prisoners convicted of crimes involving sexual assault, aggravated sexual assault, indecency with a child and incest. Inmates serving sentences for other types of offenses would have been eligible to participate in such treatment programs if they had a history of sexual offenses.

If TDC officials determined that they lacked the resources to reach all inmates suitable for treatment, they could have focused treatment for those inmates with the "greatest need" for such therapy. The TDC and the Board of Pardons and Paroles would have been required to agree to their continuing responsibilities for offenders about to be released in cases for which continuing psychological care, treatment or supervision would be appropriate and useful.

Supporters said sex offenders have a clear need for psychological counseling. Evidence from similar counseling programs in other states shows that untreated offenders almost invariably repeat their crimes after release, while those who participate in counseling are less likely to return to prison for sexual offenses. TDC now offers psychological treatment only to so-called "special needs" prisoners, such as those already certified as mentally ill.

Opponents said that HB 484 would require a great expenditure of scarce state money and TDC resources with no guarantee of success. Other opponents said that the only effective treatment for repeat sex offenders is "chemical castration."

Legislative History: The House defeated by 66 to 64, four present, not voting, an amendment that would have made "chemical castration" a condition for release of repeat sex offenders and adopted an amendment prohibiting a prisoner from participating in the program more than once. The bill then failed to pass on April 9 by 58 to 74 (Journal page 1002). A motion to reconsider later prevailed by 76 to 55, and the bill passed by 80 to 54 on April 9 (Journal page 1026). The Senate amended the bill to permit a prisoner to participate in the program more than once, then passed the bill on May 22 by 30 to 0 (Journal page 1509). The House concurred with the Senate amendment by nonrecord vote, three members recorded voting nay, on May 25 (Journal page 3412). The governor vetoed the bill on June 20.

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

Justifiable force by guards in penal institutions
(HB 527 by Stiles)

Effective Sept. 1, 1987

HB 527 authorizes prison guards, jailers, correctional officers and all peace officers to use force against an inmate when they "reasonably believe" that force is necessary to maintain the security of the facility, protect other persons or protect their own safety.

Supporters said that under current law guards and other correctional officers may use force to stop an escape attempt but have no clear authority to use force to maintain security. HB 527 would give the guard or jailer the same legal status as a regular peace officer, while enabling prison guards to deal more quickly and effectively with various prison disturbances.

Opponents said the bill was unnecessary and would encourage brutality and indiscriminate use of force as a control tactic.

Legislative History: The House passed the bill on March 26 by nonrecord vote, three members recorded voting nay, (Journal page 710). The Senate passed the bill by voice vote on May 30 (Journal page 2394).

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

Revision of TDC rules on good conduct time
(HB 680 by Morales)

Effective Sept. 1, 1987

HB 680 adds new restrictions on award of good-conduct time earned by prison inmates to accelerate their release from the Texas Department of Corrections. It alters the formulas used to award the extra good-conduct time and imposes stricter behavior standards for inmates to receive good-conduct time. The additional restrictions on award of good-conduct time will be reviewed annually, and time may be awarded to inmates retroactively, or forfeited time restored, if necessary to alleviate overcrowding. Inmates sentenced to consecutive sentences must meet parole eligibility for each separate sentence in turn. The bill also eliminates automatic release under mandatory supervision for certain offenses involving violence.

Supporters said the proposed changes in the award of good-conduct time to inmates would make it a more effective tool in managing prisoners and encouraging them to take advantage of rehabilitation programs. Many inmates have been released after serving only a fraction of their original sentence, with little regard for their behavior while in prison.

Opponents said the bill would only perpetuate the overcrowding problems at TDC by keeping prisoners at TDC longer. The cost of building new facilities to house those inmates remaining in the system because of these proposed changes would be far too high. Rather than continue the failed policy of "warehousing" inmates, the state should concentrate greater resources toward victim restitution, diversion of nonviolent inmates to community-based facilities and crime prevention.

Legislative History: The House passed the bill on April 15 by nonrecord vote (Journal page 1153). The Senate amended the bill and passed it by voice vote on May 22 (Journal page 1504). The House concurred with the Senate amendments by nonrecord vote on May 25 (Journal page 3412).

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

Authorization for multi-county jail districts
(HJR 18 by Williamson)

On Nov. 3, 1987 ballot

HJR 18 proposes a constitutional amendment to authorize the Legislature to allow the creation, financing and operation of jail districts consisting of one or several counties. The Legislature could empower such districts to issue bonds and levy property taxes to retire the bonds and to pay the operating costs of the district. Any bonds issued and property taxes levied for this purpose would require the approval of the voters in the district.

Supporters said the proposed amendment would protect the public by ensuring that counties with little revenue can still afford to build jails by enabling those counties to pool their resources and levy new taxes to finance jail construction.

Opponents said the proposed amendment would burden the public with one more taxing source and encourage unnecessary spending for new jail construction.

Legislative History: The House approved the proposed constitutional amendment on April 27 by 135 to 3 (Journal page 1344). The Senate approved the proposed amendment on May 22 by 30 to 0 (Journal page 1507).

The HRO analysis of the bill appeared in the April 27 Daily Floor Report.

Emergency reductions in prison population
(SB 215 by McFarland)

Effective Feb. 20, 1987

SB 215 amends the Texas Prison Management Act, which requires the director of the Texas Department of Corrections (TDC) to award good-conduct time to those inmates with the lowest risk rating and requires the Board of Pardons and Paroles (BPP) to advance their parole-eligibility date when the inmate population reaches 95 percent of capacity. The bill increases the initial amount of good-conduct time that can be awarded in an emergency from 30 to 90 days. It also requires the governor to authorize the TDC director to credit eligible inmates with more good-conduct time or to authorize the BPP to further advance the parole-eligibility date of eligible inmates if an overcrowding emergency continues.

The bill limited the candidates for early release by expanding the list of offenses for which inmates are barred from early release. It repealed early mandatory supervision (effective Sept. 1, 1987), which allowed the BPP to release under supervision any inmate who had 180 calendar days or less remaining on a sentence. The bill also transferred from the State Highway Fund \$32.5 million for prison and parole improvements and for state-employee worker compensation payments.

Supporters said the bill would allow the state to demonstrate to the federal courts its good-faith adherence to its pledge to eliminate prison overcrowding. It would provide greater flexibility to deal with overcrowding emergencies. By making more inmates ineligible for early release, the bill would also assure the public that only the lowest-risk, nonviolent inmates would be released when the capacity of state prisons is exceeded. Repealing early mandatory supervision would not necessarily increase the prison population because the parole board could still release inmates on parole. Shifting highway money to pay for prison, parole and worker compensation payments is necessary to meet emergencies and would not hurt highway programs.

Opponents said that the bill would still allow dangerous felons to be released early, if they had pleaded guilty to lesser offenses in plea bargains. Also, raiding the highway fund for \$32 million would disrupt long-range highway planning. Other opponents said that the bill was no more than a stop-gap; extensive reforms, including new incarceration and parole techniques, should be required to divert more non-violent felons from the prison system. Eliminating early mandatory supervision would increase the prison population and remove a tool used to maintain inmate discipline.

Legislative History: The Senate passed the bill on Feb. 4 by 25 to 3, after expanding the class of inmates ineligible for early release

(Journal page 102). The House added amendments that further expanded the class of inmates ineligible for early release and shifted money from the highway fund, then passed the bill by 129 to 11 on Feb. 11 (Journal page 317). The Senate concurred with the House amendments by 26 to 2 on Feb. 18 (Journal page 179).

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

Texas Department of Corrections sunset
(SB 245 by McFarland)

Effective Sept. 1, 1987

SB 245 continues the Texas Department of Corrections (TDC) until Sept. 1, 1999 and makes various revisions in the statutes involving TDC. The governor will designate the chair of the prison board. An office of internal audits was established. The lease-purchase arrangement for constructing the Michael Unit and trusty camps was validated. New procedures were established for identifying and treating mentally ill and handicapped inmates. TDC psychiatrists will be paid competitive salaries. Stricter standards were established for granting good conduct time, subject to an annual review regarding overcrowding. New programs will be aimed at reducing illiteracy. An urban prerelease program will allow certain inmates within 6 months of their parole to work during the day. A shock probation program will allow judges to release from prison after 90 days certain inmates aged 17 to 26.

Supporters said SB 245 would implement many of the recommendations of the Sunset Commission to streamline and improve operations. It would also implement many of the reforms ordered by the federal court and demonstrate good faith compliance on the part of the state.

Opponents said the bill would raise the cost of prisons when the budget of the state is strained. The revisions proposed concerning awards of good time could also exacerbate overcrowding.

Legislative History: The Senate passed the bill by 30 to 0 on April 8 (Journal page 569). The House amended the bill and passed it by nonrecord vote, one member recorded voting nay, on May 22 (Journal page 2955). The Senate refused to concur with the House amendments by voice vote on May 23 (Journal page 1674), and a conference committee was appointed. On June 1 the House adopted the conference report by nonrecord vote (Journal page 4271), and the Senate adopted it by voice vote (Journal page 2641).

The HRO analysis of the bill appeared in the May 21 Daily Floor Report.

Private prisons and jails
(SB 251 by Farabee)

Effective Sept. 1, 1987

SB 251 authorizes the Texas Department of Corrections (TDC) to contract with private firms and county governments for the financing, construction, operation and management of state and local correctional facilities. These facilities can house no more than 500 minimum- and medium-security inmates. A private vendor must show that its prison or jail can provide correctional services at a cost savings of at least 10 percent to the state.

Supporters said private prisons are less expensive than state-run institutions because of lower salary and program costs and decreased administrative costs resulting from a smaller bureaucracy and cost-effective management techniques. Use of private vendors could increase prison space more quickly to relieve overcrowding.

Opponents said the alleged cost advantage of private corrections over state-run systems is unproven and dubious. Inmate training or rehabilitation programs in privately run facilities are often inadequate. Vendors pay their guards and other supervisory personnel substantially lower wages than the average correctional worker, thus lowering quality.

Legislative History: The Senate passed the bill by 23 to 2 on Feb. 19 (Journal page 195). The House amended the bill to include private contracts with counties and to require that a private construction firm have prior experience in prison construction, then passed it by 122 to 19, 2 present and not voting, on March 10. The Senate initially refused to concur with the House amendments by voice vote on March 17 (Journal page 383), and appointed conferees. The Senate discharged its conferees on April 2 and concurred with the House amendments by 22 to 0 (Journal page 525).

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

Board of Pardons and Paroles sunset
(SB 341 by Farabee)

Effective Sept. 1, 1987

SB 341 changes the eligibility criteria for considering prison inmates for parole. Formerly, most inmates were eligible for parole after their calendar time served plus good conduct time equaled one-third of their sentence or 20 years, whichever was less. Inmates convicted of aggravated crimes and crimes involving a deadly weapon had to serve one-third of their sentence without good time, or 20 years, whichever was less. Under the changes made by SB 341, parole eligibility is triggered after an inmate serves one-fourth of the sentence or 15 years, whichever is less. Good time still may not be used to calculate parole eligibility for violent offenders. The bill also repealed the former procedure that treated consecutive sentences as a single sentence for parole eligibility; under SB 341, parole will be considered separately for each consecutive sentence in turn.

Supporters said the bill would give the parole board more discretion in determining which inmates should be released on parole. Accelerating the parole review process will allow the board to pinpoint earlier which inmates are the best candidates for early release and which deserve to spend a longer period behind bars. That discretion is especially useful since prison overcrowding remains a persistent problem. The bill would also eliminate the procedure that allowed consecutive sentences to be considered a single sentence for parole purposes by requiring an inmate to qualify for parole for each consecutive sentence.

Opponents said the bill would grant the parole board too broad discretion in determining when inmates should be released. Prison overcrowding could force earlier releases, while political pressures could keep inmates in longer than necessary, exacerbating the overcrowding problem. The parole system requires predictability in order that inmates will have the incentive to keep their record clean, knowing that accumulated good conduct time will speed their release. Also, considering consecutive sentences separately will keep inmates in prison longer and worsen the overcrowding problem.

Legislative History: The Senate passed the bill by voice vote on April 13 (Journal page 605). The House added amendments, including the provision prohibiting the parole board from considering consecutive sentences as a single sentence, then passed the bill by nonrecord vote on May 15 (Journal page 2453). The Senate concurred with the House amendments by 14 to 7 on May 23 (Journal page 1622).

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

COURTS

Barring peremptory challenges of jurors based on race (HB 65 by L. Evans)

Effective Aug. 31, 1987

HB 65 allows a defendant to have a new panel of potential jurors named if the judge finds that the defendant is a member of an identifiable racial group and that the prosecutor used peremptory challenges to exclude people because of their race.

Supporters said prosecutors should not be allowed to routinely exclude minorities from juries based on nothing more than their race. This practice was held unconstitutional in the 1986 U. S. Supreme Court decision of Batson v. Kentucky, 106 S. Ct. 1712.

No apparent opposition

Legislative History: The House passed the bill by nonrecord vote on May 13 (Journal page 2141). The Senate passed the bill by 30 to 0 on May 25 (Journal page 1681). It reconsidered passage on May 30 by voice vote and added an amendment to clarify the burdens of proof of the defendant and the prosecutor in establishing whether a peremptory strike of a juror was based on race, then passed the bill by voice vote (Journal page 2190). The House concurred with the Senate amendment by nonrecord vote on May 31 (Journal page 4125).

The HRO analysis of the bill appeared in the May 12 Daily Floor Report.

Appeal of disciplinary action against judges
(HB 142 by Hury, second called session)

Effective Oct. 20, 1987

HB 142 establishes a procedure for judges to seek review of State Commission on Judicial Conduct disciplinary actions not involving removal from office. The chief justice of the Supreme Court would select by lot a special court of review composed of three judges of the courts of appeal, excluding some judges who might have a connection to the parties. The commission would file a charging document containing its specific findings against the judge and the papers, documents, records and evidence on which it based its decision. Appeals before special courts of review would be conducted according to civil law rules, except that no jury trial would be available. The review would be considered a trial de novo, in the same way that county courts retry appeals from justice of the peace courts. Within 60 days of the hearing, the court "in its discretion" would issue a decision "as to the proper disposition of the appeal." The decision of the court of review could not be appealed.

Supporters said judges are the only Texas professionals who have no appeal from most disciplinary decisions of a board or commission. An appeal procedure for judges should be authorized before the state is forced to provide one by an adverse court ruling. The trial de novo procedure is an acceptable means of providing judges due process without a full commission hearing for every judge.

Opponents said conducting these hearings as trials de novo, starting the case from scratch, would represent an abrogation of the commission's work in a case under review. Review of decisions from other disciplinary boards and commissions is conducted under the substantial evidence rule, which gives commission's ruling the benefit of the doubt. Other opponents said the court of review should not be allowed discretion regarding whether it should render a decision.

Legislative History: The House passed the bill on July 18 by nonrecord vote (Journal page 360). The Senate passed it by voice vote on July 20 (Journal page 295). (HB 141, an earlier version of this bill, was enacted during the regular session but was vetoed by the governor.)

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

Premature disclosure of appellate court actions
(HB 288 by Smithee)

Effective Sept. 1, 1987

HB 288 prohibits premature disclosure by public servants of the result or content of appellate judicial decisions and opinions. It also creates an offense of intentionally or knowingly soliciting or receiving the same information from a public servant, prior to rendition of the judgment, with the intent of obtaining a benefit or harming another, when the solicitor or recipient knows that the information has not been disclosed to the opposing party or parties. Both offenses are third-degree felonies, punishable by two to 10 years in prison and a fine of up to \$5,000.

Supporters said current law is not adequate to prosecute judges and court personnel who leak appellate decisions prior to their official release as well as those who solicit such leaks. Premature disclosure of judicial decisions can have serious consequences. For example, if parties on one side of a lawsuit learn in advance of a probable adverse decision, they can agree to a settlement more advantageous than the decision.

Opponents said the threat of removal for judges and of disbarment and/or firing for other court personnel provides adequate protection against leaks. Careers could be ruined, even if charges later proved to be untrue, because criminal investigations are made public at an earlier stage than those of the Commission on Judicial Conduct.

Legislative History: The House passed the bill on March 4 by nonrecord vote (Journal page 424). The Senate amended the bill to add to the disclosure offense soliciting or receiving an undisclosed judicial decision and passed it by voice vote on April 7 (Journal page 557). The House concurred with Senate amendments on by nonrecord vote on April 13 (Journal page 1035).

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

Salaries of appellate and district judges
(HB 959 by Hinojosa)

Vetoed

HB 959 would have raised the state salary of associate justices on the 14 courts of appeal. On Sept. 1, 1989, state pay would have risen from 90 percent to 95 percent of the salary received by Supreme Court associate justices. Chief justices of the courts of appeal would have received \$500 more than associates, rather than 90 percent of the Supreme Court chief justice's pay. Limits on combined state and county salaries would not have been changed.

District judges, who now receive \$56,135 from the state, would have received 90 percent of a Supreme Court justice's salary. Combined state and county pay would have been limited to at least \$1,000 less than the combined pay for the highest paid associate justice in a court of appeals district containing the district court. (The General Appropriations act has included a similar provision for several sessions.)

Supporters said the bill would help Texas attract and retain the most qualified judges by easing some inequities in pay among district judges and intermediate appellate justices. Minor variations in cost of living and judicial workload cannot justify disparities of more than \$20,000 from one district to another, and the spread between district and appellate courts is greater than differences in caseload and function warrant. The 1989 effective date would give the state time to deal with its fiscal problems.

Opponents said district and appellate judges should not be singled out for special treatment among state employees. Since the raise would not be effective until 1989 anyway, it would be better policy to wait until the 1989 regular session, when all salaries can be considered together.

Legislative History: The House passed the bill on May 14 by nonrecord vote, one member recorded voting nay (Journal page 2268). The Senate passed it on May 26 by voice vote (Journal page 1845). The governor vetoed the bill on June 11.

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

Statewide authorization for municipal courts of record
(HB 1879 by C. Evans)

Effective Aug. 31, 1987

HB 1879 authorizes all incorporated cities to establish municipal courts of record. (Appeals from municipal courts that are not "of record" are retried de novo, as if no decision had been rendered in the municipal court.) The procedures and standards for courts of record authorized in the bill do not apply to the 13 courts already established by separate statute. Cities creating courts of record must call an election to determine whether judges will be elected or appointed. The term of municipal judges for these courts can be two or four years, and they must be attorneys or have served the previous five years on a municipal court bench, except that a city of less than 10,000 in population may appoint a non-attorney.

Supporters said municipal courts of record discourage time-consuming appeals of municipal court decisions to county court, where the case is tried again without regard to the municipal-court decision. Reducing the county court caseload would also eliminate the need for more county courts-at law. City voters should decide how municipal judges are to be selected, since cities have different needs and traditions. Municipal judges for courts of record should be attorneys because no higher judge would conduct a full-blown retrial, as in nonrecord appeals.

Opponents said that if retrials of municipal-court decisions are to be eliminated, municipal judges should be elected, just like county and district judges. Appointed city judges are not sufficiently insulated from the political pressures of city hall. Municipal judges, like justices of the peace, need not be attorneys -- cases involving only fines, not jail time, depend more on common sense than application of legal principles. Other opponents said that in counties where there is no county court-at-law and the county judge is not an attorney, the district court should review the municipal-court record on appeal.

Legislative History: The House passed the bill on May 13 by nonrecord vote (Journal page 2142). The Senate passed it by 30 to 0 on May 23 (Journal page 1625).

The HRO analysis of the bill appeared in the May 12 Daily Floor Report.

Continuances for religious holy days
(HB 2449 by Colbert)

Effective Sept. 1, 1987

HB 2449 requires courts to grant continuances in criminal and civil cases if a party required to appear desires to observe a religious holy day. A court must excuse a juror from jury duty altogether or until a later time to observe a religious holy day. The religion's tenets must prohibit a person from participating in secular activities, such as court proceedings, on a holy day. State agencies must permit an individual who is to take an exam administered by the agency on a religious holy day to take the exam on an alternative day.

Supporters said the bill simply puts into general practice what most courts and state agencies already do. A necessary part of the fundamental freedom to practice a religion, and to be free from government interference in practicing that religion, is to be able to observe the holy days of that religion.

Opponents said there is no reason for this bill since courts and state agencies already recognize religious holy days. They should have the discretion to consider the merits of each situation on a case-by-case basis.

Legislative History: The House passed the bill by nonrecord vote on May 15 (Journal page 2462). The Senate amended the bill to allow jurors the right to observe religious holy days and require state agencies to provide alternative exam days for examinees, then passed it by 30 to 1 on May 30 (Journal page 2396). The House concurred with the Senate amendments by nonrecord vote, two members recorded voting nay, on May 31 (Journal page 4188).

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

Security for judgments pending appeal
(HB 2538 by C. Evans)

Died in Calendars Committee

HB 2538 would have limited to \$1 million the maximum amount of security required to be posted to appeal a lower court judgment. Under rules that would have been established by the Texas Supreme Court, trial courts would have been given the authority to determine the amount and type of security to be posted to protect a plaintiff from any loss or damage caused by the delay in receiving a judgment pending appeal.

Supporters said the bill would provide an equitable approach for suspending judgment during the appeal of a civil suit. To appeal a judgment, current procedures require a bond to be filed or cash to be deposited in the amount of the judgment. The recent \$10 billion civil judgment against Texaco by Pennzoil illustrates the problem -- Texaco was forced into bankruptcy to avoid the ruinous bond it had to file to appeal that decision.

Opponents said this bill was a blatant attempt to benefit Texaco in the lawsuit won by Pennzoil. It would violate a long-standing legislative prejudice against interference in pending litigation, as well as separation of powers between the legislative and judicial branches, by legislatively re-writing court rules in effect since 1939.

Legislative History: The House Judiciary Committee favorably reported the bill on May 11 (Journal page 2487). The House Calendars Committee took no action on the bill.

Court administration revisions
(SB 687 by Farabee)

Effective Aug. 31, 1987

SB 687 makes various changes to statutes on assignment of judges and other judicial topics.

Retired and former statutory county court judges are eligible for assignment by presiding judges of administrative judicial regions, but current, retired and former statutory county court judges may not be assigned to district court benches outside their county of residence. Assignments by presiding judges no longer require approval of a council of judges. Parties in civil cases heard by assigned judges are limited to a single objection resulting in automatic disqualification of an assigned judge.

Salaries of certain presiding judges are increased and are to be apportioned according to the population of the counties in the region.

Court masters are authorized in family law cases, Harris County juvenile cases and alcoholic beverage permit applications in certain counties. A district court support account is created within the judicial fund, subject to appropriation.

Supporters said the bill would clear up some technical ambiguities and other difficulties with the Court Administration Act when it was recodified into the Judicial Title of the Government Code.

Opponents said this Christmas-tree bill might look pretty to its decorators, but loading amendments onto a detailed piece of legislation like SB 687 risks confusion and mistakes harmful to the state's system of court administration.

Legislative History: The Senate passed the bill by 29 to 0 on April 29 (Journal page 863). The House amended the bill, then passed it by nonrecord vote, two members recorded nay, on May 26 (Journal page 3495). The Senate refused to concur with the House amendments by nonrecord vote on May 28 (Journal page 1969), and a conference committee was appointed. On June 1 the Senate adopted the conference report by 31 to 0 (Journal page 2701), and the House adopted it by nonrecord vote (Journal page 4356).

The HRO digest of the bill appeared in the May 21 Daily Floor Report.

Appointed counsel for indigents
(SB 1108 by Farabee)

Effective Sept. 1, 1987

SB 1108 changes the way that counsel is appointed for indigent defendants and the way that those attorneys are paid. It defines indigence, requires the indigent defendant to sign an affidavit of indigence and requires that the defendant fill out a questionnaire. Each county must establish fee schedules for payment of appointed counsel.

Supporters said the bill would allow appointed attorneys to be properly compensated for expenses such as investigation and expert witnesses.

Opponents said every defendant who claims to be indigent should be required to fill out a questionnaire, which would make it possible to prosecute them for misrepresentation if they can afford their own defense.

Legislative History: The Senate amended the bill to require the defendant to complete a questionnaire, then passed the bill by voice vote (Journal page 743). The House amended the bill to give the judge discretion regarding questionnaires, then passed the bill by nonrecord vote, three members recorded voting nay, on May 15 (Journal page 2456). The Senate refused to concur with the House amendments by voice vote on May 20 (Journal page 1370), and a conference committee was appointed. The conference report included the requirement for mandatory completion of a questionnaire. The Senate adopted the conference report by voice vote on May 27 (Journal page 1924), and the House adopted the conference report by nonrecord vote on May 30 (Journal page 4116).

The HRO analysis of the companion bill, HB 618, appeared in the May 12 Daily Floor Report.

Judicial selection change
(SJR 2/SB 12 by Farabee)

Died in Senate committee

SJR 2 and SB 12 would have replaced partisan election for appellate judicial offices with gubernatorial appointment from a list of three names submitted by a 15-member nominating commission. Appointed judges and commission members would have been subject to Senate confirmation. At the next general election at least a year after appointment, judges would have faced a retention election, in which voters would have decided if the judge should be retained in office for six years. Judges not receiving majority approval would have been unseated. Current judges would have been allowed to finish their terms before being subject to a retention election.

The proposed constitutional amendment and bill were revisions of recommendations from the Committee of 100 for the Merit Selection of Judges. Earlier versions had included district judges and required up to 29 separate nominating commissions.

Supporters said a commission-nomination system would remove partisan-election politics from selection of appellate judges, concentrating on merit. The voters would retain the opportunity to keep or oust the appointed judges. Public confidence in the judiciary would be enhanced, and more qualified lawyers would be willing to serve as judges.

Opponents said the proposal would replace democratic selection of appellate judges with selection by an elite commission. Potential judges who are not part of the legal establishment would have no means of cracking the system. Retention elections can be just as expensive as partisan elections when they involve a controversial judge. Voters dissatisfied with a judge would have no idea who would replace that judge. Reform efforts should instead be directed at problem areas like campaign finance.

Legislative History: The Senate State Affairs Committee heard testimony on committee substitutes for SJR 2 and SB 12 on March 16 but took no further action.

CRIMINAL LAW

Forbidding the death penalty for accomplices (HB 13 by L. Evans)

Died in Senate committee

HB 13 would have forbidden the death penalty in murder cases for accomplices who were not a cause of the victim's death. A jury would have had to consider that issue along with others in determining whether to impose the death penalty.

Supporters said there is something inherently unfair about giving the death sentence to an accomplice who was not directly responsible for killing someone. In some cases, the person who did the actual killing receives a lighter sentence than the accomplice.

Opponents said one of the three findings that must be made to convict an accomplice of capital murder -- whether the defendant acted deliberately and with a reasonable expectation of causing death -- is enough to protect people with no real involvement. Sometimes the person who plans or directs a crime is more culpable and more dangerous than the person who actually does the killing.

Legislative History: The House passed an amendment changing the issue from whether the defendant "caused" the death to whether the defendant "was a cause of" the death (Journal page 1486), then passed the bill by nonrecord vote, one member recorded voting nay, (Journal page 1520). The Senate referred the bill to the Criminal Justice Committee, where no action was taken.

The HRO analysis of the bill appeared in the April 28 Daily Floor Report.

Speedy Trial Act amendments
(HB 23 by Roberts)

Effective Sept. 1, 1987

HB 23 makes several changes in the Speedy Trial Act. It changes the time limit for proceeding with prosecution of felony cases from 120 days to 180 days. When a case is discharged under the act, the bill bars prosecution for any offense arising out of the same transaction, except an offense of a higher grade that would be prosecuted by a different prosecutor's office. (In many areas the county attorney is responsible for misdemeanors and the district attorney's office handles felonies.)

The bill adds conditions that would keep time from being counted toward the Speedy Trial Act limit, including the defendant's fugitive status, bail forfeiture, or resistance to returning to the state for trial. It would also except from the time count any time during which the defendant is released without bail, time necessary for an outside agency to complete scientific analysis or other exceptional circumstances outside the prosecutor's control.

Supporters said the Speedy Trial Act has become a farce that has little to do with getting a speedy trial. It does not apply to delays caused by the court itself, which is where most delays actually occur. This bill would add some realistic conditions to make the time limits in the act more reasonable.

Opponents said that the proposed changes would go too far, diluting the time limits in the Speedy Trial Act. Justice delayed is justice denied, and this bill would permit prosecutors and judges too many opportunities to delay criminal trials.

Legislative History: The House version of the bill would have repealed the Speedy Trial Act; it passed by nonrecord vote, two members recorded voting nay, on April 15 (Journal page 1154). The Senate substituted its version making modifications in the Speedy Trial Act and passed the bill by voice vote on May 22 (Journal page 1510). The House initially refused to concur with the Senate amendment by nonrecord vote on May 27 (Journal page 3640). A conference committee was named and made a report, which was later withdrawn. The House reconsidered and concurred with the Senate amendments by nonrecord vote on June 1 (Journal page 4348).

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

Punishment for cruelty to animals
(HB 151 by Finnell)

Vetoed

HB 151 would have raised the offense of cruelty to animals for third and subsequent offenses from a Class A misdemeanor to a third-degree felony. The penalty for failing to provide necessary food, water, care, or shelter for an animal in custody or unreasonably abandoning an animal would have been reduced from a Class A misdemeanor to a Class C misdemeanor.

Supporters said the bill would deter those convicted of cruelty to animals from repeating that offense. By lowering the penalty for some cruelty offenses, the cases could be heard in justice-of-the-peace court instead of district court and thus speed their handling.

Opponents said the bill would too harshly penalize repeat offenses of cruelty to animals. The current penalties only need to be properly enforced to be effective.

Legislative History: The House passed the bill on April 15 by 81 to 56 (Journal page 1152). The Senate passed the bill by voice vote on May 21 (Journal page 1470). The governor vetoed the bill on June 11.

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

Sexual assault by a spouse
(HB 161 by Danburg)

Effective Sept. 1, 1987

HB 161 deletes the exception for spouses in the sexual assault (rape) statute when the assault is aggravated. Sexual assault is aggravated if it involves use of a deadly weapon, serious bodily harm or death, or a threat of serious bodily harm or death. Previous law did not allow prosecution for any kind of sexual assault if the victim was the spouse of the alleged rapist.

Supporters said there is no excuse for not allowing spouses to be prosecuted for aggravated rape, which involves actual or threatened bodily harm.

Opponents said it is difficult in the marriage context to tell when consent stops and assault begins. Prosecution for rape is already possible when the spouses have separated or divorced. Otherwise, consent is inherent to some extent in the marriage contract. When a spouse commits violence, assault or aggravated-assault charges are appropriate.

Legislative History: The House amended the original bill to expand the definition of sexual assault to include knowing exposure of a spouse or other to AIDS, then passed it by nonrecord vote, eight members recorded voting nay (Journal pages 1178 and 1229). The Senate amended the bill to delete the spousal exemption only for aggravated sexual assault, then passed the bill by voice vote on May 22 (Journal page 1509). The House concurred with the Senate amendment by nonrecord vote, three members recorded voting nay, on May 26 (Journal page 3437).

The HRO analysis of the bill appeared in the April 21 Daily Floor Report.

Fines and jurisdiction for Class C misdemeanors
(HB 438 by Blackwood)

Died in Senate committee

HB 438 would have increased the maximum fine for a Class C misdemeanor from \$200 to \$500 and adjusted the jurisdictions of justice courts, municipal courts and county courts to keep Class C misdemeanors in the justice and municipal courts.

Supporters said inflation had reduced the effectiveness of a \$200 fine. A \$200 fine for writing a \$500 bad check is not enough.

Opponents said there needs to be a class of offense with a relatively minor punishment in order to maintain public respect for the criminal justice system. People who write bad checks are generally required to pay for the check as well as pay the fine.

Legislative History: The House passed the bill by nonrecord vote, one member recorded voting nay, on May 20 (Journal page 3291). The bill died after being tagged in the Senate Criminal Justice Committee.

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.

Theft of service by late return of rental equipment
(HB 512 by Riley)

Died in the Senate

HB 512 would have created a presumption of intent to avoid payment (as an element of theft) when a person fails to pay the usual rental fee when returning rental property late.

Supporters said that some people intentionally return rental equipment days or weeks late and refuse to pay the normal rental fee for the extra time, knowing that it is very difficult to sue them for the unpaid charges or to convince a district attorney to prosecute them for theft of service.

Opponents said there is no good reason to let rental agencies use the criminal court system to enforce their debts. They should have to use the civil court system like everyone else. Also, such an offense would be unconstitutional imprisonment for debt.

Legislative History: The House passed the bill by nonrecord vote, six members recorded voting nay, on April 28 (Journal page 1395). The Senate refused to suspend the rules to allow consideration of the bill by 11 to 15 on May 29 (Journal page 2329).

The HRO analysis of the bill appeared in the April 27 Daily Floor Report.

Sending children's ID records to crime-data network
(HB 538 by Richardson)

Effective Sept. 1, 1987

HB 538 allows any information or records on a child to be sent to and disseminated by the Texas Crime Information Center and the National Crime Information Center, if the child has been reported missing by a parent or if the child has escaped from a juvenile detention facility. In addition, fingerprints and photographs kept on delinquent children who are missing may be sent to the Texas Department of Public Safety and the Federal Bureau of Investigation.

School districts may participate in a child kidnapping prevention and identification program in which school children are fingerprinted and photographed. This information can be used only for the identification and location of a missing child.

Supporters said the bill would make it easier to locate missing children by ensuring that fingerprints and other identification information can be properly kept and catalogued by law-enforcement agencies. Schools would be a logical source for gathering child-identification information.

Opponents said the bill would violate a child's privacy interests by allowing juvenile records, fingerprints and photographs to be accessible to state and federal information centers and law enforcement agencies. Moreover, parents should keep records on their children rather than schools, which do not need the extra expense of such a program.

Legislative History: The House passed the bill on April 30 by nonrecord vote, one member recorded voting nay (Journal page 1607). The Senate added an amendment creating a missing child identification program in which school districts could choose to participate, then passed the bill by 30 to 0 on May 29 (Journal page 2015). The House refused to concur in the Senate amendments by nonrecord vote, one member recorded voting nay, on May 30 (Journal page 4010), and a conference committee was appointed. On June 1 the Senate adopted the conference committee report by 31 to 0 (Journal page 2699), and the House adopted it by nonrecord vote, 11 members recorded voting nay (Journal page 4351).

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

Life imprisonment without parole
(HB 553 by Ovard and HB 574 by Richardson)

Died in Senate committee

HB 553 would have permitted a sentence of life imprisonment without parole in capital murder cases, in addition to the currently available sentences of life imprisonment or death. It would have allowed the defendant to waive a jury trial when the prosecutor was not seeking the death penalty. Those sentenced to life without parole would have been eligible for release after serving 25 years and reaching age 65.

HB 574 would have allowed a sentence of life without parole for certain first-degree felonies if the defendant had previously been convicted of one of those felonies.

Supporters said that too often a criminal is given a long sentence and released after a few years, only to commit more crimes. These bills would set up a punishment more serious than the current "life" sentence but less severe than the death penalty. By allowing waiver of jury trial, HB 553 would encourage plea bargains and reduce appeals, increasing the efficiency of the courts. HB 574 would provide a more serious penalty for someone who is convicted of a serious crime, then commits another.

Opponents said it would be cruel to imprison someone for life. It would also be too expensive and would add to the already severe prison overcrowding problem. Inmates with no release incentive would more likely pose discipline problems. HB 574 would even allow life without parole as an option for non-capital offenses.

Legislative History: The House passed HB 553 by nonrecord vote, two members recorded voting nay on May 13 (Journal page 2140). The House amended HB 574 to add a procedure and criteria for deciding whether to sentence to life without parole, then passed the bill by nonrecord vote, one member recorded voting nay, on May 15 (Journal page 2462). On May 28 the Senate Criminal Justice Committee tagged HB 574 and left HB 553 pending.

The HRO analysis of HB 553 appeared in the May 12 Daily Floor Report. The HRO analysis of HB 574 appeared in the May 14 Daily Floor Report.

Offense of keeping a vicious dog
(HB 571 by Valigura)

Effective Sept. 1, 1987

HB 571 makes it a criminal offense to own or keep a vicious dog, unless the animal is continuously restrained and the owner carries liability insurance. A person has 60 days to comply with the terms of the bill after they know that their dog has engaged in vicious conduct. A person who owns or keeps a dog that has engaged in vicious conduct must restrain the dog at all times and carry at least \$100,000 in liability insurance to cover injuries caused by the dog. Failure to do so is a Class B misdemeanor (maximum penalty of \$1,000 fine and 180 days in jail).

A court must order that the animal be humanely destroyed following the second conviction involving the same animal. A court must also order the destruction of a dog that has caused a person's death.

Supporters said the bill is necessary to ensure that owners of vicious dogs behave responsibly in keeping their animals from doing injury to others. The bill is especially necessary in rural areas that have no leash laws or ordinances that require dogs to be restrained.

Opponents said the definition of "vicious conduct" is overly broad. Requiring that dog owners acquire \$100,000 in insurance would not work because few insurance companies would insure the owner of a dog found to be vicious. The requirements would be impossible to comply with or enforce in rural areas. Destruction of a dog for a second conviction is too harsh.

Legislative History: The House passed the bill by nonrecord vote, five members recorded voting nay, on April 28 (Journal page 1397). The Senate passed the bill on May 23 by 30 to 0 (Journal page 1565).

The HRO analysis of the bill appeared in the April 27 Daily Floor Report.

Fingerprinting, photographing and sentencing juveniles
(HB 682 by T. Smith)

Effective Sept. 1, 1987

HB 682 permits a child 15 or older to be fingerprinted and photographed if the child is referred to a juvenile court for a felony. A child under 15 can be photographed or fingerprinted if the child is referred to a juvenile court for a felony involving murder, capital murder, aggravated kidnapping, aggravated sexual assault, deadly assault on a law enforcement official or attempted capital murder.

HB 682 also permits a juvenile court adjudication to be referred to a grand jury if a child is alleged to have committed those offenses. If the referral is not approved by the grand jury, the juvenile court, after a hearing, may commit the child to the Texas Youth Commission without a determinate sentence or can sentence the child to commitment in the Texas Youth Commission with a transfer to the Texas Department of Correction for up to 30 years. The bill permits transfers from TYC to penal institutions of offenders 18 years old or older.

Supporters said the public needs to be protected against juvenile killers, rapists and kidnappers. The criminal justice system needs the power to protect the public from juveniles who commit violent adult crimes. It is not enough to send them to the Texas Youth Commission, which has the discretion to let them out far too early. Permitting certain juveniles to be fingerprinted and photographed would aid law enforcement efforts when the juveniles escape juvenile detention.

Opponents said the Texas tradition of treating juveniles differently from adult offenders needs to be continued. Juvenile offenders are more likely to be rehabilitated with treatment than are adults and may not need to be locked away for a long time.

Legislative History: The House passed HB 682 by a nonrecord vote on April 15, five members recorded voting nay (Journal page 1153). The Senate deleted House provisions permitting juvenile courts to waive jurisdiction in some cases and allowing prosecution of those under age 15 charged with certain serious crimes, then passed the bill by voice vote, one member recorded voting nay, on May 22 (Journal page 1505). On May 27 the House defeated by 43 to 98 a motion not to concur with the Senate amendments, then by nonrecord vote concurred with the amendments (Journal page 3673).

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

Delinquency adjudication as admissible evidence
(HB 683 by T. Smith)

Effective Sept. 1, 1987

HB 683 permits evidence that a criminal defendant had been judged a delinquent by a juvenile court to be offered into evidence during the punishment phase of a criminal trial, if the delinquency adjudication was based on a felony offense. The delinquency adjudication is not allowed as evidence if: (1) the felony offense was committed more than five years before the offense for which the defendant is being tried and (2) the defendant has not been adjudicated a delinquent child or a child in need of supervision and has not been convicted of an offense during the five years preceding the offense for which the defendant is being tried.

Supporters said HB 683 would provide for a more informed jury in criminal trials. It would give the jury the information it needs to make an appropriate and reasonable decision with respect to punishment of a defendant who has been found guilty of a criminal offense. Under prior law a jury was not permitted to know about a defendant's juvenile court record, even though that defendant may have in fact committed several crimes before the age of 17.

Opponents said that a juvenile court proceeding is fundamentally different from an adult criminal trial. Allowing evidence of such a proceeding to be introduced would be misleading because juvenile-court proceedings are often informal and not truly adversarial. A child's rights with respect to a fair trial are not as strenuously protected in an adjudication hearing as the rights of an adult defendant in a criminal trial. A child may be adjudicated as a delinquent because the court believes that it would be in the child's best interest. It would not be fair or reasonable to allow the use of these juvenile court proceedings, under such circumstances, in later criminal trials.

Legislative History: The House passed the bill by nonrecord vote, five members recorded voting nay, on April 15. (Journal page 1154). The Senate passed HB 683 as amended by voice vote, one member recorded voting nay, on May 22 (Journal page 1506). The Senate amendment removed a provision that would have prohibited a juvenile court from sealing or destroying the files and records of cases involving adjudications of delinquency that are based on felony offenses. The House concurred with the Senate amendment by nonrecord vote on May 26 (Journal page 3562).

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

Court costs for Crime Stoppers
(HB 686 by Hury)

Died in Senate committee

HB 686 would have created a Crime Stoppers Fund from new court costs on those convicted of felonies (\$10) and misdemeanors (\$2). Five percent of fees collected could have been deducted by court clerks to cover collection expenses before sending the balance to the state. The fund could have been spent for any purpose designated in the General Appropriations Act or by the Crime Stoppers Advisory Council for any purpose in the statute creating the council. Funds received by the council would have been disbursed to local crime stoppers programs based on a budget and rules promulgated by the Criminal Justice Division of the Governor's Office.

Supporters said the state Crime Stoppers Advisory Council and local crime stoppers programs have been exceptionally successful in bringing felons to justice by blending the efforts of citizens, law enforcement and the news media. Previous appropriations to the state advisory council have been spent solely on creation of new programs, not on administrative staff or reward money. Using court costs as a revenue source for crime stoppers programs would, unlike judge-ordered probationer payments, raise a predictable amount from a larger pool of criminals and would assure proper use of the money.

Opponents said the amount of court costs paid by criminal defendants keeps getting increased almost every time the Legislature meets. HB 686 would not fully identify what these new court costs would fund. The 5 percent collection fee for the counties would be inadequate. Court costs should be used solely for programs in the locality where they are generated. A better way to help fund crime stopper programs would be to clarify judicial authority to order probationer payments to the programs.

Legislative History: The House passed the bill on April 22 by nonrecord vote, two members recorded voting nay (Journal page 1229). The bill was heard twice in the Senate Criminal Justice Committee and was referred on May 19 to a special subcommittee, where it died.

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

False driver's licenses or certificates
(HB 705 by Heflin)

Effective Sept. 1, 1987

HB 705 makes it a Class C misdemeanor (maximum fine of \$200) to sell, manufacture or distribute documents deceptively similar to driver's licenses or personal identification certificates unless marked "NOT A GOVERNMENT DOCUMENT." Subsequent offenses are Class B misdemeanors, punishable by a fine of up to \$1,000 and 180 days in jail. It is an offense to possess such a document, but no punishment is specified. Subsequent possession offenses are Class C misdemeanors. Final conviction of either offense or of various related offenses is grounds for automatic license suspension for 90 days to a year. Prosecutors may file suit to enjoin violations or threats of violations, and peace officers may confiscate deceptively similar documents.

Supporters said the bill would deter use of fake identification documents by underage drinkers as well as check and credit-card forgers, who spend little for fake documents but may defraud merchants of thousands of dollars and often evade prosecution.

Opponents said stiffer penalties that carry potential jail time on first offense are necessary to deter these criminal activities.

Legislative History: The House passed the bill by nonrecord vote on April 30 (Journal page 1607). The Senate amended the bill then passed it by 30 to 0 on May 29 (Journal page 2016). The House concurred with Senate amendments by nonrecord vote on May 30 (Journal page 4019).

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

License to carry handgun
(HB 1047 by Wilson)

Died in the House

HB 1047 would have allowed a license to carry a handgun to be issued to applicants who are residents of Texas, over 21, passed a handgun proficiency course and have never been convicted of any of a list of crimes. Restrictions would have been placed on where handguns could lawfully be carried, and the license could have been revoked if the licensee committed a crime or was found to have been originally ineligible.

Supporters said current law severely limits the right of people to legally carry handguns, and those limits are poorly defined. This bill would clarify the law and allow honest people who need to carry a gun to protect themselves. Only three other states provide no form of licensing citizens to carry handguns. Licensing people to carry handguns legally would make criminals think twice about attacking someone or breaking into a house.

Opponents said this state needs fewer handguns on the streets, not more. There are too many people who might lose their temper under stress and kill a spouse or neighbor or a drinking buddy. Police do not want to worry even more that any person they question or arrest might be carrying a handgun. Since the state is trying to attract economic development, it does not need to emphasize a "Wild West" image.

Legislative History: The House tabled the bill by nonrecord vote on May 19 (Journal page 2660).

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

Good-faith exception to rule excluding tainted evidence
(SB 1 by Brown)

Effective Sept. 1, 1987

SB 1 creates an exception to the state's exclusionary rule, which prohibits the admission in a criminal trial of evidence obtained illegally or accidentally in violation of state or federal law. The exception allows admission of evidence obtained by a law-enforcement officer in violation of state or federal law if the officer was acting in objective, good-faith reliance on a warrant issued by a neutral magistrate based on probable cause.

Supporters said the bill would prevent criminals from being released on a technicality. SB 1 would simply adopt the court-approved federal exemption. Under the federal rule, when a magistrate issues an invalid search warrant, but a police officer in good faith carries out that warrant and seizes evidence, the evidence is admissible even though it was obtained without a proper legal basis. Without a good-faith exception, a criminal could go free simply because the wrong address accidentally appears in a search warrant.

Opponents said the bill would needlessly infringe upon the constitutional protection against illegal searches and seizures by creating a nebulous good-faith exception. The bill was dangerously broad and would not be limited only to preventing the release of defendants based on technicalities. It would encourage authorities to go on "fishing" expeditions to seize evidence in violation of the rights of defendants secure in the knowledge that the tainted evidence would not be excluded.

Legislative History: The Senate passed the bill on April 15 by voice vote (Journal page 670). The House passed the bill on May 29 by nonrecord vote, one member recorded voting nay (Journal page 3937).

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

Retrial after error in punishment phase
(SB 43 by Farabee)

Effective Aug. 31, 1987

SB 43 allows a retrial after reversal on appeal in a criminal case to be limited to the punishment issue when the basis for appeal was an error in the punishment phase of the original trial. Both sides are allowed to introduce evidence to show the circumstances of the offense. The bill does not apply to reversals in capital murder cases.

Supporters said there is no good reason to repeat the whole trial after reversal on appeal if the only error was in the punishment phase.

Opponents said a judge or jury's sentence is often based partly on evidence from the guilt-or-innocence phase, whether or not they admit it.

Legislative History: The Senate passed the bill by 28 to 0 on March 16 (Journal page 337). The House passed it by nonrecord vote on May 11 (Journal page 2008).

The HRO analysis of the House companion bill, HB 382, appeared in the May 8 Daily Floor Report.

Videotaped testimony of child victims
(SB 66 by Parmer, second called session)

Effective Sept. 1, 1987

SB 66 amends current law, which allows the testimony of victims under 13 years old to be introduced as evidence in criminal cases when testimony is recorded on videotape before the prosecution begins and is shown later during a proceeding or is transmitted live to the courtroom via closed-circuit television, or videotaped during the proceeding and shown later. A child must be placed under oath and found competent before a videotape of the child's testimony may be admissible at trial. In addition, the defendant may cross-examine a child whose testimony was videotaped, either in a separate hearing outside the presence of the jury or through written interrogatories, if the videotape was recorded before the complaint or indictment was issued. If the videotape was recorded after the complaint or indictment was issued, the court may, on the prosecutor's motion, order a deposition at which the defendant can cross-examine the child.

Supporters said the bill would ensure that the state's videotape statute meets constitutional muster, while still sparing a child who has been sexually abused from the trauma of testifying in open court. Without the videotape option, many sexual-abuse cases would go unreported or would be impossible to prosecute if the child could not withstand the emotional strain of recounting the crime to the judge or jury.

Opponents said no effective videotape statute could ever be constitutional. Videotapes made of a child's testimony without contemporaneous cross-examination at the taping inevitably violate the defendant's constitutional rights. They said the open courtroom is the best place to obtain accurate testimony from any witness.

Legislative History: The Senate passed the bill on July 15 by 25 to 1 (Journal page 109). The House amended the bill to require that the witness be unavailable for questioning for televised or videotaped testimony to be used as evidence and to allow a child videotaped prior to an indictment or complaint to be cross-examined subsequently by answering written interrogatories, rather than by direct questioning at a subsequent hearing. The House also added an unrelated amendment allowing persons accused of sex offenses to be tested for AIDS. It then passed the bill on July 18 by 132 to 1 (Journal page 508). The Senate refused to concur with the House amendments by voice vote on July 19 (Journal page 24), and a conference committee was appointed. The conference committee added a provision allowing cross-examination through written interrogatories, as well as in a separate hearing, when the child's testimony is videotaped before the complaint or indictment is issued. The Senate adopted the conference committee report on July 20 by 22 to 0 (Journal page 330). The House adopted the conference report by nonrecord vote on July 21 (Journal page 656).

Search warrants by telephone
(SB 126 by Lyon)

Died in the House

SB 126 would have allowed a magistrate to issue a search warrant over the telephone or by radio under exigent circumstances, based on a peace officer's oral statement under oath. The magistrate would have been required to make a tape recording or stenographic record of the statement.

Supporters said the bill would not reduce the safeguards of individual rights, it would only furnish a speedy way of obtaining a search warrant when needed. A similar federal provision has worked very well.

Opponents said oral statements are often subject to various interpretations, even when they are recorded. Police would use this procedure to shop for a sympathetic magistrate, and might even use the warrant first, then get it approved by the magistrate.

Legislative History: The Senate passed the bill by voice vote, two members recorded voting nay, on April 27 (Journal page 818). The House set the bill on the General State Calendar for May 28 but did not consider it.

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Grand jury procedures
(SB 768 by Glasgow)

Died in the House

SB 768 would have made a number of changes in grand jury procedures. Grand juries would have been limited to considering only offenses presented by the prosecutor. Prosecutors could not have disclosed information presented to a grand jury without adequate justification. Only a grand juror or prosecutor could question jurors. Only a prosecutor could have issued subpoenas, but the foreman of the grand jury could have requested a subpoena from the state's attorney or from a district court. Accused or suspected people would have been informed in writing of their rights. An indictment for aggravated perjury before a grand jury would have had to come from a different grand jury.

Supporters said the bill was a product of compromise and would clean up a number of problems with grand juries under current law.

Opponents said the bill would tie the hands of grand juries in seeking information about criminal offenses.

Legislative History: The Senate passed the bill by voice vote (Journal page 702). The Senate version contained only the restrictions on who could question a witness or address the grand jury. The House Criminal Jurisprudence Committee added provisions that had been included in other bills passed earlier by the Senate. The bill was set on the House calendar of May 28 but was never considered.

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

State's right to appeal criminal cases
(SJR 34/SB 762 by Montford)

On Nov. 3, 1987 ballot

SJR 34 would amend the Constitution to allow the state to appeal in criminal cases, if authorized by the Legislature.

The implementing legislation, SB 762, would authorize the state to appeal any order that dismissed an indictment, information, complaint, or any part of one or an order that arrests or modifies a judgment, grants a new trial, or grants a claim of former jeopardy. It would also allow state appeals of an order suppressing evidence, a confession or an admission, but the prosecutor would have to certify that the appeal is not for the purpose of delay and is of substantial importance in the case. The prosecutor would also be able to appeal on the ground of an illegal sentence. The defendant would remain free on any existing bond or would have a right to have a reasonable bond set for a state appeal.

Supporters said the federal system and every other state have some form of state appeal in criminal cases. When a trial judge makes an erroneous decision about the law, there should be some way for the state to appeal. When there is no right of appeal, some judges tend to decide against the state to avoid appeals. Any state appeal would have to be interlocutory (before a final decision) because otherwise, even if the state won, the state could not prosecute the defendant again for the same offense without violating the prohibition against double jeopardy.

Opponents said prosecutors could use this appeal power to harass someone that they knew they could not convict. If the prosecutor is to be allowed to file interlocutory appeals, then the defendant should be able to as well.

Legislative History: The Senate adopted SJR 34 by 26 to 4 on May 19 (Journal page 1291), and the House adopted it by 119 to 23 on May 25 (Journal page 3375).

The Senate passed SB 762 by voice vote, one member recorded voting nay, on May 29 (Journal page 1292). The House passed SB 762 by nonrecord vote, two members recorded voting nay, on May 30 (Journal page 3970).

The HRO analysis of HJR 54, the House companion to SJR 34, appeared in the May 21 Daily Floor Report. The HRO analysis of SB 762 appeared in the May 29 Daily Floor Report.

ECONOMIC DEVELOPMENT

Texas Strategic Economic Policy Commission (HB 3 by Hackney)

Effective Aug. 31, 1987

HB 3 creates the 18-member Texas Strategic Economic Policy Commission that will submit to the Legislature before Jan. 1, 1989 a strategic economic plan to diversify and develop the Texas economy. The commission is to study the state business climate, job creation, and economic development.

Supporters said the development of a master economic plan was a keystone of the economic recommendations presented by blue-ribbon study committees appointed by the speaker and the governor. The commission could present the "big picture" on economic development by combining public and private sectors in one group. A separate commission could devote the necessary attention to quickly producing a central economic development plan, laying the foundation for later implementation by the new Department of Commerce.

Opponents said Texas does not need a centralized economic plan drawn by government. The free market is the best mechanism to control investment decisions. The government should only help promote competition in the marketplace. There are cycles in a free market economy, and Texas is now in a low point in the cycle. The market will correct itself without the intervention of centralized planning by government.

Legislative History: The House passed the bill by nonrecord vote, one member recorded voting nay, on April 7 (Journal page 924). The Senate changed the composition of the commission by eliminating certain statewide elected officials and the chairs of various state agencies and substituted the members of the Texas Department of Commerce, required biennial rather than annual reviews of state economic development activities and abolished the commission in June 1989 instead of June 1990, then passed the bill by voice vote on May 14 (Journal page 1155). The House concurred with the Senate amendments by nonrecord vote on May 20 (Journal page 2790).

The HRO analysis of the bill appeared in the April 7 Daily Floor Report.

Texas Department of Commerce
(HB 4 by A. Smith)

Effective Sept. 1, 1987

HB 4 creates the Texas Department of Commerce, with authority to issue revenue bonds and a mandate to promote job creation and business development. The department assumed all economic development activities of the Texas Economic Development Commission, the Texas Tourist Development Agency, and several other boards and commissions.

The department can issue special-purpose bonds for financial assistance programs for Texas exporters and for domestic business development. If the voters approve HJR 4 and HJR 5 on the November 1987 ballot, the department will be authorized to issue up to \$25 million in general-obligation bonds for a Texas Product Development Fund and a Texas Small Business Incubator Fund.

Supporters said that the old structure of state agencies responsible for economic development with overlapping jurisdictions and duplicated programs was inadequate for taking the aggressive, innovative steps needed for state government to lead Texas to sustained economic recovery. HB 4 would provide a fresh start with bold programs of financial assistance for Texas small business, export promotion and innovation.

Opponents said that the Legislature was being stampeded into major changes. HB 4 could open opportunities for a raid on state funds by private interests that could not find backing from traditional sources. Other opponents said the bill should dedicate 10 percent of state agency contracts to businesses owned by disadvantaged groups. Also, the depressed border region deserves a separate commission, not just an advisory committee.

Legislative History: The House passed HB 4 on April 8 by nonrecord vote, one member recorded voting aye (Journal page 941). The Senate amended the bill to expand the department's governing board from three members to six and to require state agencies to award at least 10 percent of all contracts to disadvantaged businesses, then passed the bill by voice vote on May 14 (Journal page 1159). The House did not concur with the Senate amendments by nonrecord vote on May 19 (Journal page 2726), and a conference committee was appointed. The conference committee deleted the Senate amendment granting the 10-percent preference for disadvantaged businesses. The House adopted the conference committee report on May 27 by 98 to 43 (Journal page 3697). The Senate adopted the conference committee report by voice vote on May 30 (Journal page 2258).

The HRO analysis of the bill appeared in the April 7 Daily Floor Report.

Small-business regulation and deadline for issuing permits
(HB 5 by Hackney)

Effective Aug. 31, 1987

HB 5 requires state agencies that issue permits to businesses to adopt rules setting deadlines for acknowledging receipt of permit applications and for issuing or denying a permit. All state agencies must also reduce any adverse economic impact on small businesses that might result from an agency rule, as long as the reduction is legal and feasible. The act does not apply to permits issued under the Alcoholic Beverage Code, and to gaming and gambling.

Supporters said the bill would improve the business climate in Texas by cutting bureaucratic red tape. Requiring state agencies to adopt deadlines and efficient methods for processing permit applications would produce streamlined procedures, which would in turn save the state money.

Opponents said the bill would be counterproductive, creating more paperwork for state agencies as well as for businesses.

Legislative History: The House passed the bill on April 8 by nonrecord vote (Journal page 941). The Senate added amendments that allow an agency to establish separate rules for contested and uncontested cases and expand the exemption for permits issued under the Alcoholic Beverage Code, then passed the bill on May 15 by voice vote (Journal page 1160). The House concurred with the Senate amendments by nonrecord vote on May 20 (Journal page 2793).

The HRO analysis of the bill appeared in the April 7 Daily Floor Report.

Financial assistance for agriculture
(HB 49 by Harrison, second called session)

Effective Oct. 20, 1987

HB 49 would create an agricultural diversification program to be administered by the commissioner of agriculture. The bill would make available three matching-grant programs to provide money to local governments and non-profit organizations. The bill would also establish a linked-deposits program in which the state would deposit money into state depository financial institutions at an interest rate 2 points below the current market rate. In exchange the institutions would agree to lend the value of the deposit to eligible agricultural borrowers at a rate not to exceed 4 points above the interest rate paid on the certificate. The agricultural diversification program becomes effective only upon the approval of the constitutional amendment proposed by HJR 5.

HB 49 also would establish a Texas Agricultural Finance Authority to issue up to \$45 million in general obligation bonds and up to \$500 million in revenue bonds to provide grants, loans, loan guarantees and other financial assistance to help diversify Texas agriculture. Issuance of the general-obligation bonds is contingent on approval of the constitutional amendment proposed by HJR 4.

Supporters said the financial assistance programs would help Texas agriculture rebound from its ongoing economic crisis. Agriculture remains the cornerstone of the Texas economy and holds great job-creating potential. Similar programs have long been used on the federal level and in other states.

Opponents said state revenue should finance basic services such as education, prisons and care for the mentally retarded. It would not be fair to provide special public benefits to the agriculture industry while other business sectors, such as oil, real estate and financial institutions, are also hurting.

Legislative History: The House passed the bill on July 18 by 144 to 0 (Journal page 484). The Senate passed the bill by voice vote on July 19, after adding an amendment creating an agricultural finance authority (Journal page 273). The House concurred with the Senate amendments by 134 to 3 on July 20 (Journal page 533).

(A similar bill, HB 1183 by Gibson, was enacted by the Legislature during the regular session but was vetoed by the governor on June 20.)

The HRO analysis of the bill appeared in the June 30 Daily Floor Report. The HRO analysis of HB 1183 appeared in the May 19 Daily Floor Report.

Small-business recovery of court costs and attorney fees
(HB 440 by Hinojosa)

Effective Sept. 1, 1987

HB 440 allows small businesses to recover court costs and reasonable attorney's fees when they prevail in a civil action or administrative proceeding against a state agency that issued a complaint against the business. In order to recover, the small business must show that the agency brought the action in bad faith, frivolously, or with no substantial justification. A small business may not recover if, during that 30-day filing period provided by the legislation for appeal of the agency's action, the agency either dismisses the complaint or action or amends its pleadings to drop the small business as a party from the complaint.

Supporters said the bill would provide small businesses that are innocent of regulatory violations some method of gaining compensation from state agencies when they are unfairly, maliciously, or arbitrarily charged with a complaint. It would also encourage state regulatory agencies to build thorough, compelling, and well-documented cases before proceeding with an administrative complaint or civil action against a small business.

Opponents said the bill was a misguided attempt to severely hamper the efforts of our state's regulatory and protective agencies. It would intimidate state agencies into going easy on small businesses at the expense of health, safety or environmental regulations. It would create an additional backlog in administrative tribunals, as the finders-of-fact try to sort through a vast array of motions charging frivolous agency enforcement. The bill sets no maximum limits upon the awards, which could be costly to the state.

Legislative History: The House passed the bill by nonrecord vote on May 7 (Journal page 1871). The Senate passed it by voice vote on May 30 (Journal page 2366). The House concurred with the Senate amendments by nonrecord vote on June 1 (Journal page 4225).

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

Preferential purchase of U.S. and Texas products
(HB 707 by R. Lewis)

Vetoed

HB 707 would have given a preference to products produced in Texas or elsewhere in the U.S. for any contracts by state agencies or or the State Purchasing Commission. Products of a country contiguous to Texas would have been considered Texas products, and products of a country contiguous to the U.S. would have been considered American products. Among Texas products, preference would have been given to products of companies majority-owned by blacks, Hispanics, women or American Indians. Texas products would have been given a preference over products from other states equal to the preference the other state would give its own products. If no Texas products were available, there would have been a 10 percent price preference for American products.

The bill would also have brought cities, counties, hospital districts, school districts, and various special taxing districts under provisions that require a preference in contracts for construction, improvements, services, public works projects, supplies, materials, or equipment.

Supporters said in such economic hard times, state and local government should do as much as possible to preserve local jobs. Many states have policies that prefer their own products.

Opponents said this bill could force up prices of many goods that state or local government units have to buy, making it even harder to meet a tight state budget. It could be a bureaucratic nightmare in many cases to trace where a product came from.

Legislative History: The House by nonrecord vote, three members recorded voting nay and one recorded voting aye, on April 29 (Journal page 1519). The Senate amended the bill to add the additional preference for products of companies majority-owned by minorities or women and adding products made in contiguous countries to the definition of Texas products and American products, then passed the bill by voice vote, six members recorded voting nay, on May 28 (Journal page 2007). The House concurred with the Senate amendments by nonrecord vote, 22 members recorded voting nay and two recorded voting aye, after a motion not to concur failed by 48 to 85, on May 30 (Journal page 4021). The governor vetoed the bill on June 19.

The HRO analysis of the bill appeared in the April 28 Daily Floor Report. The Senate amendments analysis appeared in the May 30 Daily Floor Report.

Commercialization labs at UT-Austin and Texas A&M
(HB 1405 by Richardson)

Effective Aug. 31, 1987

HB 1405 authorizes the Legislature to appropriate \$900,000 a year to be shared equally by the Center for Technology Development and Transfer at the University of Texas and the Technology Business Development division of the Texas Engineering Experiment Station at Texas A&M. The goals of the two programs are commercialization of technological discoveries and inventions for the purpose of job creation and business development.

Supporters said commercialization of scientific discoveries and inventions holds out great hope for diversification of the Texas economy and the creation of new jobs. It is appropriate for the state to take an active role in helping scientists find practical applications for their products so that the fruits of research and development can reach the general public, creating jobs and industries along the way.

Opponents said UT-Austin and Texas A&M can get \$900,000 per year to fund commercialization of research and development activities from their own endowments or from the private sector (who will benefit from these developments). At a time of budget crisis, the state needs to be spending its money on priority items such as public education and prisons.

Legislative History: The House passed the bill by nonrecord vote on May 8 (Journal page 1987). The Senate passed the bill by 30 to 0 on May 22 (Journal page 1545).

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

Bonds for superconducting super collider
(HB 1909 by A. Luna)

Effective May 14, 1987

HB 1909 permits the National Research Laboratory Commission (NRLC), the state agency handling development, financing and operation of the federal superconducting super collider project (SSC), to issue up to \$1 billion in bonds for the SSC, if Texas is chosen as the site. The NRLC could issue up to \$500 million in general obligation bonds, if voters on Nov. 3, 1987 approve the proposed constitutional amendment (HJR 88) authorizing their issuance, and \$500 million in revenue bonds. Bond proceeds will be used for the SSC project and to pay the cost of interest on the bonds. No bonds can be issued until the federal government announces a decision to locate the super collider in Texas. All bonds must be reviewed and approved by the bond review board.

Supporters said the state should provide financial and other incentives to attract the super collider to Texas because that project would help diversify the state economy, attract federal research dollars and have an economic ripple effect. The super collider will cost more than \$4.4 billion to build and will have an annual budget of \$200 to \$300 million.

Opponents said to issue \$1 billion in state bonds for a project that cannot guarantee specific economic returns would be wasteful. If the super collider does provide any economic returns, it would likely be limited to one area of the state, so local communities that want the super collider should float their own bond package. We should not saddle the state with more debt during fiscal hard times. If the state is going to float \$1 billion in bonds, then it should use the proceeds for priority items such as higher education, public schools, mental facilities and prisons.

Legislative History: The House passed the bill on May 7 by 139 to 0 (Journal page 1870). The Senate amended the bill to require review and approval by the bond review board, then passed it by 29 to 0 on May 8 (Journal page 1044). The House concurred with Senate amendments by 140 to 1 on May 12 (Journal page 2066).

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

Local research authorities for the super collider
(HB 2085 by Stiles)

Effective Aug. 31, 1987

HB 2085 allows two or more public entities to join in establishing a research authority to assist with any projects associated with the location of the federal super collider project in Texas. Such projects can include, but are not limited to, acquiring land sites, building roads and bridges, or providing housing, police, fire, cultural, or any other support service for the super collider. The research authority has taxing authority, the power of eminent domain and the authority to issue revenue bonds, with voter approval. No bonds can be issued after Aug. 31, 1991.

Supporters said the bill would allow two or more local entities to establish a research authority with powers to finance infrastructure needed for the super collider project should it be located in Texas. Safeguards in the bill include that bonds cannot be issued without voter approval and local ordinances would have to be passed before the authority could exercise its powers, along with public hearings and other provisions for public comment.

Opponents said the state is giving away too much to secure the super collider for Texas. The new research authorities would have sweeping powers of eminent domain and broad taxing authority with very little oversight. The cost-benefit ratio of this high-cost super collider project is unknown. Communities may find the alleged economic benefits from the super collider are spread over far too many years to make up for the free land, free highways, bonded debt and other subsidies that they have provided.

Legislative History: The House passed the bill by nonrecord vote on May 19 (Journal page 2675). The Senate made several changes, including a requirement of voter approval to issue the bonds, and passed the bill by 30 to 0 on May 29 (Journal page 2041). The House refused to concur with the Senate amendments by nonrecord vote on May 30 (Journal page 4067), and a conference committee was appointed. The conference committee removed a \$300 million cap on the revenue bonds and retained voter approval of the bonds. On June 1 the Senate adopted the conference report by voice vote (Journal page 2532), and the House adopted it by nonrecord vote (Journal page 4341).

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

Bond funding for agriculture, new products and small businesses
(HJR 4 by Colbert)

On ballot Nov. 3, 1987

HJR 4 would amend the Texas Constitution to allow the Legislature to authorize issuance of \$125 million in general obligation bonds for business assistance -- \$100 million for agricultural production, processing and marketing, \$15 million to provide venture financing to small businesses for new product development and \$10 million for assistance to "incubators" that assist small businesses in getting started. All bonds issued would be subject to review and approval by a bond review board.

Supporters said the proposed constitutional amendment was a key part of the economic development legislative package needed to rejuvenate Texas' economy. Limited public help for small businesses to promote economic diversification has worked well in other states and would ultimately pay for itself through increased revenues from job creation and new businesses.

Opponents said that public money should be spent for education and job training, which would provide a better foundation for economic growth than pie-in-the-sky economic development schemes. The government should not meddle in the free marketplace.

Legislative History: The House adopted HJR 4 on April 7 by 119 to 26 (Journal page 864). The Senate amended HJR 4 to add a provision for a bond review board and passed it by 30 to 0 on May 14 (Journal page 1161). The House concurred with the Senate amendments by 136 to 0 on May 20 (Journal page 2801).

The HRO analysis of the proposed constitutional amendment appeared in the April 7 Daily Floor Report.

Loans and grants of public money for economic development
(HJR 5 by A. Smith)

On Nov. 3, 1987 ballot

HJR 5 would amend the Constitution to permit the Legislature to create programs and make loans and grants of public money for economic development and diversification, the elimination of unemployment and underemployment, the stimulation of agricultural innovation, the growth of agricultural enterprises and the expansion of transportation or commerce. Bonds issued by a city, county or other political subdivision and payable from ad valorem taxes to finance loans and grants authorized by the Legislature would be subject to approval by local voters.

Supporters said that the proposed amendment was an essential element in the economic development package passed by the Legislature. HJR 5 is necessary to override certain current constitutional provisions that might be construed as prohibiting economic development investments by state or local governments that aided individual companies. This amendment is a necessary precondition to programs such as those proposed by HJR 4, which would authorize the issuance of bonds for agriculture, new products and small businesses.

Opponents said the proposed amendment is an attempt to circumvent one of the pillars of the Texas Constitution -- the prohibition against the use of public funds for private enrichment. HJR 5 would nullify the safeguards built into the Constitution to permit a limitless amount of public money to be used to finance the business schemes of individuals and private corporations. The best way for government to promote economic development would be to maintain the public education system and infrastructure such as highways.

Legislative History: The House passed HJR 5 on April 7 by 120 to 22 (Journal page 865). The Senate amended the resolution to specify that constitutionally dedicated funds could not be used for loans and grants and passed the resolution on May 14 by 30 to 0 (Journal page 1161). The House concurred with the Senate amendment on May 20 by 135 to 0 (Journal page 2803).

The HRO analysis of the bill appeared in the April 7 Daily Floor Report.

Texas Growth Fund and permanent-fund investments
(HJR 5 by Schlueter, second called session)

On Nov. 8, 1988 ballot

HJR 5 would amend the Texas Constitution to create the Texas Growth Fund, a trust fund through which the Permanent University Fund, the Permanent School Fund, the Teacher Retirement System, the Employees Retirement System and other state pension systems could make investments directly related to employment opportunity and economic growth in Texas. The Constitution also would be amended to allow the Permanent University Fund and the Permanent School Fund to be invested in any fashion, subject to the prudent-person rule.

Supporters said that HJR 5 would permit the state pension and trust funds to invest a limited portion of their considerable assets in the future economic growth and diversification of Texas. HJR 5 also would amend the Constitution to allow the Permanent University Fund and Permanent School Fund to follow the prudent-person rule in their investments, allowing broader use of those funds to increase their return without threatening the safety of the funds.

Opponents said that HJR 5 would weaken the financial soundness of the state pension and trust funds. The funds should be governed by the most conservative investment policies to ensure a secure source of income for state retirees. There are other ways for the Legislature to create jobs and promote economic growth without endangering the future of the state's pension and trust funds. HJR 5 would open the possibility of political pressure in the investment of the state's money.

Legislative History: The House amended HJR 5 to limit growth fund investments to businesses submitting an affidavit disclosing their direct financial investment in South Africa or Namibia, then adopted it on July 16 by 144 to 0 (Journal page 329). The Senate adopted the proposal by 29 to 0 on July 19 (Journal page 226).

The HRO analysis of the proposed constitutional amendment appeared in the June 30 Daily Floor Report.

Bonds for superconducting super collider
(HJR 88 by A. Luna)

On Nov. 3, 1987 ballot

HJR 88 would allow the Legislature to authorize an agency to issue up to \$500 million in general obligation bonds for a special fund to be used, without further appropriation, to pay for activities of the super collider research facility planned by the U.S. government. A bond review board would review and approve sale of the bonds and use of bond proceeds. Bond payments would have priority claim on money in the state treasury not constitutionally dedicated to another use.

Supporters of the amendment said \$500 million in bonds would show Texas' commitment in the competition among states for the super collider. Construction jobs and permanent employment of scientists, technicians and support personnel, would provide revenue to nearby communities. A project of this magnitude would attract other industries and more federal research labs and dollars.

Opponents said the the state should not increase state debt during a fiscal crisis for a high-cost, scientific boondoggle of unknown purpose and little practical application. Once again, the federal government is pitting states against one another in an unseemly bidding war. Whether it would yield more than short-term benefits in one area of the state is unclear at best.

Legislative History: The House adopted the proposed constitutional amendment by 147 to 1 on May 5 (Journal page 1706). The Senate adopted a substitute adding a bond review board by 29 to 0 on May 8 (Journal page 1043). The House concurred with the Senate amendment by 141 to 1 on May 11 (Journal page 2050).

The HRO analysis of the proposed constitutional amendment appeared in the May 5 Daily Floor Report.

Public funds for grain warehouse surety
(HJR 104 by Waterfield)

On Nov. 3, 1987 ballot

HJR 104 proposes a constitutional amendment authorizing the Legislature to guarantee with up to \$5 million in public funds a grain warehouse self-insurance fund. When the self-insurance fund reached \$5 million, as certified by the state comptroller, the state guarantee would cease.

Supporters said HJR 104 would enable grain-storage companies to continue to operate and provide Texas farmers with storage space at a reasonable price. State help would stabilize the grain storage industry and allow many facilities to remain in business. Many private insurance companies are leaving the bonding business because of large losses and low premiums -- a self-insurance fund, backed by the state until it reached a sufficient amount to operate on its own, could fill a need not being met by the private firms.

Opponents said the bill would make the grain storage industry dependent on state help and would lead other industries to come to the state for similar help. The continuing instability in the grain warehouse field could lead to further bankruptcies and could cause a drain on state resources.

Legislative History: The House adopted the proposal on May 19 by 127 to 15 (Journal page 2585). The Senate adopted it by 20 to 8 on May 30 (Journal page 229).

The HRO analysis of the proposed constitutional amendment appeared in the May 19 Daily Floor Report.

Super collider consultant for two or more sites
(SB 1428 by Edwards)

Effective May 31, 1987

SB 1428 exempts the Texas National Research Laboratory Commission from state requirements for hiring a private consultant. The consultant must provide services in connection with the formulation or submission of two or more site proposals for the superconducting super collider competition.

Supporters said that since the deadline for submitting the proposal to win the \$4.4 billion super collider project was Aug. 31, 1987, it was imperative that the Texas National Research Laboratory Commission be allowed to move quickly to prepare its proposal. This bill would exempt the commission from a 40-day delay required in current law for giving notice of invitation before consultants could be hired. Requiring that at least two proposed sites be submitted would allow more areas of Texas to participate and could enhance the state's chances to gain the project.

Opponents said the requirement that Texas submit two or more site proposals could torpedo the entire state effort to win the super collider. Texas needs to concentrate its efforts on a single, well-documented proposal. Requiring two or more proposals would dilute state efforts just to satisfy parochial political interests.

Legislative History: The Senate on April 15 passed by 31 to 0 a version of the bill requiring only one site proposal (Journal page 665). The House amended the bill to require submission of two or more sites, then passed the bill by nonrecord vote, one member recorded voting nay, on May 6 (Journal page 1780). The Senate initially refused by voice vote to concur with the House amendments, one member recorded voting nay, (Journal page 1025) but reconsidered and concurred by 30 to 0 on May 12 (Journal page 1103).

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

ELECTIONS

Uniform election date changes (HB 28 by C. Evans, second called session)

Effective Oct. 20, 1987

HB 28 changes the spring uniform election date from the third Saturday in May to the first Saturday in May. Any runoff in the May election will be held on the last or next-to-last Saturday in May. Corpus Christi may hold its city election on any Saturday in April of odd-numbered years. Tax-levy elections for maintenance of public schools or colleges are no longer exempt from the requirement that local elections be held on one of four uniform election dates. Elections for issuance or assumption of bonds can be held on a nonuniform date if a governing body finds that another date is in the public interest.

Supporters said that after the April uniform election date was changed from April to late May in order to accommodate moving the party primaries to March and April, many officials realized that holding a local election when the summer season begins cause difficulties with voter turnout, especially involving colleges and university students who leave campus. Voters are accustomed to having an important election on the first Saturday in May, the old party primary date. Also, restricting bond elections to uniform dates, unless a board or council determines that another date is in the public interest, would reduce the the number of costly and repetitive bond elections.

Opponents said preparing for absentee voting for an early May local election would be difficult if a county were to have a high-turnout primary runoff in April. Requiring that elections to approve tax levies for maintenance and operation of schools and colleges be held on a uniform date would require educators to compete for voter attention with candidates for local office.

Legislative History: The House passed the bill on July 8 in a nonrecord vote (Journal page 280). The Senate added the requirement that local governments specifically authorize bond elections held on a nonuniform date, then passed the bill by 30 to 0 on July 16 (Journal page 135). The House concurred with the Senate amendments by nonrecord vote, one member recorded voting nay, on July 20 (Journal page 531). (A similar bill, SB 1210 by Lyon, was enacted during the regular session but had been vetoed by by the governor.)

The HRO analysis of the bill appeared in the July 7 Daily Floor Report.

Place of birth on voter-registration applications
(HB 613 by Perez)

Effective Sept. 1, 1987

HB 613 adds to the list of required information on voter-registration applications the city or county and state, or foreign country, where an applicant was born.

Supporters said a blank for place of birth is essential to ensuring that only U.S. citizens are registered to vote. The number of illegal aliens and non-citizen legal residents who are registered to vote in Texas is not known, but election officials, especially in border counties, are convinced there is a problem. Some illegal aliens register just to manufacture proof of citizenship, and recent elections have seen election challenges based on allegations that illegal aliens are voting.

Opponents said unsupported allegations of alien voter registration or voting are not a sufficient reason to add place of birth to the voter registration form. That blank was deleted for children born abroad to U.S. military personnel who do not require naturalization but have nonetheless experienced delays in registration. Foreign-born U.S. citizens, especially those born in Mexico, may be intimidated into not registering because of the prospect of further questioning of their citizenship and right to vote.

Legislative History: The House passed the bill on April 29 by nonrecord vote (Journal page 1513). The Senate passed the bill by voice vote on May 22 (Journal page 1545).

The HRO analysis of the bill appeared in the April 21 Daily Floor Report.

Electronic voting systems
(HB 1412 by Hackney)

Effective Sept. 1, 1987

HB 1412 adds a number of requirements pertaining to electronic voting systems and equipment. Local election officials must conduct a manual recount of 1 percent of precincts or three precincts, whichever is greater. The secretary of state may recount any number of ballots at any precinct. No specific grounds are necessary to request a recount of an election if an electronic voting system was used. An official tabulation at a central counting station is required for systems capable of precinct tabulation if a discrepancy of more than three ballots is found.

The secretary of state must reexamine all electronic voting systems and equipment by Jan. 1, 1988. Computer software and other materials relating to electronic systems must be filed with the secretary of state, who also is permitted to prepare software. The secretary of state may seek a temporary restraining order or injunction against any part of a voting system not approved. No voting system may be used unless it can produce a record for use in auditing operation of the voting system.

Supporters said the state has allowed computers into its electoral process without sufficient protection against fraud or mistakes in ballot tabulation. Even though it is not clear that manipulation of electronic voting systems has occurred in Texas, these measures would help reduce fraud allegations and restore public confidence. The state's highest election official should have authority sufficient to enforce ballot security.

Opponents said it makes no sense to spend a lot of money to solve problems that may not exist. Some portions of the bill would be burdensome for election officials, while others could actually compromise security. Other opponents said efforts to ease the burden on local election officials went too far. The manual recount provision was watered down to the point where it no longer would be statistically significant.

Legislative History: The House passed the bill on May 20 by nonrecord vote, two members recorded voting nay (Journal page 2858). The Senate amended the bill and passed it by 30 to 0 on May 28 (Journal page 1936). The House concurred with the Senate amendment on May 30 (Journal page 4048).

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

Recodification of political fund, campaign finance law
(HB 1818 by Hilbert)

Effective Sept. 1, 1987

HB 1818 reorganizes Title 15 of the Election Code and makes substantive changes. Assets purchased by contributions and income earned on contributions may not be converted to personal use or retained indefinitely; the offense is a Class A misdemeanor (maximum penalty of \$2,000 fine and one year in jail). Specific-purpose committees may not convert contributions accepted on or after Sept. 1, 1987 to the personal use of former and current candidates and officeholders. Candidates and officeholders may reimburse themselves from contributions for use of personal funds. Contributions may be used to defray federal income taxes accruing on contributions and for certain legal actions.

Failure to maintain proper records is a Class B misdemeanor (maximum penalty of \$1,000 fine and 180 days in jail). The secretary of state is authorized to distinguish between significant and insignificant noncompliance with reporting requirements and to assess a civil penalty for failure to correct noncompliance after notice.

Contribution and expenditure reports are to be filed semi-annually. Opposed candidates and political committees involved in an election also must file two prep-election reports. Bank loans exceeding \$50 must be disclosed even though they do not constitute contributions. New disclosure requirements and restrictions for general purpose committees include a waiting period for expenditures and telegram reporting of expenditures just before an election. Corporations and labor organizations may not make contributions or expenditures in connection with recall elections. Only officeholders may use the Great Seal of Texas in political advertising.

Supporters said the bill would improve coherence and enforceability of the law pertaining to political funds and campaign finance. HB 1818 clarifies vague provisions, eliminates inconsistencies, conforms statutory law to court decisions and addresses administrative concerns of the secretary of state.

No apparent opposition

Legislative History: The House passed HB 1818 on May 15 on the Local and Consent Calendar (Journal page 2445). HB 1818 initially pertained only to contributions by corporations and labor unions in recall elections. The Senate added to HB 1818 the recodification bill, SB 465, which it had earlier passed by voice vote, one member recorded voting nay, on May 14 (Journal page 1169), then passed HB 1818 by voice vote on May 30 (Journal page 2186). The House concurred with Senate amendments by nonrecord vote on May 30 (Journal page 4177).

The HRO digest of SB 465, which was added to HB 1818, appeared in the May 28 Daily Floor Report.

Single-location primary elections and financing revisions
(HB 1962 by R. Smith)

Died in House committee

HB 1962 would have required party primary elections to be conducted jointly at a single location. (Current law permits more than one primary in the same building only if conducted in separate rooms.) Separate ballots, ballot boxes and election returns would have been maintained. County clerks, rather than party executive committees, would have administered primaries. Two co-judges of different parties would have presided at polling places. One set of election officers would have staffed absentee ballot boards and central counting stations. Any qualified voter would have been permitted to vote absentee by personal appearance in primary elections. Counties would have provided election equipment and would have been reimbursed by the state for transportation costs. Expenses of securing and operating polling places and compensation of election personnel would have been paid by the state.

Supporters said requiring single-location primaries would save the state \$4.6 million by reducing duplication of polling places and election workers. Trained election professionals would improve efficiency on Super Tuesday, when the national spotlight will shine on Texas. Voter confusion would be reduced, and turnout likely would improve. Making it easier for a few voters to vote in the primary of their choice would not constitute a partisan advantage.

Opponents said single-location primaries would not save nearly as much money as was claimed. Most polling places already share buildings, and personnel cannot be reduced much without compromising service. Some of the "savings" would result from shifting the financial burden onto the counties. The proposed change would compound uncertainties associated with an election clouded by new laws and a projected record turnout. The major purpose of the bill is to benefit the Republican Party, which has always drawn far fewer voters to its primary than the Democrats.

Legislative History: The House referred HB 1962 to the Elections Committee, which held a hearing and referred it to subcommittee. SB 1059 by Krier, the companion bill, died in the Senate State Affairs Committee.

Allowing voters to use written aids at polling places
(SB 884 by Edwards)

Vetoed

SB 884 would have repealed the Election Code provision that prohibits carrying certain written voting aids into a voting booth. The code currently prohibits written communications prepared and furnished to voters by another person and marked or printed in a way that identifies candidates or measures for which a voter has agreed to vote or has been requested to vote. Violations are Class C misdemeanors (maximum fine of \$200). The code includes one example of a communication that is not prohibited: a sample ballot, which has not been marked or printed in a way that identifies candidates or measures for which to vote, that is obtained by the voter from a newspaper or another person and marked only by the voter.

SB 884 also would have prohibited leaving written communications at a voting station and would have required election officers to check periodically and remove such materials.

Supporters said the bill would retain current protections against coercion and electioneering while encouraging intelligent voting despite adverse conditions, such as ballots containing 100 or more races or two or more similar names. Denial of written aids induces voters to reach for the straight-ticket lever even when that action does not reflect the voter's true choices. This confusing law lends itself to shifting interpretations.

Opponents said repealing this section is neither necessary nor advisable. Voters already can bring in handwritten lists or sample ballots they have marked themselves. Interest groups could exercise undue influence on voters by flooding them with materials such as "slate cards" encouraging blind voting for special interests.

Legislative History: The Senate passed the bill on May 13 by voice vote, one member recorded voting nay (Journal page 1120). The House passed it on May 20 by nonrecord vote, one member recorded voting nay (Journal page 2806). The governor vetoed the bill on June 19.

The HRO analysis of HB 2047 by Danburg, the companion bill, appeared in the May 19 Daily Floor Report.

ENVIRONMENT/WATER

Return deposit for beverage containers (HB 210 by Guerrero)

Died in House committee

HB 210 would have required beverage distributors and retailers to mark their beverage containers as returnable for deposit and to pay a refund of not less than five cents for returned containers. In addition, beverages connected by nonbiodegradable binders could have been sold only if the binder was returnable for a deposit. Every metal beverage container would have been required to have nondetachable opening devices. Violators would have been guilty of a misdemeanor and subject to fines between \$100 and \$1,000.

Supporters said the bill would protect the environment by reducing litter on highways, beaches and parks. It would also save the state money in cleanup costs, create new jobs and encourage tourism.

Opponents said the bill would be too expensive. The price of beer and soft drinks would go up because distributors and retailers would incur added handling costs. Sales would also drop because consumers would be irritated by the extra effort of returning containers for deposits. This would inevitably lead to a loss of jobs in the beverage industry.

Legislative History: The bill was referred to the House Environmental Affairs Committee (Journal page 179), where it died in subcommittee.

Texas Water Resources Financing Authority
(HB 734 by T. Smith)

Effective June 20, 1987

HB 734 created the Texas Water Resources Finance Authority to finance water conservation and development projects by purchasing political subdivision bonds. The authority can issue revenue bonds and can pay the premium, principal and interest on those revenue bonds with the income from its political subdivision bonds or other funding sources. Issuance of those bonds must be approved by the bond review board. The authority cannot incur any indebtedness or liability on behalf of the state nor receive state appropriations. The authority may buy water project bonds issued by local political subdivisions either directly or from the Texas Water Development Board, which may sell the authority any political subdivision bonds purchased with money in the Water Loan Assistance Fund, the Water Development Fund or the Agricultural Water Conservation Fund.

Supporters said the proposal would allow the Texas Water Development Board to restructure its debt by shifting future income into the present, thereby avoiding potential draws on general revenue. The development board's municipal-bond income over the next 10 years will only be equal to, or slightly more than, the debt payments it owes. After the late 1990s, however, the board's bond income will significantly exceed its debts. HB 734 would even out this cash flow imbalance by allowing the new authority to issue revenue bonds now to purchase local water bonds, then retire the bonds later with the income from the local bonds.

Opponents said the proposal would provide an open-ended grant of authority to finance water projects without public approval. Public approval for state debt financing of water projects, as is required for general obligation bonds, would safeguard the state from over extending itself or from funding projects that might be environmentally questionable. The state might have to bail out the authority if the debt payments on its revenue bonds exceeded the income from the local bonds it purchased.

Legislative History: The House passed the bill on April 28 by 142 to 1 (Journal page 1396). The Senate added provisions allowing the Texas Water Development Board to sell political subdivision bonds to the Texas Water Resources Finance Authority and requiring that revenue bonds issued by the authority be approved by the bond review board, then passed the bill on May 15 by 30 to 0 (Journal page 1239). The House concurred with the Senate amendments by 141 to 2 on May 21 (Journal page 2907).

The HRO analysis of HB 734 appeared in the April 27 Daily Floor Report. The HRO analysis of a similar bill, HB 1127 by Craddick, appeared in the May 7 Daily Floor Report.

Agricultural Hazard Communication Act
(HB 1896 by McDonald)

Effective Jan. 1, 1988

HB 1896 regulates use of workplace chemicals in agriculture. It requires agricultural employers to compile a workplace chemical list providing information about hazardous chemicals used or stored annually in the workplace in certain quantities. Information required includes the date and crop on which the chemical was used and the area where the chemical is stored. The list must be read to the workers at least once each work season.

Supporters said the bill would protect farm workers, farmers, fire departments and emergency personnel working in agricultural areas by making sure everyone has the proper information to avoid overexposure to dangerous chemicals and for treating overexposure should it occur.

Opponents said this bill would cause too great a cost and paperwork burden on farm employers. Other opponents said that rather than simply allowing farm workers to find out what kinds of chemicals could cause them injury, the bill should prohibit employers from exposing workers to these chemicals.

Legislative History: The House passed the bill on May 7 by nonrecord vote, nine members recorded voting nay (Journal page 1873). The Senate added several amendments, including a requirement that the chemical list be read only to employees who request a crop sheet or who have not taken a special chemical-training course (Journal page 2057), then passed the bill by voice vote, one vote recorded nay, on May 29 (Journal page 2066). The House concurred with the Senate amendments by voice vote on May 30 (Journal page 4049).

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

Fishing license exemption for under 17 and over 64
(SB 13 by Brown)

Effective April 22, 1987

SB 13 exempts those under 17 or over 64 from obtaining a fishing license. The exemption applies to Texas residents or non-residents from states that grant similar exemptions for Texans.

Supporters said the bill would save the state \$286,803 per year to pay license deputies to issue free licenses to those under 17 and over 64. The Texas Parks and Wildlife Commission acted properly in waiving fees for these age groups, which were previously exempt from licensing, and this bill would spare them the trouble of obtaining a license. The bill offers a better plan than restoring the lengthy list of exemptions repealed previously.

Opponents said that in 1985 fishing license exemptions were repealed, and waivers and fee reductions were authorized, for good reasons. Under the current arrangement, the parks and wildlife commission can waive licensing fees for the young and the elderly yet still compile useful data on the number of anglers. This information helps the department make wildlife management decisions like how many fish to stock. Other opponents said the bill does not go far enough in addressing the public outcry that resulted when the exemptions were repealed. Other groups now receiving fee waivers or reductions should also be exempted.

Legislative History: The Senate passed the bill by 29 to 0 on Feb. 16 (Journal page 143). The House passed the bill by 129 to 1 on April 9 (Journal page 993).

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

State land for low-level radioactive waste disposal
(SB 62 by Zaffirini, second called session)

Effective Oct. 20, 1987

SB 62 requires the School Land Board or the University of Texas System Board of Regents to sell land at appraised value to the Texas Low-Level Radioactive Waste Disposal Authority if the land is designated as the site for a disposal facility required by federal law. Mineral as well as surface rights are to be conveyed. If Permanent School Fund land is chosen, the authority must lease additional land as a buffer and implement a rangeland and wildlife management plan on it.

Waste at the site must be stored in structures of reinforced concrete or superior material. Shallow-land burial is prohibited. The authority is required to report to the 71st Legislature on volumes and types of wastes generated by decommissioning of nuclear reactors. Texas nuclear power reactors operated or constructed by public utilities must provide reactor site storage for five years' worth of low-level wastes.

Supporters said the search for a disposal site has narrowed to two sites in Hudspeth County, one on school land and one on university land. Requiring sale once a site is selected is necessary because the land commissioner has said that he will not sell the land for a disposal site unless required to do so. The wastes would not necessarily have to come through El Paso, and the sites are generally downstream from that city's groundwater.

Opponents said the bill virtually dictates selection of one of two potential sites in Hudspeth County, even though neither may be the best site based on objective criteria. As a result of that unjustified selection, the state may have to pay for the costly defense of a legal challenge. A disposal site in Hudspeth County would threaten the health of El Paso's citizens and economy, since much of the waste would be transported through El Paso, and a leak at the site could contaminate the aquifer that provides water for the area. Above-ground storage should be required to ensure that groundwater is not contaminated. Land sale requirements would infringe on obligations of officials entrusted with school and university land.

Legislative History: The Senate passed the bill by 28 to 2 on July 16 (Journal page 125). The House passed it by nonrecord vote, two members recorded voting nay, on July 18 (Journal page 502).

The HRO analysis of the bill appeared in the July 18 1987 Daily Floor Report.

Agricultural water conservation grants and loans
(SB 410 by Montford)

Effective May 26, 1987

SB 410 continues the pilot program established in 1985 to make loans to underground water conservation districts and to soil and water conservation districts, which in turn provide loans to farmers and ranchers to purchase and install more efficient irrigation equipment and practices. The program will be continued through the fiscal 1988-1989 biennium to use uncommitted funds remaining in the \$5 million pilot loan fund. SB 410 also expands the program to allow loans to surface-water irrigation districts.

SB 410 also expands the grants to districts program, established in 1985 to provide grants to water and conservation districts to purchase equipment to evaluate the efficiency of irrigation systems. Grants may be used to purchase equipment to evaluate water conservation systems on dryland and rangeland. Districts may also receive grants to obtain and use agricultural water conservation equipment.

Supporters said a sound state agricultural water-conservation program is needed to preserve land and water resources for future generations. Continuing the pilot loan program would allow a further demonstration of its need and use, since it has only been in operation since March 20, 1986.

Opponents said the pilot loan program has already proved itself to be unsuccessful and should be discontinued. Only four districts have applied to participate in the program so far. In these times of fiscal austerity the remaining money for the pilot loans could be put to better use. Any subsidy program will inevitably lead to abuses, spawn other unjustifiable assistance programs and artificially maintain economically uncompetitive private enterprises at public expense.

Legislative History: The Senate passed the bill by 31 to 0 on March 3 (Journal page 255). The House passed the bill by 133 to 1 on May 14 (Journal page 2228).

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

Hunter education program
(SB 504 by Lyon)

Effective Aug. 31, 1987

SB 504 allows the Texas Parks and Wildlife Department to establish a hunter education program and requires hunters who are under 17 years old on Sept. 1, 1988 to carry a certificate of course completion with their hunting license.

Supporters said a hunter education course would make hunters more aware of both safety rules and game laws. It would save lives and help increase compliance with game laws.

Opponents said the bill would just create more bureaucracy. People should teach their own children about hunting and safety.

Legislative History: The Senate passed the bill by 22 to 7 on May 6 (Journal page 998). The House amended the bill to limit the course fee to to \$15, then passed it by nonrecord vote, eight members recorded voting nay, on May 22 (Journal page 3297). The Senate concurred with the House amendments on May 28 (Journal page 1949).

The HRO analysis of the bill appeared the May 21 Daily Floor Report.

Access to Permanent School Fund land
(SB 611 by Lyon)

Effective Aug. 31, 1987

SB 611 authorizes the state and others with an interest in state land to obtain access to landlocked state lands dedicated to the Permanent School Fund. If the state or its agents cannot reach an agreement with a surface owner to obtain access to landlocked state land, the state can use the power of eminent domain to gain access.

Supporters said the bill would prevent the Permanent School Fund from losing up to \$20 million annually from undeveloped hard minerals by allowing the state to gain access to approximately 7.1 million acres of landlocked surface and mineral land dedicated to the Permanent School Fund.

Opponents said the bill would constitute government confiscation of private property and would undermine the right of private ownership of land. The grant of the power of eminent domain was too broad.

Legislative History: The Senate passed the bill on March 26 by 22 to 3 (Journal page 462). The House passed the bill on May 14 by nonrecord vote, two members recorded voting nay, after adding several amendments, including a provision raising the percentage of royalties and bonuses a lessee must pay the state under a mineral lease from 60 percent to 80 percent (Journal page 2132). The Senate concurred with the House amendments by 30 to 0 on May 20 (Journal page 1372).

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

Bay and estuary studies
(SB 683 by Montford)

Effective Sept. 1, 1987

SB 683 makes the Texas Parks and Wildlife Department and the Texas Water Development Board jointly responsible for conducting studies of the effects of fresh-water inflows on coastal bays and estuaries. The Texas Water Commission will review and comment on the studies. An advisory council to guide research includes representatives from the water commission, parks and wildlife department, the Texas Department of Health, the General Land Office and the conservation districts, reclamation districts and river authorities operating in the river basins or watersheds that empty into a bay or estuary, as well as one representative from commercial fishing groups, recreational fishing and hunting groups and conservation groups.

Supporters said SB 683 would clarify the confusion over the respective roles of the water development board and the water commission in conducting bay and estuary studies. The studies are important to determine how much fresh-water inflows are required to protect the commercial and environmental values of bays and estuaries. Shrimp and virtually all other commercially valuable fish and animals that live in the bays and estuaries depend on flows of fresh water from rivers and creeks.

Opponents said letting fresh water flow into the Gulf of Mexico constitutes waste. Water should be put to beneficial use for use by the people upstream.

Legislative History: The Senate passed the bill by 23 to 0 on March 26 (Journal page 456). The House passed the bill by nonrecord vote on May 21 (Journal page 2962).

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.

Establishing the Texas Rivers Conservation System
(SB 702 by Santiesteban)

Died in the Senate

SB 702 would have created the Texas Rivers Conservation System to preserve and enhance the wilderness qualities, scenic beauty, recreational historical values and ecological regimens of the units of the system. The system would have been administered to conserve aesthetic, fish, wildlife, archeological, geological, botanical and other natural and physical features and resources. The Texas Rivers Conservation Fund would have been established. SB 702 would have prohibited channelization -- changing a natural stream into a man-made ditch or canal with channels to accelerate runoff, realignment the stream or fill a reservoir -- within the boundaries of the units of the system.

Supporters said that although the rivers in Texas are public property, often the land bordering the rivers is private property and the public has no river access. SB 702 would have allowed the state to buy easements from land owners to ensure access. SB 702 would preserve rivers in their natural state, protect the free and natural flow of the rivers and prohibit their over-development.

Opponents said that the bill would interfere with the peaceable enjoyment by landowners of their private property. Although landowners would not be compelled to sell the state an easement in their property, their property would be affected if the neighbors did sell easements to the state. The likelihood that the public using the easements to gain access to the river would intentionally or inadvertently trespass private property would be increased. SB 702 would also interfere with river authorities' ability to control flooding.

Legislative History: The Senate Committee on Natural Resources reported SB 702 favorably with a substitute by 6 to 4 (Journal page 1141), but the bill was not considered by the Senate.

Clarifying state agency groundwater jurisdiction
(SB 761 by Montford)

Died in House

SB 761 would have directed the Texas Water Commission and the Texas Water Development Board to jointly identify critical groundwater areas around the state and establish a schedule for reviewing identified areas. The board would have conducted a technical study of the critical groundwater area and forwarded the study to the commission. The commission would have considered the board's study and recommended whether to create a groundwater district. After a hearing, the commission could call an election in the area to approve creation of the district.

Supporters said that the bill would clarify the responsibilities of the water development board and the water commission concerning which agency is to conduct studies of critical groundwater areas and initiate creation of new groundwater districts. Although authorized in 1985, no groundwater districts have been formed as a result of critical area designations, none of the detailed studies have begun and no recommendations have been made concerning the need for additional districts.

Opponents said authority to conduct the studies of critical groundwater areas should be given solely to the water commission, which has a greater institutional concern for water quality and water conservation. The water development board has traditionally been oriented towards water development rather than water conservation.

Legislative History: The Senate passed the bill by voice vote on March 26 (Journal page 458). The House Natural Resources Committee reported the bill by a vote of 6 to 0 on April 22 (Journal page 1493). SB 761 was placed on the General State Calendar on May 28, but the bill was not considered by the House.

The HRO Analysis of the bill appeared in the May 28 Daily Floor Report.

Financial assistance for water pollution control
(SB 807 by McFarland)

Effective June 17, 1987

SB 807 establishes a state water pollution control fund to provide assistance to cities, counties and other political subdivisions to build federally funded water-treatment plants. Assistance is provided in accordance with the capitalization grant program established under the Federal Water Pollution Control Act. The Texas Water Development Board is responsible for administering the revolving fund, which consists of money from federal grants, direct appropriations, investment earnings on amounts credited to the revolving fund and other sources, such as constitutionally authorized water development bonds issued by the board. The fund can be used to make loans at or below market interest rates, including interest-free loans at terms not to exceed 20 years. The fund can also be used to buy or refinance debt obligations of political subdivisions, to guarantee or purchase insurance, to fund accounts and for reasonable costs of administering the fund according to federal regulations.

SB 807 also authorizes a revenue bond program to raise state money for the program. This money would go into the Texas Water Resources Fund in the state treasury. The fund would be administered by the board and would be used to provide matching funds for federal money provided to the state water pollution control revolving fund.

Supporters said that as a result of recent changes in federal law, the state faces a loss of \$682 million in federal funds over the next eight years unless the Water Code is amended to conform with federal requirements. Through the Federal Clean Water Act, the Congress has authorized a phase-out of the federal construction grants program. This program, administered by the Texas Water Development Board, makes federal grants to local entities to build and upgrade waste-water treatment. The program is being replaced with a perpetual revolving loan program that will require 20 percent matching money from the states. The fund established by SB 807 will be used to provide matching funds for the federal money provided to the state water pollution control revolving fund.

Opponents said SB 807 would provide another opportunity for the state to sink further into debt through the revenue-raising mechanisms provided for water development projects. Too many risks are involved with debt-financing, such as issuing bonds to raise money, for it to be a prudent undertaking by the state. It is also highly questionable that the federal government would allow the state to use bond proceeds for its matching grant.

Legislative History The Senate passed the bill by 29 to 0 on April 22 (Journal page 730). The House passed SB 807, as amended, by 141 to 3 on May 21 (Journal page 2959). The Senate concurred with the House amendments by 30 to 0 on May 23 (Journal page 1578).

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.

Groundwater management minimum standards
(SB 967 by Santiesteban)

Died in the House

SB 967 would have made a number of changes in the Water Code provisions dealing with underground water conservation districts. The Texas Water Commission could have required a district to adopt and enforce reasonable minimum standards for the regulation and conservation of groundwater under certain circumstances. If the district did not adopt or enforce the commission's minimum standards, the commission could have assumed the management of a district for as long as the commission considered necessary. The bill would have also established a separate process for the creation of groundwater districts. Districts could have made and enforced reasonable rules to preserve, protect and prevent waste of groundwater. The tax a district could levy to pay maintenance and operating expenses would be reduced from 50 cents to 10 cents on each \$100 of assessed valuation.

Supporters said that while many districts are doing a good job of groundwater management, some inactive districts fail to guard the aquifers they were designed to protect. As a result, the more active districts adjacent to the inactive districts are precluded from regulating those areas covered by the inactive districts. HB 1451 would allow the commission to ensure that districts are active and not established as shams to block needed regulation. The bill would also remedy procedural difficulties in creating a new district and adding land to an existing district.

Opponents said the bill would go too far in allowing the state to substitute its judgment about groundwater protection for those most familiar with local conditions. Minimum standards set statewide would be inflexible and could result in increased expenses for agriculture and other industries. Other opponents said the bill did not go far enough. In areas with critical groundwater problems where citizens have voted against establishing a district, the water commission should be able to assume jurisdiction over the area to make the groundwater management decisions necessary to prevent contamination and depletion.

Legislative History: The Senate passed the bill on May 21 by voice vote, one member recorded nay (Journal page 1422). The House defeated the bill on second reading on May 29 by 57 to 81, 2 present, not voting (Journal page 3893).

The HRO analysis of the House companion bill, HB 1451 by T. Smith, appeared in the May 27 Daily Floor Report.

Protecting groundwater quality
(SB 1033 by Santiesteban)

Died in the House

SB 1033 would have created the Groundwater Study Committee to make recommendations for a state groundwater protection policy to the Legislature by 1989. The Texas Water Commission would have been required to prepare a report by Jan. 1, 1989 assessing groundwater quality in the major and minor aquifers of the state. The commission and other state agencies having groundwater jurisdiction would have published an annual groundwater monitoring and contamination report documenting cases of groundwater contamination.

Supporters said a strong monitoring program is needed to characterize groundwater resources and trends in groundwater quality, to identify causes of contamination and respond to contamination problems, to evaluate the effectiveness of groundwater-protection efforts, to correlate water contamination with incidences of health problems and to improve the quality of groundwater management decisions. The groundwater study committee would provide the forum for the necessary high-level participation in developing a statewide groundwater quality protection policy.

Opponents said that the bill would be the first step down the road to intrusive state regulation of groundwater owned by private landowners. Other opponents said the bill would not go far enough. It calls for more studies, but no action. The Legislature should act to adopt groundwater quality protection standards as a basic component of its groundwater protection strategy.

Legislative History: The Senate passed SB 1033 by voice vote on May 11 (Journal page 1087). The House Natural Resources Committee reported the bill favorably with amendments on May 20. The bill was placed on the General State Calendar for May 28 but was never considered by the House.

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Bonds for water projects
(SJR 54 by Montford)
(HB 72 by T. Smith, second called session)

On Nov. 3, 1987 ballot

SJR 54 would amend the Texas Constitution to authorize the Texas Water Development Board to issue an additional \$400 million in general-obligation bonds. Of that \$400 million authorization, \$200 million would be earmarked for "hardship" water-supply projects, regional water-supply projects and water-supply projects in areas that are converting from groundwater to surface water supplies; \$150 million would be for "hardship" wastewater-treatment projects and regional wastewater treatment projects and \$50 million would be used for structural and nonstructural flood-control projects. The implementing legislation, HB 72 authorizes issuance of the bonds, if the voters approve SJR 54. Bonds issued after Jan. 1, 1988 must be reviewed and approved by the bond review board, whose members have civil immunity for any damage suits arising from the performance of their duties.

Supporters said Texas needs more money for water projects because the customary sources of funding -- federal grants -- have been drying up. Most of the bonds authorized by the voters in 1985 for water-supply and flood-control projects have been committed; additional bonding authority is needed to replenish the funds. The additional \$200 million in bonding authority for wastewater treatment projects is needed to provide the required matching state funds for the new revolving fund for building and upgrading wastewater treatment.

Opponents said that less than two years ago voters approved a constitutional amendment permitting the state to issue \$980 million in bonds for water projects. Of that \$980 million bonding authorization, \$830 million remains unissued. Also, the state should show more restraint as it considers adding billions in new state debt.

Legislative History: The Senate adopted SJR 54 by 30 to 1 on May 7 (Journal page 1019). The House adopted SJR 54 by 135 to 3 on May 27. (Journal page 3658).

The House passed HB 72 by nonrecord vote on July 14 (Journal page 308). The Senate passed it by voice vote on July 20 (Journal page 311).

The HRO analysis of SJR 54 appeared in the May 27 Daily Floor Report. The HRO analysis of HB 72 appeared in the July 8 Daily Floor Report.

ETHICS

County authority to require financial disclosure (HB 790 by Eckels)

Effective Jan. 1, 1988

HB 790 authorizes county commissioners courts in counties with a population of more than 125,000 to require a financial-disclosure reporting system for county officials, precinct officials, county judicial officials, candidates for those offices and county employees. The commissioners court prescribes items to be reported and the due dates for reports. Commissioners are prohibited from requiring reports from a limited portion of a class of officials but may restrict reporting to a limited portion of county employees, as long as all employees with similar jobs are required to report. Those who are county officials, precinct officials or county judicial officials on Jan. 1, 1988 will not have to file a report for their current term of office until required to file as candidates.

Supporters said counties need authorization to require financial disclosure as the state and some cities do. Harris County has a voluntary financial-disclosure system, but not all officials participate. The public has a right to know the financial interests of public officials. Those who object to such disclosure need not serve.

Opponents said financial disclosure is a bad policy at any level because it discourages many honest people from seeking office. At least one county official has indicated he may no longer serve if disclosure is required in Harris County. Other opponents said if financial disclosure discourages corruption, it should be required for all public officials at every level, in every county.

Legislative History: The House passed HB 790 on the Local and Consent Calendar on May 8 by nonrecord vote (Journal page 1966). The Senate added amendments applying the bill to all counties of 125,000 or more population, not just Harris County, and passed the bill on May 21 by voice vote, one member recorded voting nay (Journal page 1472). The House refused to concur with Senate amendments by nonrecord vote on May 21 (Journal page 2973), and a conference committee was appointed. On June 1 the Senate adopted the conference report by voice vote (Journal page 2434), and the House adopted it by nonrecord vote (Journal page 2973).

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

Conflicts of interest of local public officials
(HB 1948 by Robnett)

Effective Sept. 1, 1987

HB 1948 alters various provisions of VACS art. 988b, which requires local public officials to abstain from discussion and voting on matters in which they or certain relatives have a "substantial interest" and to file affidavits disclosing those interests. The money threshold for substantial interest in a business entity was raised from \$2,500 to \$5,000. Art. 988b preempts any contrary common law on conflict of interest as applied to local public officials.

Supporters said the bill would refine a good law by making it easier for local public officials to comply and by clarifying legislative intent of some provisions. The \$2,500 standard for substantial interest in a business entity should be raised so that officials who own a minor interest in a huge company are not required to file an affidavit and abstain from voting. Preemption of the common law relating to conflicts of interest is needed because the threat of lawsuits has caused many city attorneys to become overcautious in their recommendations concerning conflict of interest.

Opponents said the Legislature should not attempt to preempt the common law regarding conflicts of interest because it may afford some protections not available in statutory law.

Legislative History: The House passed the bill on May 6 by nonrecord vote, one member recorded voting nay (Journal page 1810). The Senate amended the bill and passed it by voice vote on May 27 (Journal page 1917). The House concurred with the Senate amendments by nonrecord vote on May 29 (Journal page 3864).

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

Open Meetings Act revisions
(SB 168 by Caperton)

Effective Aug. 31, 1987

SB 168 makes several changes in the Open Meetings Act. Governmental bodies must keep certified agendas or tape recordings of closed meetings for at least two years after a meeting, longer pending the outcome of any court action begun during the two-year period. Such records can be inspected in chambers by a judge and can become public under certain circumstances. The degree of intent constituting a violation for improperly conducting a closed meeting is reduced from willful to knowing. Minutes or tape recordings also are required for open meetings. Acts taken in violation of the open meetings law are voidable, and a court can award attorneys' fees and court costs to prevailing parties. Emergency meetings on two hours' advance notice are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action. Governmental bodies cannot prevent or impair visual recording of public meetings when adopting rules regulating how meetings are to be recorded.

Supporters said ambiguities and loopholes in the open meetings act must be eliminated to ensure proper enforcement. It is nearly impossible, for example, to prove a meeting should not have been closed if there is no record of what was considered in that meeting. Court safeguards will protect governmental bodies from frivolous suits and unwarranted disclosures.

Opponents said the bill was too restrictive and would complicate daily business for governmental bodies. Recording of closed meetings would compromise confidentiality, and the requirement for minutes or taping of all meetings would be onerous. Other opponents said allowing only a certified agenda, not a recording, of a closed meeting would be inadequate protection.

Legislative History: The Senate passed the bill by 31 to 0 on April 15 (Journal page 684). The House amended the bill and passed it on May 29 by nonrecord vote (Journal page 3889). The Senate concurred with the House amendments by voice vote on May 31 (Journal page 2440).

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Prohibiting legislators from acting as paid lobbyists
(SB 197 by Edwards)

Died in the House

SB 197 would have prohibited legislators from accepting compensation for influencing legislation during their elected terms. Violation would have been a Class A misdemeanor (maximum penalty of one year in jail and a \$2,000 fine). The lobbying prohibition would not have applied to legislators who resigned to hold another governmental position that rendered them ineligible to serve in the Legislature or to those replaced in an election after resignation or removal. The prohibition also would not have affected acceptance of otherwise legal contributions.

Supporters said legislators who accept lobbying jobs before their legislative positions are filled by special election have an irreconcilable conflict of interest. Although none of the legislators in this position cast votes during the 1986 special sessions, no law would have prevented them from voting. The work of interim committees could be compromised if committee members continue to serve after becoming lobbyists for particular special interests.

Opponents said the bill was too sweeping and impractical, trying to fix a problem that does not exist. Legislators who resign from office to accept a private-sector lobbying position would have to wait until a special election is held to choose their successor before assuming their new duties. Special elections are held only four times a year unless the governor declares an emergency, and runoffs can delay the process even further. As long as a legislator who has resigned refrains from voting or engaging in any other legislative activity that could create a conflict of interest, there should be no problem.

Legislative History: The Senate passed the bill by 30 to 0 on April 21. The House State Affairs Committee reported the bill by 9 to 0 on May 22. It was placed on the General State Calendar for May 28 but was not considered by the House.

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Candidate sanctions for violating Judicial Code of Conduct
(SB 497 by Caperton)

Effective June 17, 1987

SB 497 stipulates that anyone who files a ballot application for those judicial offices named in the Judicial Code of Conduct is subject to Canon 7, which sets campaign standards for judges seeking judicial office. Candidates who are attorneys are subject to sanctions by the State Bar, and candidates who are judges are subject to sanctions by the State Commission on Judicial Conduct. Candidates who fall in neither category are subject to "appropriate disciplinary action" by the attorney general or local district attorneys.

Supporters said campaign tactics that are unethical for judges are no less unethical when practiced by those seeking judicial office; both should be subject to the same standards. Enforcement of the code by the State Bar grievance committee and others has already been ordered by the Supreme Court, and passage of a statute would add weight and emphasis to the Supreme Court's action.

Opponents said the bill, like the Supreme Court order before it, would be unenforceable without an addition to State Bar disciplinary rules. The provision for judges merely restates current constitutional law. State Bar discipline would fail to effectively regulate campaign conduct since grievance cases might be settled years after the election.

Legislative History: The Senate passed the bill by 29 to 0 on April 30 (Journal page 887). The House passed the bill on the Local and Consent Calendar by 147 to 0 on May 29 (Journal page 3853).

Lobbyist registration, electronic data fees and forms
(SB 1081 by Henderson)

Effective Jan. 1, 1988

SB 1081 amended the lobbyist registration law to require registration with the secretary of state every two years and payment of a \$100 fee for initial registration and for renewals. Registrations expire on Dec. 31 of odd-numbered years unless renewed during that month. Fees are to be deposited into a Lobbyist Registration Fund that can be used only to administer registration. Also, the Secretary of State's Office may create a system to make non-confidential information stored in its computer banks accessible via electronic data transfer. The secretary is required to collect in advance fees sufficient to cover costs.

Supporters said the bill would establish a reasonable fee for administration of lobby registration. Lobby registration fees are charged in 28 other states. The fee would not be burdensome since many groups seeking to influence legislation would not be required to register, either because they do not spend enough money or because their activities fall under one of six exceptions. Also, an on-line system for disseminating information such as corporate financial and registration records would be more efficient than providing the information by phone or mail. The service would be available at cost and thus cheaper than that provided by private business.

Opponents said lobbyists are required to register so that the public can know who is trying to influence their elected and appointed officials. A fee might discourage organizations that are voluntarily registering, which would deprive the public of that information. Also, the administrative costs of providing electronic data to the public have not proved excessive and should be borne by the state. The secretary of state should not be duplicating services already provided by private businesses. Other opponents said a sliding scale of fees should be established so that struggling public interest groups and wealthy lobbies do not pay the same amount.

Legislative History: The Senate passed SB 1081 by voice vote, three members recorded voting nay, on May 1 (Journal page 917). The House amended the bill and passed it by nonrecord vote on May 29 (Journal page 3936). The Senate concurred in two of three House amendments on June 1 (Journal page 2661). (These two amendments incorporated the provisions of SB 974, dealing with data transmission; the rejected amendment concerned interpretation of registration rules by the secretary of state). The House reconsidered its vote and tabled the amendment not accepted by the Senate by nonrecord vote on June 1 (Journal page 4306).

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

FAMILY

Kidnapping a child from the custodial parent (HB 113 by Collazo)

Effective Sept. 1, 1987

HB 133 eliminates taking a child out of state as an element of the offense of taking children in violation of custody orders. It adds as an element of the offense that the child was taken out of the court's jurisdiction with the intent to deprive the court of its authority over the child. It also makes it a felony for a noncustodial parent to knowingly entice or persuade a child to leave the custody of the custodial parent. The number of days in which a person has to return a child to avoid prosecution has been reduced from seven to three days.

The bill also automatically revokes the license of any security officer who kidnaps a child from a custodial parent and makes it an offense to kidnap a child for remuneration.

Supporters said the bill would protect children by tightening the law against kidnapping a child from a custodial parent. No longer could noncustodial parents and others have a seven-day head start after taking their children. Local law-enforcement officials would no longer have to wait until the child is taken out of state before getting involved.

Opponents said the bill would not be in the best interests of children because it would turn more parents, perhaps exasperated by custody and visitation problems, into felons.

Legislative History: The House passed the bill on April 28 by nonrecord vote, two members recorded voting nay (Journal page 1398). The Senate passed the bill on May 20 by voice vote, one member recorded voting nay, after adding an amendment repealing the Penal Code provision making it an offense for any person to entice a child to leave the custodial parent (Journal page 1333). The House refused to concur with the Senate amendment by nonrecord vote on May 22 (Journal page 3304), and a conference committee was appointed. The conference committee adopted the House version of the bill. The House adopted the conference report by nonrecord vote on May 27 (Journal page 3698). The Senate adopted the conference report by voice vote on May 29 (Journal page 2029).

The HRO analysis of the bill appeared in the April 27 Daily Floor Report.

Parental consent for marriage of a minor
(HB 317 by Tallas)

Effective Sept. 1, 1987

HB 317 allows the parent of a minor child (age 14 through 17) to give consent for the child's marriage either when the child applies for a marriage license or during the 30 days before the application. Any county clerk can acknowledge parental consent, not just the one accepting the application. Parents who are ill do not have to be present.

Supporters said the bill would make it more convenient for parents to consent to the marriage of their minor children when they live in different counties. Consent given by absent parents living in other states is honored by Texas county clerks -- parents living within the state should have the same convenience.

Opponents said the bill would reduce parental involvement in a decision that seriously affects the child's life. Requiring that the parent and child both be present when consent is given provides an opportunity for them to discuss the marriage decision.

Legislative History: The House passed the bill on March 11 by nonrecord vote (Journal page 500). The Senate passed the bill on April 15 by 31 to 0 (Journal page 628).

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

State day-care centers
(HB 500 by S. Hudson)

Effective Sept. 1, 1987

HB 500 allows establishment of day-care centers by the Department of Human Services (DHS), if state funds are appropriated for that purpose. To be eligible to attend a day-care center, a child must be at least six weeks old and be eligible for state assistance under the Aid to Families with Dependent Children program. The child's caretaker must be employed, registered as seeking employment or totally disabled. Eligible children cannot be charged a fee, while other children admitted to attend the day-care center are to be charged according to their family income.

DHS can contract for services with an individual, organization, association, or corporation that meets the standards established by DHS for the day-care centers and the standards for licensed child-care facilities. The fees paid to the centers cannot exceed the cost to the the state of providing the same service.

The bill requires DHS and the Texas Education Agency to design a pilot day-care/pre-kindergarten program in consultation with an administrator of a local Project Head Start program.

Supporters said this bill would provide the assistance low-income parents need to find work by providing child care at little or no cost. These day-care centers would help parents who now receive some sort of government financial assistance to break out of the welfare cycle and help themselves. This bill would not cost the state anything but would put in place the framework for a state day-care program so that, when funds are available, the program can begin without delay.

Opponents said this bill would authorize spending limited state resources. The state will not have money to fund this program for a number of years, and the Legislature should wait until it has the money to fund the program.

Legislative History: The House passed the bill by nonrecord vote, one member recorded voting nay, on May 11 (Journal page 2008). The Senate passed the bill with some clarifying changes by 30 to 0 on May 29 (Journal page 2052). The House concurred with the Senate amendments on May 30 by nonrecord vote, four members recorded voting nay (Journal page 4007).

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

Joint managing conservatorships
(HB 617 by C. Evans)

Effective Sept. 1, 1987

HB 617 permits a court, in a lawsuit affecting the parent-child relationship (such as a divorce or custody proceeding), either to award custody to one parent or to award joint custody. The court can appoint joint managing conservators (joint custody) whether both parents agree to it or not. The appointment of joint conservators is not permitted when there has been past or present neglect or physical or sexual abuse of any child by one of the parents. The appointment of joint managing conservators does not affect the court's authority to order child support, including payments by one joint managing conservator to the other. Joint managing conservators can agree to modify an existing decree. The court can modify a decree or replace a joint conservatorship with a sole conservatorship in certain cases.

Supporters said joint custody is generally in the best interest of the children. Texas courts, however, usually award sole custody to the mother and visitation rights to the father. These court decisions reflect anachronistic assumptions about the role of women and men in the family. They are unfair not only to fathers cut off from regular contact with their children but also to mothers who must raise the children alone. Sole custody arrangements often lead to continuous litigation and repeated changes, which can adversely affect the children.

Opponents said joint custody works only if the parents want it to work. Courts should not be permitted to award joint custody when the parents have not agreed to it. Joint custody is clearly inappropriate when there has been physical, psychological or emotional abuse of a spouse or child in the family. HB 617 would only prohibit the appointment of joint conservators when there had been neglect or physical or sexual abuse of a child by one of the parents, a far too narrow exception.

Legislative History: The House passed the bill by nonrecord vote on April 1 (Journal page 795). The Senate amended the bill and passed it by voice vote, one member recorded voting nay, on May 23 (Journal page 1628). The House concurred with the Senate amendments by nonrecord vote on May 26 (Journal page 3441).

The HRO analysis of the bill appeared in the March 31 Daily Floor Report.

Waiting period after issuance of a marriage license
(HB 1213 by Arnold)

Effective Jan. 1, 1988

HB 1213 will prohibit marriage ceremonies from taking place during the 72 hours immediately following the issuance of the marriage license. A marriage will be voidable if the ceremony takes place during that time. The county clerk will be required to indicate on the license when it is issued. A marriage ceremony may occur during the 72 hours immediately after the issuance of the marriage license if an applicant is a member of the armed forces and is on active duty or obtains an order of a district court allowing a marriage to take place during the waiting period.

Supporters said a short waiting period between when a marriage license is issued and when the marriage ceremony occurs would reduce the number of divorces in the state. A cooling-off period would inhibit impulsive marriages.

Opponents said this bill would not decrease the high number of divorces in Texas. The decision to marry is an emotional one, and no amount of time to "cool off" is likely to affect misguided decisions to marry. This bill would be an unwarranted encroachment into individual privacy. The decision to marry is a personal one, and the state should not intrude into that decision by requiring people to wait.

Legislative History: The House passed the bill on May 5 by nonrecord vote, four members recorded voting nay (Journal page 1713). The Senate amended the bill to include exceptions for certain members of the armed forces and by district court order and passed the bill by voice vote on May 28 (Journal page 1978). The House concurred with the Senate amendments by nonrecord vote on May 30 (Journal page 4045).

The HRO analysis of the bill appeared in the May 4 Daily Floor Report.

Licensing exemption for religious children's homes
(HB 2020 by Roberts)

Died on the House floor

HB 2020 would have exempted religious homes for incorrigible children from licensing by the Department of Human Services. Such children would have to have been declared incorrigible by the parents or legal guardians and a qualified professional such as a psychiatrist, counselor or family law certified attorney. Such homes would have had to comply with local fire, health and safety regulations.

Supporters said there are not enough facilities to handle incorrigible children, especially from poor families. Religious homes want to help with these children and can do a superb job, but they have been limited by bureaucratic state regulation. Some of the Department of Human Services regulations violate the religious freedom of the church groups and keep them from using the strong discipline and religious teaching that enable them to be successful.

Opponents said the bill was special-interest legislation to help certain homes avoid the minimum standards required to protect the children. Many denominations already operate licensed homes under state regulation and teach religious views, yet they require no special dispensation. The bill's provisions that any problems are to be addressed through the Deceptive Trade Practices Act would be unworkable, leaving these homes essentially unregulated. Some groups might operate substandard homes or abuse children in the name of religion, and the state should have full authority to investigate and regulate these homes, for the sake of the children living in them.

Legislative History: The House rejected HB 2020 by 64 to 78 on second reading on May 18 (Journal page 2568).

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

Duty to support grandchildren
(SB 409 by Farabee)

Died in House committee

SB 409 would have imposed a duty on parents to support the children of their minor children. Grandparents would have been required to support their grandchild until the minor parents turned 18 and to the extent that the minor parents were unable to provide support for the child. Failure to support a grandchild under such circumstances would have been a Class A misdemeanor, punishable by up to a year in jail and a fine of up to \$2,000.

Supporters said parents must be forced to bear responsibility for the teenage pregnancy problem. Texas ranks first in the nation in births to girls under 14 and second in the nation in the total number of teenage pregnancies. The bill would also discourage parents from putting their pregnant teenage children out on the street. It would encourage families to bear a share of the cost of providing for the babies of their teenage children.

Opponents said that the impact of SB 409 on parents of teenagers would be unfair under many circumstances. For example, when minors have voluntarily left home years before the birth of their children, it is not fair to hold their parents responsible. Pregnant minors already can decide for themselves whether to have sex, to have an abortion or to give their baby up for adoption. Since the parents have virtually no legal say in these decisions, they should not be held financially responsible for the outcome of those decisions.

Legislative History: The Senate passed the bill by voice vote on March 18 (Journal page 396). The House Judiciary Committee held a hearing on the bill on March 30, then referred it to subcommittee, where no further action was taken.

Spousal maintenance after divorce
(SB 532 by Caperton)

Died in the House

SB 532 would have permitted a court, in a suit for divorce or annulment, to order maintenance for either spouse if the marriage had lasted at least 10 years, the spouse seeking maintenance lacked the property to provide for minimum needs and was unable to work because of a disability, caring for a young or disabled child at home or lacking the earning capability for self-support. The court would have had to limit its maintenance award to the reasonable period of time, up to three years, necessary for the recipient to obtain either employment or an employable skill. The maintenance award would have been limited to the minimum amount necessary for the recipient spouse to meet reasonable needs -- no more than \$1,500 per month or 20 percent of the paying spouse's gross monthly income, whichever was less. Maintenance awards could not have been made to unmarried cohabitants.

Supporters said the bill is narrow in scope and would provide for limited spousal support following divorce only for spouses who are in real need. Spouses, particularly women, who have been homemakers for years, foregoing the opportunity to work on their own, often have real difficulty when they are suddenly thrown onto the job market. Temporary spousal maintenance would ease the transition. The amount limit for most payor spouses would be 20 percent of monthly gross income, which would be tax deductible as alimony. The community property system of property division has not proved adequate to provide support for homemakers following divorce. Texas is the only community property state, as well as the only state in the nation, that provides for no spousal support following divorce.

Opponents said that Texas has a community property system providing that, upon divorce, the court will divide equally between the spouses all the money and property acquired during the marriage, as well as the value added to separately held property. Courts have the discretion to make an equitable division of the community to take economic need by one spouse into account. Alimony is unnecessary today, since most wives bring home their own paychecks. If a spouse chooses to stay home rather than develop job skills, that is a matter of individual choice. The absence of alimony in Texas is also attractive to out-of-state business.

Legislative History: The Senate passed the bill on March 25 by voice vote, five members recorded voting nay (Journal page 436). The House Judiciary Committee reported the bill favorably; it was placed on the General State Calendar on May 28 but was not considered by the House.

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Premarital and marital property agreements
(SB 842 by Caperton)

Died in the House

SB 842 would have revised and expanded the provisions in the Texas Family Code relating to premarital property agreements. A premarital agreement would have had to be in writing and signed by both parties. It would have been unenforceable if it was proved that the signing had not been voluntary or that the agreement was unconscionable when it was signed and certain other criteria were not met. SB 842 would have also expanded the provisions in the Family Code concerning the enforcement of marital agreements and shifted the burden of proof to the person contending that the agreement should not be enforceable.

Supporters said current law concerning premarital property agreements is vague, incomplete and does not address relevant issues such as whether the agreement needs to be in writing, what property arrangements can legitimately be made the subject of premarital agreements and how these agreements can be changed, revoked or enforced. SB 842 would lend more certainty to the law.

Opponents said agreements made in contemplation of marriage are, in reality, agreements made in contemplation of divorce. Allowing people intending to be married to contract in contemplation of divorce is bad public policy. These agreements make it easier for people to walk away from their commitments and obligations. Therefore, they ought to be void and unenforceable as violative of sound public policy.

Legislative History: The Senate passed the bill by 31 to 0 on April 2 (Journal page 516). The House Judiciary Committee reported it favorably with a substitute on April 13; it was placed on the General State Calendar on May 27 but was not considered by the House.

The HRO analysis of the bill appeared in the May 27 Daily Floor Report.

Establishment of paternity
(SB 1123 by Armbrister)

Effective June 19, 1987

SB 1123 provides that voluntary legitimization by the biological father of an illegitimate child no longer requires the consent of the child's mother. The standards used for termination of parental rights also apply to the termination of the rights of an alleged or probable father with respect to an illegitimate child.

A child is presumed to be the legitimate child of a man if the child was born during the marriage of or within the period of gestation following the dissolution of the marriage of the man and the mother of the child.

A paternity suit may be brought by the mother, by a man claiming to be or possibly to be the father, or by any other person or governmental entity having standing to sue under sec. 11.03 of the Code (including, the child, the child's guardian, any authorized agency or a person with actual possession of the child).

Supporters said the bill is needed to bring the Texas Family Code into conformity with the Texas Supreme Court's decision in In the Interest of Unnamed Baby McLean, 725 S.W.2d 696 (1987). Under prior law, when a child was born to a woman not married to the child's father, she automatically exercised all rights as a parent; the father had those rights only if the mother consented. A father seeking legal recognition of his paternity or to terminate the mother's parental rights had to prove that it was in the child's best interest. Since only men were required to satisfy this "best interest" test for legitimization, the Supreme Court decided that violated the Equal Rights Amendment to the Texas Constitution. SB 1123 would bring state law into conformity with the Constitution.

Opponents said that the special difficulties that a mother of an illegitimate child faces from the moment of conception justifies the different treatment of the mother and the biological father in the Family Code. It is the woman who bears the physical, emotional and financial burden of her pregnancy. The biological father is totally free from any responsibility unless he chooses to step forward or some action is taken against him. The state has a substantial interest in encouraging the mother to properly care for the child by assuring her that her wishes regarding the child will not be subject to the absolute veto of the biological father.

Legislative History: The Senate passed the bill by voice vote on May 15 (Journal page 1213). The House passed the bill, as amended, on the Local and Consent Calendar on May 27 by 147 to 0 (Journal page 3627). The Senate concurred with the House amendments by 30 to 0 on May 28 (Journal page 2000).

Community property ownership with right of survivorship
(SJR 35 by Caperton)

On Nov. 3, 1987 ballot

SJR 35 would amend Art. 16, sec. 15 of the Texas Constitution to permit spouses to agree in writing that all or part of their community property becomes the property of the surviving spouse upon the death of the other spouse.

Supporters said that this amendment is necessary to alter court rulings that a joint tenancy with right of survivorship cannot be created with community property. Married couples who want to establish a joint tenancy arrangement with rights of survivorship must first convert their community property into separate property by entering into a partition agreement, an unnecessarily complicated procedure. A simple means should be made available by which spouses can provide that the survivor is entitled to all or a designated portion of their community property without the necessity of making a will or partitioning the property.

Opponents said that this proposed constitutional amendment would undermine the Texas community property system, which protects the interests of both spouses in property accumulated during the marriage. Married couples already have the legal capacity to create a joint tenancy with right of survivorship but must take the extra step of converting their community property to separate property, which ensures that creating a right of survivorship is a step that is not taken lightly.

Legislative History: The Senate adopted SJR 35 by 28 to 2 on April 21 (Journal page 708). The House adopted it by 135 to 0, two present, not voting, on May 27 (Journal page 3657).

The HRO analysis of the proposed constitutional amendment appeared in the May 27 Daily Floor Report.

HEALTH AND HUMAN SERVICES

Indigent Health Care Act revisions (HB 344 by Leonard)

Effective Sept. 1, 1987

HB 344 makes several changes to the Indigent Health Care Act passed in 1985. It clarifies that persons eligible for AFDC, SSI, or Medicaid are barred from receiving benefits under the act, even if they have exhausted their benefits. Local governmental units must use the state fiscal year in accounting for indigent health care. Counties may require prior approval for non-emergency indigent health care at non-designated hospitals.

Counties that raise their tax rate by more than 8 percent and designate part of that increase for indigent health care must use those designated funds solely for indigent health care. The bill established a formula for eligibility for state aid for indigent health care.

A governmental entity that owned, operated or leased a hospital and sold or leased that hospital on or after Jan. 1, 1985 retains an obligation to provide indigent health care. If a hospital district dissolves without selling, or otherwise disposing of, the hospital, then the hospital district is relieved of responsibility, and the county must assume that responsibility.

Supporters said the bill was just a clean-up of the law. The provision for transfer of responsibility when a hospital is sold or leased mirrors the intent of the original act.

No apparent opposition

Legislative History: The House amended HB 344 to include the provisions of several different bills affecting the Indigent Health Care Act, then passed it by nonrecord vote, one member recorded voting nay, on May 6 (Journal page 1799). The Senate added provisions on dedication of taxes and rollback elections and a formula for determining eligibility for state aid, then passed the bill by voice vote on May 15 (Journal pages 1239). The House concurred with the Senate amendments by nonrecord vote on May 19 (Journal page 2702).

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

Teenage pregnancy prevention
(HB 401 by Guerrero)

Died in the House

HB 401 would have have designated the Texas Health and Human Services Coordinating Council to coordinate state teenage-pregnancy prevention programs. The council would have set uniform guidelines for state agencies in collecting and analyzing statistical information on teenage pregnancy and parenthood. The council would have served as a statewide clearinghouse on teenage pregnancy information and abstinence education. It would have made recommendations to agencies and the legislature to prevent duplication of pregnancy related services and would have submitted a report each regular session to the Legislature on the status of state teenage-pregnancy programs.

Supporters said that Texas has an abysmal teenage pregnancy rate, ranking third in the United States in the number of babies born to teenagers. Since 1981 Texas has ranked first in the United States in the number of babies born to girls under the age of 14 years old. The impact of teenagers having children on the teenagers, their babies and families, social service agencies and the state budget is severe and lasting. HB 401 is a conservative first step in addressing the problem, providing for uniform collection and analysis of data to target state prevention and information programs.

Opponents said that encouraging abstinence is all the state needs to do to address the teenage pregnancy problem. Sex education programs and the ready availability of contraceptives have proved ineffective in reducing the rate of teenage pregnancy. The teaching of sexual responsibility should be left up to parents.

Legislative History: The House Human Services Committee reported the bill by 6 to 1 on April 28. It was placed on the General State Calendar on May 25 but was not considered by the House.

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

Prohibiting certain abortions
(HB 410 by Millsap)

Effective Sept. 1, 1987

HB 401 prohibits the performance of an abortion on a woman who is pregnant with a viable (able to live outside of the mother's womb) unborn child during the third trimester of pregnancy. The Texas State Board of Medical Examiners can take any appropriate disciplinary action against a practitioner who violates this prohibition, including refusal to admit to the practitioner to examination or refusal to license or renew the license of the practitioner.

A physician may perform an abortion if the fetus is not viable and the pregnancy is not in the third trimester, if the abortion is necessary to prevent death or a substantial risk of serious impairment to the physical or mental health of the woman, or if the fetus has a severe and irreversible abnormality.

Supporters said only 10 states have not restricted the availability of abortion in some manner during the third trimester, post-viability stage of fetal development. Abortion of a healthy fetus during this late stage falls just short of murder and should be expressly prohibited no matter how few cases it might actually cover. HB 410 is a narrow and reasonable bill, carefully drafted to meet the constitutional requirements of the U. S. Supreme Court's Roe v. Wade decision. The bill does not prohibit or restrict abortions that take place before a fetus is viable and allows abortion during the third trimester to prevent the death or serious impairment of the mother and if the fetus has a severe, irreversible abnormality.

Opponents said that HB 410 is unnecessary. Only six abortions were performed in Texas during 1986 during the third trimester, post-viability stage, and most if not all those six were performed because the unborn children had life-threatening birth defects. HB 410 would seriously hamper a woman's constitutionally protected right to decide whether to have an abortion by intimidating physicians and encouraging them to stop performing abortions. Other opponents said the bill did not go far enough -- it should have made performing late-term abortions a criminal offense and should have required prior consent, by parents or a court, for a minor to have a abortion.

Legislative History: The House State Affairs Committee amended the original version of HB 410 to eliminate a requirement that minors receive the consent of their parents or a probate court prior to an abortion. The House passed the bill by nonrecord vote, two members recorded voting aye and one recorded nay, on May 19 (Journal page 2588). The Senate limited the abortion prohibition to the third trimester, eliminated any criminal penalties, eliminated a requirement that abortions be performed only in a hospital and permitted abortion

when the fetus has a severe and irreversible abnormality, as identified through reliable diagnostic procedure, then passed the bill by voice vote, three members recorded voting nay, on May 28 (Journal page 2006). The House concurred with the Senate amendments by nonrecord vote on May 30 (Journal page 4005).

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

In vitro fertilization insurance coverage
(HB 843 by C. Evans)

Effective Sept. 1, 1987

HB 843 requires group health insurers to offer coverage for in vitro fertilization. The offer of coverage for in vitro fertilization can only be rejected in writing. In order to be covered under group health insurance, the in vitro fertilization must be made with sperm of the patient's spouse; the patient or her spouse must have been infertile for at least five years; the infertility must be associated with endometriosis, exposure in utero to diethylstilbestrol (DES), or blockage or removal of at least one of the fallopian tubes or oligospermia; the patient must have been unable to have a baby through use of less costly covered infertility treatments; and the procedures must be performed at a facility that conforms to the American College of Obstetric and Gynecology guidelines or American Fertility Society minimal standards.

Supporters said many insurers and group health-care plans in Texas refuse to pay for treatments associated with infertility. Lower income women who cannot afford to pay for other types of treatment are therefore forced to forego having children. The experience in other states that require coverage for infertility treatments and in vitro fertilization suggests that insurance costs would not go up here.

Opponents said every extra benefit offered by group health insurers adds costs that must be borne by all premium payers. Insurance costs would either go up or other coverage would have to be eliminated from the policy. Infertility is not a predictable risk, nor is in vitro fertilization a treatment for a sickness or injury, so group health insurers should not be forced to cover such procedures.

Legislative History: The House passed HB 843 by nonrecord vote, two members recorded voting nay, on May 5 (Journal page 1975). The Senate added clarifying amendments and passed the bill by voice vote on May 22 (Journal page 3449). The House concurred with the Senate amendments by nonrecord vote, two members recorded voting nay, on May 26 (Journal page 3449).

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

Texas Council on Alzheimer's Disease and Related Disorders
(HB 1066 by C. Evans)

Effective Sept. 1, 1987

HB 1066 creates a 17-member Texas Council on Alzheimer's Disease and Related Disorders composed of five public members and seven professional members plus the chief executives of five state agencies. The council is to work in conjunction with the Health Department and its board, and its duties include coordinating state activities affecting victims of these diseases. On behalf of the council, the Health Department may receive appropriations, funds made available by the board and gifts and grants. Gifts and grants are deposited in a council fund in the state treasury. Council members receive no compensation but can receive reimbursement for expenses.

Supporters said the council would help Alzheimer's victims, their caregivers and health professionals by coordinating state resources, disseminating information and encouraging research.

No apparent opposition

Legislative History: The House passed the bill by nonrecord vote on April 29 (Journal page 1516). The Senate passed it by voice vote on May 14 (Journal page 1148).

The HRO digest of the bill appeared in the April 28 Daily Floor Report.

AIDS/communicable disease control
(HB 1829 by McDonald)

Effective Sept. 1, 1987

HB 1829 revises the definition of "communicable disease," as used in the Texas Communicable Disease Prevention and Control Act, to include acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection. HB 1829 requires reporting of suspected cases of certain diseases to local health authorities; those reports are confidential. Emergency medical service personnel, peace officers or firefighters who may have been exposed to a reportable disease on duty must be notified.

A court may enter a temporary or extended order for the management of a person with a communicable disease. A protective custody order may be issued for a person infected with a communicable disease that presents an immediate threat to the public health.

Mandatory testing for AIDS, HIV, antibodies to HIV or an infection with any other probable causative agent of AIDS is generally prohibited, with some specific exceptions. The State Board of Health is permitted to adopt emergency rules for mandatory testing for HIV infection if the health commissioner files a certificate of necessity with the board. If the prevalence rate of HIV infection in the population reaches 0.83 percent, the board of health must promulgate emergency rules for mandatory testing for HIV infection as a condition for obtaining a marriage licence. HB 1829 also authorizes the Texas Department of Corrections to test inmates for HIV.

Supporters said the bill would be a reasonable response to the deadly AIDS epidemic in Texas. It is carefully written to balance an individual's interests in personal privacy and liberty with the state's interest in protecting public health.

Opponents said that the AIDS epidemic is already such a threat to public health that extraordinary precautions are required. Health authorities should have more flexibility to quarantine those spreading the infection and to require mandatory testing of certain groups susceptible to AIDS. If tests show that a person has the AIDS-virus, those living with that person should be informed. AIDS-virus testing should be mandatory for marriage license applicants. Other opponents said the bill would do nothing to address the AIDS problem in Texas. It would just feed paranoia about the disease and about certain groups of people. The confidentiality provisions in the bill are loose and their probable effect would be the opposite of what is intended.

Legislative History: The House passed HB 1829, as amended, by nonrecord vote on May 29, one member recorded voting nay (Journal page 3931). The Senate added provisions concerning mandatory testing,

disclosure of test results and testing of prison inmates, then passed the bill by voice vote on May 30 (Journal page 2284). The House refused to concur with the Senate amendments by nonrecord vote on May 31 (Journal page 4179), and a conference committee was appointed. On June 1 the Senate adopted the conference report by voice vote (Journal page 2793), and the House adopted it by 109 to 37 (Journal page 4345).

The HRO digest of the bill appeared in the May 21 Daily Floor Report.

Board of Medical Examiners regulation of physicians
(HB 2560 by Wright)

Effective Sept. 1, 1987

HB 2560 requires hospitals and other health-care facilities to report to the Texas State Board of Medical Examiners (TSBME) whenever they significantly discipline or investigate a physician for incompetency or improper professional conduct. Individual physicians and medical students must report to TSBME those physicians they feel are a threat to the public welfare. The bill grants immunity from suit or job discrimination for persons reporting to the board in good faith.

The bill also increased penalties that may be imposed by the TSBME against physicians who constitute a threat to public welfare and required TSBME to establish systems for informing consumers about physician discipline records.

Supporters said that TSBME discipline of physicians has been inadequate in the past. The public has been unable to obtain background information about physicians concerning past disciplinary actions taken against them. Better reporting to the TSBME about peer-review discipline, immunity for those who report, better reporting to the public by TSBME and a tougher Medical Practice Act would help remedy the situation. The state needs to bring its law into conformity with new federal legislation on physician discipline.

Opponents said the bill failed to go far enough in setting reporting and discipline requirements and did not include penalties for failure to report to the TSBME, as has been recommended in various studies. The TSBME had recommended continuing education requirements as part of the drive to improve physician competency but this was not included in the bill.

Legislative History: The original version of HB 2560 dealt with clarifying the status of state professional review bodies in response to federal reporting legislation. The House passed HB 2560 on the Local and Consent Calendar on May 8 (Journal page 1958). The Senate amended HB 2560 by adding to it most of the provisions of SB 181 by Brooks, revising the physician discipline provisions of the Medical Practice Act. The Senate passed the bill as amended on May 30 by 31 to 0 (Journal page 2321). The House concurred with the Senate amendments by nonrecord vote on June 1 (Journal page 4240).

The HRO analysis of SB 181 appeared in the May 28 Daily Floor Report.

Informing potential organ and tissue donors
(SB 16 by Farabee)

Effective Jan. 1, 1988

SB 16 requires every hospital to establish a protocol for identifying potential organ or tissue donors and to inform survivors of opportunities to donate.

Supporters said there is a shortage of donated tissue and organs. Many people who would donate do not know about it or do not think about it in time. SB 16 would simply establish a regular procedure for making this option known.

Opponents said hospital personnel who make the request for organ donation might put too much pressure on survivors to donate.

Legislative History: The Senate passed the bill by 29 to 0 on Feb. 2 (Journal page 121). The House passed it by 131 to 0 on April 9 (Journal page 995).

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

AIDS testing for certain criminal defendants
(SB 66 by Parmer, second called session)

Effective Oct. 20, 1987

Section 3 of SB 66 requires that a person indicted for the offenses of sexual assault or aggravated sexual assault undergo testing to determine whether that person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or has been exposed to the human immunodeficiency virus (HIV). A court may direct on its own motion that a defendant undergo testing or grant a motion of the victim of the alleged offense. If the person refuses to submit to the testing voluntarily, the court can require testing. The test result will be sent to the local health authority, which will notify the victim. The state cannot use the test results in any criminal proceedings arising out of the alleged offense.

Supporters said victims of alleged sexual assaults should be able to find out whether their assailants have sexually transmitted diseases. The state's interest in the health and safety of victims and other members of the public clearly outweighs whatever privacy interest the indicted person may have. No self-incrimination would be involved since the test result could not be used as evidence.

Opponents said requiring persons indicted of certain crimes to undergo medical testing without their consent, particularly before they have been convicted and without any reason to believe they may have a sexually transmitted disease, would be a violation of their privacy rights and their right to be presumed innocent. Victims who fear exposure can be tested themselves.

Legislative History: The Senate passed SB 66, which initially dealt only with the videotaped testimony of child abuse victims, by 25 to 1 on July 15 (Journal page 109). (The Senate passed SB 83 by McFarland, which dealt with testing of persons indicted for sexual offenses, by 27 to 0 on July 17 (Journal page 184).) The House amended SB 66 to include the provisions dealing with the testing for sexually transmitted diseases, then passed the bill as amended by 132 to 1, two present, not voting, on July 18 (Journal page 508). The Senate refused to concur with the House amendments by voice vote on July 19 (Journal page 240), and a conference committee was appointed. The Senate adopted the conference committee report by 22 to 0 on July 20 (Journal page 330), and the House adopted it by nonrecord vote on July 21 (Journal page 656).

Smoking in public places and meetings
(SB 165 by Brooks)

Died in House committee

SB 165 would have made prohibited smoking in public places and at public meetings. It would have required that smoking areas be designated in public places. Public places would have included work places. Violation of the Texas Smoke-Free Indoor Air Act would have been a class C misdemeanor, punishable by a maximum fine of \$200. The Texas Department of Health would have been required to implement and determine compliance with the act.

Supporters said smoking is life-threatening, and it has been proven that nonsmokers can be adversely affected from inhaling smoke. This bill would protect the public health by limiting smoking in public places and meetings.

Opponents said the proposed Texas Smoke-Free Indoor Air Act is not necessary. It would infringe on individual rights and would be difficult to enforce. It has not been proven that passive smoking is harmful to one's health. If a nonsmoker does not wish a smoker to smoke in their presence, all they have to do is ask them not to smoke or move to another location. Furthermore, many localities already have limited anti-smoking ordinances -- these decisions should be determined by local circumstances, not imposed statewide.

Legislative History: The Senate passed the bill by voice vote on March 31 (Journal page 481), after failing to suspend the three-day rule by 20 to 8 on March 30 (Journal page 475). The bill received a public hearing in the House State Affairs Committee on May 4, but no further action was taken.

Texas Department of Mental Health/Mental Retardation sunset
(SB 257 by Farabee)

Effective Sept. 1, 1987

SB 257 continues the Texas Department of Mental Health and Mental Retardation (TDMHMR) until Sept. 1, 1999. The emphasis on community-based services was increased. A new schedule of service fees will be established with input from an advisory committee. The department must conduct annual reviews of elderly clients to see if they can be placed in less restrictive settings. Responsibility for the education of school-aged mentally retarded children was transferred to the Texas Education Agency. A "single portal of entry" was established for admission to the mental health system.

Supporters said the bill was the result of a compromise among those vitally interested in services for the mentally ill and mentally retarded. The emphasis on community care is a continuation of the trend toward keeping only those with the most severe problems under the care of an institution. Concerns about increased fees were minimized by provisions for input from an advisory committee consisting largely of parents of clients.

Opponents said the emphasis on priority populations and community-based services is a way for TDMHMR to abdicate responsibility for adequately caring for people in need. The standard of care provided by many community-based programs is simply not adequate. The provisions for placing the elderly in less restrictive settings would be used as an excuse to move the elderly to less expensive nursing homes.

Legislative History: The Senate passed the bill by voice vote on April 14 (Journal page 620). The House adopted a committee substitute that, among other changes, would establish an advisory committee on fees, and passed the bill by nonrecord vote on May 28 (Journal page 3733). The Senate refused by voice vote to concur with the House amendments on May 28, and a conference committee was appointed. On June 1 the Senate adopted the conference report by voice vote (Journal page 2767), and the House adopted it by nonrecord vote (Journal page 4316).

The HRO analysis of the bill appeared in the May 27 Daily Floor Report.

Department of Human Services sunset review
(SB 298 by Edwards)

Effective Sept. 1, 1987

SB 298 continues the Department of Human Services (DHS) until Sept. 1, 1999. The department may not impose a moratorium on certifying nursing homes for Medicaid. DHS may reimburse current or former employees for legal expenses in criminal cases concerned with the person's conduct when caring for or protecting children, the elderly, or disabled persons, if the person is acquitted or charges are dropped. An assault on a client or resident at a state facility, except the Texas Youth Commission and the Texas Department of Corrections, by an owner or employee was increased from a class A misdemeanor to a third degree felony (maximum penalty of \$5,000 fine and 2 to 10 years in prison). Assaulting a protective services worker for DHS is also increased to a third degree felony.

DHS and the Texas Department of Mental Health and Mental Retardation (TDMHMR) are required to adopt a memorandum of understanding forbidding each to adopt any rule or regulation that would increase the cost of providing services or the number of employees necessary to provide services in a health care facility unless required by state or federal law or federal regulations, necessary to protect the health or safety of the patients, or unless the department is prepared to assume the increased costs.

Family homes caring for four or more children must be registered. The annual registration fee is \$100, and DHS must inspect the homes at least once a year. An Office of Youth Care Investigations in the Attorney General's Office will investigate abuse or neglect of children and elderly people. A competitive review procedure for purchasing for DHS, TDMHMR and the Texas Department of Corrections will review if these agencies produce services at a price more than 10 percent higher than the private sector costs. If such a finding is made, the agencies must reduce their costs.

Supporters said the current DHS moratorium on certifying nursing homes for Medicaid keeps competition out of that market and keeps poorly managed facilities in business. Requiring the department to bear the cost of any new rule or regulation that is not absolutely necessary would help keep down the costs of health care.

Opponents said the present moratorium on certifying nursing homes for Medicaid keeps down costs. There is a surplus of nursing homes, and increased vacant beds would only increase the cost of providing the services. The requirement that the department pay for the increased costs of any rules or regulations would effectively prevent the department from issuing anything but emergency regulations.

Legislative History: The Senate passed the bill by voice vote on April 27 (Journal page 821). The House made several changes, including prohibiting the moratorium on certifying nursing homes for Medicaid, then passed the bill by nonrecord vote, two members record voting nay, on May 27 (Journal page 3733). The Senate refused to concur with the House amendments by voice vote on May 28 (Journal page 2005), and a conference committee was appointed. On June 1 the Senate adopted the conference report by 31 to 0 (Journal page 2657), and the House adopted it by nonrecord vote (Journal page 4315).

The HRO analysis of the bill appeared in the May 27 Daily Floor Report.

Anabolic steroids and human growth hormones
(SB 1035 by Tejeda)

Effective Sept. 1, 1987

SB 1035 added anabolic steroids and human growth hormones to the dangerous drug list in VACS art. 4476-14. Medical practitioners licensed to prescribe and administer dangerous drugs, are prohibited from prescribing, dispensing or administering an anabolic steroid or human growth hormone except for a valid medical purpose. A practitioner or pharmacist cannot prescribe, dispense or deliver steroids or hormones without a written prescription on a form that is in compliance with the Texas Pharmacy Act. Practitioners may administer steroids or hormones for a valid medical purpose in their office without a prescription. Only a practitioner or pharmacist may possess over 250 tablets or eight 2cc bottles of an anabolic steroid or human growth hormone. Violation is a third-degree felony, with a maximum penalty of 10 years in prison and a fine of \$5,000.

Supporters said the use of steroids and growth hormones, while popular among athletes and body builders, is dangerous and sometimes fatal. The possible side effects of misuse include impotence, liver cancer, testicular atrophy, kidney damage, high blood pressure, hair loss, jaundice, violent mood swings and death. Current law regulating the use of steroids and growth hormones has been ineffective in stopping their illicit use.

Opponents said SB 1035 would only turn high school and college athletes and body builders into felons. Education about the dangers of steroid use has already begun and should be sufficient to limit most abuses. Putting steroids and growth hormones on the dangerous drug list should be enough to handle whatever problem remains with respect to their illegal use.

Legislative History: The Senate passed SB 1035 by voice vote on April 23 (Journal page 742). The House added a clarifying amendment and passed the bill by nonrecord vote on May 22 (Journal page 3299). The Senate concurred with the House amendment by voice vote on May 27 (Journal page 1888).

The HRO analysis of the bill appeared in the May 21 Daily Floor Report.

Insurance coverage for mammography screenings
(SB 1371 by Brooks)

Effective Sept. 1, 1987

SB 1371 requires each accident and sickness insurance policy covering women who are at least 35 years old and each medicare supplemental policy to provide coverage for an annual screening by low-dose mammography for the presence of occult breast cancer.

The bill also requires the State Board of Insurance to establish minimum standards for long-term care insurance coverage. It established additional regulation for home-health agencies and raised the minimum license fee.

Supporters said that mandatory health-insurance coverage for mammography screening for breast cancer would allow early detection that would save lives and reduce health-care costs. One out of every 10 women in the United States and in Texas will get breast cancer. Of the 130,000 women who get breast cancer this year, 40,000 will die from it. Women who have had the mammography screening test have a much better survival rate than women whose cancer is not detected until cancer symptoms appear.

Opponents said the purpose of accident and sickness insurance policies is to pay or reimburse for expenses resulting from the treatment of an accident or sickness. A mammography screening for hidden breast cancer is not a treatment for breast cancer. Expanding the purpose of sickness and accident insurance and mandating additional coverage would drive up costs for health insurers that would be passed on as higher premiums.

Legislative History: The Senate passed SB 1371 by voice vote on May 11 (Journal page 1076). The House amended the bill to add the provisions for mammography screening and home health care, then passed the bill by nonrecord vote on May 30 (Journal page 3962). The House reconsidered SB 1371 on May 30 by a nonrecord vote, then passed the bill again (Journal page 3994). The Senate refused to concur with the House amendments (Journal page 2403), and a conference committee was appointed. On June 1 the Senate adopted the conference report by voice vote (Journal page 2703), and the House adopted it by nonrecord vote (Journal page 4356).

The HRO analysis of a similar bill on mammography screening, SB 720 by Parmer, which was added to SB 1371 as a House amendment, appeared in the May 25 Daily Floor Report.

AIDS testing for blood donors
(SB 1405 by Brooks)

Effective Aug. 31, 1987

SB 1405 authorizes blood banks, without donor consent, to test donated blood for the AIDS virus, hepatitis, venereal disease and other infectious diseases. The blood bank must disclose the test results and the name of the donor to the doctor or other authorized person who ordered the test, the attending doctor and the donor or a person authorized to consent to the test for the donor. Information required by law can be released to the Texas Department of Health, a local health authority, the federal Centers for Disease Control and other government entities. A blood bank must report blood-test results showing contamination with an infectious disease, without disclosing the donor's identity or domicile, to hospitals where the blood was transfused, to the doctor who performed the transfusion, to the patient who received the blood and for statistical purposes. A blood bank can be required by a court to provide the recipient of blood with the results of the blood tests, with donor identification deleted, of every donor of blood transfused into the recipient or, if unable to do so, to use every reasonable effort to locate the donor of blood in question and obtain a sample of blood for testing. Any blood bank that discloses the disease or identity of an infected donor commits a Class C misdemeanor offense, punishable by a fine of up to \$200, and is liable in a civil action for actual damages, a civil penalty of up to \$1,000, court costs and attorney's fees.

Supporters said SB 1405 would protect the blood supply in state by ensuring that all blood can be tested. With the rising threat of the deadly AIDS virus and other infectious diseases transmitted through the blood, it is becoming increasingly important for blood banks to test the blood they receive. Making donor records generally confidential would ensure that blood-donors would not be discouraged from giving blood.

Opponents said blood banks should at least be required to refer donors who test positive for infectious diseases to counseling services that are available elsewhere. An infected person without counseling could unknowingly spread the disease or donate contaminated blood to another center.

Legislative History: The Senate passed the bill by 30 to 0 on April 22 (Journal page 717). The House passed SB 1405 as amended by 139 to 2, two present, not voting, on May 21 (Journal page 2966). The Senate refused to concur with the House amendments by voice vote on May 30 (Journal page 2388), and a conference committee was appointed. On June 1 the Senate adopted the conference report by 31 to 0 (Journal page 2784), and the House adopted it by nonrecord vote, one member recorded voting nay (Journal page 4356).

The HRO analysis of the House companion bill, HB 2444 by Wright, appeared in the May 14 Daily Floor Report.

HIGHER EDUCATION

Higher education revisions (HB 2181 by G. Lewis)

Effective June 19, 1987

HB 2181 makes numerous changes in the structure and funding of higher education in Texas. The Coordinating Board, Texas College and University System (renamed the Texas Higher Education Coordinating Board) will develop a five-year higher-education master plan that will be updated annually. The board's duties and responsibilities were expanded, making the board the central authority for higher education in Texas. It will establish the role and mission of each state higher education institution. The board will also advise the Legislature on higher education and recommend higher education funding levels to the Legislature. It can set maximum enrollment limits and administer funds appropriated by the Legislature. The board will recommend higher education funding formulas to the Legislature. Higher education institutions must submit their budget requests to the board as well as the Legislative Budget Board.

HB 2181 also established new research programs to be administered by the coordinating board. These include 1) an enhanced research program to support faculty research; 2) an advanced research program to support basic research in the natural and social sciences; 3) an advanced technology program to support applied research at both public and private schools, including medical and dental schools; and 4) a research assessment program. The board and the state auditor will establish a uniform system of accounting and reporting for institutions of higher education.

Each school may set the tuition rate for graduate programs under its control, but graduate tuition may not be more than twice the amount set by the Legislature. The bill specifically permits Mexican students who attend Texas schools in counties that border Mexico to pay in-state tuition. Governing boards retain control of tuition, fees, and other receipts they collect.

Supporters said the bill would improve the quality of higher education and promote more efficient management of higher education resources by implementing many of the proposals made by the Select Committee on Higher Education. It would expand the coordinating board's authority to define the role, scope and mission of state-supported institutions of higher education. The bill would also give higher education authorities more autonomy, while also increasing their accountability.

Opponents said the bill would give the coordinating board power that should be vested in the Legislature. It would allow the board to set

enrollment caps, decide the role and mission of every institution and even increase graduate-school tuition. Policies of such significance should be left to the elected Legislature, not an appointed board.

Legislative History: The House passed the bill by nonrecord vote, 19 members recorded voting nay and one recorded voting aye, on April 30 (Journal page 1626). The Senate amended the bill to limit to graduate school any tuition increases set by governing boards and to allow Mexican residents to pay in-state tuition rates at border schools, then passed it by 30 to 0 on May 21 (Journal page 1411). The House initially refused to concur with the Senate amendments by nonrecord vote on May 26 (Journal page 3472), and a conference committee was appointed. The House initially adopted the conference committee report by 116 to 16 on May 30 (Journal page 4112). The House reconsidered the vote by which the conference committee was adopted, then dismissed the conferees and concurred with the Senate amendments by 125 to 15 on June 1 (Journal page 4270).

The HRO analysis of the bill appeared in the April 30 Daily Floor Report.

Basic skills test for college students
(HB 2182 by Delco)

Effective Aug. 31, 1987

HB 2182 requires that students in public colleges and universities be tested for reading, writing and mathematics skills. Students will have to meet the minimum test standards before they can enroll in an upper-division course that gives them more than 60 hours of credit. Colleges and universities will use a test prescribed by the Texas Higher Education Coordinating Board. The board will set minimum standards, but an institution can require higher standards. Students whose test results fall below the standard set by the board must take a remedial education program. The test will be given to all students starting school in the fall of 1989 and to transfer students with less than 60 semester credit hours.

Supporters said the bill would help identify and assist students who meet college-entrance requirements but lack the basic skills needed to perform effectively in higher-level work. It would be given only after the student was accepted in a school and could not be used as a condition to admission to the school.

Opponents said the bill would force many students out of college because they cannot pass a subjective paper-and-pencil test. The test should not be the sole criterion for entrance to upper-level work; such factors as a grade point average and major should also be considered.

Legislative History: The House passed the bill by nonrecord vote, 12 members recorded voting nay and one recorded voting aye, on May 4 (Journal page 1642). The Senate amended the bill and passed it by voice vote on May 31 (Journal page 1414). The House concurred with the Senate amendments by nonrecord vote, one member recorded voting nay, on May 26 (Journal page 3473).

The HRO analysis of the bill appeared in the April 30 Daily Floor Report.

Core curriculum at Texas colleges and universities
(HB 2183 by Delco)

Effective June 17, 1987

HB 2183 defines higher-education core curriculum as the liberal arts, humanities, sciences and political, social and cultural history courses that all undergraduates are required to take before graduating. Each public institution of higher education must submit a statement of the content, rationale and objectives of its core curriculum for review by an advisory committee of the Texas Higher Education Coordinating Board. The Legislature may appropriate funds to the board to use as incentive funding for institutions for exemplary core curriculums.

Supporters said that many Texas colleges and universities do not require a core curriculum that emphasizes broad-based liberal arts education. A college education should not just be technical training in a particular field. This bill does not impose a specific core curriculum on schools but sets guidelines for the kind of basic college education a student should receive at a Texas college or university.

Opponents said it would grant too much authority to a centralized coordinating board to interfere with curriculum decisions at individual schools.

Legislative History: The House passed the bill by nonrecord vote, 12 members recording nay, on May 4 (Journal page 1642). The Senate passed the bill by 30 to 0 on May 21 (Journal page 1411).

The HRO analysis of the bill appeared in the April 30 Daily Floor Report.

Hazing prohibition
(SB 24 by Barrientos)

Effective Sept. 1, 1987

SB 24 broadens the definition of hazing, applies hazing prohibitions to private as well as to state-supported colleges and universities and to high schools, and increases penalties. It removes consent by the person hazed as a defense. A personal hazing offense occurs if a person engages in, solicits, or in any way encourages or aids hazing. It is also an offense to have first-hand knowledge of a specific hazing incident and to fail to report it to school officials. An organization commits hazing if it condones or encourages hazing or if an officer or any person connected with the organization commits or assists in a hazing offense. Hazing by an individual is a misdemeanor, with a maximum penalty of two years in jail and a \$10,000 fine. Hazing by an organization will be a misdemeanor punishable by a fine of \$5,000 to \$10,000. Every institution of higher education must inform its students of the provisions of this bill during the first three weeks of school.

Supporters said that hazing is a very serious and dangerous problem, which has recently resulted in serious injuries and even deaths. The current state statute banning hazing is unenforceable. A tough law would demonstrate that hazing is not acceptable behavior. Those who know about, but do not report, hazing incidents are equally guilty as those committing the offense.

Opponents said the bill was overly broad and vague. It would make it a crime to participate in harmless initiation rituals. Initiation of young men and women into social groups has long been a normal part of student life. There is no need to go overboard based on a few extreme cases. Creating an offense for failing to report a hazing incident would go too far.

Legislative History: The Senate passed the bill by voice vote on March 11 (Journal page 312). The House amended the bill to remove making failure to report firsthand knowledge of a hazing incident an offense and making it an organizational offense if one or more persons in an organization committed or assisted in a hazing incident, then passed it on May 6 by nonrecord vote, three members recorded voting nay, (Journal page 1865). The Senate refused to concur with the House amendments by voice vote on May 11 (Journal page 1074), and a conference committee was appointed. The conference committee replaced the sections removed by House amendment and modified the offense-by-an-organization section. The House adopted the conference report by nonrecord vote on May 25 (Journal page 3426), and the Senate adopted it by voice vote on May 27 (Journal page 1888).

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

Liability for violation of NCAA rules
(SB 643 by Montford)

Effective Sept. 1, 1987

SB 643 allows public and private colleges and universities to sue for damages any person who violates a rule of the National Collegiate Athletic Association (NCAA) or any other national or regional athletic association, if the violation results in sanctions by the association. The sanctions may be against the educational institution, a student or the regional athletic conference. Damages may include lost television revenues or ticket sales.

Supporters said the bill would serve as an effective method to deter irresponsible alumni and athletic boosters who sometimes offer cash or property benefits to student recruits and athletes. Even when colleges or student athletes are punished for such activities, the booster will often just continue such tactics.

Opponents said the bill would go too far in trying to punish well-meaning alumni for offenses that have become a part of the collegiate athletic system. The schools encourage alumni support and should not be allowed to adopt the hypocritical tactic of filing suit against boosters for rule violations they should have prevented themselves.

Legislative History: The Senate passed the bill by voice vote on April 13 (Journal page 603). The House approved the bill by nonrecord vote, one member recorded voting nay, on May 21 (Journal page 2964).

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.

INSURANCE/TORT REFORM

Limiting medical malpractice judgments (HB 5 by Wright, second called session)

Died in Calendars Committee

HB 5 would have limited the amount of each health-care liability judgment against a physician or health care provider to \$1 million for each claim, without regard to the number of physicians or health care providers against whom the judgment was rendered or the number of plaintiffs or other parties involved in the action. This limit would not have applied to the amount of damages awarded to cover an injured person's medical, hospital and custodial care expenses.

Supporters said that in 1977 the Legislature limited the amount victims may receive in compensation from any one defendant to a maximum of \$500,000 for all non-economic damages (such as pain and suffering and mental anguish) and most economic damages other than medical expenses. Courts have varied in their interpretation of this legislation -- some have applied the limit to each defendant named in the suit rather than to each claim, while others have contended that the limit is not constitutionally valid at all. Skyrocketing medical-malpractice liability insurance rates are driving doctors out of business or forcing them to drop certain services, such as obstetrics. A \$1-million dollar cap on each medical claim, rather than on the amount a plaintiff can recover separately from each defendant, would stabilize the rising cost of insurance and encourage physicians to re-enter the risky fields of practice.

Opponents said that HB 5 would unduly restrict injured parties from fully recovering justifiable damages and shield incompetent health care professionals. It would place an arbitrary, unconstitutional ceiling on damages for all injured plaintiffs without regard to their individual circumstances. The malpractice crisis among Texas doctors should be addressed by better policing of the medical profession not by limiting doctors' liability for their medical negligence. The insurance and medical practice industries have offered no assurances that limits on doctors' liability would have any effect on doctors' insurance rates.

Legislative History: The House State Affairs Committee reported HB 5 by 9 to 3 nays, one present, not voting on July 2. The Calendars Committee did not act on the bill.

The HRO analysis of a similar bill, HB 2630 by Wright, which passed the House but died in the Senate during the regular session, appeared in the May 29 Daily Floor Report.

Prohibiting "redlining" in home insurance coverage
(HB 620 by Dutton)

Effective Aug. 31, 1987

HB 620 prohibits insurance companies from discriminating based on geographic location among members of a class of policyholders facing equal risks and hazards by cancelling or refusing to renew home-damage insurance policies or limiting coverage of those policies.

Supporters said home-damage insurance "redlining," refusing or cancelling insurance or limiting coverage based solely on where a policyholder may live, unfairly burdens poor people and minority groups. This bill would stop companies from unfairly limiting coverage, cancelling or failing to renew home insurance based only on the address of the residence.

Opponents said there are already plenty of protections against unfair discrimination in state and federal law. The insurance industry is inherently "discriminatory" because it provides different levels of coverage to different people based on actuarial calculations of risk. Other opponents said that the bill did not go far enough. "Redlining" by insurance companies should be prohibited for all types of insurance.

Legislative History: The House passed the bill by nonrecord vote, one member recorded voting nay, on April 22 (Journal page 1231). The Senate passed the bill by 30 to 0 on May 30 (Journal page 2394).

The HRO analysis of the bill appeared in the April 21 Daily Floor Report.

Assumption-of-risk defenses for civil lawsuits
(HB 2320 by C. Evans)

Effective Sept. 1, 1987

HB 2320 creates two affirmative defenses for use by a defendant in a civil lawsuit for personal injury or death. It is an affirmative defense that the plaintiff, at the time the cause of action arose, was committing a felony that was the sole cause of the plaintiff's damages. It is also an affirmative defense that the plaintiff was committing or attempting to commit suicide and the plaintiff's conduct was the sole cause of the damages. These defenses do not apply in workers' compensation suits or in suits against an insurer based on a contract, a statute or common law. HB 2320 applies to all suits in which trial commences after Sept. 1, 1987.

Supporters said that HB 2320 would restore some balance to the legal standards used in liability cases by providing a civil defendant with an affirmative defense in two situations in which it would be clearly unjust to allow a plaintiff to recover damages.

Opponents said that the bill contains broad provisions that could result in serious infringement of the right of an injured plaintiff to recover compensation for injuries suffered as a result of the conduct of a defendant.

Legislative History: The House amended the bill on May 14 to add the commission of a misdemeanor by the plaintiff as a liability defense, then passed the bill on May 15 by nonrecord vote, 11 members recorded voting nay (Journal page 2461). The Senate deleted provisions in the House version creating a defense if the plaintiff committed a misdemeanor and if a product was misused and added provisions requiring the plaintiff's action to be the sole cause of the damages and exempting workers' compensation and insurance suits. It then passed the bill on May 30 by voice vote (Journal page 2191). The House concurred with the Senate amendments by nonrecord vote on May 31 (Journal page 4190).

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

Constitutionally validating medical malpractice damage limit
(HJR 3 by Wright, second called session)

Died in Calendars Committee

HJR 3 would have amended the Texas Constitution to validate and make enforceable a statutory limitation on health-care liability damage judgments.

Supporters said that a cap on the amount of damages an injured person can receive as compensation for damages other than medical expenses is needed to ensure the availability and affordability of medical services. Texas courts have held the damage limit imposed by the 1977 Legislature constitutionally invalid. As a result, juries continue to award outrageous damages to injured people, medical malpractice liability insurance rates continue to skyrocket and doctors are continuing to go out of business or drop certain services, such as obstetrics. A reasonable dollar cap would stabilize the rising cost of insurance and encourage doctors to re-enter the risky fields of practice.

Opponents said doctors are seeking special status and protection in the state constitution. Limiting malpractice damage awards by statute violates the "open courts" provision of the Bill of Rights in the Texas Constitution, which guarantees every person full access to the courts to seek redress for injury. Even if the Texas Constitution were amended to give physicians special protection at the expense of injured plaintiffs, the limit would still conflict with the equal protection clause of the United States Constitution.

Legislative History: The House State Affairs Committee reported HJR 3 by 9 to 3, one present, not voting, on July 2. The House Calendars Committee took no action on the proposed constitutional amendment.

Insurance consumer protection and liability reporting
(SB 2 by Jones, first called session)

Effective Sept. 2, 1987

SB 2 makes numerous changes in the Insurance Code affecting liability insurance. It creates a consumer protection division and public counsel at the State Board of Insurance (SBI), provides authority for creation of a number of market-assistance, risk management and excess liability pools for organizations unable to obtain liability insurance, regulates policy cancellations and nonrenewals, mandates detailed reporting requirements for property and casualty insurance companies and provides broad public access to these records.

Supporters said the bill embodies many of the recommendations of the House/Senate Joint Committee on Liability Insurance and Tort Reform. SB 2 is a reasonable approach to insurance regulation that would promote lower liability rate increases and give the SBI the data it needs to regulate the industry. The bill would protect the public interest by setting up a consumer protection division with an attorney who can intervene in rate cases on behalf of the public. The SBI would have greater authority to scrutinize insurance company activities, claims and losses. Insurance pools would help non-profit organizations obtain insurance that is currently unavailable to them.

Opponents said the bill would unfairly subject the insurance industry to onerous reporting requirements. The more Texas burdens companies with bureaucratic regulations, the more likely companies are to take their business to other states, reducing competition that keeps premiums low. A public counsel would just create another unnecessary bureaucracy that would increase the cost of regulation. Insurance pools are not as carefully watched by the SBI as private insurance policies, so non-profit organization participating in these pools would be deprived of important protections. Other opponents said that SB 2 would not restrain soaring insurance rates. Rates should simply be frozen at their current levels, or the rate of increase should at least be capped.

Legislative History: The Senate passed the bill by voice vote on June 2 (Journal page 13). The House passed the bill on June 3 by nonrecord vote (Journal page 9).

The HRO analysis of the bill appeared in the June 3 Daily Floor Report.

Tort reform
(SB 5 by Montford, first called session)

Effective Sept. 2, 1987

SB 5 changes several aspects of tort law. The bill allows a court to impose sanctions for frivolous pleadings. It limits a claimant's ability to recover damages, depending on the claimant's comparative responsibility for causing the damages, limits the application of joint and several liability and caps punitive damage awards. SB 5 defines municipal governmental and proprietary functions and limits liability for governmental functions (see SJR 26).

Supporters said that it would reform those aspects of tort law that have made general-liability insurance unaffordable and even unavailable in Texas. By penalizing those who bring frivolous suits, SB 5 would alleviate the strain on the judicial system and reduce the cost of defending suits. It would bar claimants who were 60 percent responsible for causing damages from recovering for those damages in certain cases, eliminating the free ride enjoyed by irresponsible claimants. It would limit joint and several liability to discourage suits against "deep pocket" defendants filed in the hope of recovering large judgments. SB 5 would cap punitive damages in order to avert their random imposition. The bill also protects Texas cities and taxpayers from unreasonable tort-suit awards and expensive insurance premiums by limiting municipal liability for governmental functions.

Opponents said that none of the changes in tort law proposed by SB 5 would ensure that liability insurance rates will be brought under control. The insurance crisis was caused by insurance company management errors and faulty investment policies, not the peculiarities of the Civil Practice Code. The current debate started when insurance companies were reporting huge losses and blaming them on excessive jury awards. In 1986 property-casualty insurance companies reported record net profits of \$12.7 billion, but attempts to weaken tort-law protection for injured individuals have not stopped. The only effective solution to the insurance crisis is better regulation and reform of the insurance industry.

Legislative History: The Senate passed the bill by voice vote, two members recorded voting nay, on June 2 (Journal page 8). The House passed the bill by nonrecord vote, six members recorded voting aye and two recorded voting nay, on June 3 (Journal page 11).

The HRO analysis of the bill appeared in the June 3 Daily Floor Report.

Calculation of prejudgment interest
(SB 6 by Montford, first called session)

Effective Sept. 2, 1987

SB 6 limits award of prejudgment interest in civil damage suits to cases involving personal injury, property damage or death. Interest accrues from the 180th day after the defendant received written notice of the claim or the suit was filed. (Prejudgment interest is the amount equal to the interest that could have been earned on the monetary damages a plaintiff receives in the court's final judgment of a tort case.)

Supporters said the bill would clarify when prejudgment interest accrues, thereby correcting a Texas Supreme Court decision that allowed interest to be figured from the date of the claim. The bill would strike a careful balance between the interests of plaintiffs and defendants, while still discouraging trial delays and promoting settlements.

Opponents said the bill would prevent full compensation of plaintiffs by limiting their prejudgment interest. Defendants would have no incentive to settle a lawsuit before the interest accrual began, contributing to delays in the already overburdened civil justice system.

Legislative History: The Senate passed the bill by voice vote on June 2 (Journal page 9). The House passed the bill by nonrecord vote, five members recorded voting nay, on June 3 (Journal page 6).

The HRO analysis of the bill appeared in the June 3 Daily Floor Report.

Trial venue for railroad tort actions
(SB 7 by Montford, first called session)

Effective Sept. 2, 1987

SB 7 restricts the locations in which a civil action may be brought against a railroad. It amends sec. 15.036 of the Texas Civil Practice and Remedies Code by deleting the provision that permitted a suit to be brought against a railroad in any county through or into which the railroad extends or is operated. The bill also amends sec. 15.036 and sec. 15.037, venue of civil actions against foreign corporations, to provide that the mere ownership, leasing of tracks, roadbeds, or right-of-way, or the maintenance or repair of tracks, does not constitute an agency or representative relationship in a county for venue purposes. Non-management employees engaged in general maintenance, switching, loading or unloading or operating trains in transit are not be considered agents or representatives of the railroad for venue purposes.

Supporters said sec. 15.036 allowed any type of suit against a railroad, including personal injury suits, to be brought in any county in which the railroad had tracks. Railroads were placed at an unfair disadvantage when they were sued in a county other than the one where the injury occurred or the plaintiff lived, particularly in terms of witness preparation and availability. This overly liberal venue provision also encouraged "forum shopping" -- plaintiffs could sue a railroad in counties that, although having no connection to the injury, have a reputation for being pro-plaintiff.

Opponents said SB 7 would restrict an injured plaintiff's access to the courts. A plaintiff who has moved, perhaps for special treatment or rehabilitation necessitated by the injury, would be at a disadvantage having to sue in the county in which the cause of action accrued, in the county where the plaintiff lived when the cause of action accrued or, if the railroad does not operate in the county in which the plaintiff lived, in the county where the railroad operates that is the nearest one to where the plaintiff lived.

Legislative History: The Senate passed the bill by voice vote on June 2 (Journal page 10). The House passed the bill by nonrecord vote, two members recorded voting nay, on June 3 (Journal page 6).

The HRO analysis of the bill appeared in the June 3 Daily Floor Report.

Risk management programs in state agencies
(SB 8 by Farabee, first called session)

Effective Sept. 2, 1987

SB 8 creates a division of risk management in the Industrial Accident Board (IAB). The division will develop and administer a system to identify property and liability losses in each state agency, evaluate the exposure of each agency to claims for losses, assess the costs of risk management and reduce losses by state agencies. The division will also make recommendations to the Legislature on methods to reduce state exposure to the risks of losses.

State agencies, including institutions of higher education, will have until Jan. 1, 1989 to implement an effective risk management program in accordance with IAB guidelines. Agencies failing to develop an acceptable program will have to enter into an interagency program with the IAB to develop and administer a program for the agency.

Supporters said that the bill would save money for the state government by instituting a system of risk management for state agencies, including institutions of higher education, to reduce the number of claims and improve workplace safety. Most states and most large corporations have risk management programs that have efficiently lowered liability costs. Although there is no way to calculate the savings from accidents that never happen, the widespread acceptance of these programs indicates that the state would also save money.

Opponents said that SB 8 would cost too much for the uncertain savings it might provide. The Attorney General's Office already has a safety section to visit state agencies and increase employee awareness of occupational safety. The Legislature could expand this existing program if necessary, rather than create a new level of bureaucracy.

Legislative History: The Senate passed the bill by voice vote on June 2 (Journal page 10). The House passed the bill by nonrecord vote on June 3 (Journal page 14).

The HRO analysis of the bill appeared in the June 3 Daily Floor Report.

Texas Nonprofit Organizations Liability Pool
(SB 9 by Farabee, first called session)

Effective Sept. 2, 1987

SB 9 allows non-profit organizations to form an insurance pool to provide primary and excess liability insurance coverage to the organizations, their officers and employees. The pool will provide primary coverage up to \$250,000 and excess coverage in an amount found by the pool's board to be actuarially sound.

Supporters said that non-profit, charitable groups have been among the main victims of the liability insurance crisis that has increased premium rates and left some organizations without insurance coverage. SB 8 would make sure that liability insurance is available to non-profit organizations, although it would not guarantee that the insurance would be any less expensive.

Opponents said that the bill would create a new entity to compete with private companies. The private insurance market is better at assessing risks than an artificially created liability pool. Other opponents said that this bill takes the wrong approach toward making liability insurance available to non-profit charities. Insurance reform laws should force big companies to provide the liability protection needed by Texas non-profits.

Legislative History: The Senate passed the bill by voice vote on June 2 (Journal page 11). The House passed the bill by nonrecord vote, two members recorded voting nay, one recorded voting aye. on June 3 (Journal page 9).

The HRO analysis of the bill appeared in the June 3 Daily Floor Report.

Liability of corporate directors
(SB 260 by Henderson)

Effective Aug. 31, 1987

SB 260 allows the shareholders of a corporation to amend its articles of incorporation to exempt its directors from liability for monetary damages, except in certain cases. Liability cannot be waived when a director breached a fiduciary duty to the corporation or shareholders, acted in bad faith or with intentional misconduct, received an improper benefit from a transaction, was involved in an unlawful stock repurchase or payment of dividend or when a director's liability was expressly provided by law.

Supporters said the bill would make it easier for directors to obtain liability insurance. Many qualified people are reluctant to serve as directors of corporations for fear of potential lawsuits that could arise in the course of their service.

Opponents said this bill would protect board directors at the expense of injured claimants who would be left uncompensated. Exceptions to liability in other torts are not made for good-faith mistakes -- why should board directors receive special treatment?

Legislative History: The Senate passed the bill on March 24 by 28 to 2 (Journal page 424). The House amended the bill to expand the liability exemption to include all directors, not just to outside directors and to expand the definition of a corporation to include credit unions, then passed the bill by nonrecord vote, one member recorded voting nay, on May 21 (Journal page 2968). The Senate concurred with the House amendments by voice vote, one member recorded voting present, on May 28 (Journal page 1952).

The HRO analysis of the bill appeared in the May 21 Daily Floor Report.

Liability immunity for municipalities
(SJR 26 by Montford, Sarpalius)

On Nov. 3, 1987 ballot

SJR 26 would amend Art. 11 of the Texas Constitution to allow the Legislature to define those functions of a municipality that are governmental (for the benefit of all citizens of the state, such as enforcing the law) and those that are proprietary (for the benefit of only the citizens of the city, such as running a park). The Legislature would be authorized to redefine functions as governmental or proprietary, even though previous statutes or common law had different definitions. The amendment would validate any laws enacted in this area enacted by the 70th Legislature in its regular or special sessions.

Supporters said that this constitutional amendment was an important part of the tort-reform package aimed at easing the problem of cost and availability of liability insurance for cities plagued by lawsuits. While municipal liability for damages arising from governmental functions can be limited, there are no limits on the amount of damages that can be recovered from a lawsuit arising out of proprietary functions. The Legislature, rather than the courts, needs to be able to define whether a municipal government function is governmental or proprietary. A constitutional amendment is needed because certain court rulings have interpreted the "open courts" provision of the Constitution as limiting the Legislature's power to restrict damage awards under these circumstances.

Opponents said that the proposed amendment would allow the Legislature to override years of carefully reasoned court decisions defining governmental and proprietary functions. It would do nothing to solve the crisis in municipal liability insurance, which has been caused by unwise investment and underwriting decisions by the insurance industry, not by excessive damage awards.

Legislative History: The Senate adopted SJR 26 on May 6 by 30 to 1 (Journal page 984). The House adopted the proposal by 134 to 14 on May 21 (Journal page 3074).

The HRO analysis of the proposed constitutional amendment appeared in the May 21 Daily Floor Report.

LABOR/PUBLIC EMPLOYEES

Sick-leave pool for state employees
(HB 8 by Leonard)

Vetoed

HB 8 would have required each state agency to establish a pool to which their employees could contribute one to three days of unused sick-leave. The sick-leave pool could have been tapped by state employees when an illness or injury exhausted their sick leave. An employee could have used up to one-third of the amount accumulated in the pool, or 90 days, whichever was less.

Supporters said a pooled sick-leave program would provide state employees the opportunity to help their colleagues who are sick or injured by contributing sick leave to those who needed it. The program would not cost the state any money because the people who deal with personnel matters could do this job also.

Opponents said the bill would cost the state an additional \$300,000 per year and require 13 additional employees to administer. This would be an inordinate expenditure considering the state's financial situation.

Legislative History: The House amended the bill to allow all state agencies to have sick-leave pools, not just the Department of Public Safety as in the original version of the bill, then passed it by nonrecord vote, two members recorded voting nay, on April 30 (Journal page 1606). The Senate passed the bill by voice vote on May 23 (Journal page 1633). The governor vetoed the bill on June 19.

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

Limits on Optional Retirement Program membership
(HB 10 by Kuempel, second called session)

Effective Oct. 20, 1987

HB 10 narrows the definition of "faculty member" under the Teacher Retirement System to include persons employed full-time by an institution of higher education as teachers, researchers, administrators of faculty, members of the administrative staff of the coordinating board, professional librarians or professional staff members whose job is filled by a nationwide search. The Texas Higher Education Coordinating Board may issue rules regarding eligibility in the Optional Retirement Program (ORP). However, any person who is a member of the ORP prior to Sept. 1, 1987 is entitled to continue in the program.

Supporters said the ORP was created to allow faculty members and other university administrators whose job market is national or even global an individual retirement account program (much like an IRA) that is mobile. Having the option to enroll in a retirement program that allows the member to vest in one year and is easily transferable is an added incentive for scholars to come to Texas universities. This bill defines more accurately who should have the option to belong to the ORP and gives the coordinating board authority to regulate eligibility.

Opponents said the bill would restrict membership in the ORP and would allow the coordinating board to even further restrict membership by decree. All faculty, librarians, and researchers should be eligible, as they are now, to participate in the ORP. The ORP could be so restricted that only a faculty elite could belong.

Legislative History: The House passed a version of the bill that would have lowered the state contribution to the ORP from 8.5 percent to 7.5 percent for the 1988-89 biennium and would have lengthened the period for vesting in the ORP from one to three years. The House version passed by nonrecord vote, 30 members recorded voting nay, on June 29 (Journal page 42). The Senate substituted a version of the bill concerned with defining the membership of the ORP, then passed the bill by 31 to 0 on July 20 (Journal page 307). The House concurred with the Senate amendments by nonrecord vote on July 21 (Journal page 649).

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

State personnel office
(HB 15 by Earley, second called session)

Died in Senate committee

HB 15 would have created a state personnel office within the state auditor's office, replacing the office operated by the classification officer. Every full-time classification employee from each state agency would have been transferred to the state personnel office. The personnel office duties would have included establishing personnel guidelines, administering the state's position classification plan, establishing performance-evaluation standards, reviewing personnel law and policies and developing uniform grievance procedures.

Supporters said the bill would consolidate the state's classification system in a central personnel office, making it more effective and efficient. It would avoid wasteful duplication caused by state agencies who handle their own personnel matters. It would also provide a single source of information related to personnel issues.

Opponents said the bill would create an office that is duplicative, expensive, and bureaucratic. The current classification plan already provides agencies with a uniform guideline for implementing the classification system. Also, state agencies would still need their own classification workers even if the bill were passed because the state's classification statute makes the agencies responsible for placing employees in the proper classification.

Legislative History: The House passed the bill on July 14 by 77 to 59 after adding several amendments, including provisions expanding the personnel office duties to include coordination of employee benefit programs and reviewing the office under the sunset process (Journal page 309). The Senate referred the bill to the State Affairs Committee, where no further action was taken.

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

Employees Retirement System contributions and benefits
(HB 21 by Kuempel, second called session)

Effective Sept. 1, 1987

HB 21 temporarily lowers the state contribution to the Employees Retirement System (ERS) from 7.4 percent to 7 percent for the 1988-89 biennium. It also increases by 5 percent retirement and death benefits for ERS members who retired or died before Sept. 1, 1985. The ERS trustees can increase from the current 1.5 percent to 1.8 percent the multiplier used to calculate retirement benefits for the first 10 years of service, beginning Jan. 1, 1989, unless the increase causes the unfunded actuarial liability of the system to exceed 31 years. If the trustees cannot increase the multiplier, they must recommend to the 71st Legislature a way to increase the multiplier.

Supporters said reduction in the state contribution rate would save the state money but would not jeopardize the actuarial soundness of the system. The increase in benefits for members who died or retired before Sept. 1, 1985 would help beneficiaries to catch up with the high rate of inflation during the late 1970s. Increasing the multiplier for the first 10 years of service to 1.8 percent would bring state employee retirement benefits more in line with those of the Teacher Retirement System and elected officials, whose multiplier rate for the first 10 years of service is 2 percent.

Opponents said the state should not reduce its contributions to the ERS fund every time it needs money. Just because the ERS is in relatively good financial shape now does not mean it is invulnerable. The system benefited from an unprecedented bull market on Wall Street. If the stock market falls, will the state make up the difference?

Legislative History: The House passed the bill by nonrecord vote, four members recorded voting nay, on June 30 (Journal page 56). The Senate added an amendment requiring the ERS trustees to raise the multiplier rate from 1.5 to 1.8 percent if it did not jeopardize the system's unfunded liability, then passed the bill by 26 to 0 on July 15 (Journal page 102). The House concurred with the Senate amendments by 142 to 1 on July 20 (Journal page 530).

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

Payment of state employees' legal fees
(HB 33 by T. Smith, second called session)

Effective Oct. 20, 1987

HB 33 requires the state to indemnify state employees, officers and certain persons contracting with the state for reasonable attorney's fees incurred in defense of a criminal prosecution arising out of an act performed or omission made within the course and scope of employment or contractual performance. The state must provide indemnity if the attorney general determines that the conduct for which the person is being prosecuted could give rise to a civil cause of action and that the person was found not guilty or that the case was dismissed because there was no probable cause to believe that the person committed the offense or because the complaint, information or indictment was void. State liability for indemnification cannot exceed \$10,000 for the prosecution of a single action. HB 33 does not apply to persons criminally prosecuted for driving while intoxicated or for involuntary manslaughter resulting from DWI.

Supporters said state employees who are criminally prosecuted for incidents arising out of their good faith performance of their jobs are inadequately protected because they are not indemnified by the state for the costs of their defense. HB 33 would provide limited state assistance in those circumstances in which state indemnity is justified.

Opponents said that the bill would provide too sweeping an obligation for the state to indemnify state employees for their legal expenses in criminal cases. It is questionable whether the state should indemnify state employees when local prosecutors, acting on behalf of the state, bring criminal charges against those persons. Other opponents said that there should be no limit placed on the indemnity paid by the state to its employees when those employees are wrongly prosecuted for actions arising from their employment. Such limits would discourage good people from working for the state.

Legislative History: The House passed the bill by nonrecord vote on July 18 (Journal page 486). The Senate passed it by voice vote on July 19 (Journal page 240).

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

Political campaigning by police and firefighters
(HB 426 by Granoff)

Effective Aug. 31, 1987

HB 426 regulates political activities of police and fire department employees in cities with populations of 10,000 or more that have not adopted civil service law. It prohibits these employees, while in uniform or on active duty, from engaging in the following political activities: political speeches, distributing campaign literature, wearing campaign buttons, circulating or signing a candidate's petition, soliciting votes for a candidate and soliciting campaign contributions for a candidate. All these activities are permitted for employees out of uniform and off active duty, except that campaign-fund solicitations may only be among members of an employee organization to which the employee belongs.

Supporters said the bill protects the right of non-civil service police officers and firefighters to participate in the election process. Even though these employees are covered by a statute that prohibits coercing them to participate in or refrain from taking part in campaigns, police and fire department employees have had to fight cities in court for the right of political activity. Other provisions of the bill were intended to prohibit uniformed officers from soliciting contributions while on duty, not to withdraw rights from off-duty employees.

Opponents said the Legislature should not intervene in what is part of a local decision whether to adopt civil service. Allowing employees who work for city officials to campaign for or against them is bad public policy that can result in favoritism or retribution. Police officers and firefighters already have adequate protection by statute and in court. Other opponents said other city employees should be afforded the same protection of their political rights. Also, the final version of the bill compromised the rights of off-duty employees by prohibiting them from soliciting campaign contributions from anyone but members of their own employee organizations, even when off-duty and not wearing a uniform.

Legislative History: The House passed the bill on April 1 by nonrecord vote, one member recorded voting nay, (Journal page 794). The Senate passed the bill by voice vote, one member recorded voting nay, on April 30 (Journal page 903).

The HRO analysis of the bill appeared in the March 30 Daily Floor Report.

Prohibiting residency requirements for city employees
(HB 824 by Barton)

Effective Aug. 31, 1987

HB 824 prohibits incorporated cities or towns from requiring residency within the municipal limits as a condition of employment for municipal workers. Municipalities are allowed to set reasonable time limits on how long a municipal employee who lives outside of the municipality has to respond to a civil emergency; the time limits cannot be imposed retroactively on an employee after their adoption. Municipal department heads appointed by the mayor or governing body of the city or town may be subject to a residency requirement.

Supporters said residency requirements for city employees are arbitrary and unfair, especially in larger cities. Because areas of a city may be annexed and de-annexed, some employees find that they may or may not comply with residency requirements, even though they may have never changed their residency. Some municipal employees may live in an adjoining city but actually be closer to their place of employment than city residents.

Opponents said this bill is an invasion of cities' home-rule authority, abridging the right of local governments to decide what is best for their particular situation. Most cities limit residency requirements to top-level city management, who should have to cope with the same level of service and taxes as the residents of the city they manage.

Legislative History: The House amended the bill to delete an exemption for cities covered by the collective bargaining statutes and to add a provision allowing residency requirements to be imposed on municipal department heads appointed by the mayor or governing body of a city or town. It then passed the bill by nonrecord vote, one member recorded voting nay, on May 14 (Journal page 2268). The Senate passed the bill by 30 to 0 on May 27 (Journal page 1899).

The HRO analysis of the bill appeared in the Daily Floor report.

Rehiring state employees taking early retirement
(HB 1141 by Russell)

Effective Aug. 31, 1987

HB 1141 allows state employees who retired between Nov. 30, 1986 and May 31, 1987 and received increased retirement benefits to be rehired by the state as any other retired state employees. (HB 40, enacted during the 1986 special session, increased retirement benefits as an incentive for state employees to retire early but prohibited their rehiring by the state.)

Supporters said this bill would encourage more state workers to retire, which was the intent of the original bill passed in 1986. Some employees have not retired because they want the option of being rehired by the state like other retired state employees.

Opponents said the state employees who retired under the original bill received enhanced benefits. It makes little sense to give them better benefits to get them off the state payroll and then turn around and let them be rehired.

Legislative History: The House passed the bill by nonrecord vote on May 22 (Journal page 3284). The Senate passed the bill by 30 to 0 on May 30 (Journal page 2394).

The HRO analysis of the bill appeared in the May 20 Daily Floor Report.

Repeal of workers' compensation
(HB 1565 by R. Smith)

Died in Senate committee

SB 1565 would have repealed the state's workers' compensation laws as of Sept. 1, 1991. The Industrial Accident Board, the agency that decides workers' compensation claims, also would have been abolished on Sept. 1, 1991. The bill's stated purpose was to require a reorganization of the system prior to its repeal.

Supporters said the bill would rescue the workers' compensation program by providing an incentive to solve the program's problems quickly and reasonably. By imposing a deadline for revising the program, the parties involved would be forced to make compromises they now refuse to make.

Opponents said it would be dangerous and irresponsible to revise the workers' compensation program by threatening to repeal it. No worthy compromise is likely if the principals involved in negotiating reforms have a "gun" to their heads.

Legislative History: The House passed the bill on May 7 by nonrecord vote, 34 members recorded voting no (Journal page 1875). The Senate Jurisprudence Committee left the bill as pending business.

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

Unemployment-compensation bonds and taxes
(HB 2090 by Criss)

Effective Sept. 1, 1987

HB 2090 authorizes the Texas Employment Commission (TEC) to issue bonds and use the proceeds to repay any advances made to the state by the federal government to eliminate the deficit in the state's unemployment-compensation trust fund. The TEC may also increase the "interest tax" on employers, a special state surtax on unemployment taxes used to pay interest on the federal advances, from the current rate of 0.1 percent to as high as 0.2 percent. The wage base on which employer taxes are computed will be increased from the current \$7,000 to \$8,000 for 1988 and \$9,000 for 1989 and thereafter.

HB 2090 also freezes the maximum weekly benefit amount at October 1986 levels for three years. The benefits calculated for claims filed after Oct. 1, 1989 will not take into account any increase in the annual average weekly wage for manufacturing production workers for 1986 and 1987.

Supporters said that the bill would end the recurring crisis in the Texas unemployment-compensation trust fund by allowing the TEC to float bonds to pay off the fund's debt to the federal government. The state would save money because it could issue tax-exempt bonds at a much lower interest rate than the rate the federal government charges. The freeze on benefits and the increase in the taxable wage base would also help keep the fund solvent by increasing revenue to the fund by \$418 million over the next five years.

Opponents said that floating bonds to bring the unemployment compensation fund into balance would saddle the employers of Texas with a long-term debt that would increase their unemployment-tax burden for years. The state can continue to borrow money from the federal government until the end of 1988, by which time the state's economy may recover. The Legislature should not rush into borrowing \$700 million.

Legislative History: The House passed the bill by 135 to 2 on April 28 (Journal page 1394). The Senate added the freeze on benefits and the increase in the wage base and changed the sunset provision to Jan. 1, 1990. (The House version had included an Aug. 31, 1987 sunset date.) The Senate then passed the bill by a voice vote on May 27 (Journal page 1897). The House concurred with the Senate amendments by nonrecord vote, one member recorded voting nay, on May 29 (Journal page 3868).

The HRO analysis of the bill appeared in the April 27 Daily Floor Report.

Teacher Retirement System contributions and benefits
(HB 2623 by C. Harris)

Effective Aug. 31, 1987

HB 2623 lowers the state contribution rate to the Teacher Retirement System from 8 percent to 7.2 percent for the fiscal 1988-89 biennium. The bill also increases retirement or death benefits paid to TRS members who retired or died before Sept. 1, 1984.

Supporters said reducing the state contribution rate to the TRS would cut state spending without jeopardizing the actuarial soundness of the system. The increase in benefits would help teacher retirees catch up on the high rate of inflation in the late 1970s.

Opponents said the state should not cut its contribution to the the teacher retirement fund every time it needs money. Just because the TRS is in relatively good financial shape now does not mean it is invulnerable.

Legislative History: The House passed the bill by nonrecord vote, seven members recorded voting nay, on May 29 (Journal page 3986). The Senate amended the bill to require that teachers who contributed more to their retirement account as a result of salary increases be reimbursed the excessive contributions they made and then passed the bill by voice vote, three members recorded voting nay, on May 31 (Journal page 2376). The Senate later reconsidered the vote, tabled the amendment, and finally passed the bill by voice vote, three members recorded voting no, on May 31 (Journal page 2425).

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

Prohibiting stoop labor by farm and ranch workers
(SB 545 by Uribe, Truan)

Vetoed

SB 545 would have prohibited employers from requiring agricultural workers to use, in a stooped position, a knife or other tool that has a handle shorter than four feet while doing agricultural work, other than harvesting or transplanting commonly done with a hoe for cleaning, weeding, thinning or cultivating. The prohibition would have not applied to forestry, greenhouse, nursery and vineyard operations.

Supporters said some farm employers have circumvented the 1981 law banning the use of short-handled hoes by forcing their workers to use other short-handled tools like knives and trowels. This bill would plug the loopholes in existing law and finally eliminate stoop labor, which causes debilitating, long-term injury to farm workers.

Opponents said a blanket prohibition of all short-handled tools would end up damaging young crops and preventing crops from being properly cultivated. Those employees injured by stoop labor can apply for worker compensation benefits, and the higher insurance premiums for farm employers with many claims will act as an economic incentive for them to eliminate such practices.

Legislative History: The Senate passed the bill on March 17 by voice vote, two members recorded voting nay (Journal 387). The House passed the bill by nonrecord vote, three members recorded voting nay, on May 29 (Journal page 3935). The governor vetoed the bill on June 11.

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

Raising minimum wage for farm workers
(SB 601 by Santiesteban)

Effective Sept. 1, 1987

SB 601 raises the minimum wage for farm workers in Texas from \$1.40 to \$3.35 an hour. The \$30-per-week minimum wage for farm workers provided with housing is repealed. The bill requires piece-rate agricultural workers to be paid the same hourly minimum wage as other agricultural workers.

Supporters said the bill would update the state's minimum-wage law and ensure that farm workers are paid the same minimum wages as other major groups of workers. Farm workers should finally be given the legal protection against wage exploitation that other workers have long enjoyed.

Opponents said the bill would impose an unnecessary financial burden on farmers who are struggling to survive. The resulting increased costs would raise food prices for consumers.

Legislative History: The Senate passed the bill on May 13 by voice vote, one member recorded voting nay (Journal page 1126). The House added several amendments, including a provisions that would keep the farm worker minimum wage at \$3.35 an hour even if the minimum wage for other workers was raised and deleting a guarantee that any farm worker provided with housing cannot be paid less than 30 cents per hour below minimum wage, then passed the bill by nonrecord vote, four members recorded voting nay, on May 25 (Journal page 3380). The Senate concurred with the House amendments by voice vote on May 29 (Journal page 2104).

The HRO analysis of HB 711, the companion bill, appeared in the May 19 Daily Floor Report.

Early retirement for certain Teacher Retirement System members
(SB 990 by Parker)

Died in the Senate

SB 990 would have made certain members of the Teacher Retirement System eligible for early retirement. Members would have been eligible if their age, plus two years, and their service credit, plus two years, would entitle them to retire under the standards set in current law. The bill was to apply to those who retired on or after May 31, 1987 but before Oct. 31, 1987.

Supporters said this bill would encourage the retirement of members of the retirement system who are at the top of the salary schedules. The state would save money by allowing some of the higher-paid teachers to retire early, and it would not endanger the solvency of the retirement system.

Opponents said this bill would cause a shortage of experienced teachers and administrators. The bill would single out a particular group for a benefit that would not be afforded to other members and would be expensive for the system.

Legislative History: The Senate on May 14 refused to suspend the regular order of business to consider the bill by 17 to 9, less than the two-thirds vote required (Journal page 1172).

Parental leave for state employees
(SB 1280 by Parmer)

Died in the House

SB 1280 would have entitled state employees to receive up to 24 weeks of unpaid parental leave upon the birth of the employee's child, upon the adoption or commencement of foster care of a child or to take care of a child who is catastrophically ill. An employee who takes parental leave would be entitled to return to the position held before taking leave. If this were not possible, the employee would be entitled to an equivalent or similar position. Coercion or retaliation against such employee would be prohibited.

Supporters said that whether by economic necessity or by choice, by 1990 about 75 percent of all women with children will be working outside the home. It is important for the development of children and the preservation of the family unit that fathers and mothers be permitted to participate in early child rearing. The lack of state employment policies to accommodate working parents forces many employees to choose between job security and parenting. This conflict discourages the continued service of valuable state employees. SB 1280 would ease this conflict by providing definite guidelines for parental leave.

Opponents said that the state is under no legal obligation to provide this considerable employment benefit for one class of employees. Parental leave is disruptive and costly. To avoid the problems associated with parental leave, state employers would tend to discriminate by not hiring or promoting women employees of child-rearing age.

Legislative History: The Senate passed the bill by voice vote, two members recorded voting nay, on May 4 (Journal page 941). The House State Affairs Committee reported the bill favorably on May 15. It was placed on the General State Calendar for May 29 but was not considered by the House.

On May 30 the House amended SB 1279 by Edwards, an unrelated bill concerning state bidding practices, and added the parental leave provisions of SB 1280 to that bill (Journal page 3964). The Senate by voice vote refused to concur with the House amendment on June 1 (Journal page 2592), and the amendment was dropped by the conference committee.

LOCAL GOVERNMENT

Abolishing treasurer office in Nueces, Gregg and Fayette counties (HJR 35 by Yost)

On Nov. 3, 1987 ballot

HJR 35 would amend the Texas Constitution to abolish the office of county treasurer in Nueces, Gregg and Fayette counties. The county treasurer duties in Nueces County would be transferred to the county clerk. The county treasurer duties in Fayette County would be transferred to the county auditor. The Gregg County commissioners court could transfer the duties to another county officer.

Supporters said the office of county treasurer is no longer worth maintaining in a number of Texas counties. Nueces, Gregg and Fayette counties wish to abolish the office to save money. The county treasurer merely serves as a transfer agent, duties which could be easily performed by another county officer. Independent audits by the county auditor or any other office performing the treasurer's job would protect against mistakes and fraud and would maintain the proper system of checks and balances.

Opponents said elective positions should not be abolished, especially to give the duties to an appointed official or another officer chosen by the commissioners court. The county treasurer, as the elected official who safeguards the county's funds, serves as a check on the actions of the county commissioners court. Other opponents said that if the office of county treasurer is obsolete in these counties, it may be obsolete in other counties as well. Rather than waste the time and expense of amending the Constitution to deal with purely local matters, all counties should be able to decide by local option whether or not they need county treasurers.

Legislative History: The House adopted the proposal by 130 to 8, three members recorded present, not voting, on May 20 (Journal page 2857). The Senate adopted it by 29 to 1 on May 28 (Journal page 1979).

The HRO analysis of the proposed constitutional amendment appeared in the May 20 Daily Floor Report.

Maximum tax-rate increase for some rural fire districts
(HJR 60 by Leonard)

On Nov. 3, 1987 ballot

HJR 60 proposes a constitutional amendment to raise the cap on the property-tax levy of rural fire prevention districts from three cents per \$100 valuation to six cents. The increase would be limited to districts wholly or partly in a county with a population exceeding 400,000 residents. Voter approval would be necessary for increasing a local levy.

Supporters said HJR 60 and its implementing legislation would guarantee that larger rural fire-prevention districts can raise enough revenue to support necessary services. Districts located near large cities have trouble paying for contracted services provided by city fire departments because the three-cent tax rate does not generate enough revenue.

Opponents said it was irresponsible of the Legislature to propose a tax-raising amendment to the voters during difficult economic times.

Legislative History: The House adopted the proposal on May 26 by 122 to 9 (Journal page 3486). The Senate adopted it by 31 to 0 on May 30 (Journal page 2254).

The HRO analysis of the proposed constitutional amendment appeared in the May 26 Daily Floor Report.

Allowing counties to perform work for other governments
(HJR 83 by Stiles)

On Nov. 3, 1987 ballot

HJR 35 proposes a constitutional amendment to allow a county to perform unpaid work for government entities partly or entirely inside its boundaries, using county equipment and personnel.

Supporters said tax money would be saved if counties could assist other governments in the county with projects. Counties do not always have a project underway and find their equipment and employees idle, waiting for the next job. They could easily assist school districts, municipal utility districts or port authorities.

Opponents said this proposed constitutional amendment is too broadly worded. It could authorize a county to do extensive work for free for a utility district controlled by private developers. If a city within the county included area outside of the county, the county could still do work for the city outside of the county. Not all county taxpayers would benefit equally from such use of their tax money.

Legislative History: The House adopted the proposed constitutional amendment by 131 to 0 on May 25 (Journal page 3376). The Senate added clarifying amendments and passed it by 31 to 0 on May 30 (Journal page 2285). The House concurred with the Senate amendments by 139 to 0 on May 31 (Journal page 4126).

The HRO analysis of the proposed constitutional amendment appeared in the May 25 Daily Floor Report.

Controlling proliferation of colonias
(SB 408 by Uribe)

Effective Sept. 1, 1987

SB 408 prohibits a public utility from providing utilities to any subdivided land that is required to be platted unless the plat has been approved by the local city planning commission. The bill provides a mechanism for a landowner, a public utility or the governing body of a city to request the appropriate planning commission to review a plat for this purpose. It also allows a city to enjoin and recover damages for violations by a landowner.

Supporters said the bill would allow cities along the Mexican border to control the proliferation of "colonias" within five miles of their city limits. These substandard developments have severe health and water quality problems due to lack of potable water, sewage systems and proper streets; cities need additional authority to control their growth.

Opponents said that the bill would extend city land-use controls beyond the degree that was justified.

Legislative History: The Senate passed the bill on March 26 by 30 to 0 (Journal page 446). The House passed the bill by nonrecord vote, one member recorded voting no, after adding several amendments, including exempting from the plat requirement land divided into parts, all of which are two and one-half acres or larger, and requiring 25 percent of the members of the Houston city planning commission to reside outside the city boundaries (Journal page 3933). The Senate refused to concur with the House amendments by voice vote on May 31 (Journal page 2420), and a conference committee was appointed. The conference committee removed the House plat-exemption amendment and added the requirement that at least two persons of the Houston city planning commission reside outside the city boundaries. On June 1 the Senate adopted the conference committee report by voice vote (Journal page 2787), and the House adopted it by nonrecord vote (Journal page 4355).

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

City repair of substandard buildings and owner penalties
(SB 481 by Johnson)

Effective Aug. 31, 1987

SB 481 allows home-rule cities with populations of more than 700,000 to repair single-family homes, duplexes and other residential buildings of 10 or fewer units to minimum standards. The city may assess costs against the owner, following a hearing, after expiration of the allotted period for owner repairs or removal. As an alternative to removal or repair by the city, cities can assess civil penalties for failure to repair or remove buildings. City liens are inferior to mortgage liens and non-transferable. Repair liens held by cities of any size may not be foreclosed on properties that are residential homesteads of persons 65 or older.

Supporters said assessments for repair would allow cities to deal with substandard housing without bulldozing or "red tagging." City repairs would restore housing and protect neighborhoods from blight. The provision for civil penalties is an alternative for cases where a landlord is likely to ignore a lien.

Opponents said the bill would go too far by allowing cities to repair property without an owner's consent. Forcing owners to pay for repairs could drive up rents beyond what the market will bear. The civil penalty provision alone would have been sufficient to spur even the most recalcitrant owners.

Legislative History: The Senate passed the bill by 25 to 6 on April 7 (Journal page 559). The House amended the bill to limit the bill to cities 700,000 and over, among other changes, then passed it by nonrecord vote on May 15 (Journal page 2459). The Senate refused to concur with the House amendments on May 19 by voice vote (Journal page 1285), and a conference committee was appointed. The Senate adopted the conference committee report by 28 to 0 on May 29 (Journal page 2108), and the House adopted it by nonrecord vote on May 30 (Journal page 4116).

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

Curbing limited-purpose and strip annexation
(SB 962 by Barrientos)

Effective Sept. 1, 1987

SB 962 limits a city's authority to annex "strips" less than 1,000 feet wide. Also, a city may not use limited-purpose annexation on territory equal in size to more than 10 percent of its incorporated area in any given year. The bill also provides a deadline by which a city must have substantially completed building capital improvements to provide municipal services to newly annexed areas.

Supporters said the bill would curb questionable annexation practices and abuses. If areas are to be included within a city, then the city should have to provide necessary service to the annexed area in a reasonable period of time.

Opponents said cities should be given more land-use controls, not less. Since there are no state, regional, or county land-use controls, cities are the only government entities that can effectively limit and plan development to protect homeowners and the environment.

Legislative History: The Senate passed the bill by voice vote on May 25 (Journal page 1741). The House added several amendments, including one that would allow a political subdivision to continue to exist for up to 10 years after being annexed by a city if at least 90 percent of the utility and road improvements being paid for by bonds issued by the subdivision were completed, then passed the bill by nonrecord, one member recorded voting nay, on May 30 (Journal page 3962). The Senate concurred with the House amendments by voice vote on June 1 (Journal page 2636).

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

Randall County hospital district coverage, district revisions
(SJR 5 by Sarpalius, second called session)

On Nov. 3, 1987 ballot

SJR 5 would amend the Texas Constitution to allow the Amarillo Hospital District to assume responsibility for hospital care of indigent residents in the area of Randall County that is not served by another hospital district. A tax could be levied on residents of the area, with voter approval. Randall County would have to pay the state \$45,000 for the costs of publishing the amendment. Future changes in the boundaries or jurisdiction of hospital districts that are described in the Constitution could be made without constitutional amendment.

Supporters said the parts of Randall County that are not part of a hospital district need service. This constitutional amendment would allow the people in the affected part of Randall County to decide by election whether they want the Amarillo Hospital District to assume indigent health care duties from the county. The provision for permitting future changes in constitutionally created hospital districts to be made by statute would simply avoid the expense of a constitutional amendment for such local concerns.

Opponents said this proposal would just authorize more taxes for residents of Randall County to satisfy an obligation that the county already has. Other opponents said that it is unfair to force Randall County pay for publishing this proposed constitutional amendment since other localities affected by single amendments do not have to pay.

Legislative History: The Senate adopted the proposal by 28 to 0 on July 6 (Journal page 52). The House amended the proposal to add the provisions for Randall County to pay for publishing the resolution and for future changes in boundaries or jurisdiction without amending the Constitution, then passed it by 135 to 0 on July 17 (Journal page 352). The Senate initially refused to concur with the House amendment, then reconsidered and voted to concur by 27 to 0 on July 18 (Journal page 203).

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

Justice of the peace precincts in certain counties
(SJR 6 by Lyon, second called session)

On Nov. 3, 1987 ballot

SJR 6 proposes an amendment to the Texas Constitution to allow counties with populations of 150,000 or more, according to the most recent federal census, to elect more than one justice of the peace per precinct. The current provision requiring two justices of the peace in precincts in which there is a city of 18,000 or more would be modified to apply only to counties with populations of less than 150,000 according to the most recent federal census.

Supporters said granting urban counties the discretion to determine the number of justices per precinct would aid them in drawing precincts that comply with the Texas Constitution as well as the federal Voting Rights Act. Dallas County has received legal advice that its districting plan violates the Texas Constitution because the 18,000 population provision has been interpreted to apply only to cities of that size wholly contained in a precinct. Amending the Texas Constitution is the least expensive and most straightforward means for Dallas County and other counties to assure the validity of plans including multi-judge precincts.

Opponents said allowing large counties complete discretion to set the number of justices of the peace in each precinct would increase the potential for political abuses, such as creating positions for friends and abolishing those held by foes. Other opponents said the solution to the problem of arbitrary population brackets is not another arbitrary population bracket. Dallas County's concern could be addressed in ways that better serve the state, such as elimination of the city boundary criteria entirely. Only criteria like county population, number of precincts and precinct population are likely to produce reasonably balanced workloads and levels of service.

Legislative History: The Senate adopted the proposal by 30 to 0 on July 16 (Journal page 149). The House adopted it on July 18 by 135 to 3 (Journal page 371).

The HRO Analysis of HJR 10, the companion proposal, appeared in the July 18 Daily Floor Report.

Creation of emergency medical-services districts
(SJR 27 by Blake)

On Nov. 3, 1987 ballot

SJR 27 proposes a constitutional amendment to authorize the Legislature to create emergency medical-services districts that could levy a property tax of ten cents per \$100 valuation if approved by the voters in the proposed district.

Supporters said the proposal would give rural counties the ability to provide emergency medical services to unincorporated areas and to raise enough tax revenue to support additional services.

Opponents said that the Legislature should not be proposing a tax-raising mechanism to the voters during a time of economic hardship.

Legislative History: The Senate adopted the proposal by 31 to 0 on May 7 (Journal page 1023). The House amended the proposal to raise the allowable tax rate from three cents per \$100 valuation to ten cents and to eliminate reference to taxes in the ballot language, then adopted it on May 21 by 125 to 18 (Journal page 2958). The Senate concurred with the House amendments by 30 to 0 on May 23 (Journal page 1576).

The HRO analysis of the proposed constitutional amendment appeared in the May 21 Daily Floor Report.

PUBLIC EDUCATION

Teacher-appraisal system revisions
(HB 173 by Haley, second called session)

Effective Oct. 20, 1987

HB 173 creates separate systems for appraising teachers and administrators. Probationary teachers and teachers on level 1 of the career ladder will be appraised twice each school year. Teachers on career ladder levels 2, 3, and 4 whose performance on the most recent appraisal was rated "satisfactory" or above will be appraised only once during each school year.

The bill requires the State Board of Education to adopt a process and criteria for appraising school administrators for use in all districts.

Supporters said the bill would reduce the number of appraisals needed for teachers on the higher rungs of the career ladder. Teachers on levels 2, 3, and 4 have proven their performance, and an additional appraisal each year is too costly to justify.

Opponents said that reducing the appraisal of teachers for placement on the career ladder would undermine one of the key education reforms. Other opponents said the reduction in appraisals for experienced teachers did not go far enough. Appraisals every two or three years would suffice.

Legislative History: The House passed the bill on July 18 by nonrecord vote, one member recorded voting nay, five members recorded voting aye (Journal page 487). The Senate amended the bill to delete a House floor amendment allowing different evaluation standards depending on the education setting, then passed the bill by voice vote on July 19 (Journal page 278). The House concurred with the Senate amendments by nonrecord vote, five members recorded voting nay, on July 21 (Journal page 653).

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

Funding of the foundation school program
(HB 177 by Hammond, second called session)

Effective July 21, 1987

HB 177 requires the commissioner of education to reduce each school district's allocation per student in average daily attendance if, for either year of the fiscal biennium ending Aug. 31, 1989, the state's share of the foundation school program exceeds the amount appropriated for that year. The reduction in state aid to local districts would be determined by a proration formula adopted by the State Board of Education. The maximum tax rate allowed before a rollback election can be called would be increased by the amount necessary to raise the revenue required to compensate for the loss of state aid.

Supporters said that since the state remains under severe financial constraints, it may not be able to pay for its full share of the foundation school program in the coming biennium. This bill offers the most equitable way for local districts to make up any shortfall should the state run short of funds.

Opponents said it is unfair to ask local school districts to make up the difference if the state should fall short of funds. The state should look for other ways to cut spending or for ways to raise taxes to avoid reductions in state aid to local districts. Local taxpayers should not be hit with both a state tax hike and a local school tax hike. Local districts are already having difficulties meeting their budgetary needs because of a drop in local property values.

Legislative History: The House changed HB 177 substantially by floor amendment, deleting provisions that would have delayed implementation of teacher-salary career ladder levels 3 and 4 and would have increased the local fund assignment from 33.3 percent to 34.8 percent. The House then passed the bill by 108 to 30 on July 18 (Journal page 504). The Senate added clarifying amendments, then passed the bill by 29 to 0 on July 19 (Journal page 277). The House concurred with the Senate amendment by 105 to 44 on July 20 (Journal page 600).

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

Sex education training in teacher education programs
(HB 226 by Delco)

Died in the House

HB 226 would have required every state-supported senior college and university to include as part of its teacher certification program a course on reproduction and family life. The course would have included instruction in how to teach the subject to children. It also would have had to emphasize the merits of abstinence from sexual activity.

Supporters said the bill was needed to provide teachers with the necessary training to deal with the growing problem of teenage pregnancy in Texas. Texas ranks third in the nation in the number of babies born to teenagers. Since 1981 Texas has led the nation in the number of babies born to girls under 14 years old. Many parents do not feel comfortable discussing sexual matters with their children, so teachers should receive the training necessary to counsel teenagers in this area. Since February of 1987 the State Board of Education has required all school districts to offer some kind of program involving sexual responsibility -- HB 226 would ensure that the teachers teaching the course are competently trained.

Opponents said the only thing the state should be doing to address Texas' teenage pregnancy problem is to encourage sexual abstinence. HB 226 would lay the foundation for state-mandated sex education programs and clinics in the public schools. The Legislature and Texas educators should leave the teaching of morality, values and sexual responsibility to parents.

Legislative History: The House Higher Education Committee reported HB 226 on April 6 by 5 to 0. It was placed on the General State Calendar on May 27 but was not considered by the House.

The HRO analysis of the bill appeared in the May 27 Daily Floor Report.

Expulsion from school for arson or vandalism
(HB 723 by A. Hill)

Effective Aug. 31, 1987

HB 723 adds two offenses to the list for which a student may be expelled from school, if the offense was committed on school property or during a school function. A student can be expelled for engaging in arson or for engaging in criminal mischief. (Arson is generally defined as starting a fire or explosion with intent to destroy or damage any building, habitation or vehicle. Criminal mischief generally means intentional or knowing damage or destruction of property without the owner's consent, i. e. vandalism.)

Supporters said students who destroy school property either through criminal mischief or arson should be expelled. School officials have had no recourse against students.

Opponents said this bill further undermines one of the major provisions of the educational reforms of 1984, designed to keep students in school. The state should provide every student with an education. If school districts are allowed simply to expel problem students, society will have to pay later.

Legislative History: The House passed the bill on May 8 by nonrecord vote (Journal page 1988). The Senate amended the bill and passed it by 30 to 0 on May 25 (Journal page 1683). The House concurred with the Senate amendments by nonrecord vote on May 27 (Journal page 3630).

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

Dropout reduction program
(HB 1010 by Martinez)

Effective Sept. 1, 1987

HB 1010 requires the Texas Education Agency (TEA) to develop a program to reduce the number of students who leave school before graduation. The program will include standardized statewide record-keeping, documentation of student school transfers and follow-up procedures. A nine-member interagency coordinating council will be created to coordinate policies and services. A statewide dropout information clearinghouse will be developed.

Supporters said the bill would help solve the school dropout problem. Only four states have a higher dropout rate than Texas. If Texas is to remain competitive in attracting new industry, which demands a well-educated work force, coordinated efforts must be directed at curbing the dropout problem.

Opponents said the state cannot afford to implement such measures now. The yearly cost of the proposal would be \$522,000. The best alternative would be to encourage students to stay in school, which can be done with current personnel.

Legislative History: The House passed the bill by nonrecord vote, seven members recorded voting nay, one member recorded voting aye, on April 22. (Journal page 781). The Senate amended the bill and passed it by voice vote on May 22. (Journal page 1530). The House concurred with the Senate amendments by nonrecord vote on May 26 (Journal page 3451).

The HRO analysis of the bill appeared in the April 21 Daily Floor Report.

School-district lease-purchase agreements
(HB 1285 by Haley)

Died in conference committee

HB 1285 would have allowed school districts to enter into lease-purchase contracts for buildings and other improvements to real property. Five percent of the registered voters of the district could petition the school board to call a referendum on whether such a contract should be executed. The bill also would have clarified that contracts a political subdivision enters into for the use or purchase of any property not pledged to be paid with property taxes would have to be paid through an annual appropriation or any source other than property taxes.

Supporters said this bill would give school districts an alternative to issuing bonds for financing improvements to buildings and other real property. Districts with poor bond ratings or whose residents regularly defeat bond requests have no other way to fund badly needed improvements. The registered voters in a school district would still be able to defeat lease-purchase financing of improvements by petitioning for a referendum.

Opponents said the bill would allow school districts to incur a form of debt to fund building improvements without voter approval.

Legislative History: The House passed the bill by nonrecord vote, one member recorded voting no, on May 11 (Journal page 2009). The Senate amended the bill to eliminate the lease-purchase option and to require that any improvement contract be subject to competitive bidding and prevailing wage requirements, then passed it by voice vote on May 22 (Journal page 1535). The House refused to concur with the Senate amendments by nonrecord vote on May 26, and a conference committee was appointed (Journal page 3455). The conference report adopted the House version of the bill. The House adopted the conference committee by nonrecord vote on June 1 (Journal page 4262). The Senate voted to recommit the bill to conference committee by 19 to 11 on June 1 (Journal page 2668), and no further action was taken.

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

Public posting of school information
(HB 1758 by Culberson)

Effective Sept. 1, 1987

HB 1758 requires each school to post certain information, including a map of the school's attendance area, the school's total enrollment for each of the past four years, the ratio of teachers to students and a statement that copies of the notice and map are available in the school's main office. The notice must also include the aggregate results of the Texas Educational Assessment of Minimum Skills (TEAMS) test for the past three years and the results of the exit-level test that students must pass before they can receive their high school diploma. High schools must post the most recent aggregate results by grade level of any norm-referenced assessment instrument, including the Scholastic Aptitude Test (SAT) and American College Testing Program (ACT).

Supporters said that posting notice would make it easier for parents to obtain vital information concerning their child's school or prospective school. All of the posted information is already available through the Open Records Act but is often difficult to obtain. Posting this information would serve as an incentive to spur improved performance by school administrators, teachers and students.

Opponents said this bill was unnecessary because the information schools would be required to post is already available to anyone who asks for it. Posting such information would only serve as a divisive factor among the different schools and districts. It would encourage parents to make judgments from raw data that are often inappropriate for direct comparisons.

Legislative History: The House passed the bill by a nonrecord vote, four members recorded voting nay, on April 27 (Journal page 1345). The Senate added some clarifying changes and passed the bill by voice vote on May 23 (Journal page 1645). The House concurred with the Senate amendments by nonrecord vote, one member recorded voting nay, on May 27 (Journal page 3688).

The HRO analysis of the bill appeared in the April 23 Daily Floor report.

Larger minimum class size with teacher's aide
(HB 2495 by Haley)

Died in Senate committee

HB 2495 would have allowed school districts to enroll up to 25 students in a kindergarten, first, second, third or fourth grade class if a full-time aide were in the classroom at all times along with the regular classroom teacher. (Current law limits class size to 22 students per teacher for kindergarten, first and second grades, and for third and fourth grade starting with the 1988-89 school year.)

The bill would have also added to current law that a school district could be exempted from the class size requirements if the state education commissioner found that the limits would impose an undue hardship on the district due to an emergency caused by a fire or natural disaster.

Supporters said school districts need flexibility in maintaining a low teacher-student ratio while still providing students with a quality education. It would help school districts adjust when a few more students than anticipated enroll.

Opponents said this bill would be even more costly for school districts than the class size limits in current law. School districts now pay aides half to a third as much as a teacher. It would be less expensive for a school district to hire three teachers to instruct 50 students than it would be to hire two teachers and two aides to do the same job. It would save the districts little money if they must hire a fully qualified teacher aide just to handle one to three additional students in a class.

Legislative History The House amended the bill to allow a school district to be exempted from the class size requirements if the state commissioner found that the limits would impose an undue hardship on the district due to an emergency caused by a fire or natural disaster and to change the effective date of the bill from Sept. 1, 1987 to Sept. 1, 1988. The bill then passed on May 26 by nonrecord vote, 10 members recorded voting nay (Journal page 3488). The bill was referred to the Senate Education Committee, where no final action was taken.

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

Setting school-funding formulas in the appropriations bill
(HB 2572 by Rudd)

Died in the Senate

HB 2572 would have permitted the Legislature to set the components of the Foundation School Program funding formulas in the appropriations bill. The formulas, which affect allotments for special, bilingual, compensatory and vocational education programs and include special allotments for experienced teachers, educational improvement, transportation, enrichment equalization and gifted and talented students, are currently determined by separate statute. Other statutory formulas set the local share of the Foundation School Program and adjust for price differentials between districts and district size.

Supporters said the bill would treat public education like other items in the state budget. This would give the Legislature a way to better determine the amount of general revenue available to balance the state budget. This change would not endanger public education funding since the full Legislature would still have to approve any change in the funding formulas made in the appropriations bill.

Opponents said the bill would have reversed all the progress made in public-education financing by the 1984 special session. Public education has been established by law as a top priority for the state, and the Legislature has enacted a carefully considered series of formulas to ensure that local school districts would receive adequate state aid for each element of educational funding. HB 2572 would allow the Appropriations Committee to override these decisions and balance the state budget on the backs of Texas school children.

Legislative History: The House eliminated the provisions setting funding formulas in the appropriations bill by 75 to 69 (Journal page 2644), then passed HB 2572 on May 20 by 127 to 10 (Journal page 2861). The Senate Finance Committee reported the bill favorably without amendment, but it was never considered on the Senate floor.

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

Reallocation from Highway Fund to Available School Fund
(SB 68 by Montford, second called session)

Effective Sept. 1, 1987

SB 68 requires the comptroller to transfer to the Foundation School Fund during the fiscal 1988-89 biennium \$280 million that would otherwise be credited to the Highway Fund and was not constitutionally dedicated to that fund. During the fiscal 1990-91 biennium, the comptroller will transfer \$280 million from the General Revenue Fund to the Highway Fund, plus transfers to compensate the Highway Fund for interest it would have earned on the funds transferred to the school fund in the prior biennium.

Supporters said the bill would bring an additional \$280 million into the Foundation School Fund for the fiscal 1988-89 biennium, freeing general revenue that would otherwise be allocated to the school fund in order to help maintain other vital state services. The process proposed by SB 68 is essentially a loan from the Highway Fund to the Foundation School Fund, with the result that everything would turn out about even after four years. The bill would not be creating a debt for the next Legislature to deal with.

Opponents said that the bill would saddle the next Legislature with a \$280 million debt. It is bad public policy to restrict a future budget in order to fund current state spending. By raiding the Highway Fund the bill would renege on prior commitments to maintain adequate funding for a first-class transportation system.

Legislative History: The Senate passed the bill by 26 to 0 on July 15 (Journal page 112). The House passed the bill on July 18 by 140 to 3 (Journal page 504).

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

Method of selecting State Board of Education
(SB 86 by Parker, second called session)

Effective Oct. 20, 1987

On ballot Nov. 3, 1987

SB 86 requires a referendum at the Nov. 3, 1987 election to decide whether the State Board of Education (SBOE) should be appointed or elected. If the proposition is defeated, the members of the SBOE will be elected at the 1988 general election, as required by current law. If the proposition is approved, the SBOE will be appointed by the governor from three persons per district nominated by the Legislative Education Board.

Supporters said continuing the appointed SBOE would allow continuity in state education policy at a time when public education is at a crossroads, facing the challenges of restricted state revenues and lawsuits threatening the state school-finance system. It is especially important that the current board serve during the sunset review of the Texas Education Agency in 1989. Also, the 15 SBOE districts are so large that a person of average means could scarcely mount a campaign.

Opponents said the Legislature and the voters never intended for the SBOE to remain an appointed board. A transitional appointed board was a compromise reached during negotiations over HB 72, the 1984 education reform law. The Legislature should not go back on its word that the board will revert to an elective system. Retaining an appointed board would foster an elitist image of the board that could undermine public support for education reform. The voters should be trusted to choose a board that will be sensitive to state education needs.

Legislative History: The Senate passed the bill on July 16 by voice vote, seven members recorded voting nay (Journal page 138). The House amended the bill to change the dates on which the SBOE would either be elected or appointed following the referendum and to change the wording of the ballot proposition, then passed the bill by 91 to 52 on July 18 (Journal page 505). The Senate concurred with the House amendments by voice vote on July 19 (Journal page 516).

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

Modifying no pass/no play rule
(SB 232 by Sarpalius)

Died in House committee

SB 232 would have required the State Board of Education (SBOE) to study the effectiveness of the no pass/no play suspension rule under which students are suspended from extracurricular activities for a six-week grade reporting period if they receive a grade below 70 in any academic course.

Supporters said now that the no pass/no play rule has been operating for a few years, it should be reviewed to determine if modifications are justified. A study would help the SBOE and the Legislature decide if a three-week or a six-week suspension period is best for promoting academic performance.

Opponents said this bill is one more effort to undermine the education reforms of HB 72. The no pass-no play provisions of HB 72 are working well and have broad public support. Also, school districts that were not part of a pilot study would have to compete against schools using a shorter experimental suspension period.

Legislative History: The Senate passed the bill by voice vote, one member recorded voting nay, on May 25 (Journal page 1744). The bill was referred to the House Public Education Committee, where no action was taken.

Repeal of subject-area testing for teachers
(SB 335 by Parker)

Effective April 25, 1987

SB 335 repeals the requirement that teachers and administrators pass an examination testing their subject-area knowledge in order to retain their certification. The bill also repeals the requirement that the State Board of Education (SBOE) consult teachers and administrators when developing basic literacy and subject-matter tests and that teachers and administrators be allowed to use SBOE-developed preparation for the tests, including remedial aid.

Supporters said the bill would eliminate the need to spend more than \$14 million in scarce state funds to find out what everyone already knows: the majority of Texas teachers are competent and knowledgeable in their subject areas. Teachers have already proven themselves through their overwhelming success on the literacy test, the TECAT. Developing separate tests for each subject area would be an administrative nightmare.

Opponents said repeal of subject-area testing would be a step backward from the progress made by the HB 72 reforms. Subject-area testing, like some other reforms, should be fine-tuned, not abandoned. The current revenue shortage is no justification for removing the subject-area testing requirement.

Legislative History: The Senate passed the bill by 30 to 0 on Feb. 24 (Journal page 217). The House passed the bill by 139 to 0 on April 23 (Journal page 1298).

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

Education Code revisions
(SB 793 by Parker)

Died in the House

SB 793 would have revised the Education Code, especially in areas dealing with student testing and proficiency. The bill would have deleted the requirement that first-grade students be tested on minimum skills in reading, writing and mathematics. The State Board of Education (SBOE) could direct the Texas Education Agency (TEA) to adopt a test to measure the minimum skills of first-grade students in reading, writing and mathematics. The bill would have deleted a requirement that students who fail the exit-level test for graduation be allowed to re-take the test during the 11th and 12th grades. Instead, the the SBOE would have selected the dates and locations for students to re-take the test.

The bill would have extended the time between TEA monitoring, inspection and accreditation visits. Each school district would have been required to pay for a TEA monitor or master to review the school district's operation.

The bill would have removed the pilot status of year-round school programs and made other administrative changes. A competency profile would have to be maintained for each student enrolled in a vocational education course designed to provide occupational instruction.

Supporters said the changes were minor "clean-up" alterations. The current tests to measure the minimum skills of first-grade students are not reliable indicators of the skills of the students. This bill would give the SBOE the direction it needs to develop a test that would measure the minimum skills of these students. The bill would also give the SBOE the flexibility needed to schedule test dates for the re-taking of the exit-level exam.

No apparent opposition

Legislative History: The Senate passed the bill by voice vote on April 28 (Journal page 836). The House Public Education Committee reported the bill by 8 to 0 on May 22. It was placed on the House General State Calendar on May 28, but it was not considered by the House.

The HRO digest of the bill appeared in the May 28 Daily Floor Report.

Degree requirements for a teaching certificate
(SB 994 by Parker)

Effective Sept. 1, 1987

SB 994 requires a person applying for a teaching certificate after Sept. 1, 1991 to possess a bachelor's degree in an academic major or interdisciplinary academic major that is related to a subject in the Texas school curriculum. The interdisciplinary academic major could be reading, but not education.

After Sept. 1, 1991 the State Board of Education (SBOE) may not require applicants to have more than 18 semester hours of education courses at the baccalaureate level. A minimum number of semester-credit hours of student teaching, which would be included in the hours needed for certification, must be required.

The SBOE and the Texas Higher Education Coordinating Board must develop a comprehensive teaching-induction program, offering supervision by experienced teachers, for the probationary year before a teacher receives a Level One teaching certificate. The TEA and the coordinating board are to identify talented students and recruit these students into the teaching profession.

Supporters said the bill would broaden the curriculum of future Texas teachers in response to the national movement to strengthen teacher education programs. It would shift teacher training from education methodology courses to more substantive course work. The bill would help eliminate useless education courses that are perpetuated by departments of education.

Opponents said this legislation presupposes without justification that education majors not receive a broad education. Education majors do not take 120 hours of teaching methods courses. In fact, students in education programs have a more well-rounded curriculum than most academic majors, since education students take the same academic program as majors in academic fields, as well as the appropriate education courses.

Legislative History: The Senate passed the bill by voice vote on May 13 (Journal page 1129). The House passed the bill by a nonrecord vote, two members recorded voting nay, on May 29 (Journal 3964).

The HRO analysis of the bill appeared in the May 27 Daily Floor Report.

STATE GOVERNMENT

State purchase of office buildings (HB 1169 by Gibson)

Effective June 19, 1987

HB 1169 allows the State Purchasing and General Services Commission to decide whether to build new state office buildings or purchase existing buildings when the state needs more than 50,000 square feet of additional office space within a particular county. Bonds previously authorized for issuance by the Texas Public Finance Authority to build more than 50,000 square feet of office space in a county can be used instead to purchase an existing building, if it is determined to be more financially advantageous than constructing a new building. The bill requires disclosure of persons who would benefit from the sale of the building to the state. Any purchase must be approved by the Legislature or by the Legislative Budget Board.

The Texas Public Finance Authority can also purchase, construct or repair buildings in any county where the state needs more than 50,000 square feet of space in addition to space in Travis County. The board may issue bonds up to one and one-half the amount of the estimated cost for a project. All of these bonds must be approved by the bond review board.

Supporters said the bill would save the state money by allowing for more efficient planning of office-space needs. The bill would make it easier for the state to purchase existing buildings, rather than build new ones, if that would be more cost-effective. Office buildings are abundant as a result of overbuilding by the private sector, and the state can take advantage of the market and save taxpayer money.

Opponents said the purchase of existing private buildings by the state would lower property-tax income to school districts and local governments. It could also encourage speculative building in areas where state expansion is likely. This could produce political pressure on the state purchasing commission and the Legislature to bail out developers unable to obtain private tenants for their structures.

Legislative History: The House amended the bill to require public disclosure of persons benefitting from state purchase of an existing building, then passed it by nonrecord vote, seven members recorded voting nay, one recorded voting present, on May 13 (Journal page 2175). The Senate passed a complete substitute allowing the public finance authority to purchase, construct and repair any kind of state property anywhere in the state and permitting the sale of bonds or lease agreements to finance equipment approved by the Legislature,

then passed the bill by 30 to 0 on May 22 (Journal page 1543). The House refused to concur with the Senate amendments by nonrecord vote, one member recorded voting present, on May 22 (Journal page 3678), and a conference committee was appointed. The Senate adopted the conference report by 29 to 0 on May 31 (Journal page 2407), and the House adopted it by 140 to 0 on June 1 (Journal page 4269).

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

Establishing English as official state language
(HJR 55 by Patterson)

Died in House committee

HJR 55 would have amended the Texas Constitution to make English the official language of the state. The Legislature would have been required to enforce the amendment with appropriate laws. Persons seeking to enforce the amendment would have had standing to sue the state.

Supporters said the proposal would ensure that Texas remains united, secure and prosperous. The state has been divided by groups who feel entitled to be educated and live their entire lives in the language of their ethnic heritage. Anyone who cannot speak English is economically handicapped and needs an incentive to learn the common language.

Opponents said the proposed amendment would be divisive and counterproductive. It could be used to discriminate in many areas, including voting, hiring and housing. It could also hinder free enterprise by leading to the prohibition of multilingual advertising.

Legislative History: The House referred the proposed amendment to the State Affairs Committee, where it died in subcommittee.

Four-year terms for House members
(HJR 112 by Finnell)

Died on House floor

HJR 112 proposed a constitutional amendment to increase terms of House members from two years to four. Members would draw lots for two-year and four-year terms so that half the membership would be elected every two years. All representatives would have been chosen after each reapportionment. Members would continue to be elected to two-year terms until the first election after the reapportionment following the 1990 census.

Supporters said Texas cannot afford perpetual campaigning by a revolving-door body of members always thinking of the next election. The state needs continuity of leadership. Texas state senators behave responsibly toward their constituents even though they are elected every four years; House members would do the same. House members have smaller districts than senators do and this would guarantee accountability.

Opponents said legislators who must face voters every two years are more responsive to constituents because they cannot count on the public and press forgetting legislative action before an election. This proposed amendment, apparently designed to save incumbent House members the bother of running every two years, would create a House of full-time career politicians rather than the part-time citizen membership envisioned in the Constitution.

Legislative History: The House rejected the proposed amendment on third reading by 87 to 56, less than the two-thirds margin required for adoption, on May 26 (Journal page 3555).

The HRO analysis of the proposed constitutional amendment appeared in the May 21 Daily Floor Report.

Martin Luther King, Jr. birthday state holiday
(SB 485 by Johnson)

Effective Aug. 31, 1987

SB 485 permits state agency heads to allow employees to substitute Martin Luther King, Jr. Day (the third Monday in January) as a paid state holiday for any other state holiday occurring on a weekday, except general-election day, and on which the agency is required to be open.

Supporters said the bill would permit state employees to observe the birthday of this major figure in American history if they wish, without increasing the number of paid state holidays. Martin Luther King, Jr. Day is a federal holiday, and state employees should be able to observe it as well. The loss to the state would be minimal since state offices would remain open.

Opponents the state has too many holidays already. Allowing state employees to choose the holidays they would observe would complicate the administration of state offices.

Legislative History: The Senate passed the bill by 31 to 0 on May 1 (Journal page 919). The House passed the bill by nonrecord vote, six members recorded voting nay, on May 14 (Journal page 2173).

The HRO analysis of the House companion bill, HB 32, appeared in the May 13 Daily Floor Report.

Official citations for Texas laws
(SB 664 by McFarland)

Died in the House

SB 664 would have authorized the secretary of state and the Texas Legislative Council to adopt official citations for all general and permanent state laws that do not already have official citations. It would also have made the Deceptive Trade Practices Act applicable to any publisher who distributed Texas statutes under some other citation system without clearly disclosing that fact to the consumers.

Supporters said these changes would guarantee that the system of numbering Texas statutes is public property, so that any publisher would be able to use it. This would eliminate the West Publishing Company's claimed monopoly on the numbering system used in their Vernon's Texas statutes, increasing competition and cutting prices.

Opponents said the bill was special interest legislation for the benefit of the Bancroft Whitney Company. They want to use the numbering system developed by West Publishing to publish their own rival set of Texas statutes. This plan would create confusion and would not necessarily lower prices.

Legislative History: The Senate passed the bill by 27 to 0 on March 12 (Journal page 329). The House tabled the bill by nonrecord vote on May 21 (Journal page 2983).

The HRO analysis of the bill appeared in the May 21 Daily Floor Report.

Annual legislative sessions
(SJR 5 and SB 38 by Parmer)

Died in House committee

SJR 5, a proposed constitutional amendment and its implementing legislation, SB 38, would have required a 60-day budget session of the Legislature starting on the third Tuesday of April of even-numbered years, in addition to the current 140-day regular session in odd-numbered years. The budget session would have been restricted to budget, appropriations and state-revenue measures, and to emergency matters submitted by the governor. The Legislature could have chosen to enact a one-year budget, rather than the current biennial budget.

Supporters said a one-year budget cycle would better fit the needs of a large urban state like Texas. The Legislature has more work than it can do in a deliberate fashion when it only meets every two years. Regular annual sessions would help eliminate the crisis atmosphere of special sessions forced by emergencies. Trying to predict state needs so far in advance often results in waste -- state agencies should have to justify their spending needs every year, and revenues could be adjusted up or down in annual increments, avoiding the large budget and tax dislocations of recent years.

Opponents said that annual legislative sessions would eliminate the "citizen-legislator" who stays close to the people most of the year. Meeting only once every two years provides a "cooling-off" period -- legislatures in other states tend to jump on the fad-of-the-moment bandwagon. If an emergency requires a special session, then the Legislature, and public attention, can focus on a few important issues. Two-year budgeting allows more concentrated oversight and review of how agencies spend their money and permits agencies to do more long-term planning.

Legislative History: The Senate passed SJR 5 on May 12 by 21 to 9 (Journal page 1107). The Senate passed SB 38 by voice vote, seven members recorded voting nay, on May 12 (Journal page 1108). The House State Affairs Committee considered SJR 5 and SB 38 at a public hearing on May 25 and left both measures pending.

Eligibility of legislators for other offices
(SJR 9 by Brown)

On Nov. 3, 1987 ballot

SJR 9 would delete the constitutional provision rendering senators and representatives ineligible during their elected terms to hold offices for which "emoluments" (salary or benefits) had been increased by the Legislature. Former legislators entering such offices would not be entitled to an increase authorized during their legislative terms but could receive raises adopted by subsequent legislatures. The amendment also would eliminate the provision making legislators ineligible during their elected terms to be appointed to offices for which appointments must be confirmed by the Legislature. It would also remove ineligibility for offices appointed in whole or in part by either house of the Legislature.

Supporters said current provisions intended to prevent conflicts of interest are too sweeping in that they keep otherwise qualified legislators from serving in other offices during the period of their elected term, regardless of whether they resign before their term is completed. Under the Supreme Court's interpretation of the "emoluments" provision, no legislator is eligible to run for any office with an overlapping term if a pay raise, including a small increase intended to keep all state employees even with inflation, was approved during that term. Denying them the raise makes more sense than barring them from service. Public hearings on Senate confirmation would guard against conflicts of interest in connection with gubernatorial appointments of legislators.

Opponents said the amendment would remove important protections against gubernatorial vote-trading by rewarding legislators with plum appointments. Senators should not get a risk-free shot at office by running for another state office in the middle of their term, especially if they have voted to increase the compensation to that office. Other opponents said prohibiting former legislators from receiving raises approved when they were legislators is unnecessary because when they run for that office the voters can decide if there is a conflict.

Legislative History: The Senate passed SJR 9 by 26 to 0 on Feb. 26 (Journal page 236). The Senate version would have allowed legislators elected to an another office to accept increased emoluments that were part of a general increase for all offices. The House amended the proposal to prohibit legislators from receiving any increased emolument during the term for which they had been elected to the Legislature, then adopted it by 125 to 14 on May 27 (Journal page 3653). The Senate did not concur with the House amendment by voice vote on May 28 (Journal page 1985), and a conference committee was appointed. The conference committee report added the provision

allowing appointment of legislators to other offices during their elected term. On June 1 the Senate adopted the conference report by 31 to 0 (Journal page 2656) and the House adopted it by 132 to 15 (Journal page 4344).

The HRO analysis of the proposed constitutional amendment appeared in the May 26 Daily Floor Report.

Speaker serving on executive committees
(SJR 17 by Farabee)

On Nov. 3, 1987 ballot

SJR 17 proposes a constitutional amendment to allow the Legislature to include the speaker of the House of Representatives as a member of agencies or committees that include executive department members and perform executive functions.

Supporters said the amendment is necessary to allow the speaker to serve as a voting member of the Cash Management Committee and the Bond Review Board. Since these committees exercise some executive authority, the House speaker may not be able to serve as a voting member without violating the constitutional separation of powers among the executive, legislative and judicial branches. Allowing the speaker to serve on such committees and boards would be an appropriate exception to the separation of powers provision since issuance of state debt is closely related to the appropriations process. Legislators would be accountable to the electorate if they appointed the speaker to an inappropriate position.

Opponents said political niceties involving certain boards do not justify breaching the constitutional separation of powers, which must be preserved as a guard against abuses of power. The speaker, who is elected by a single district and chosen by his House colleagues, cannot be equated with the lieutenant governor, who is elected statewide and is officially a member of the executive department. The speaker cannot be expected to provide an effective check on the actions of executive department members while acting as a quasi-executive.

Legislative History: The Senate passed SJR 17 by 29 to 2 on April 1 (Journal page 509). The House added an amendment allowing appointees of the speaker also to serve on executive committees, then passed it on May 14 by 140 to 1 (Journal page 2230). The Senate refused to concur with the House amendment by voice vote on May 15 (Journal page 1205), and a conference committee was appointed. The conference report deleted the House amendment. The Senate adopted the conference committee report on May 31 by 29 to 0 (Journal page 2404). The House adopted the conference report by 144 to 0 on June 1 (Journal page 4267).

The HRO analysis of the proposed constitutional amendment appeared in the May 13 Daily Floor Report.

Limits on appointments by lame-duck governors
(SJR 53 by Edwards)

On Nov. 3, 1987 ballot

SJR 53 would authorize the Legislature to limit the terms of office of those appointed by outgoing governors on or after the Nov. 1 preceding the general election for governor. Such appointments could be limited to periods ending before a term would otherwise expire or before the next election at which a vacancy would be filled. The expiration of a term of office or the creation of a new office would constitute a vacancy.

Supporters said the amendment would safeguard the intent of a 1983 law regarding lame-duck gubernatorial appointments. The intent of the law is to prevent lame-duck governors from extending their influence via "midnight appointments." The amendment, combined with implementing legislation, would ensure that only judicial appointments could be made for a full term by lame-duck governors and that other lame-duck appointments could terminate Feb. 1.

Opponents said allowing the governor to make post-election appointments enhances continuity and has worked well at the federal level. Current constitutional provisions reflect the governor's mandate to use the appointment power for the entire term of office. The timing of this attempt to amend the Constitution suggests that it is intended to constrain the current governor, who has said he will not seek another term.

Legislative History: The Senate adopted SJR 53 on May 21 by 30 to 0 (Journal page 1470). The House adopted it by 113 to 28 on May 28 (Journal page 3743).

The HRO analysis of the proposed constitutional amendment appeared in the May 28 Daily Floor Report.

STATE FINANCE

Budget execution authority (HB 7 by Hollowell, second called session)

Effective Aug. 3, 1987

HB 7 creates a system for adjusting state finances between legislative sessions. The governor may propose adjustments to the state budget, within certain limits, to the Legislative Budget Board (LBB). The governor may propose that the LBB prohibit a state agency from spending all or part of its appropriation, transfer appropriations from one agency to another, change the purpose for which an appropriation is spent within an agency or change the time that an appropriation is made available to an agency. The LBB would ratify, reject or recommend changes in the governor's proposal. The governor may approve or reject any changes recommended by the LBB. The changes can only pertain to appropriations in fiscal years that have not ended and only to one biennium.

The kinds of adjustments that can be made are limited. The salary of an elected official or a board member appointed by the governor, or appropriations to the Legislature or legislative agencies, cannot be reduced or eliminated. Any agency's appropriation for any fiscal year cannot be decreased by more than 10 percent or increased by more than 5 percent. The allocation of money between specific programs or statutory allotments in the foundation school program cannot be altered except to conform the allocations to actual student attendance and enrollments.

The interim budget execution provisions are subject to sunset review and will expire Sept. 1, 1999, unless continued by legislative action.

Supporters said a state government as large as Texas' cannot function economically without continuous budget management. The state needs a way of responding to fiscal circumstances that may change during the 19 months each biennium when the Legislature is not in regular session.

Opponents said this bill puts too much power in the hands of three state officials -- the governor, the lieutenant governor and the speaker -- and allows them to substitute their priorities for those established by majorities of both houses of the Legislature in the General Appropriations Act. The Constitution provides for special sessions to deal with problems when the Legislature is not in session.

Legislative History: The House amended the bill to provide that no interim budget action could alter the foundation school program and passed it by 92 to 57 on July 2 (Journal page 247). The Senate

amended the bill to allow certain adjustments to be made in the foundation school program, then passed the bill by voice vote, four senators recorded voting nay, on July 19 (Journal page 227). The House concurred with the Senate amendments by nonrecord vote, 15 members recorded voting nay, on July 20 (Journal page 526).

The HRO analysis of the bill appeared in the June 30 Daily Floor Report.

Allowing the Legislature to accept gifts and grants
(HB 1637 by Millsap)

Effective Sept. 1, 1987

HB 1637 authorizes acceptance of gifts, grants and donations by either branch of the Legislature, committees created by resolution and five legislative agencies. Donors must be organizations tax-exempt under the Internal Revenue Code for charitable, religious and other specified purposes. All gifts, grants and donations must be accepted in an open meeting of the appropriate body, and the name of the organization and purpose of the gift, grant or donation must be reported in the public record.

Supporters said the Legislature cannot afford to refuse offers from interested organizations that are willing to help fund costly activities like interim studies and Capitol renovation. Various state agencies are permitted and even encouraged to seek gifts, while the Legislature is not. Any potential for studies being tainted by private interests would be lessened by limiting donors to tax-exempt organizations and by requiring acceptance in open meetings so that the public can hold legislators accountable for their actions.

Opponents said budgetary concerns do not excuse undermining the objectivity, thoroughness and integrity of interim legislative studies by allowing interested parties to suggest studies and then bankroll them. If a committee accepted money from an organization on one side of a controversial issue, the other side would have reason to cry foul. Private organizations that have money to spend on "government" studies can skew legislative priorities. Federal tax-exempt status has little to do with an organization's motives and does not prohibit all lobbying activities.

Legislative History: The House passed the bill on April 30 by nonrecord vote, one member recorded voting nay (Journal page 1605). The Senate amended the bill to require that donors be nonprofit organizations and that donations be accepted in open meetings, then passed the bill by voice vote on May 22 (Journal page 1534). The House concurred with the Senate amendments by nonrecord vote on May 25 (Journal page 3423).

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

Uniform statewide accounting system
(HB 1785 by Williamson)

Effective Sept. 1, 1987

HB 1785 establishes a Uniform Statewide Accounting System Committee to plan and develop a pilot program for a statewide accounting system for all state agencies, including institutions of higher education. The committee will be chaired by the comptroller and consist of the governor, the lieutenant governor, the speaker, the auditor, the state treasurer and a member of the Texas Higher Education Coordinating Board. The committee must develop a uniform statewide accounting system plan by Aug. 31, 1988 and present its plan to the 71st Legislature no later than Jan. 1, 1989. The comptroller must begin implementation of the first component of the plan, a statewide payroll/personnel system, by Aug. 31, 1988. A new State Government Accounting Division in the Comptroller's Office will implement the plan.

Supporters said that the bill would be the first step toward standardizing the accounting of all state revenues, assets and liabilities. A statewide accounting system would make it easier for agencies, oversight authorities and the Legislature to uncover inefficiencies in state government and compare the cost-effectiveness of all state-agency operations. Texas is only one of 10 states without a uniform accounting system.

Opponents said any state accounting system should not be implemented in haste, as this bill would require. A new accounting system takes years of planning, and implementation should wait for a thorough review by the next Legislature.

Legislative History: The House amended the bill to include a pilot program with preliminary implementation plus a \$5 million appropriation and passed it by nonrecord vote on May 12 (Journal page 2080). The Senate deleted the \$5 million appropriation and passed the bill by voice vote on May 27 (Journal page 1909). The House refused to concur with the Senate amendments by nonrecord vote on May 28 (Journal page 3778), and a conference committee was appointed. The conference committee did not reinstate the \$5 million appropriation. On May 31 the Senate adopted the conference committee report by voice vote (Journal page 2404), and the House adopted it by nonrecord vote (Journal page 4264).

The HRO analysis of the bill appeared in the May 12 Daily Floor Report.

Economic Stabilization ("rainy day") Fund
(HJR 2 by Schlueter)

On Nov. 8, 1988 ballot

HJR 2 would amend the Texas Constitution to create an economic stabilization (rainy day) fund. The fund would receive one-half of any surplus in the General Revenue Fund and 75 percent of any increase in oil and gas production taxes. The fund could be used for any purpose at any time by a two-thirds vote of each house the Legislature, or to continue existing programs in case of a budget deficit, by a three-fifths vote of each house.

Supporters said a "rainy day fund" is needed to even out the wide fluctuations in state revenue that Texas has suffered in the past few years, bringing certainty to state fiscal planning and improving the state's attractiveness to the business community. It would ensure that when state revenue runs a surplus that money would not be squandered.

Opponents said HJR 2 would lock away increases in state revenue that should be used to restore vital state programs that have been eviscerated by the continuing budget squeeze. The amendment would also force any tax increase to be maintained longer by removing most of the revenue benefit from a return to higher oil prices and would restrict budget flexibility by creating another dedicated fund.

Legislative History: The House adopted HJR 2 on May 8 by 130 to 0 (Journal page 1985). The Senate amended HJR 2 to permit appropriations from the fund for any purpose by a two-thirds vote and to deposit in the fund 75 percent of any increase of oil and gas production taxes, rather than all of any increase. The Senate then passed HJR 2 on May 20 by 30 to 0 (Journal page 1342). The House refused to concur with the Senate amendments by nonrecord vote on May 22 (Journal page 3304), and the proposal was sent to conference committee. The conference committee report adopted the Senate changes. On May 27 the Senate adopted it by 30 to 0 (Journal page 1885), and the House adopted it by 141 to 0 (Journal page 3696).

During the second called session, HJR 2 was amended (by both SJR 5 and SJR 8) to change the date of its submission to the voters from Nov. 3, 1987 to Nov. 8, 1988.

The HRO analysis of the proposed constitutional amendment appeared in the May 8 Daily Floor Report.

Grants from state oil overcharge revenue
(SB 33 by Jones, second called session)

Effective Sept. 1, 1987

SB 33 established a mechanism for the distribution of the \$234 million received by the state from the federal government from successful federal lawsuits against oil companies charged with violating federal price controls during 1973-81. The governor will distribute this revenue through grants to public or private applicants that have been approved by a review committee consisting of the lieutenant governor and the House speaker. The grants will be administered by the energy efficiency division, which will be transferred to the governor's office.

SB 33 lists 23 specific programs as eligible for grants. SB 1, the General Appropriations Act, in Art. 5, sec. 81, contains a statement of legislative intent that 26 specific programs are to be funded.

Supporters said that SB 33 was a carefully considered proposal for an equitable distribution of the oil overcharge money being held by the state. The Joint Oil Overcharge Committee appointed during the regular session received many project proposals and considered technical and expert testimony on the permissible uses of the money. Many of the programs in the bill were recommended by the joint committee.

Opponents said that the bill fails to fulfill the federal intent in transferring to the state money derived for the federal lawsuits. Congress cut back the federal weatherization program, low-income energy program and other conservation programs with the expectation that states would replace the cutbacks with oil overcharge receipts. These programs could receive only minor amounts of revenue, while transit authorities, a high-speed rail study and a high energy physics program could be heavily funded.

Legislative History: The Senate passed the bill, which would have permitted the governor to fund only projects approved by a committee, by 27 to 3 on July 16 (Journal page 164). The House passed a substitute bill, which would have permitted the governor to fund a project after review and comment by a committee, by 130 to 6 on July 18 (Journal page 500). The Senate refused by nonrecord vote on July 19 to concur with the House amendments (Journal page 230), and a conference committee was appointed. The conference committee required approval by a committee for any grants made by the governor. On July 21 the Senate adopted the conference report by 30 to 1 (Journal page 351), and the House adopted it by 141 to 4 (Journal page 662).

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

Sale of TDMHMR and TDC land to the Highway Department
(SB 52 by Montford, second called session)

Effective July 21, 1987

SB 52 requires the Texas Department of Corrections (TDC) and the Texas Department of Mental Health/Mental Retardation (TDMHMR) to sell certain land to the Department of Highways and Public Transportation before Aug. 31, 1988. Money from the sales will go to the General Revenue Fund. The highway department may sell or lease the land, with the proceeds going to the Highway Fund, but TDC and TDMHMR may lease back any of the land for \$1 per year until Aug. 31, 1991. The land includes 790 acres from the TDMHMR Leander Rehabilitation Center in Williamson County, about 75 acres of land from the TDMHMR Austin State School Annex, and about 5,786 acres of TDC land from the Central and Jester units in Fort Bend County.

Supporters said sales of underutilized state land would free \$120 million for the General Revenue Fund without adversely affecting any of the agencies involved. The highway department would recover the money used to buy the land by selling or leasing it. TDC and TDMHMR would only lose land they do not need and would be able to lease it back for the next few years if they desire.

Opponents said this plan is a subterfuge to transfer assets of TDC and TDMHMR to pay for general state operating expenses. Both TDC and TDMHMR are under federal court scrutiny for problems that involve lack of funding, and this action could be interpreted by those courts as bad faith on the part of the state. The land in Leander is particularly useful to TDMHMR, yet there is no provision for it to be replaced.

Legislative History: The Senate passed the bill by 26 to 1 on July 15 (Journal pages 115). The House amended the bill and passed it by 134 to 3 on July 18 (Journal page 501). The Senate refused to concur with the House amendments by voice vote on July 19 (Journal page 253), and a conference committee was appointed. On July 21 the House adopted the conference report by 132 to 13 (Journal page 661), and the Senate adopted it by 30 to 1 (Journal page 351).

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

Cash management notes and debt review by attorney general
(SB 56 by Farabee, second called session)

Effective Aug. 4, 1987

SB 56 increased the total combined amount of cash management notes allowed to be issued, plus the amount borrowed through interfund borrowing, from 20 percent of estimated general revenue to 25 percent. The bill specifically defines credit agreements that the state treasurer can enter into in connection with the issuance of cash management notes. It also allows the state treasurer to invest bond proceeds in tax-exempt securities.

The bill also requires the attorney general to examine and approve, and the comptroller to register, all notes and bonds issued by public entities in Texas on or after Nov. 1, 1987.

Supporters said the bill would increase by 5 percent the amount of cash management notes and interfund borrowing allowed to meet temporary cash shortfalls in the General Revenue Fund. The increase is necessary because of the uncertainty surrounding the extent of the possible cash shortfall. Also, requiring the attorney general to review all bonds made by public entities, including those made by entities created under the non-profit corporation act, would help the state keep track of all debt instruments issued by public entities in Texas.

Opponents said that increasing the amount of cash management notes the state could sell would expand what is already an abrogation of the spirit of the prohibition on state debt found in the Texas Constitution. Also, there is no demonstrable need to dramatically expand the types of debt instruments reviewed by the attorney general.

Legislative History: The Senate passed the bill by 26 to 0 on July 15 (Journal page 103). The House amended the bill to require the review of non-profit corporation bonds and long-term lease purchase agreements by the attorney general, then passed it by 138 to 4 on July 18 (Journal page 496). The Senate refused to concur with the House amendments by voice vote on July 19 (Journal page 250), and a conference committee was appointed. The conference committee removed the requirement that the attorney general review long-term lease purchase agreements. The Senate adopted the conference committee report by 31 to 0 on July 20 (Journal page 322), and the House adopted it by 143 to 0 on July 21 (Journal page 655).

The HRO analysis of the bill appeared in the July 17 Daily Floor Report,

Cash Management Committee and cash management notes
(SB 789 by Farabee)

Effective Sept. 1, 1987

SB 789 allows the speaker of the House and the lieutenant governor to be voting members of the cash management committee. The speaker would be a voting member only if the Constitution is amended to allow it (SJR 17 includes that amendment); otherwise, the speaker would remain a non-voting member of the committee.

The bill requires that cash management notes be paid off in the biennium in which they are issued, rather than in the fiscal year. The interest rate on the notes and the total cost of issuing the notes must be at least 1 percentage point less than the state-treasury interest rate at the time the notes are sold or the projected average state treasury interest rate over the life of the notes. The bill repealed the provision that sunsets the use of cash management notes on Sept. 1, 1989.

Supporters said all five members of the cash management committee (governor, lieutenant governor, speaker, comptroller and treasurer) should be allowed to vote on the issuance of the notes. Decisions about borrowing large sums of money should be made by a broad range of state leaders. Also, cash management notes should be paid off to coincide with the state budget, which spans two years. Allowing the Treasury to project the interest rate on its investments over the life of the notes would more accurately reflect market conditions.

Opponents said that to make the House speaker, a legislative officer, a voting member of this committee would violate the separation of powers between the executive and the legislative branches of government. Also, the state closes its books at the end of each fiscal year, and cash management notes should be paid off to coincide with the yearly closing of the books. Cash management notes were authorized with the understanding that they were a temporary measure to help the state through a fiscal crisis; the 1989 sunset provision would only prove that these debt instruments have become a permanent fixture.

Legislative History: The Senate passed the bill by voice vote on April 1 (Journal page 510). The House amended the bill to add the provision for projecting annual interest rate over the life of the notes, then passed it by nonrecord vote on May 13 (Journal page 2229). The Senate concurred with the House amendments by voice vote on May 15 (Journal page 1193).

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

Creation of Bond Review Board and Bond Finance Office
(SB 1027 by Farabee)

Effective Sept. 1, 1987

SB 1027 creates a five-person Bond Review Board consisting of the governor, who would chair the board, the House speaker, the lieutenant governor, the state treasurer and the comptroller. State agencies, statewide entities created by statute and other entities issuing bonds on behalf of the state must apply to the board for approval before issuing a bond or signing an installment sale or lease-purchase agreement with a term longer than five years or an initial principal larger than \$250,000. A bond finance office, the director of which would be appointed by the board, will issue an annual report listing the amount of state bonds outstanding and their repayment schedules. The board can request the state auditor to review the disposition of the proceeds of state bonds.

Supporters said that SB 1027 would allow the state to monitor and control the size of its long-term debt and speak with a single consistent voice in dealing with Wall Street and the bond market. Only if a majority of the five most important officeholders in the state approved a bond could it be issued -- a hurdle high enough to stop any unnecessary issue.

Opponents said that the state is already over its head in debt. This bill would not stop the continued issuance of bonds in the name of the state; it would provide only a facade of control. There should be an absolute cap on state debt in terms of the amount owed per capita or as a percentage of personal income.

Legislative History: The Senate passed SB 1027 on May 11 by 28 to 0 (Journal page 1081). The House passed the bill by nonrecord vote, three members recorded voting nay, on May 29 (Journal page 3893).

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Bonds for corrections, TDMHMR facilities
(SB 1407 by McFarland)

Effective Aug. 31, 1987

SB 1407 authorizes the Texas Public Finance Authority to issue up to \$500 million in general-obligation bonds for acquiring, building, equipping and renovating facilities for corrections, youth corrections, and mental health and mental retardation, contingent on approval by the voters of the constitutional amendment proposed by SJR 56 by McFarland, authorizing issuance of the bonds. The authority may also issue revenue bonds for the same purpose, but the total of all bonds issued cannot exceed \$500 million.

The bill also establishes a bond review board, composed of the governor, lieutenant governor, speaker of the House, treasurer and comptroller, which must approve issuance of any bonds and projects. The Department of Corrections will have to submit a master plan for construction of correctional facilities to the bond review board in order to receive any distribution of the proceeds of the bonds.

Supporters said SB 1407 and the related constitutional amendment, SJR 56, would allow the state to undertake important construction and renovation projects needed by the Texas Department of Corrections, the Texas Youth Commission and the Texas Department of Mental Health and Mental Retardation. Using bond issues to spread construction costs over a long period would allow the state to begin building now without draining appropriations from other vital state services.

Opponents said bonds will eventually cost the state far more than would a one-time appropriation to finance the construction, since interest payments over 20 years will almost double the total cost of the project. Texas should preserve its pay-as-you-go tradition and not go deeply into debt because of its current temporary budget squeeze.

Legislative History: The Senate passed SB 1407 on May 8 by voice vote (Journal page 1040). The House amended the bill to increase the number of members on the authority board, then passed the bill on May 29 by 139 to 6 (Journal page 3892). The Senate refused to concur with the House amendment by voice vote on May 30, and a conference committee was appointed (Journal page 2292). The conference committee deleted the increase in the number of members on the board but specified that the governor would appoint the chair of the board. On June 1 the Senate adopted the conference report by 31 to 0 (Journal page 2702), and the House adopted it by nonrecord vote, four members recorded voting nay (Journal page 4348).

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Federal funds constitutional dedication to Highway Fund
(SJR 8 by Montford, second called session)

On Nov. 8, 1988 ballot

SJR 8 proposes a constitutional amendment to dedicate all federal highway reimbursements to the purpose of acquiring rights-of-way and constructing, maintaining and policing public roads.

Supporters said the proposed constitutional amendment would clarify that federal highway money paid to the state to reimburse the Highway Department for money spent on federally approved highway projects is constitutionally dedicated to the Highway Fund. The money deposited in the Highway Fund and spent by the highway department has already been dedicated by statute for acquiring rights-of-way and constructing, maintaining and policing public roads, so it is only logical that federal funds transferred to the state to replace dedicated funds should also be dedicated for the same purposes.

Opponents said that the Legislature should not tie up any more money with constitutional dedications that limit the latitude of future Legislatures to control state finances. By giving constitutional status to the dedication of federal reimbursements, the proposed amendment would deprive the General Revenue Fund of the interest on the federal receipts and would limit the ability to borrow unused money in the Highway Fund to maintain other vital state services during periods of cash shortfall.

Legislative History: The Senate adopted SJR 8 on July 16 by 30 to 0 (Journal page 129). The House added a change in the election date of an unrelated proposal, HJR 2, and passed SJR 8 by 131 to 13 on July 18 (Journal page 373). The Senate concurred with the House amendment on July 18 by 27 to 0 (Journal page 204).

The HRO analysis of the proposed constitutional amendment appeared in the July 18 Daily Floor Report.

State bonds for local public facilities
(SJR 55 by Parmer)

On Nov. 3, 1987 ballot

SJR 55 would amend the Texas Constitution to allow the Legislature to issue up to \$400 million in general-obligation bonds for grants and loans to local governments. Governments could use the grants to plan and design public facilities and the loans to acquire, repair, or build public facilities.

Supporters said the proposal would boost the state's sagging economy. Making money available for local governments to finance such necessary, but expensive, facilities as jails, hospitals, and libraries would quickly create badly needed jobs. It would also attract business from outside the state by sending a message of confidence in our future. The state can use its superior credit rating to obtain better financing terms than can local governments.

Opponents said it would be bad public policy for the state to take on more debt, especially to assist local governments that can help themselves. Texans are proud of their pay-as-you-go tradition and should not abandon that financially sound practice in the face of a temporary economic slowdown.

Legislative History: The Senate adopted the proposed amendment on May 7 by 25 to 5 (Journal page 1022). The House adopted the proposed amendment on May 30 by 114 to 27 (Journal page 3970), after changing the ballot date from 1987 to 1988 (Journal page 3887). The Senate returned the resolution to the House for further consideration. The House tabled its amendment, then adopted the resolution by 123 to 22 on June 1 (Journal page 4325).

The HRO analysis of the proposed constitutional amendment appeared in the May 28 Daily Floor Report.

Bonds for corrections, TDMHMR facilities
(SJR 56 by McFarland)

On ballot Nov. 3, 1987

SJR 56 proposes a constitutional amendment to permit the Legislature to authorize the issuance of up to \$500 million in general obligation bonds to finance acquiring, building, equipping or renovating facilities for prisons, youth corrections and mental health-mental retardation.

The Legislature could require review and approval of issuance of the bonds and of the projects to be financed by the bond proceeds. The issuer of the bonds, or any entity created or directed to review and approve potential projects, could include members or appointees of members of the executive, legislative and judicial branches.

Supporters said that SJR 56 and its implementing legislation, SB 1407, would allow the state to undertake important construction and renovation projects needed by the Texas Department of Corrections, the Texas Youth Commission and the Texas Department of Mental Health and Mental Retardation. Using bond issues to spread the cost over a long period would allow the state to begin building now without draining appropriations from other vital state services.

Opponents said bonds would eventually cost the state far more than would a one-time appropriation to finance the construction, since interest payments over 20 years would almost double the total cost of the project. Texas should preserve its pay-as-you-go tradition and not go deep into debt because of its current temporary budget squeeze.

Legislative History: The Senate adopted SJR 56 on May 8 by 29 to 0 (Journal page 1039). The House adopted it by 130 to 14 on May 28 (Journal page 3744).

The HRO analysis of SJR 56 appeared in the May 28 Daily Floor Report.

TAXES/REVENUE

Select Committee on Tax Equity (HB 2 by Schlueter)

Effective March 30, 1987

HB 2 creates a 13-member Select Committee on Tax Equity to study the Texas tax structure. The committee will examine the tax burden borne by various classes of taxpayers, the impact of state and local taxes on economic development and the relationship between taxes and the revenue needs of the state and local governments.

Supporters said that the Texas economy has gone through irreversible structural changes, and the state tax structure must change with it. A blue-ribbon committee would involve the public by holding hearings throughout the state, carefully examining the long-term effect of any change and building consensus for its conclusions.

Opponents said that Texas should act immediately to deal with the budget crisis, rather than waiting two years for another committee to duplicate the process of gathering information about state tax options. Those who want to change the system have more than enough information now to do the job. Other opponents said there is no need for radical change in the Texas tax structure, which has served the state well in the past and will do so in the future. This committee would be a vehicle for taxing services or introducing income taxes to Texas.

Legislative History: The House passed the bill on March 11 by 143 to 0 (Journal page 499). The Senate amended the bill to enable the lieutenant governor and the speaker to jointly select the chair of the committee, rather than permit the speaker alone to select the chair, then passed the bill on March 18 by 28 to 0 (Journal page 397). The House concurred with the Senate amendment by 131 to 0 on March 19 (Journal page 591).

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

State revenue increase
(HB 61 by Morales, second called session)

Effective Sept. 1, 1987

HB 61 repealed the Sept. 1, 1987 scheduled reversion of the sales-tax rate from 5.25 percent to 4.125 percent and increases the rate to 6 percent on Oct. 1. The sales-tax base was expanded to include certain services and certain items currently exempted. The corporate franchise tax was increased for two years from \$5.25 per \$1,000 of taxable capital to \$6.70 per \$1,000. The cigarette tax was increased from 20.5 cents per pack to 26 cents per pack. The hotel tax was raised from 4 percent to 6 percent of the price paid for a room. The motor-vehicle sales tax was raised from 5 percent to 6 percent. A 20 percent surtax was imposed, for two years only, on the insurance company occupations tax. A new administrative services tax of 2.5 percent was also imposed on service fees paid to insurance administrators. Fees paid by certain professionals were increased, for two years only, by \$110. A new fee of \$25 will be charged for a sales-tax permit. Certain protested tax payments will be deposited in the General Revenue Fund, rather than in a suspense account.

Supporters said that HB 61 would raise a total of \$4.83 billion in new state revenue in fiscal 1988-89. The tax increases would raise most of the revenue necessary to provide essential state services. The bill would send a message to the nation that Texas is willing to do what needs to be done to raise enough revenue to maintain services at a level that would sustain a vital and vibrant state economy yet also restrain spending to keep state government operating in a cost-efficient manner. The alternative is deep cuts in public and higher education, even forcing the closing of certain colleges and universities, and a sharp reduction in basic health and human services.

Opponents said that Texans do not want higher taxes. Public opinion polls repeatedly indicate that a majority of Texans believe that state spending should be cut substantially before new taxes are considered. The Legislature should follow the will of the people and keep its promise to hold the line on taxes and spending.

Other opponents said that the state tax system, with its increasing dependence on the sales tax, already hits the poor with disproportionate force. Raising the sales tax rate to one of the highest in the nation would only make a bad system worse. The Legislature should consider other revenue alternatives, such as expanding the sales-tax base to cover all services or instituting a corporate or individual income tax.

Legislative History: The House considered numerous amendments to HB 61 on July 2. An amendment to apply a 5.25 percent sales tax rate to

services, including professional services, was defeated by 28 to 116. An amendment imposing a 6 percent sales tax on insurance premiums was adopted by 78 to 70. HB 61, applying a 6 percent sales tax to the current tax base and to insurance premiums and reducing MTA sales tax rates in Houston, Austin and Corpus Christi, passed by 82 to 66 on July 2 (Journal page 248). The Senate deleted the insurance-premium tax and proposed a 6 percent sales tax rate on an expanded base. It proposed raising the corporate franchise tax, cigarette tax, hotel tax, motor-vehicle sales tax, automobile inspection fees and driver's license fees. The Senate also proposed doubling professional license fees, imposing a 16 percent surtax on the insurance company occupations tax, imposing a new insurance administrative services tax and establishing a new fee for sales-tax permits. The Senate passed HB 61 on July 14 by 23 to 7 (Journal page 93). The House refused to concur with the Senate amendments on July 16 by nonrecord vote (Journal page 335), and a conference committee was appointed. The conference committee deleted the Senate provisions increasing motor-vehicle inspection fees and driver's license fees and the House provision instituting an insurance-premium sales tax and reducing the MTA sales tax rates. The conference committee extended the sales tax to services not covered in the Senate version. The Senate adopted the conference report on July 20 by 26 to 5 (Journal page 330). After several unsuccessful efforts to suspend the rules and adopt the conference committee report, the House adopted it by 78 to 70 on July 21 (Journal page 648).

The HRO analysis of the bill appeared in the July 2 Daily Floor Report. The HRO analysis of Senate amendments to HB 61 appeared in the July 15 Daily Floor Report. The HRO analysis of the conference committee report on HB 61 appeared in the July 20 Daily Floor Report. The final version of HB 61 is also summarized in HRO State Finance Report No. 70-8, The General Appropriations Act and New Revenue for Fiscal 1988-89, July 28, 1987.

Making the temporary motor-fuels tax increase permanent
(HB 62 by Stiles, second called session)

Effective Aug. 31, 1987

HB 62 repealed the Sept. 1, 1987 expiration of the five-cents-per-gallon motor-fuels tax increase and the prepaid diesel-fuel tax permit price increase enacted in 1986, making the increases permanent.

The state tax rate on gasoline, diesel and liquefied gas continues at 15 cents per gallon. The tax rate on gasoline sold to transit companies continues at 14 cents per gallon, and the tax rate on diesel sold to transit companies continues at 14.5 cents per gallon. The cost of a liquefied gas tax decal permit (which currently varies in cost from \$48 to \$660 depending on the type of vehicle) was increased by one-half. The bill also authorizes the use of irrevocable letters of credit to secure fuel-tax payments. Distributors, suppliers and bonded diesel users will be released from bonding requirements after two consecutive years of compliance.

Supporters said that continuing the current motor-fuel revenue levels would allow the state to maintain essential state services. Since state taxpayers have grown accustomed to paying the higher motor-fuels tax, making the increase permanent would be one of the least disruptive means of raising necessary new revenue. HB 62 is expected to raise almost \$897 million in additional revenue in fiscal 1988-89. The Highway Fund would receive \$661 million of this revenue, which would help the construction industry and provide jobs to Texans who have lost opportunities in other sectors of the economy.

Opponents said that HB 62 would break the word of the Legislature to state taxpayers, who were expecting the temporary increase in the motor-fuels tax to end on Sept. 1. A higher gasoline tax would increase the already severe regressivity of the Texas tax structure -- all motorists, regardless of their income, would pay the same increase, which would take a far larger bite from the pocketbooks of persons with lower income. Highway spending need not be increased by such a large amount when other vital programs are facing drastic cuts.

Legislative History: The House passed the bill on July 2 by 128 to 20 (Journal page 248). The Senate modified the provisions concerning letters of credit and passed the bill on July 16 by 30 to 1 (Journal page 132). The House concurred with the Senate amendments by 137 to 6 on July 20 (Journal page 543).

The HRO analysis of the bill appeared in the July 2 Daily Floor Report.

Repeal of transfers to the Highway Fund
(HB 63 by Schlueter, second called session)

Effective Sept. 1, 1987

HB 63 permanently eliminated the statutory dedication to the Highway Fund of general revenue equaling one-tenth of the revenue raised by the motor-vehicle sales tax and one-eighth of the revenue raised by the motor-fuels tax. The bill also eliminated the statutory dedication to the Farm-to-Market Road Fund of \$15 million per year in general revenue and the priority given to allocations from the General Revenue Fund to the Farm-to-Market Road Fund and the Foundation School Fund.

HB 63 was contingent on the enactment of HB 62, which made permanent the temporary increase in motor-fuels tax rates enacted during the September 1986 special session. HB 62 was signed by the governor on July 21.

Supporters said eliminating these transfers would allow the General Revenue Fund to keep an additional \$447 million during the 1988-89 biennium, which is needed to help balance the state budget. The Highway Fund and the Farm-to-Market Road Fund would not lose net revenue, since an increase in the motor-fuels tax would offset their losses from the elimination of the general-revenue transfers.

Opponents said that eliminating this transfer to the Highway Fund would be contingent on raising motor-fuels taxes, which would unreasonably burden the average Texan suffering from hard economic times. The Legislature should first turn to other sources of revenue to support state spending.

Legislative History: The House passed HB 63 by 147 to 0 on July 2 (Journal page 249). The Senate passed the bill by 30 to 0 on July 14 (Journal page 89).

The HRO analysis of the bill appeared in the July 2 Daily Floor Report.

Effective date of revenue measures
(HB 176 by Morales, second called session)

Effective July 21, 1987

HB 176 provides that, even if seven specified bills did not receive the two-thirds vote required by the Constitution to take effect in less than 90 days, the bills would take effect on the earliest effective date provided in those bills, as if they had received a two-thirds vote. The effective date provision applies to: HB 7, state budget execution; HB 21, state contribution reduction and benefit increase for the Employees Retirement System; HB 61, state and local sales and use taxes; HB 62, motor fuel and gas production taxes; HB 177, state and local funding of the Foundation School Program; SB 52, forfeiture of property related to certain felony offenses; and SB 68, actions for child support and possession and access to a child.

Supporters said the bill was necessary to prevent the disruption in state revenue collection that would be caused if revenue measures became effective after the Sept. 1 beginning of the state fiscal year or after the Oct. 1 beginning of the tax-collection quarter. It would also allow those members who oppose a tax increase to cast their vote based on the merits of the legislation, not on whether a bill needs a two-thirds majority for immediate effect.

Opponents said that HB 176 would allow some members to avoid a politically difficult vote in favor of a tax bill, ducking responsibility for the disruption and revenue loss that would normally flow from the failure of that bill to pass by a two-thirds vote and take effect immediately. This bill circumvents the Texas Constitution for political expediency.

Legislative History: The House passed the bill by 96 to 46 on July 18 (Journal page 503). The Senate adopted an amendment deleting HB 63 from the list of bills affected and passed HB 176 by 31 to 0 on July 20 (Journal page 299). The House concurred with the Senate amendment by 126 to 24 on July 21 (Journal page 649).

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

Calculation of unemployment-compensation deficit tax
(HB 979 by Criss)

Effective Sept. 1, 1987

HB 979 changes the formula for determining the unemployment deficit tax, which is intended to maintain a minimum amount in the unemployment compensation fund. The tax is currently assessed on employers in proportion to the number of their employees drawing benefits, so that employers who do not have former employees drawing benefits are exempted from the deficit tax. HB 979 imposes the deficit tax on all employers, beginning with computations made for calendar year 1988.

Supporters said that the unemployment-compensation-tax reform law passed in 1983 was intended to apply the deficit tax to all employers, but the Texas Employment Commission has interpreted it to exempt 100,000 employers. This bill spreads the deficit-tax burden more fairly among all employers. The additional taxes collected would eliminate the deficit in the unemployment compensation fund, saving interest on loans taken out to cover the shortfall and eventually lowering other unemployment-compensation-tax rates.

Opponents said that HB 979 would increase taxes on new employers who have not had to lay-off workers and therefore have not been a drain on the unemployment compensation fund. It would be better to borrow enough money to pay off the deficit now and spread the repayment over a longer period of time.

Legislative History: The House passed the bill on May 8 by nonrecord vote (Journal page 1988). The Senate passed the bill on May 23 on the local and uncontested calendar by 30 to 0 (Journal page 1566).

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

Bingo tax and increase in bingo prize limits
(HB 1043 by Criss)

Effective Sept. 1, 1987

HB 1043 imposed a new state tax on the conduct of bingo games of 2 percent of gross receipts over \$2,500 per quarterly reporting period. The limit on prizes offered or awarded on any one bingo occasion of \$2,500 for all games was changed to \$1,500 for instant bingo games and \$2,500 for all other bingo games. Bingo advertisements may not include the amount of the prize offered, and no door prizes may be awarded.

Supporters said that the new gross receipts tax would raise a significant amount of revenue for the state without greatly impinging on bingo profits. Small charities would not be hurt by the separate limit on instant games, which are inexpensive to operate.

Opponents said the bill would encourage instant bingo, which is straight-out gambling. Other opponents said that the bill was just another in an endless series of doomed attempts to control a flawed enterprise. The Bingo Enabling Act was a mistake and should be repealed.

Legislative History: The House passed the bill by nonrecord vote, 17 members recorded voting nay, on April 29 (Journal page 1517). The Senate failed to suspend the regular order of business to consider a committee substitute for the bill by 17 to 13 on May 23 (Journal page 1639). On May 26 the Senate considered the committee substitute, which contained a \$1,500 limit on instant bingo, rather than the \$2,500 limit contained in the House version, and passed the bill by voice vote, two members recorded voting nay (Journal page 1869). The House concurred with the Senate amendments by nonrecord vote, four members recorded voting nay, one member recorded voting aye, on May 30 (Journal page 4042).

The HRO analysis of the bill appeared in the April 28 Daily Floor Report.

Sales-tax exemption for newspapers and magazines
(HB 1606 by Schlueter)

Effective Oct. 1, 1987

HB 1606 exempts from the sales and use tax magazines sold by subscription and newspapers sold by individual copy or by subscription.

Supporters said that newspapers and magazines have been subjected to the sales tax only since 1984. The comptroller has had great difficulty in administering the tax, since full compliance requires collecting taxes from newspaper carriers. The computer and personnel time that would be saved by HB 1606 could be channeled into more lucrative tax collection operations. Applying the sales tax to newspapers and magazines could also be an infringement of the First Amendment, since the state is raising the cost to citizens of receiving information and opinion.

Opponents said repealing this sales tax would deprive the General Revenue Fund of \$16.5 million in the coming biennium. Cities would lose about \$3.3 million and mass transit authorities (MTAs) would lose \$1.3 million. The small collection difficulties encountered by the comptroller are well worth the large amount of money generated. The U. S. Supreme Court has upheld similar taxes, so there is no First Amendment problem.

Legislative History: The House passed the bill on May 5 by nonrecord vote (Journal page 1713). The Senate adopted an amendment deleting the exemption for magazines and passed the bill on May 29 by voice vote, one member recorded voting nay (Journal page 2068). On May 30 the Senate reconsidered the final passage by 19 to 10 and adopted an amendment to exempt magazines sold by subscription, then passed the bill by 21 to 7 (Journal page 2380). The House concurred with the Senate amendment by nonrecord vote on June 1 (Journal page 4233).

The HRO analysis of the bill appeared in the May 4 Daily Floor Report.

Limit on transit-authority revenue increase
(HB 2438 by Schlueter)

Died in Senate committee

HB 2438 would have limited any increased revenue that transit authorities might receive from an expansion of the sales-tax base. The comptroller would have withheld from a transit authority's sales-tax revenue the increase in revenue generated by any expansion of the state sales-tax base by 5 percent or more. The amount withheld would have been distributed to the cities and counties within the transit authority and could have been used only for transportation projects.

Supporters said the bill would prevent transit authorities from receiving an undeserved revenue windfall from an expansion of the sales-tax base. The bill would redirect the extra revenue to cities and counties, which have a more immediate need for additional income to reduce traffic congestion and which must rely on declining property taxes and local sales taxes for most of their income. In contrast, transit authorities across the state have been taking in more revenue than they have been able to spend wisely.

Opponents said that HB 2438 was an attempt by cities and counties to siphon off sales-tax revenues intended for public transportation systems, in order to spend it on bridges and roads. The bill would have overridden the will of the voters who approved the transit authority taxes and slowed the economic development that is fostered by an up-to-date approach to solving urban transportation problems through public transit.

Legislative History: The House passed the bill on third reading on May 18 by nonrecord vote (Journal page 2532). The Senate Finance Committee considered the bill on May 26, but took no further action.

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

Lower tax valuation for unsold, unoccupied new houses
(HB 2445 by Berlanga)

Effective Aug. 31, 1987

HB 2445 defines certain residential real property as business inventory, to be appraised for taxation at its wholesale, rather than retail, value. To qualify for the different valuation, the residential real property must never have been occupied as a residence, must remain unoccupied, not be leased or rented or produce income, yet remain for sale.

Supporters said that the bill would end unfair valuation of new, unsold homes and would relieve builders of an additional, unjustified financial burden at a time of lower demand and unstable markets. The Property Tax Code does not limit the kind, nature or character of property to be appraised as business inventory. Local appraisers should therefore appraise unsold houses according to a wholesale valuation standard, as they appraise all other kinds of unsold inventory.

Opponents said the bill would give a special break to real estate speculators at the expense of others. It would reduce local property tax revenues, requiring a higher tax rates on occupied homes to make up the difference, especially in municipal utility districts in newly developed areas. The loss of taxable wealth would make more school districts eligible for aid from the Foundation School Program, decreasing aid to currently eligible districts and reducing the equity of the school finance system. The bill would tax similar property differently, violating the constitutional requirements for equity and uniformity in taxation.

Legislative History: The House passed the bill on May 6 by nonrecord vote, two members recorded voting nay (Journal page 1874). The Senate amended the bill to allow an owner of the inventory to obtain an injunction to have the inventory valued on the lower basis, then passed it on May 25 by voice vote, one member recorded voting present (Journal page 1738). The House refused to concur with the Senate amendments by nonrecord vote on May 28 (Journal page 3717), and a conference committee was appointed. The conference report included a version of the Senate amendment. The Senate adopted the conference committee report on May 31 by voice vote, one member recorded voting present (Journal page 2407), and the House adopted it by nonrecord vote on June 1 (Journal page 4267).

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

State lottery authorization
(HJR 7 by Wilson)

Died on House floor

HJR 7 would have amended the Texas Constitution to permit the Legislature to establish a state lottery. Net proceeds from the lottery, after deducting prizes and expenses, could have been used only for public purposes.

Supporters said that a state lottery would be a popular way to generate a large amount of revenue for the state without raising taxes and would have provided income to cities, towns and counties. The overwhelming majority of the people of Texas support a state lottery, which has proven to be a reliable and efficient means of generating revenue throughout the country. A lottery would be no more regressive than any other revenue source. Those few who are offended by a state lottery would not have to participate.

Opponents said that a lottery would be an unreliable and inefficient way to raise revenue that would have put the state in the position of promoting gambling. Lottery revenue tends to fluctuate wildly, increasing as each new game is introduced and then dropping off as the public tires of the latest gimmick. A state lottery is really a disguised tax that is twice as regressive as a sales tax; poor people lose a greater percentage of their income to a lottery than do rich people. The administrative costs of a lottery would be much greater than for any other source of state revenue.

Legislative History: The House defeated the proposal on May 14 by 72 to 73 (Journal page 2263).

The HRO analysis of the proposed constitutional amendment appeared in the May 14 Daily Floor Report.

Prohibition of personal and corporate income taxes
(HJR 9 by Schlueter, second called session)

Died in Senate committee

HJR 9 proposed a constitutional amendment to delete the provision of the Texas Constitution permitting the Legislature to tax personal and corporate income. Legislation enacting a state personal or corporate income tax could not take effect unless it was approved by the voters in a referendum.

Supporters said that amending the Texas Constitution to prohibit personal and corporate income taxes would ensure that those taxes could not be imposed without the support of a majority of the voters. A ban on personal and corporate income taxes would help the state's business climate at a time it most needs to attract new jobs and would restrain the Legislature from spending more and more each year. A personal-income tax would inevitably fall most heavily on middle-income Texans, who already bear a substantial tax burden. A corporate-income tax would fall most heavily on the most profitable companies, which hold the key to maintaining economic growth and the source of new jobs for Texans.

Opponents said that a constitutional prohibition against personal and corporate income taxes would be bad public policy, since it would restrict the state's future revenue options before all the alternatives were carefully examined and fully debated by the Select Committee on Tax Equity. Income taxes would be an improvement over the current inflexible and inequitable tax structure, would be deductible from federal income taxes (sales taxes are not currently deductible) and would grow with the state's economy. Out-of-state firms cite good public schools and an efficient highway system as more important than a lack of income taxes in choosing to relocate to Texas.

Other opponents said that a corporate income tax should not be prohibited, since it would be much fairer than the current corporate franchise tax based on the amount of capital owned by a corporation, not whether it is profitable.

Legislative History: The House adopted the proposed constitutional amendment by 106 to 42 on July 2 (Journal page 171). The Senate Finance Committee took no action on the proposal.

The HRO analysis of the proposed constitutional amendment appeared in the July 2 Daily Floor Report.

Surviving spouse school-tax homestead exemption
(HJR 48 by Schlueter)

On Nov. 3, 1987 ballot

HJR 48 would extend the constitutional protection against increases in school ad valorem taxes on the homestead of a person 65 or older to that person's surviving spouse, if the surviving spouse was 55 or older at the time of the older spouse's death. The protection would be effective as long as the residence remained the surviving spouse's homestead, subject to limitations imposed by the Legislature.

Supporters said the proposed amendment would protect surviving spouses from suffering huge increases in school property taxes in the year after their over-65 spouse dies. The proposed amendment would only extend a tax exemption that these people had before their spouse died. Rising property values in many areas mean that in many cases, a suddenly unfrozen tax burden may be far higher than what it was when it was frozen. Some spouses have been forced to sell their homes because they could not afford to pay the increased taxes. The special protection from tax increases would be limited to older surviving spouses, who are most likely to need the continued protection.

Opponents said giving special consideration to homeowners who happen to have been married to someone age 65 or older is unfair to other taxpayers who face higher school taxes. The Legislature should not cut the revenue school districts need to implement public education improvements. Other opponents said property tax breaks should be continued only because of economic need. Limiting the exemption to surviving spouses 55 or older is arbitrary and discriminates on the basis of age. If school tax breaks are extended, exemptions for other sorts of taxes should be extended as well.

Legislative History: The House adopted the proposal by 121 to 18 on March 30 (Journal page 725). The Senate amended the proposal to limit the continued tax freeze to spouses 55 and older, then passed it by 31 to 0 on April 28 (Journal page 835). The House concurred with the Senate amendments by 140 to 1 on May 6 (Journal page 1773).

The HRO analysis of the proposed constitutional amendment appeared in the March 30 Daily Floor Report.

Tax exemption for idle off-shore rigs
(HJR 96/HB 2082 by Stiles)

On Nov. 3, 1987 ballot

HJR 96 would allow local taxing units to exempt from property taxes off-shore oil and gas drilling rigs that are in storage and not being repaired. The exemption would apply to rigs stored in a county bordering the Gulf of Mexico or on a bay or other body of water adjacent to the gulf. The implementing legislation, HB 2082 by Stiles, would become effective Jan. 1, 1988 if the constitutional amendment is approved by the voters.

Supporters said the proposal would provide needed relief for the depressed oil industry. Many unused rigs are being stored here, but many others have been moved to avoid taxes. If the rigs are moved back to Texas, it would stimulate local economies because of the labor, services and goods required for maintenance.

Opponents said the bill would cut revenue to local authorities. Any relief to the oil industry should be tied to the price of oil. Other opponents said that the entire oil and gas drilling industry in Texas is hurting, and the tax exemption should not be limited to off-shore equipment.

Legislative History: The House adopted the proposal by 134 to 0 on April 29 (Journal page 1512). The Senate passed it by 30 to 0 on May 20 (Journal page 1361).

The HRO analysis of the proposed constitutional amendment appeared April 29.

Two percent cap on combined local and sales and use taxes
(SB 58 by Jones, second called session)

Effective Oct. 20, 1987

SB 58 limits all combined local sales and use taxes to 2 percent. Cities, counties, and transit authority sales taxes may not total more than 2 percent.

Supporters said with the state sales tax rate now at 6 percent, placing a 2 percent cap on local sales taxes would ensure that no community in the state would have a total combined sales tax of more than 8 percent.

Opponents said sales taxes are voted on by the people in that area, and it is the prerogative of the local voters to determine how much sales tax they wish to pay to support local services.

Legislative History: The Senate passed the bill by 30 to 0 on July 14 (Journal page 89). The House passed the bill by nonrecord vote, eight members recorded voting nay, on July 18 (Journal page 428).

The HRO Analysis of the bill appeared in the July 18 Daily Floor Report.

City and county sales tax revisions
(SB 299 by Farabee)

Effective April 2, 1987

SB 299 revised the sales tax law allowing cities and counties not within the boundaries of a transit authority to levy a 0.5 percent local or county sales tax and to use the revenue to offset property taxes. SB 299 permits cities that do not levy a property tax to vote on adopting the additional sales tax. The 3-percent limit on property-tax rate growth before a roll-back election is allowed that applied to cities adopting the additional sales tax was removed, leaving these cities subject to the 8-percent limit that applies to cities without the additional sales tax. The requirement for an election on levying the additional sales tax within 10 years of the effective date of the tax was eliminated. Contracts entered into before the effective date of an additional tax are exempted from the tax.

Supporters said that SB 299 was a clean-up bill to harmonize treatment of different local taxes and improve administration of the additional sales tax.

Opponents said that the bill authorizing the local additional sales tax had only been in effect since Jan. 1, 1987, so it should have been allowed to operate longer to see if change were really necessary.

Legislative History: The Senate passed SB 299 on Feb. 18 by 28 to 0 (Journal page 180). The House amended the bill and passed it by 137 to 2 on April 1 (Journal page 793). The Senate concurred with the House amendments by 31 to 0 on April 1 (Journal page 506).

The HRO analysis of the bill appeared in the April 1 Daily Floor Report.

Taxation of goods temporarily in state ("freeport" exemption)
(SJR 12 by McFarland)

On Nov. 3, 1987 ballot

SJR 12 would amend the Texas Constitution to exempt from taxation goods, merchandise and ore passing through the state and detained here for no longer than 175 days for the purpose of assembling, storing, manufacturing, processing or fabricating. A county, school district or municipality could still tax this property in 1988 if it took official action before Jan. 1, 1988, and could tax the property in 1989 if it acted before April 1, 1988.

Supporters said that SJR 12 would reinstate a tax exemption that has already been enacted by statute but has been questioned by the court. The goods exempted add value to the products produced in Texas and have been a proven incentive for economic development. The exemption is necessary for Texas to compete with the many other states that offer similar tax incentives. If the tax break proves too onerous for some jurisdictions, they could choose to opt out.

Opponents said SJR 12 would deprive cities, counties and school districts of a substantial portion of their tax base. The provisions allowing local taxing units to opt out of the exemption are too restrictive.

Legislative History: The Senate adopted SJR 12 on May 1 by 27 to 2 (Journal page 923). The House amended the resolution to give local governing bodies until April 1, 1988 to exempt property in 1989. (It also added the provisions of HJR 95, which would exempt certain non-income-producing property from taxation). The House adopted SJR 12 on May 28 by 144 to 1 (Journal page 3740). The Senate did not concur with the House amendment by voice vote on May 30 (Journal page 2296), and a conference committee was appointed. On June 1 the House adopted the conference committee report by 138 to 0 (Journal page 4269), and the Senate adopted it by 29 to 1 (Journal page 2702).

The HRO analysis of the bill appeared in the May 27 Daily Floor Report.

Local-option taxation of personal property
(SJR 12 by McFarland)

On Nov. 3, 1987 ballot

SJR 12 would permit the Legislature to exempt from ad valorem taxation non-income-producing tangible personal property, except for residential structures. Local taxing authorities could override the exemption and impose a tax.

Supporters said the amendment would bring some order to varying local taxation of tangible personal property, such as boats, planes and recreational vehicles. The taxation of this property is not uniform among appraisal districts, so some boat, plane or RV owners pay substantial local taxes while owners in neighboring counties are not taxed at all.

Opponents said that exempting boats, planes and RVs from taxation would save money for rich people, while shifting the tax burden onto those Texans who cannot afford such expensive items. SJR 12 is rich-person's special-interest legislation at a time the rest of the state is facing higher taxes to maintain vital state and local government functions. Other opponents said that a full statewide tax-exemption for non-income-producing tangible personal property would be better than this amendment's local-option exemption. Allowing personal property to be taxed in some counties but not in others would encourage owners to move their property to a non-taxing district, depriving the taxing district of its anticipated income and encouraging disrespect for the law.

Legislative History: The Senate passed SJR 12 on May 1 by 27 to 2 (Journal page 923). The Senate-passed version concerning only a tax exemption for goods temporarily in the state (the so-called "freeport" exemption.) The House added the major provisions of HJR 95, exemption of non-income-producing property, except mobile homes. It adopted the amended proposal on May 28 by 144 to 1 (Journal page 3740). The Senate refused to concur with the House amendments on May 30 (Journal page 2296), and a conference committee was appointed. The conference committee report, which permits the Legislature to exempt non-income-producing tangible personal property, except residential structures, was adopted on June 1 by the House by 138 to 0 (Journal page 4269) and by the Senate by 29 to 1 (Journal page 2702).

The HRO analysis of SJR 12 appeared in the May 27 Daily Floor Report. The HRO analysis of HJR 95 by C. Evans and HB 1736 by Stiles, exemption of non-income-producing tangible personal property, appeared on April 29. The HRO analysis of SB 367, exemption from local taxation for non-income-producing recreational boats, the implementing legislation for SJR 12, appeared on May 6.

TRANSPORTATION

Repealing nonresident exemption from proof of financial responsibility (HB 390 by Parker)

Effective Sept. 1, 1987

HB 390 repeals an exemption for nonresidents from the requirement that motorists must carry proof of liability insurance. The exemption had covered vehicles registered to and operated by nonresidents, except for vehicles primarily operated in the state. The bill also creates a county deposit alternative for compliance with the liability insurance law.

Supporters said that Texas motorists need protection from uninsured motorists who are involved in accidents, then leave the state. Although this problem is more acute along the border, the law applies equally to residents of other states as well as to foreign drivers.

Opponents said many Mexican motorists who cannot afford auto liability insurance would avoid crossing the border in order to avoid checkpoints where they might be asked for proof of insurance. This would harm border merchants and could disrupt cooperation with Mexico on joint traffic projects. Texas residents are already protected by current law requiring vehicle impoundment for foreign residents who are involved in accidents and do not provide proof of insurance.

Legislative History: The House amended the bill to repeal the nonresident exemption, then passed it by nonrecord vote on April 30 (Journal page 1607). The Senate amended the county deposit provision, then passed the bill by voice vote on May 30 (Journal page 2189). The House concurred with the Senate amendment by nonrecord vote on May 30 (Journal page 4128).

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

Mass transit authorities
(HB 943 by Wilson)
(SB 79 by Henderson, Green,
second called session)

Effective Sept. 1, 1987

SB 943, as amended by SB 79 during the second called session, allows the voters in the Houston Metropolitan Transit Authority (MTA) to petition for an election to decrease to 0.75 percent or 0.5 percent the current 1.0 percent sales-and-use tax dedicated to the Houston MTA. The election to roll back the MTA tax must take place before March 1, 1988. If the Houston MTA sales tax is decreased as a result of an election, the reduction in the MTA tax will be phased in, not take immediate effect.

HB 943 also allows the voters in the Austin, San Antonio and Houston MTAs to petition to require that a political subdivision that appoints a member of the MTA board reconsider the appointment. In Austin, a board member can be removed from office for malfeasance or nonfeasance by a majority vote of the body that appointed the member.

HB 943, as amended by SB 79, will require the Austin, Houston and Corpus Christi MTAs to undergo an external financial audit once a year and to undergo sunset review every 12 years, although they cannot be abolished. (SB 79 exempted the San Antonio MTA from undergoing sunset review or external audits.) It also allows cities participating in the Austin MTA to hold an election to withdraw from the Austin MTA.

Supporters said the metropolitan transit authorities should be made more accountable to the public they serve. The Houston MTA has raised more revenue than it needs, and the voters should have the opportunity to decide whether to reduce the current MTA sales tax rate.

Opponents said the bill was unnecessary because metropolitan transit authorities are already accountable to the public. Creating a procedure to call an election to roll back the Houston MTA tax rate would be reneging on an obligation already made to fully fund the MTA, which would in turn inhibit its ability to sell bonds by introducing doubt about its revenue sources. Other opponents said that the restrictions on MTAs should apply to every jurisdiction -- voters in MTAs other than Houston would also like to petition for a tax rollback election.

Legislative History: The House passed HB 943 by nonrecord vote, two members recorded voting nay, on April 29 (Journal page 1515). The Senate adopted a number of amendments and passed the bill by voice vote on May 22 (Journal page 1528). The House concurred with the Senate amendments by nonrecord vote, one member recorded voting nay, on May 26 (Journal page 3566).

During the second called session the Senate passed SB 79 by 30 to 0 on July 16 (Journal page 142). The House passed it by 139 to 1, two members recorded voting present, on July 18 (Journal page 510).

The HRO analysis of HB 942 appeared in the April 28 Daily Floor Report.

Joint agreements for turnpike projects
(HB 1364 by Cain)

Effective Aug. 31, 1987

HB 1364 allow the Texas Highway and Public Transportation Commission, upon a finding of need and economy, to contract with the Texas Turnpike Authority to share costs on a toll road facility to be owned and operated by the authority. Agreements could not exceed 40 years but could specify a length of time that a project would remain a toll facility and could provide that revenues from one joint project be used to fund another that is an extension of the original project or part of an "integrated system of turnpike projects." Contracts would have to provide that when a project is no longer a toll facility it becomes part of the state highway system.

The bill would also allow local governments to issue bonds or make payments for turnpike projects under agreements with the turnpike authority of 40 years or less. These governments could pledge revenues from any source, including annual appropriations, and could collect taxes to to pay interest and provide a sinking fund.

Supporters said the bill would help fund needed highway construction projects by allowing various government entities to pool their money. Transportation needs in metropolitan areas could be met more quickly by building turnpikes rather than federally funded freeways. These roads would ultimately become part of the state highway system. Ratings of Texas Turnpike Authority bonds would improve. The bill, combined with passage of a related constitutional amendment, HJR 65, would clear up legal questions over whether the state can use recently appropriated federal money for an experimental turnpike project.

Opponents said building more toll roads would be an inequitable way to meet Texas' transportation needs. Toll roads place a heavy burden on those drivers who live and work near them. Tolls have a way of lingering on long after the project is paid for. HB 1364 would officially sanction this lingering effect up to 40 years by allowing revenues from one toll project to be used to subsidize extensions of the original project or parts of an "integrated system of turnpike projects."

Legislative History: The House passed the bill on April 30 by nonrecord vote (Journal page 1604). The Senate amended the bill and passed it by 30 to 0 on May 22 (Journal page 1529). The House concurred with the Senate amendment by nonrecord vote on May 26 (Journal page 3567).

The HRO analysis of the bill appeared in the April 28 Daily Floor Report.

Assistance for turnpike projects
(HJR 65 by Cain)

On Nov. 3, 1987 ballot

HJR 65 would allow joint projects by the Highway Department and the Texas Turnpike Authority and would permit the state to contribute money from any source to the project. Commissioners courts of counties with populations of more than 400,000, any adjoining county or any or taxing unit within those counties would be allowed to levy a property tax, after approval by the voters. The tax could pay for all or part of the principal and interest on turnpike bonds or the maintenance and operation of toll roads wholly or partially within the taxing jurisdiction, to the extent that tolls were insufficient.

Supporters said the proposed amendment would help fund needed highway construction projects more efficiently by allowing various government entities to pool their money. Transportation needs in metropolitan areas could be met more quickly by building turnpikes rather than federally funded freeways. These roads would be built to the same standards and ultimately would become part of the state highway system. Ratings of Texas Turnpike Authority bonds would improve. Passage of the amendment would clear up legal questions over whether the state can use recently appropriated federal money for an experimental turnpike project.

Opponents said building more toll roads would be an inequitable way to meet Texas' transportation needs. Toll roads place a heavy burden on those drivers who live and work near them, while sparing those who do not. Tolls have a way of lingering on long after the project is paid for. Local governments should not be permitted to subsidize construction of toll roads -- such projects should stand or fall based on whether they are cost-effective, not whether they will be bailed out later.

Legislative History The House adopted HJR 65 139 to 0 on April 29 (Journal page 1510). The Senate adopted the proposal by 30 to 0 on May 22 (Journal page 1528).

The HRO analysis of the proposed constitutional amendment appeared in the April 29 Daily Floor Report.

Motorcycle helmet requirement
(SB 144 by Lyon)

Died in the House

SB 144 would have required all persons operating motorcycles on public streets or highways, and their passengers, to wear protective headgear. Violators would have been guilty of a traffic violation and subject to a \$10 to \$50 fine.

Supporters said motorcycle helmets save lives and prevent head injuries, which in turn saves job-loss hours and health-care resources.

Opponents said the decision whether to wear a motorcycle helmet should be a matter of individual choice and not subject to governmental intervention.

Legislative History: The Senate passed the bill on April 7 by voice vote, after a motion to suspend the rules passed by 22 to 7 (Journal page 556). The House set the bill on the General State Calendar on May 28 but did not consider it.

The HRO analysis of the bill appeared in the May 28 Daily Floor Report.

Safety belts on school buses
(SB 270 by Green)

Died on House floor

SB 270 would have required that school buses be equipped with a safety belt for each seated passenger the bus was designed to carry. School buses would also have had to be equipped with padded seat backs that were at least 28 inches high. The seats and safety belts would have had to comply with the standards of the National Highway Traffic Safety Administration.

School-bus drivers would not have been liable for a student's injury caused by failure to wear a safety belt. Evidence of use or non-use of a safety belt on a school bus would not have been admissible in a civil trial. School buses purchased or leased before Jan. 1, 1988 would not have to be equipped with safety belts.

Supporters said safety belts save lives and reduce the severity of injuries. Requiring them on school buses is long overdue. The cost of providing safety belts is not very high when coupled with the lowered insurance rates for school districts.

Opponents said the bill would add an unnecessary and costly safety feature to school buses. Current federal safety standards for school buses protect children from harm to the extent possible. Studies have indicated that the use of safety belts could lead to more serious injury than not wearing safety belts, in buses equipped with U.S.-mandated safety features.

Legislative History: The Senate passed the bill by 19 to 5 on April 2 (Journal page 521). The House amended the bill to require seat belts on buses leased or purchased after Jan. 1, 1988 rather than Sept. 1, 1987, to require that sufficient money be appropriated from state general revenue to cover the cost of implementing the bill and to limit application of the bill only to those districts whose school boards approved. It then passed the bill by 73 to 70 on May 22 (Journal page 3296). The Senate refused by voice vote to concur with the House amendments on May 25 (Journal page 1696), and a conference committee was appointed. The House refused to adopt the conference report on May 30 by 60 to 71 (Journal page 4116). The Senate adopted the conference committee report by 18 to 8 on June 1 (Journal page 2642). A motion to reconsider the conference committee report failed in the House on June 1 by 87 to 55, two members recorded voting present (Journal page 4348).

The HRO analysis of the bill appeared in the May 21 Daily Floor Report.

Restricting carrying children in truck beds
(SB 353 by Tejeda)

Died in the House

SB 353 would have restricted operation of an open-bed pickup truck or an open-flatbed truck or trailer with a child younger than 12 in the bed. Driving at a speed exceeding 30 mph on a public road, or at any speed on a public highway for which the minimum speed is 45 mph, would have been prohibited unless the child was secured by a safety belt in a passenger seat securely affixed to the floor of the bed. The anchorage of the safety belt would have to have been part of the manufacturer's original equipment on the vehicle.

Supporters said statistics prove riding unsecured in the back of a pickup truck or flatbed truck or trailer is simply not safe. Adults are subjecting children to an unreasonable risk of death or injury. Children younger than four, who would have to ride in a child seat inside a car, are riding unsupervised in the back of trucks and trailers. The bill would exact the least possible burden on families who have a truck and more children than will fit inside.

Opponents said the bill would not be enforceable in rural counties where many people have no choice but to place children in open truck or trailer beds. Migrant workers and other poorer Texans could be punished for transporting their families in the only available vehicle. Staying off interstate highways limits mobility, and driving 30 mph on hilly rural two-lane roads with no posted minimum speed limit is probably more dangerous than driving at normal speeds. Other opponents said a belted seat in a specially designed truck is the only safe way to ride in an open bed.

Legislative History: The Senate passed the bill on April 27 by voice vote, five members recorded voting nay (Journal pages 819). The House Transportation Committee reported the bill by 8 to 0 on May 12. The bill was set on the General State Calendar on May 27, but it was not considered by the House.

The HRO analysis of the bill appeared in the May 27 Daily Floor Report.

Trucking rate flexibility and safety enforcement
(SB 595 by Parmer)

Effective Aug. 31, 1987

SB 595 requires the Texas Railroad Commission to establish base rates and allow price deviations for general commodity shipments of more than 500 pounds by some motor carriers. Excluded motor carriers can be granted similar flexibility at the discretion of the commission. Deviations from base rates are subject to suspension on grounds of "predatory pricing." The commission may assess administrative penalties of up to \$10,000 for statutory or administrative violations relating to safety, certification or rates. Commercial vehicles that transport property for hire in Texas but are not required to obtain a certificate or permit from the commission are required to register annually and pay a \$1 fee and are subject to various penalties. The Department of Public Safety is required to report violations by registered commercial vehicles.

Supporters said the bill is a balanced compromise that addresses the most critical concerns of both shippers and truckers, granting the Railroad Commission the administrative discretion to deal with rates and safety. The combination of limited rate flexibility and protections against predatory-pricing would introduce greater competition without sacrificing market stability. Registration and other provisions create a framework for enforcement of truck safety.

Opponents said even limited flexibility can increase costs substantially and reduce availability of transportation for small shippers and rural areas. This plan is just one step down the road to total deregulation, which would cause serious price discrimination and market chaos. Other opponents said Texas cannot afford to settle for half-way measures like SB 595 when the economic future of the state is endangered by an archaic system of overregulation. More drastic revision of the Motor Carrier Act is needed to create a deregulated free market economy.

Legislative History: The Senate passed SB 595, which then pertained only to shipping of USDA commodities, by 31 to 0 on May 7 (Journal page 1003). The House passed a complete substitute containing the rate flexibility and safety enforcement provisions, on May 15 by nonrecord vote (Journal page 2478). The Senate concurred with the House version by voice vote on May 20 (Journal page 1311).

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

INDEX

Bill Number	Page
HB 2	210
HB 3	57
HB 4	58
HB 5(2)	134
HB 5	59
HB 7(2)	196
HB 8	146
HB 10(2)	147
HB 13	37
HB 15(2)	148
HB 21(2)	149
HB 23	38
HB 28(2)	72
HB 33(2)	150
HB 49	5
HB 49(2)	60
HB 61(2)	211
HB 62(2)	213
HB 63(2)	214
HB 65	27
HB 72(2)	92
HB 80(2)	15
HB 83	16
HB 113	99
HB 142(2)	28
HB 146(2)	17
HB 151	39
HB 161	40
HB 173(2)	170
HB 176(2)	215
HB 177(2)	171
HB 210	78
HB 226	172
HB 288	29
HB 317	100
HB 344	110
HB 390	229
HB 401	111
HB 410	112
HB 426	151
HB 438	41
HB 440	61
HB 484	18

Bill Number	Page
HB 500	101
HB 512	42
HB 527	19
HB 538	43
HB 553	44
HB 571	45
HB 574	44
HB 613	73
HB 617	102
HB 620	135
HB 655	1
HB 662	6
HB 671	102
HB 680	20
HB 682	46
HB 683	47
HB 686	48
HB 705	49
HB 707	62
HB 723	173
HB 734	79
HB 790	93
HB 824	152
HB 834	7
HB 843	114
HB 943	230
HB 959	30
HB 979	216
HB 1010	174
HB 1043	217
HB 1047	50
HB 1066	115
HB 1141	153
HB 1169	185
HB 1213	103
HB 1285	175
HB 1364	232
HB 1405	63
HB 1412	74
HB 1565	154
HB 1606	218
HB 1637	198
HB 1652	2

Bill Number	Page
HB 1758	176
HB 1785	199
HB 1818	75
HB 1829	116
HB 1879	31
HB 1896	80
HB 1909	64
HB 1948	94
HB 1953	8
HB 1962	76
HB 1963	3
HB 2020	104
HB 2082	224
HB 2085	65
HB 2090	155
HB 2181	128
HB 2182	130
HB 3183	131
HB 2279	9
HB 2320	136
HB 2438	219
HB 2445	220
HB 2449	32
HB 2495	177
HB 2538	33
HB 2560	118
HB 2572	178
HB 2623	156
HJR 2	200
HJR 3(2)	137
HJR 4	66
HJR 5	67
HJR 5(2)	68
HJR 7	221
HJR 9(2)	222
HJR 18	21
HJR 35	161
HJR 48	223
HJR 55	187
HJR 60	162
HJR 65	233
HJR 83	163

Bill Number	Page
----------------	------

HJR 88	69
HJR 96	224
HJR 104	70
HJR 112	188

SB 1	51
SB 2(1)	138
SB 5(1)	139
SB 6(1)	140
SB 7(1)	141
SB 8(1)	142
SB 9(1)	143
SB 12	36
SB 13	81
SB 16	119
SB 20(2)	10
SB 24	132
SB 33(2)	201
SB 38	191
SB 43	52
SB 52(2)	202
SB 56(2)	203
SB 58(2)	225
SB 62(2)	82
SB 66(2)	120
SB 66	53
SB 68(2)	179
SB 79(2)	230
SB 86(2)	180
SB 95	11
SB 126	54
SB 144	234
SB 165	121
SB 168	95
SB 197	86
SB 215	22
SB 229	12

Bill Number	Page
----------------	------

SB 232	181
SB 245	24
SB 251	25
SB 257	122
SB 260	144
SB 270	235
SB 298	123
SB 299	226
SB 335	182
SB 341	26
SB 353	236
SB 408	164
SB 409	105
SB 410	83
SB 421	14
SB 481	165
SB 485	189
SB 497	97
SB 504	84
SB 521	4
SB 532	106
SB 545	157
SB 595	237
SB 601	158
SB 611	85
SB 643	133
SB 664	190
SB 683	86
SB 687	34
SB 702	87
SB 761	88
SB 762	56
SB 768	55
SB 789	204
SB 793	183
SB 807	89
SB 842	107

Bill Number	Page
----------------	------

SB 884	77
SB 962	166
SB 967	90
SB 990	159
SB 994	184
SB 1027	205
SB 1033	91
SB 1035	125
SB 1048	13
SB 1081	98
SB 1108	35
SB 1123	108
SB 1280	160
SB 1371	126
SB 1405	127
SB 1407	206
SB 1428	71

SJR 2	36
SJR 5(2)	191
SJR 5	167
SJR 6(2)	168
SJR 8(2)	207
SJR 9	192
SJR 12(2)	227
SJR 12	228
SJR 17	194
SJR 18	14
SJR 26	145
SJR 27	169
SJR 34	56
SJR 35	109
SJR 53	195
SJR 54	92
SJR 55	208
SJR 56	209

HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78769
(512) 463-0752