

**LEGISLATIVE UPDATE -- SIGNIFICANT BILLS
OF THE 78TH TEXAS LEGISLATURE
AFFECTING REAL ESTATE,
LENDING AND OTHER COMMERCIAL MATTERS**

**Legislative Committee, Real Estate Division
Real Estate, Probate and Trust Law Section
The State Bar of Texas**

June 26, 2003

**This paper is dedicated to the memory of Mimi Trueheart,
whose contributions as a Committee member, Vice Chairman, and friend
have been greatly missed.**

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LEGISLATIVE UPDATE

I. INTRODUCTION

This paper presents a summary of significant bills passed during the Regular Session of the 78th Legislature of the State of Texas pertaining directly or indirectly to real estate, mortgage lending, and other business and commercial issues. More than 1,200 bills were introduced during the Regular Session dealing with these issues. Of the 5,754 bills filed this session, 1,403 passed or approximately 24.38 percent. This paper includes only those that passed and that the authors perceived to be of general interest to the audience. We have categorized the bills, generally, under specific topics instructive of the content of the bill; however, many bills are broad enough to affect other areas of the law. Consequently, bills listed in a particular category do not necessarily represent all of the bills of interest with respect to that particular topic, but rather the entire paper should be reviewed for other bills relevant to that topic that may be listed in another category. In addition, the short caption for each bill and the general summary for each bill may not cover all relevant aspects of the bill, but rather are simply intended to alert the reader to the bill generally and the areas of law affected by the bill.

II. EFFECTIVE DATES

In general, the effective date of acts of the Legislature is 91 days after adjournment of the Regular Session (September 1, 2003 for the 78th Regular Session), unless a later effective date is specified in the bill. If, however, a bill includes a provision for immediate effect and is passed by a two-thirds majority in each house, such act becomes law immediately on signing by the Governor and/or filing with the Secretary of State. Because of the possible confusion and uncertainty in this area, we have included after the summary of each bill the earliest effective date for each bill shown by the Texas Legislative Service on its website.

III. ACKNOWLEDGMENTS

This paper was written by its presenters and by the other members of the Legislative Committee of the Real Estate Division of the State Bar's Real Estate, Probate and Trust Law Section set forth below, who have volunteered their time and efforts to track and report on real estate, lending and other commercial legislation during the 78th Regular Session. Their efforts are greatly appreciated. The following is a list of the members of the Committee:

Janna Melton, *Attorney at Law*, Austin, Chairman
Bailey Moseley, *Attorney at Law*, Marshall, Vice-Chairman
Sarah Senterfitt, *Attorney at Law*, Austin, Legislative Counsel
Chris Christensen, *PeirsonPatterson, LLP*, Dallas
Marie Louise Crozat, *Law Office of Marie Louise Crozat, P.C.*, Houston
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James Ivy Wiedemer, *Attorney at Law*, Bellaire

We would also like to acknowledge the efforts of Joyce Nunn, assistant to Janna Melton, who helped with the compilation of this paper.

IV. INTERNET ACCESS

These bills can be accessed at the following websites (with hyperlinks):

The State Bar's website at <http://www.mytexasbar.com>
and
The Legislature's website at <http://www.capitol.state.tx.us>

Several bills may be bracketed to certain geographic areas in the State by reference to municipality or county population and/or square miles contained in the county. The following websites are helpful in deciphering the bracketing system.

<http://www.tsl.state.tx.us/ref/abouttx/popcity32000.html>
and
<http://quickfacts.census.gov/qfd/states/48/48029.html>

V. SUMMARIES OF BILLS

Affordable Housing

House Bill 2044

Relating to the powers and duties of the General Land Office and the accounting and disposition of state-owned property.

Author: McReynolds Sponsor: Staples
Amends numerous sections within Chapter 31, Natural Resources Code

This bill creates a mechanism for the Land Commissioner to recommend to the Governor the use of underused state property for affordable housing purposes when the best use of that property would be for residential purposes. The bill then expands the authority of the Governor to approve such use, in lieu of specific authorization by the Legislature as required under prior law, and the transfer to an entity (as opposed to a political subdivision as was required under prior law) for development for affordable housing purposes. The bill also makes comprehensive changes to the procedures and manner in which the General Land Office can conduct authorized real estate transactions, including permitting the use of a broker if determined to be in the best interests of the state.

Effective Date: June 20, 2003

House Bill 2308

Relating to the low income housing tax credit program.

Author: Jones, Jesse Sponsor: West, Royce
Amends Sections 2306.6703, 2306.6711 and 2306.6725, Government Code

Prior to House Bill 2308, there were no statutes which prohibited multiple housing developments located within the same neighborhood from both receiving a low income housing tax credit. This amendment of Section 2306.6703 provides that an application for the low income housing tax credit is ineligible if the applicant proposes a new development within "one linear mile or less" from a development that has received a low income housing tax credit within the three (3) years prior to the application. There are certain exceptions to the prohibition, including, among others, for developments using specified funds (e.g. federal HOPE VI funds through the U.S. Dept. of HUD) or that are located outside a metropolitan statistical area.

Effective Date: September 1, 2003

House Bill 2801

Relating to urban land bank demonstration programs.

Author: Giddings Sponsor: West, Royce
Adds Subchapter 379C, Local Government Code

House Bill 2801 authorizes certain municipalities (with a population in excess of 1.18 million (i.e., Dallas) and which are predominantly located in a county with an area of less than 1,000 square miles – i.e., Dallas and Tarrant counties) to establish an "urban land bank demonstration program". A land bank may directly acquire unimproved real property for

which a foreclosure has been ordered for past due taxes if, among other things, (i) the amount of taxes owed (including fees, penalties, etc.) exceeds the market value of the land, (ii) there are no buildings on the land, and (iii) taxes have been delinquent in the preceding six (6) years. The land bank is authorized to purchase any qualified property without the property being offered to the public at a foreclosure sale on the courthouse steps (unless the landowner objects pursuant to the requirements of the Act). The land bank may then sell the property to qualified developers for the purpose of constructing affordable housing thereon. Upon sale of the land to a qualified developer, the land must be encumbered with deed restrictions concerning the allowable household income of any prospective homebuyer.

Effective Date: September 1, 2003

House Bill 3546

Relating to the exemption from ad valorem taxation of certain property used to provide low-income or moderate-income housing.

Author: Hamric Sponsor: Lucio
Amends Section 11.182, and adds Sections 11.1825, 11.1826 and 23.215 Tax Code

Acts of the 75th and 77th Texas Legislatures created the Community Housing Development Organization (CHDO) exemption whereby a non-profit organization could be exempted from paying ad valorem taxes on property offered in furtherance of providing affordable housing to low-income and moderate-income individuals and families. House Bill 3546 is in response to the perception that a disproportionate number of non-profit organizations that were not based in the community were receiving the benefits of the CHDO exemption.

Although not retroactive, House Bill 3546 implements a number of forward looking provisions crafted to ensure that the CHDO exemption is more accessible to *bona fide* community-based organizations, including a requirement that at least two of the positions on the board of directors of the organization seeking the CHDO exemption must be reserved for low-income individuals, individuals living in economically disadvantaged census tract, or individuals appointed by a neighborhood organization that represents low income individuals. An organization seeking a CHDO exemption must meet certain requirements to establish it as a non-profit charitable organization with a purpose of providing low income housing, must be organized under the laws of Texas, and must have its principal place of business in Texas (with a majority of its board members also having their principal place of residence in Texas).

There are a number of other new requirements regarding the housing development. Among them, a minimum of fifty percent (50%) of the total square footage in a CHDO exempted housing project must be reserved for individuals or families that meet the income level requirements set forth in this bill. Specifically, a housing unit may not be sold or rented to an individual or family whose median income is greater than sixty percent (60%) of either (i) the area median family income or (ii) the statewide area median income. Annual rent may not exceed thirty percent (30%) of the area median family income.

Property is not eligible for a CHDO exemption unless the property is actively housing qualified individuals or is under active construction or other physical preparation. An organization will not receive a CHDO exemption for the rehabilitation of a housing project unless (i) the initial construction of the project was completed at least ten (10) years before the organization began the rehabilitation and (ii) if the person or organization from whom the property was acquired was not the original owner of the project, such person or organization must have owned the project for a minimum of five (5) years.

Effective Date: September 1, 2003

Senate Bill 264

Relating to the continuation and functions of the Texas Department of Housing and Community Affairs.

Author: Lucio
Amends Sections 1372.0231, 2306.001, 2306.021-22, 2306.0661, 2306.0721-22, 2306.082, 2306.111, 2306.113, 2306.186, 2306.252, 2306.589, 2306.6703, 2306.6704-05, 2306.6710-11, 2306.6716-17 and 2306.6725; adds Sections 2306.359 and 2306.67055; and repeals Sections 2306.072(d), 2306.185(g), 2306.590-91 and 2306.6732, Government Code

In connection with the Texas Sunset Commission conclusion that the Texas Department of Housing and Community Affairs (“TDHCA”) had improved its responsiveness to public input, Senate Bill 264 extends the life of the TDHCA until September 1, 2011, grants the department greater rule making authority and adds a significant amount of administrative provisions.

Effective Date: September 1, 2003

Senate Bill 284

Relating to the continuation and functions of the Texas State Affordable Housing Corporation.

Author: Lucio

Amends 1372.0221, 1372.023, 2306.057, 2306.0721-22, 2306.081, 2306.5521, 2306.553-54, 2306.5545 and 2306.562-63, and adds 2306.5546-58, Government Code

The Texas State Affordable Housing Corporation (TSAHC) facilitates the provision of affordable housing for low income persons. The TSAHC was scheduled to sunset as of September 1, 2003. Senate Bill 284 continues the TSAHC until September 1, 2009, and requires TSAHC to adopt a minimum dollar-for-dollar public benefit requirement for recipients of 501(c)(3) bonds. For every dollar of abated property tax revenue that a recipient receives, it must invest one dollar in rent reduction, capital improvements projects, or social, educational, or economic services benefiting income-eligible persons. This bill also extends eligibility to all professional educators for the home loan program (formerly known as the “teacher home loan program”) and implements changes to the percentages of the state ceiling allocations of qualified residential rental project bonds and a number of corporate governance provisions for TSAHC, pertaining to standards of conduct and conflicts of interest.

Effective Date: September 1, 2003

Annexation

House Bill 1197

Relating to authorization for a development agreement between a municipality and an owner of land in the municipality’s extraterritorial jurisdiction.

Author: Krusee

Adds Subchapter G, Local Government Code

Prior to adoption of House Bill 1197, individuals and municipalities could not enter into agreements that governed the development of land within the extraterritorial jurisdiction of the municipality. HB 1197 allows a written contract between an individual owner of land in the extraterritorial jurisdiction of a municipality and that municipality (with a population of at least 1.9 million - i.e., Houston) to specify certain tasks to be conducted by the municipality, such as: extend planning authority, authorize land use and development regulations, and construction of roads, drainage, and sewer systems. The contract between the landowner and the municipality may also guarantee the continuation of ETJ status and its immunity from annexation for a period of up to 15 years. These agreements may be renewed or extended for periods of up to 15 years, with a total duration not to exceed 45 years. Also, House Bill 1197 validates existing agreements in accord with the provisions of this bill. Finally, a municipality may not require such an agreement as a condition for providing water, sewer, electricity, and other similar utilities.

Effective Date: June 20, 2003

House Bill 1204

Relating to the authority of municipalities and counties to regulate subdivisions in a municipality’s ETJ.

Author: Baxter Sponsor: Wentworth

Amends Sections 242.001 and adds 231.100, and adds Sections 242.0015, 212.0025, 232.0013 and 232.0095, Local Government Code

In response to complex and often conflicting county and municipal subdivision and platting requirements, the 77th Legislature passed legislation that had the practical effect of consolidating municipal and county subdivision and platting requirements within the municipality's extraterritorial jurisdiction. However, it became apparent that less populous areas experience less development than urban areas, and so the problems associated with dual regulation are not as evident. Now excepted from the requirement of consolidation are those counties that are considered economically distressed under Section 232.071, Local Government Code, counties within fifty (50) miles of a border, and certain urban counties under Section 232.100, as amended by House Bill 1204. In those areas, municipal and county approval is required; when the requirements between the county and the municipality are in conflict, the more stringent regulation controls.

Areas that are required to consolidate or apportion control over the zoning and platting process must enter into an agreement setting forth the requirements that any subdivisions or plats within the extraterritorial jurisdiction must meet. If the concerned county and municipality cannot reach an agreement, House Bill 1204 provides that such entities must enter into arbitration. If an agreement reached under this Act establishes a plan for roads that conflicts with a plan set by a metropolitan planning organization (MPO), the plan of the MPO prevails.

Effective Date: June 20, 2003

House Bill 2334

Relating to the rights of residents of an area annexed for limited purposes to vote in certain municipal elections.

Author: Turner
Amends Section 43.140(a), Local Government Code

Prior to adoption of this amendment, residents of land annexed by a municipality for a limited purpose were only allowed to vote for members of the governing body of the municipality, such as the mayor or city council. This amendment extends the voting privileges of voters within a limited purpose annexation area to vote in an election of the office of the controller, if the controller is an elective position of the municipality.

Effective Date: September 1, 2003

House Bill 3591

Relating to authorizing the strip annexation of certain property by certain municipalities.

Author: Pitts
Adds Section 43.054, Local Government Code

Current law prohibits municipalities from annexing a strip of land that is less than 1,000 feet in width. House Bill 3591 allows a municipality with more than 21,000 people located in a county with more than 100,000 people to annex a strip of land following along a road or highway for the purpose of annexing territory contiguous to the strip if the land contiguous to the strip was formerly used in connection with the superconducting super collider high-energy research facility (i.e., Waxahachie, Texas).

Effective Date: June 20, 2003

Brokers

House Bill 660

Relating to access to criminal history record information by certain licensing and regulatory agencies.

Author: Allen Sponsor: Deuell
Amends Section 411.12 of the Government Code by amending Subsections (a) and (c) and adding Subsection (d) and repealing (b)

Gives specific authority to enumerated licensing and regulatory agencies in Texas (including the Texas Real Estate Commission) to perform both DPS and FBI criminal history record checks.

Effective Date: September 1, 2003

House Bill 1508

Relating to the regulation of certain occupations by the Texas Real Estate Commission.

Author: Flores Sponsor: Fraser
Amends, adds, and repeals various sections of the Occupations Code

Raises the cap on the cost of a salesperson application license from \$50 to \$75. Adds a provision authorizing a fee up to \$40 for filing an application for approval of an instructor of core real estate courses. Adds a provision authorizing a fee up to \$40 for filing an application for approval of an instructor of continuing education courses. Changes the fee for preparing a license or registration history to \$20 from \$10. Prohibits the commission from charging a fee for filing a request to place the salesperson license on active status or the broker a fee for filing a request to sponsor the salesperson in cases where the commission issued an original inactive salesperson license under Section 1101.363(b) to a salesperson who is not sponsored by a licensed broker and that person is subsequently sponsored by a licensed broker. A salesperson may now go inactive without filing a special form. Authorizes the commission to establish by rule methods for publishing the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission to be prominently displayed on the Internet website of certain persons regulated by the commission. Repeals the requirement that a broker who intends to associate with an applicant for a salesperson license must join the applicant in filing the application. Modifies the provisions on inactive salesperson licenses to allow the issuance of an inactive salesperson license to a person who applies for a salesperson license and satisfies all requirements for the license. For purposes of when the Information About Brokerage Services form is required, changes the term "face to face meeting" to the term "substantive dialog" and clarifies the definition of "substantive dialog" to include written communication that involves a substantive discussion related to a specific property. For certain regulated persons, requires posting in a prominent display on the Internet website notice to consumers and service recipients of the availability of payment for aggrieved persons. Adds an honesty, trustworthiness, integrity, and competence prerequisite for professional inspector license to include written communication that involves a substantive discussion related to a specific property. Changes the renewal period on a license from a year to twenty-four months and adds a provision on the calculation of the license fee.

See also House Bill 2044 under *Affordable Housing*, which authorized the use of brokers in connection with real estate transactions with the General Land Office.

See also House Bill 3508 under *Miscellaneous* regarding nonsubstantive revisions to enacted codes, which contains nonsubstantive changes to the Occupations Code, including changes intended to conform the Code to incorporate revisions made to the Real Estate License Act in the 77th Legislature.

Effective Date: September 1, 2003

Senate Bill 252

Relating to the registration of mortgage bankers.

Author: Staples Sponsor: Flynn
Amends Subtitle E, Title 3 of the Finance Code by adding Chapter 157

Requires residential mortgage bankers to register with the Texas Savings and Loan Commissioner. Registration entails filing a statement with the Savings and Loan Commissioner containing the name and address of the mortgage banker; the name, address, and telephone number of the representative of the mortgage banker to be contacted regarding a written complaint; and a list of the locations in this state at which the person conducts the business of a mortgage banker. Periodic renewal of the registration is not required. Provides the employee of a mortgage banker is not required to register. Exempts federally insured banks, savings banks, savings and loan association, Farm Credit System Institutions, credit unions and affiliates; licensed mortgage brokers; or certain lenders regulated by the Office of Consumer Credit Commissioner. Requires mortgage bankers to update changes in the registration statement by the 30th day after the information changes. Permits a registration fee of a maximum of \$500. Requires mortgage bankers to provide an application disclosure. The registration gives the Texas Savings and Loan Commissioner the ability to give notice to the registered mortgage banker of any "signed written complaint" and seek resolution of the complaint. The Savings and Loan

Commissioner could revoke registration — after an administrative hearing — if (1) the mortgage banker fails or refuses to respond to a consumer complaint or (2) the Savings and Loan Commissioner concludes that the mortgage banker has engaged in an intentional course of conduct to violate the law or has engaged in an intentional course of conduct that constitutes improper, fraudulent, or dishonest dealings. If the Savings and Loan Commissioner determines to revoke the registration, the mortgage banker could appeal that decision to the court. Allows the Finance Commission to adopt standard forms, by rule, for mortgage bankers who represents that an applicant for a loan is preapproved or has prequalified for the loan.

Effective Date: January 1, 2004

Senate Bill 1000

Relating to a statistical or demographic analysis conducted by the Texas Legislative Council for a state agency and to information collected by the Council in the course of performing the analysis.

Author: West Sponsor: Goodman

Amends Chapter 323 of the Government Code by adding Section 323.020; Amends Section 552.112 of the Government Code

Confers confidential treatment on information collected by the Texas Legislative Council in conducting a study for a state agency.

Effective Date: June 20, 2003

Senate Bill 1013

Relating to the regulation of the practice of appraising real property; providing administrative, civil, and criminal penalties.

Author: Staples Sponsor Flores

Amending various sections of the Occupations Code

Allows the Texas Appraiser Licensing and Certification Board to charge a fee for filing a request for a return to active status. Permits the Texas Appraiser Licensing and Certification Board to publish rules establishing procedures under which a person may obtain an extension of time to complete the continuing education required to renew the person's certificate or license. Allows the Texas Appraiser Licensing and Certification Board to place on inactive status the certificate or license of an appraiser. Permits the Texas Appraiser Licensing and Certification Board, on its own motion, to file a formal complaint against a person who, without holding a certificate or license, engages in an activity for which a certificate or license is required. Creates civil and criminal penalties for unlicensed activity.

Effective Date: September 1, 2003

Senate Bill 1577

Relating to the effect of a criminal conviction on licensing and regulation of a mortgage broker or loan officer.

Author: Carona Sponsor: Flynn

Amends various sections of the Finance Code

Changes eligibility requirements for mortgage brokers and loan officers by requiring the individual to satisfy the Savings and Loan Commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity. Adds the eligibility requirement that the individual not be in violation of the Mortgage Broker License Act, a rule adopted under the Mortgage Broker License Act, or any order previously issued to the individual by the Savings and Loan Commissioner. Clarifies that a person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case. Broadens the requirement on mortgage broker and loan officer license renewal that an individual not be convicted of a criminal offense (prior law only included felonies) directly related to the occupation of the mortgage broker. Permits the Savings and Loan Commissioner to order disciplinary action against mortgage brokers or loan officers who disregard an order of the Savings and Loan Commissioner.

Effective Date: September 1, 2003

Senate Bill 1578

Relating to an examination requirement for mortgage broker and loan officer license applicants.

Author: Carona Sponsor: Flynn
Amends Subsections (a) and (c), Section 156.204 of the Finance Code

Provides that mortgage broker and loan officer applicants must provide the Savings and Loan Commissioner with satisfactory evidence of having passed an examination, offered by a testing service or company approved by the Finance Commission, that tests (i) knowledge of the mortgage industry and (2) the role and responsibilities of a mortgage broker or loan officer.

Effective Date: September 1, 2003

Senate Bill 1667

Relating to obtaining criminal history record information on an applicant for or holder of a mortgage broker or loan officer license.

Author: Averitt Sponsor: Flynn
Amends Section 156.206, of the Finance Code; Amends Subchapter F, Chapter 411, of the Government Code

Changes the Finance Code to meet federal requirements enabling the use of FBI background checks in determining a person's eligibility for a mortgage broker or loan officer license.

Effective Date: September 1, 2003

Construction

House Bill 208

Mechanic's lien on real property for demolition services.

Author: Puente
Amends Sections 53.021(e) and 53.124(e), Property Code

Provides that the mechanic's lien procedures and rights in Chapter 53 also apply to persons who perform labor as part of, or who furnish labor or materials for, the demolition of a structure under a written contract with the owner of the property, or the owner's agent, trustee, receiver, contractor or subcontractor.

Effective Date: September 1, 2003; Applies only to labor performed or materials or labor furnished under a written contract entered into on or after September 1, 2003.

House Bill 329

Regulation of Mold Assessors, civil liability for mold remediation, insurance coverage on mold claims.

Author: Naishtat Sponsor: Fraser
Amends Title 12, Occupations Code by adding new Chapter 1958; adds Article 21.21-11, Insurance Code

HB 329 creates Chapter 1958, Occupations Code, to regulate certain mold related activities such as mold remediation and mold assessments. Exemptions are also listed such as commercial or residential real estate inspections, repair or replacement of plumbing or HVAC, and custodial services. The bill requires the Texas Board of Health to promulgate rules by April 1, 2004 for minimum performance standards and work practices for conducting a mold assessment or remediation, safety standards, a public education program, a code of ethics, licensing and registration requirements, examination, training, and continuing education. An owner or tenant is exempt from licensure and may perform assessment or remediation on his property. Contaminated areas of less than 25 contiguous square feet do not require a licensee to perform remediation or assessment. The Act specifies the content of "work analysis" for a mold assessment and "work plan" for a mold remediation project, which shall be given to the client before work begins. Notice of all remediation

projects shall be given to the TxDOH by the licensee. New licensees who perform assessment are prohibited by new conflict of interest rules from performing remediation work. Cross-ownership of assessment and remediation entities is prohibited.

Licensees shall provide a certificate of mold remediation to the owner, which the owner is required to provide to a buyer of the property. A property owner is not liable for damages related to mold remediation if a certificate of mold remediation has been issued and the damages accrued on or before the date of the issuance of the certificate.

The bill amends the Insurance Code to provide that an insurance company may not take into account in its underwriting decisions regarding residential property insurance (defined as homeowners insurance policies and allied lines insurance policies) previous mold damage or a claim for mold damage if the property was remediated, a certificate provided, and a subsequent inspection reveals no evidence of mold damage.

Effective Date: September 1, 2003, except that the licensing and registration provisions of new Section 1958.101(a) of the Occupations Code need not be complied with until the Texas Department of Health adopts rules required by Chapter 1958, Occupations Code.

House Bill 705

Liability of In-Home Service Companies and Residential Delivery Companies for Negligent Hiring.

Author: Solomons

Adds Chapter 145, Civil Practices and Remedies Code

A company is rebuttably presumed to have not acted negligently if the company accused of negligent hiring obtains a criminal history background report on its employees and the background report shows no criminal history as described in the Act.

Effective Date: September 1, 2003, for causes of action accruing on or after that date.

House Bill 730

Texas Residential Construction Commission; Residential Construction Liability Act Amendments.

Author: Ritter

Amends various sections of Chapter 27 and adds Title 16, Property Code

This Act creates the Texas Residential Construction Commission. The 9 member Commission will have six primary responsibilities: (1) register homebuilders, in order to keep track of and discipline builders, (2) oversee a state-sponsored home defect inspection process, (3) prepare and adopt building performance standards, (4) oversee three task force groups—on mold, arbitration, and rain harvesting; (5) provide a voluntary certification program for arbitrators and (6) provide for the filing of arbitration awards. The commission's members, appointed by the Governor, will be 4 homebuilders, 3 public members, 1 engineer and 1 architect or residential inspector.

After, Buecher, it is now unclear in determining which written warranty language will be sufficient to disclaim the implied warranty of good and workmanlike construction. The Act provides for the Commission to prepare and adopt new building performance standards, to enable builders to define their warranty obligations. The standards are focused more on performance of the home after closing rather than how the home is constructed. The Act replaces any implied warranty of good and workmanlike construction with a limited statutory warranty and any implied warranty of habitability with a statutory warranty of habitability. The Commission by rule shall adopt limited statutory warranties and building and performance standards for residential construction that contain a warranty period of one year for workmanship and materials; two years for plumbing, electrical, heating, and air-conditioning delivery systems; and 10 years for major structural components of the home. The construction of each new home or home improvement shall include the warranty of habitability. For a construction defect to be actionable as a breach of the warranty of habitability, the defect must have a direct adverse effect on the habitable areas of the home and must not have been discoverable by a reasonable prudent inspection or examination of the home or home improvement within the applicable warranty periods.

The Commission and the new building performance standards provide a new method of resolving construction disputes. Either the homeowner or builder may file a claim with the Commission and any pending lawsuit is abated. The

Commission will assign a state approved inspector to inspect the alleged defect and determine whether the construction complies with the Commission's building performance standards. The builder can then make its Residential Construction Liability Act ("RCLA") offer. If the homeowner refuses the offer and elects to sue or proceed with the abated lawsuit, the homeowner will have the burden of overcoming the inspector's determination.

The Commission will be funded from house registration fees (estimated to be approx. \$30) paid after the closing of each home constructed, builder registration fees (\$500 initially, and not more than \$300 on a renewal basis), and from inspection fees.

All builders will be registered with the Commission, and be subject to its disciplinary authority--revocation of registration for certain limited causes, such as fraud, misappropriation of trust funds, discrimination, false advertising, failure to pay a judgment, failure to register a home and failure to reimburse a homeowner for inspection costs if ordered by the Commission.

Residential construction arbitrators may voluntarily choose to be certified by the Commission and certain arbitration awards must be filed with the Commission. Arbitration awards can be vacated if it is shown that a manifest disregard of Texas law has occurred.

The Act also amends the RCLA. Current law has been held to require that the builder has the burden of proving that the homeowner unreasonably rejected the builder's offer. The Act's amendments provide that the builder is only required to show that the builder made a reasonable offer, not that the homeowner unreasonably rejected the offer. Amendments also provide a mechanism for agreement between builder and homeowner for the terms by which a builder may voluntarily decide to buy back a home. The dollar cap on the amount of damages that may be assessed against a builder has been eliminated.

Effective Date: September 1, 2003 for the RCLA amendments and the Act in general, but the Commission members need not be appointed until 12/1/03, and thereafter are required to adopt the limited statutory warranties; 3/1/04 for the registration provisions and the certification of arbitrators.

House Bill 1487

Texas Electrical Safety and Licensing Act.

Author: Driver

Adds Chapter 1305, Occupations Code

Currently, electricians are licensed only locally. HB 1487 requires electricians to obtain a state license from the Texas Commission on Licensing and Regulation; however, municipalities are not prohibited from continuing their licensing practices. Electrical work must be performed by licensed electricians. The licensing scheme includes a master, journeyman, and apprentice levels with corresponding experience requirements. Special classifications are carved out for sign electricians. The National Electrical Code (NEC) as published by the National Fire Protection Association is the state electrical code as adopted by the commission.

Effective Date: September 1, 2003, except that the provisions requiring the electrician to have a license do not become effective until September 1, 2004, along with the requirements to display such a license and the criminal penalties for violation of the Act.

Senate Bill 277

Sunset Legislation--Continuation of the Texas Board of Professional Engineers.

Authors: Ellis, Rodney Sponsor: Chisum

Amends Section 1001.001, et seq., Occupations Code

The Texas Board of Professional Engineers is subject to Chapter 325, Government 3 Code (Texas Sunset Act). This Act extends the existence of the Board from September 1, 2003, to September 1, 2015. A Joint Advisory Committee on the Practice of Engineering and Architecture is created. The Board is required to maintain a statistical analysis of complaints filed. The Board is permitted to issue advisory opinions on the interpretation of the Engineering Practices Act.

Effective Date: September 1, 2003

Senate Bill 282

Sunset Legislation--Continuation of the Texas Board of Plumbing Examiners.

Author: Jackson Sponsor: Bailey
Amends Section 1301.001, et seq., Occupations Code

The Texas State Board of Plumbing Examiners is subject to Chapter 325, Government 3 Code (Texas Sunset Act). This Act extends the existence of the Board from September 1, 2003 to September 1, 2015, authorizes sanctions, requires interagency cooperation, and makes other amendments to the Plumbing License Law.

It also amends the supervision of non-licensed plumbers. Currently, a person who performs plumbing is not required to be licensed outside of the municipal limits of a city or town, or within a municipality of fewer than 5,000 inhabitants, unless a municipal ordinance requires otherwise. Under the Act, a licensed plumber who supervised and controlled a worker engaged in plumbing a new one- or two-family dwelling in an unincorporated area would have training and management responsibility for the worker and would be required to review and inspect the plumbing performed. The licensed plumber, however, would not need to provide continuous or uninterrupted on-the-job oversight of the work. The Act also authorizes the Board to adopt registration requirements for plumber's apprentices, including training and education requirements.

Effective Date: September 1, 2003

Senate Bill 283

Sunset Legislation--Continuation of the Texas Board of Architectural Examiners.

Author: Jackson Sponsor: Chisum
Amends Chapters 1051 -1053, Occupations Code

Occupations Code, ch. 1051-1053 governs professional architects, landscape architects, and interior designers under regulation of the Board of Architectural Examiners, a nine-member body with at least one member from each profession (four architects, one landscape architect, and one interior designer) and three public members. This Act extends the existence of the Board from September 1, 2003 to September 1, 2015. Registration of landscape architects and interior designers is required under the Act. The Board may recommend to cities a rehabilitation code and prescriptive provisions for rehabilitation.

Effective Date: September 1, 2003

Senate Bill 1090

Inspection, Installation, Repair of Elevators, etc. in Single Family Homes.

Author: Carona Sponsor: Geren
Amends Section 754.011 Health and Safety Code

Elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as applicable, and must be inspected by a QEI-1 certified inspector after the installation is complete. The inspector shall provide the dwelling owner a copy of the inspection report. A municipality may withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the QEI-1 inspection report to the municipality. On completing installation of equipment in a single-family dwelling, a contractor shall provide the dwelling owner with relevant information, in writing, about use, safety, and maintenance of the equipment, including the advisability of having the equipment periodically and timely inspected by a QEI-1 certified inspector.

The bill requires persons who install, repair, or maintain elevators, etc. to register as a contractor with the Texas Commission on Licensing and Regulation.

Effective Date: September 1, 2003, except that the provisions relating to single family homes do not take effect until January 1, 2004.

Contracts of Sale and Other Transfers

House Bill 1306

Relating to the confidentiality of certain information relating to real property purchased or sold by certain state entities.

Author: Marchant

Amends Natural Resources Code Section 11.084 and redesignates it as Section 11.086

Previously, the Veteran's Land Board, the School Land Board, and the General Land Office could keep information regarding the values established by appraisals and the information relating to sales or purchase prices confidential until it entered into a contract for the purchase or sale of real estate. This amendment extends that confidentiality until a deed has been executed. *See also* House Bill 2044 under *Affordable Housing*, which also makes comprehensive changes to the procedures and manner in which the General Land Office can conduct authorized real estate transactions, including permitting the use of a broker if determined to be in the best interests of the state.

Effective Date: June 20, 2003

House Bill 3383

Relating to agricultural development districts.

Author: Swinford

Amends Sections 60.032 and 60.033, Agriculture Code and affects the application of Section 41.001(a), Election Code

Previously, a purchaser could opt out of a contract for the purchase of land if the purchaser had not been provided with notice that the property the subject of the contract was located within an Agricultural Development District, but there was no form of notice proscribed by statute. The Agriculture Code now requires the board of directors of the District to proscribe the form of notice by September 30, 2003. This bill also rescinds the application of this right of rescission if the contract requires the seller to provide a title insurance policy commitment prior to the sale and if the contract gives the buyer the right to back out of the contract if the property is in such a district.

In addition, Texas Agricultural Development Districts must record detailed information about themselves (such as plats identifying the District's boundaries, the form of notice, assessment rate, etc.) in the real property records of each county in which the District is located and with the Texas Department of Agriculture.

Effective Date: September 1, 2003

Senate Bill 1647

Relating to a timeshare developer's ability to complete certain documents.

Author: Staples

Adds Property Code Section 221.036

Timeshare developers may charge a fee, without being charged with unauthorized practice of law, for the preparation of a contract, closing document or disclosure document by an attorney or otherwise "accepted by the commission for use in the particular type of transaction involved".

Effective Date: June 20, 2003

Senate Bill 1527

See also Senate Bill 1527 under *Lending & UCC* for a bill affecting a purchaser's right to cure under a contract of sale for residential property.

Documents and E-Commerce

House Bill 1282

Relating to commercial electronic mail.

Author: McCall

Adds Sections 46.001 - 46.011, Business & Commerce Code

Under House Bill 1282, unsolicited commercial e-mails may not be sent to a person who requests removal from the sender's list. Following such a request, the sender must remove the person's email within three days and may not include it in any lists the sender sells. Lists may not be sold which include e-mail addresses from persons who requested removal. Commercial e-mailers may not borrow another domain name to send e-mails, unless they have that domain name owner's permission. Unsolicited commercial e-mail must include a reply mechanism to request removal and must be preceded with the letters ADV or, if the email includes obscene material, ADV: ADULT ADVERTISEMENT. There are stiff civil, D.T.P.A., and even criminal penalties for violators. There are safe harbors for accidental and unintended violations and exemptions for certain communications such as by trade associations to their members.

Effective Date: September 1, 2003

House Bill 2930

Relating to the confidentiality of certain personal information in real property records filed with the county clerk.

Author: Lewis

Add Section 11.008 and amends Section 13.002, Property Code.

Every standard deed, deed of trust, or mortgage form attorneys use must be modified effective January 1, 2004 to include a 12 point bold faced or 12 point upper case lettered notice on the FIRST PAGE which states: "NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER." Instruments executed on or after 1/1/04 transferring an interest in real property to or from an individual may not be recorded unless the notice is on the first page. The county clerk may not reject a document for recording on the basis that it includes or does not include a driver's license or social security number. The county clerk must post a notice stating that driver's license and social security numbers are not required to record instruments and that all recorded documents are public information. This law, by its terms, is the exclusive law governing privacy in recording (such as there is - just driver's license and social security numbers) unless a later statute overrides it. The bill confirms recording is still public notice. Recorded instruments which must have a social security number under Federal law, such as IRS liens, will be recorded with that otherwise confidential information.

See also Senate Bill 1559 (Author: Madla; Sponsor: Lewis), which is identical, was passed one day prior to House Bill 2930, but signed by the Governor on the same day, June 20, 2003.

Effective Date: September 1, 2003

Entities and Franchise Tax

House Bill 1156

Relating to adoption of the Business Organizations Code.

Author: Giddings Sponsor: Fraser

Adds the Business Organizations Code and, on its effective date, repeals the Texas Business Corporation Act, Texas Non-Profit Corporation Act, Texas Revised Limited Partnership Act, Texas Miscellaneous Corporation Laws Act, Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, Texas Real Estate Investment Trust Act, Texas Uniform Unincorporated Nonprofit Associations Act, Texas Professional Corporation Act, Texas Professional Associations Act, and Cooperative Associations Act.

Enacts the new “Business Organizations Code” (supplanting all of the above acts which are repealed) which employs a “hub and spoke” structure, where provisions common to all entities, such as definitions and filing procedures, purposes and powers, formation and governance, record keeping, filing requirements, liability, merger and termination procedures, are in a central “hub”, and separate “spokes” contain provisions governing specific types of entities that are not common or similar. Changes filing fees for various filings; generally increases filing fees for LLCs, PAs and conversions, and decreases some filing fees for limited partnerships. Enacts numerous substantive changes in the laws governing business entities to modernize business entity law and contemplate electronic means of record keeping, communications and filing. Reverses the default rules for statutory preemptive rights and cumulative voting rights of shareholders; grandfathers both of these rights for corporations formed prior to the effective date in most instances. Changes content requirements of many filings, including articles of incorporation/organization. The State Bar of Texas Business Law Section and George Coleman and Daryl Robertson of Jenkens & Gilchrist, a Professional Corporation, prepared a Chart Listing the Changes from Existing Law, copyright 2003. The chart is posted at <http://www.reptl.org> under Projects of the Legislative Committee, Real Estate Division, as an appendix to this paper. Per the authors' request, the chart is not to be republished or reprinted without their permission.

Effective Date: January 1, 2006; entities formed prior to that date may elect to be regulated by the new code; all Texas business entities will be regulated by the new code from and after January 1, 2010.

House Bill 1165

Relating to corporations.

Author: Solomons Sponsor: Janek

Numerous amendments to the Texas Business Corporation Act and Texas Miscellaneous Corporation Laws Act to allow for the statutes to more closely align with modern technology and business practices.

More important substantive changes include (1) a provision that preemptive rights do not exist unless expressly provided for in the Articles of Incorporation; special grand-fathering rules are added to preserve shareholders' preemptive rights in existing corporations; (2) allowing a corporation to renounce any interest in business opportunities presented to the corporation or one or more of its officers, directors or shareholders; (3) clarification of indemnification procedures; (4) general updates to subscription procedures; (5) more power for the board to deal with stock options; (6) contemplation of electronic means of record-keeping and communications; (7) denial of cumulative voting unless expressly provided in the Articles of Incorporation (with grand-fathering provisions); (8) elimination of liability for commencing business before consideration of \$1,000 is received; (9) elimination of certain required items from articles of amendment; (10) changes to filing requirements for mergers and plans of share exchange; and (11) specifically allocating to directors the responsibility for winding up a corporation.

Effective Date: September 1, 2003

House Bill 1637

Relating to the formation, organization, management, and records of certain business organizations.

Author: Oliveira Sponsor: Averitt

Numerous amendments to the Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, and Texas Revised Partnership Act.

This bill is intended to update and improve the affected statutes; generally adds flexibility in the structuring and operation of LLCs, LPs and GPs. Eliminates inconsistencies and uncertainties in the statutes; updates, clarifies and adds flexibility to the current statutory provisions in view of changes to the federal income tax classification rules and trends in other states, including eliminating the outmoded dissolution provisions and providing a mechanism for continuation of an LLC upon the death of the LLC's sole member by appointment of a successor member; and corrects and clarifies provisions dealing with filing procedures as proposed by the secretary of state. More important substantive changes include (1) allowing a person to be admitted as a member of an LLC and acquire a membership interest in the LLC, including a person who will be the sole member, without meeting certain criteria; (2) for multiple member LLCs, allowing a person to be admitted to the LLC as a member without acquiring a membership interest in the LLC; (3) requiring allocation of profits and losses, if the regulations do not otherwise provide, to be allocated on the basis of the agreed value of the contributions made by each member; (4) an express provision that the statute does not prohibit employment by a professional limited liability company of nurses or of clerks, secretaries, bookkeepers, technicians, assistants, and other individuals who are

not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; (5) authorization for a partnership to receive, as the contribution of a partner, any tangible or intangible benefit to the limited partnership or other property of any kind or nature, including cash, a promissory note, services performed, a contract for services to be performed, other interests in or securities of the limited partnership, or interests in or securities of any other limited partnership, domestic or foreign, or other entity; and (6) a specific provision that a partner owes to the partnership, the other partners, and transferees of deceased partners a duty of loyalty and a duty of care.

Effective Date: September 1, 2003

Senate Bill 1059

Relating to corporate ethics and integrity.

Author: Ellis Sponsor: Marchant
Adds new Section 402.0231 to Subchapter B, Chapter 402, Government Code

Creates a corporate integrity unit of the within the office of the attorney general to assist in the enforcement of the laws relating to corporate fraud or other similar illegal activities. Requires the corporate integrity unit to: (1) assist district and county attorneys in the investigation and prosecution of corporate fraud or other similar illegal activities; (2) serve as a clearing house for information related to that subject; and (3) assist state agencies with investigation of complaints and administrative enforcement actions for corporate fraud violations. Adds Chapter 2263 to Subtitle F, Title 10, Government Code, which requires outside financial advisors and service providers which manage and/or invest state funds (including institutions of higher education and retirement plans, among others) to disclose in writing conflicts of interest and other facts which could affect the providers' independent judgment. Alternatively, the provider must state affirmatively that no such conflicts/facts exist. Written statements must be filed by April 15 of each year and cover the prior calendar year. New or amended statements must be filed any time there is new information to report.

Effective Date: September 1, 2003

Environmental and Energy

House Bill 547

Relating to the distance between certain pits that are part of quarrying operations and adjacent property.

Author: Wohlgemuth
Amends Section 133.901, Natural Resources Code

Previously, Section 133.901, Natural Resources Code provided that a quarry could not have its pit closer than 50 feet to the property line if the pit was located in a county having a population between 400,000 and 475,000. This bill removes the population brackets to expand the law to all counties having a population of less than 3.3 million, with a new exception for excavation constructed by a political subdivision to provide drainage or stormwater retention (which is in addition to the currently existing exception for pits that property owners agree to allow closer to the property line).

Effective Date: September 1, 2003, with application only to pits that are active (or become active) on or after that date.

House Bill 1366

Relating to the environmental regulation and remediation of certain dry cleaning facilities; providing penalties.

Author: Elkins
Adds Chapter 374 to the Health and Safety Code

This bill requires the TCEQ to adopt performance standards for both existing and new dry cleaning facilities and requires the owner of dry cleaning facilities to register with and pay a registration fee to the TCEQ. The bill also provides for a surcharge on the purchase of dry cleaning solvents. The fees fund the dry cleaning facility release fund. Certain exceptions

are made for dry cleaning facilities using carbon dioxide as the dry cleaning solvent. Certain facilities may choose not to participate in fund benefits provided they demonstrate that they have never used and certify that they will never use perchloroethylene at the facility. New facilities which chose not to participate must file financial assurance with the TCEQ.

The TCEQ will rank sites impacted by releases from dry cleaning facilities. Any person who owns the dry cleaning facility or who has owned the property on which the facility was located for at least five years can apply to have the site ranked. If a person is eligible to have corrective action costs paid for by the fund, an administrative or judicial claim cannot be made against that person by any other person (except a political subdivision) to compel corrective action or to seek recover of the costs of corrective action.

Effective Date: September 1, 2003, with certain sections, mainly related to disbursements from the fund, taking effect at later dates.

House Bill 2252

Relating to exemptions for certain individuals from cost recovery actions and liens placed on homesteads by the Texas Commission on Environmental Quality.

Author: Flores

Amends Sections 361.181, 361.194, 361.197 and 361.201 of the Health and Safety Code

The Texas Commission of Environmental Quality is authorized to file a lien against real property to recover costs of remediation. House Bill 2252 limits the TCEQ's ability to file a lien against certain property. Specifically, it mandates that the TCEQ must take into account the landowner's ability to satisfy the lien including whether the land subject to the lien is a homestead occupied by the landowner and has a market value of less than \$250,000. The commission may not file cost recovery actions under these provisions if the person against whom the TCEQ is proceeding is an individual whose only significant asset is a homestead that is the subject of the remedial action and that is worth less than \$250,000. The TCEQ will be required to promulgate rules for assessing the financial capability of an individual potentially responsible for contamination, but will not be able to include in that assessment the value of a homestead if its value is less than \$250,000 and if it is occupied by the owner.

Effective Date: September 1, 2003

House Bill 2661

Relating to the use of greywater.

Author: Puente

Amends Section 26.0311 of the Water Code and Sections 341.039 and 366.012 of the Health and Safety Code

This bill requires the Texas Commission on Environmental Quality to adopt standards for the use and reuse of greywater. The bill expands on the definition of greywater to provide that greywater does not include wastewater that has come in contact with toilet waste, that is from the washing of material soiled with human wastes or that is from sinks used for food preparation or disposal. The bill provides that builders are encouraged to install plumbing in a manner to provide for the collection of greywater and for the use of greywater in a manner to prevent foundation cracking and movement.

Effective Date: September 1, 2003

House Bill 3152

Relating to the potability of and requirements for removing contaminant from groundwater.

Author: Bonnen

Adds Subchapter W to Chapter 361 of the Health and Safety Code; amends Sections 211.003, 212.003 and 401.005 of the Local Government Code

This bill establishes the idea of a municipal setting designation, in which the need to remediate contaminated groundwater may be eliminated. A municipal setting designation is available for areas within the corporate limits of the extraterritorial jurisdiction of a municipality with a population of at least 20,000 and has a public drinking water supply available. Any person may submit a request for a municipal setting designation to the TCEQ, after providing certain notices to

municipalities, well owners and utilities which could be impacted by the designation. Before the TCEQ can issue a municipal setting designation certificate, the applicant must document that the application is supported by a resolution of each municipality and retail public utility impacted by the designation and that the property subject to the designation is subject to an ordinance or restrictive covenant prohibiting the use of groundwater from the property as potable water. The bill clarifies that a municipality may regulate the pumping, extraction and use of groundwater by persons other than retail public utilities to prevent the use or contact with groundwater that presents a threat to human health and that in the context of a municipal setting designation, the municipality may extend the application of the ordinance into its extraterritorial jurisdiction.

Effective Date: September 1, 2003

House Bill 3264

Relating to the prevention of childhood lead poisoning.

Author: Hunter

Amends Section 88.001 and adds Section 88.0025 to the Health and Safety Code

This bill allows the Texas Board of Health to adopt measures to address the issue of childhood lead poisoning, including measures to encourage public awareness of the dangers of lead poisoning and the testing of children likely to be exposed.

Effective Date: September 1, 2003

Senate Bill 100

Relating to carbon monoxide detectors in certain child-care facilities and family homes.

Author: Van de Putte

Sponsor: Uresti

Adds Section 42.060 to the Human Resources Code

Senate Bill 100 requires that day-care centers, group day-care homes and "family homes" (defined by Human Resources Code 42.002 (9)) regulated under the Human Resources code be equipped with carbon monoxide detectors. The Department of Protective and Regulatory Services will set requirements for the placement, installation and number of detectors and maintenance procedures for the detectors.

Effective Date: September 1, 2003

Senate Bill 624

Relating to the provision of parks and recreational facilities by certain conservation and reclamation districts; authorizing the issuance of bonds on voter approval.

Author: Lindsay

Sponsor: Callegari

Amends various sections of Chapter 49 of the Water Code

This bill would allow water districts to use tax receipts and levy a tax to be used for the creation and operation and maintenance of recreational facilities. Districts in certain counties will be able to issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities upon voter approval. To take effect, this bill will require passage of a constitutional amendment, Senate Joint Resolution 30.

Effective Date: September 13, 2003 if a constitutional amendment made by Senate Joint Resolution 30 is approved by the voters.

Senate Bill 1265

Relating to prosecution of environmental crimes.

Author: Armbrister

Sponsor: Capelo

Adds Section 7.203 to the Water Code

This bill requires that, with respect to environmental violations of the Water Code, the Health and Safety Code or any other

statute, rule, order, permit or other decision with the jurisdiction of the Texas Commission on Environmental Quality by a permit holder or an employee of a permit holder, a peace officer must notify the TCEQ before the matter is referred to a prosecuting attorney for criminal prosecution. The TCEQ will then determine whether administrative or civil remedies adequately and appropriately address the alleged violation. If the TCEQ determines that the administrative or civil remedies are adequate and appropriate, the prosecuting attorney may not prosecute the alleged violation.

Effective Date: September 1, 2003

House Bills 329 and 730 and Senate Bill 127

See also House Bill 329 under *Construction* establishing regulation of certain mold related activities; House Bill 730 under *Construction* establishing the Texas Residential Construction Commission, which has certain responsibilities related to mold and rain harvesting; Senate Bill 127 under *Insurance* regarding requirements affecting an insurers handling of water damage claims.

Home Equity

House Joint Resolution 23

Proposing a constitutional amendment permitting refinancing of a home equity loan with a reverse mortgage.

Author: Hochberg/Solomons Sponsor: Carona
Amends Section 50(f), Article XVI, of the Texas Constitution

Permits the refinancing of a home equity loan with a reverse mortgage.

Effective Date: September 13, 2003, subject to approval by the voters by an election on that date.

Senate Bill 1067

Relating to home equity lending and high cost home loans.

Author: Carona Sponsor: Solomons
Amends various sections of the Finance Code

This bill is enabling legislation for the home equity reform legislation contained in SJR 42. Allows the Texas Finance Commission and Credit Union Commission to, on request of an interested person or on its own motion, issue interpretations of Sections 50(a)(5) (7), (e) (p), (t), and (u), Article XVI, Texas Constitution. Adds a provision that the lender, in connection with a high cost home loan, may not charge a borrower an amount for a service or product if the borrower does not receive the service or product.

Effective Date: September 13, 2003, subject to approval by the voters by an election on that date of the home equity constitutional amendment proposed by Senate Joint Resolution 42.

Senate Joint Resolution 42

Proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

Author: Carona Sponsor: Solomons
Amends Subsection (a), Section 50, Article XVI, of the Texas Constitution

Strengthens the home equity cure provision by making it a comprehensive provision with specific guidance allowing lenders to correct or cure errors in connection with a home equity loan. Creates new authorization for home equity lines of credit with advances up to 50% of the fair market value of the home. The home equity lines of credit have a minimum draw requirement of \$4,000, and combined debt still may not exceed 80%. Prohibits fees charged in connection with any debit or advance. Prohibits lender or holder from unilaterally amending the line of credit. Debit cards, credit cards, or pre-printed solicitation checks, or similar devices cannot be used to access the line of credit. Authorizes the Legislature to

delegate to one or more state agencies the authority to issue interpretive opinions on the home equity laws and provides actions in accordance with interpretive opinions do not violate the home equity provisions of the Texas Constitution. Prohibits home equity closings until one business day after the owner of the homestead receives an itemized disclosure with the actual fees, points, interest, costs, and charges that will be charged at closing. Adds regulated mortgage brokers to the list of lenders authorized to make home equity loans. Permits the refinancing of a home equity loan with a reverse mortgage. Expressly makes bi-monthly payments permissible. Changes the text of the twelve-day notice.

Effective Date: September 13, 2003, subject to approval by the voters by an election on that date.

Insurance

House Bill 1865

Relating to commercial group property insurance for certain businesses and associations.

Author: Bonnen

Adds Article 5.41-3 and amends Article 5.57A of the Insurance Code

Allows insurers to write commercial group property insurance for groups of businesses or associations that constitute a "large risk," as defined in Section 8(f) of Article 5.13-2 of the Insurance Code, if the members of the group have clearly identifiable underwriting characteristics or the members of the association are engaged in similar undertakings. If each member itself is not a "large risk," then the insurer must file the policy form with the commissioner for informational purposes. Also allows members of a trade association, with the commissioner's approval, to form a group to purchase workers compensation insurance.

Effective Date: June 20, 2003

House Bill 2922

Relating to nonsubstantive revisions of statutes relating to the Department of Insurance.

Author: Marchant

Recodifies Insurance Code

This 1200+ page bill recodifies the Insurance Code.

Effective Date: April 1, 2005.

Senate Bill 14

Relating to automobile and residential property insurance regulation.

Author: Jackson Sponsor: Smithee

Amends various sections of the Insurance Code

Provides for immediate Department of Insurance review of insurers' residential property rates. The Department of Insurance is authorized to order rates to be lowered. Revises rate regulations for residential property insurance with one set of provisions effective until December 1, 2004, and one set effective thereafter (among differences are the requirement that rate changes prior to December 1, 2004, be pre-approved by the commissioner while rate changes after December 1, 2004, within certain parameters, do not require approval). Rate filings are considered public information in accordance with Chapter 552, Government Code. Requires insurers to notify policyholders in advance of premium increases over ten percent. Disallows excessive, inadequate, unreasonable, and unfairly discriminatory rates (and defines the concepts of excessive, unfairly discriminatory, and inadequate [but not unreasonable] rates). Requires refunds to policyholders of rates rejected by commission under certain conditions. Revises and enlarges rule-making authority of insurance commissioner. Establishes rules regarding rating territories. Requires filing of quarterly reports with the insurance commissioner who must report quarterly to the governor, lieutenant governor, and speaker of the house (this provision expires December 1, 2004). Requires forms for residential property insurance to be filed with Department of Insurance for approval prior to use.

Allows limited use of credit scoring. Insurer must disclose use of credit scoring to consumer. Prohibits use of credit scoring as the sole reason for denying, canceling, or non-renewal. Requires insurers to provide reasonable exceptions to rates for consumers whose credit history has been directly affected by certain events (e.g., catastrophic illness, death of spouse, child or parent, identity theft). Requires insurers to file their credit scoring methods with the Department of Insurance. Requires the commissioner to report to the governor and legislature on credit scoring and its impact and effects before the 79th Legislature.

Contains provision regarding automobile insurance rates and forms and withdrawal of insurers from the state. Adopts the International Residential Code (IRC) as the building code for the windstorm area. Also, modifies regulation of qualified inspectors in the windstorm area. Contains provisions requiring disclosure of certain information regarding policies of insurance sold in Europe during the 1920s through 1940s and distribution of the proceeds thereof. Creates Property & Casualty Legislative Oversight Committee, which sunsets September 1, 2007, and is required to make biennial reports to the governor, lieutenant governor, and speaker.

Effective Date: June 11, 2003

Senate Bill 113

Relating to premium discounts for certain residential insurance policies.

Author: Van de Putte Sponsor: Seaman
Adds Article 5.43 to the Insurance Code

Allows insurers authorized to write residential property insurance to offer premium discounts of not less than three percent to insureds who have continuously been policyholders with the insurer (or an affiliate) and have not filed a claim during the three years before the effective date of a policy. The insurer may increase the premium by one percent for each subsequent claim-free year (but the insurer is not required to offer discounts exceeding ten percent).

Effective Date: June 20, 2003

Senate Bill 115

Relating to notice of certain changes in residential property insurance coverage on renewal.

Author: Van de Putte Sponsor: Seaman
Adds Section 5.45 to the Insurance Code and amends Section 5.35 of the Insurance Code.

Requires an insurer renewing a policy of homeowners insurance, fire and residential allied lines insurance, farm and ranch owners insurance or farm and ranch insurance to give the policyholder written notice of any differences in each form of policy offered on renewal versus the expiring policy. The notice must be in plain language. Also requires the insurance commissioner to promulgate a comparison form (available on the internet) for policies and endorsements approved by the commissioner under Article 5.35(a), (b), or (c). The comparison form must be easily read and understood and facilitate comparison and understanding of the policy.

Effective Date: June 20, 2003

Senate Bill 127

Relating to procedures by insurers for handling water damage claims.

Author: Fraser Sponsor: Seaman
Amends certain sections of Chapters 5, 21, and 23 of the Insurance Code

Places restrictions on the use of claims history of water damage in underwriting residential property insurance if a person follows certain remediation and inspection requirements. Requires the commissioner to adopt rules to implement such restrictions. Requires insurers to file with the Department of Insurance their underwriting policies with regard to water damage claims.

Empowers, but does not require, commissioner to adopt rules to require more “prompt, efficient, and effective” (than otherwise required by Article 21.55 of the Insurance Code) processing of certain types of water damage claims (including

claims for losses due to mold) identified by the commissioner as requiring such rules (not a very precise standard).

Contains provisions governing the licensing of public insurance adjusters (including examinations, financial responsibility, and continuing education).

Effective Date: June 11, 2003

Senate Bill 310

Relating to rate information to be filed by certain insurers of residential property.

Author: Fraser

Adds Subchapter P to Chapter 5 of the Insurance Code

Has a one-time only effect (producing only one report to the legislature). Requires insurers to give certain information to the insurance commissioner for compilation of a report to the legislature. The report is finished and available at <http://www.tdi.state.tx.us/index.html>.

Effective Date: February 25, 2003

Judgments and Litigation

House Bill 4

Relating to reform of certain procedures and remedies in civil actions.

Author: Nixon Sponsor: Ratliff

Amends and repeals various sections of the Civil Practice and Remedies Code; Amends various sections of the Government Code; Amends various sections of the Probate Code; Amends various sections of the Health and Safety Code; Amends Section 417.001(b), Labor Code; Amends various sections of the Finance Code; Repeals Sections of the Transportation Code; Amends Section 10.08, Article 5.151, and Adds Section 11, Insurance Code; Repeals The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes); Amends and Adds various sections of the Education Code; Amends Section 16.01, Subchapter B, Chapter 32, and Adds Section 32.060, Human Resources Code; Repeals Sections 32.021(i) and (k), Human Resources Code, and Section 242.050, Health and Safety Code

House Bill 4 is the comprehensive tort reform bill addressing many issues affecting the civil court system. The authors' stated intent is to bring more balance to the Texas civil justice system, reduce litigation costs, and address the role of litigation in society. House Bill 4 contains elements addressing: class action lawsuits, offers of settlement, venue and forum non conveniens, proportionate responsibility, products liability, prejudgment and postjudgment interest, appeal bonds, seat belts and child safety seats, medical malpractice, charitable volunteer immunity and liability, admissibility of evidence regarding nursing homes, and liability relating to asbestos claims.

Effective Date: June 11, 2003

House Bill 408

Relating to the liability of landowners for certain uses of their land.

Author: Miller Sponsor: Fraser

Amends Section 75.003(c), Civil Practice and Remedies Code

Current law provides liability protection for landowners who lease land to other people for recreational purposes such as hunting and fishing. For owners, lessees, or occupants of real property who receive fees for recreational activities on their premises, House Bill 408 increases the allowable fee cap. The new cap is twenty times the total amount of ad valorem taxes on the property for the previous calendar year.

Effective Date: September 1, 2003

House Bill 462

Relating to the collection of a fee from certain nonresident attorneys requesting permission to participate in proceedings in a Texas court.

Author: Gallego Sponsors: Ellis, Rodney
Adds Section 82.0361 to Subchapter B, Chapter 82, of the Government Code

Provides that nonresident attorneys shall pay a \$250 fee to the Board of Law Examiners before filing a motion requesting to participate in proceedings. The collected fees will go the basic civil legal services account of the judicial fund for use in programs approved by the Supreme Court that provide basic civil legal services to the indigent. Permits the Texas Supreme Court to adopt rules for waiving or reducing the fees in the case of nonresident attorneys representing the indigent.

Effective Date: September 1, 2003

House Bill 2040

Relating to authorizing certain state agencies to share information for investigative purposes.

Author: Marchant Sponsor: Ellis, Rodney
Amends Section 555.051 in Chapter 555 of the Government Code; Amends the heading to Chapter 555, Government Code

Allows the Board of Accountancy, the Office of the Attorney General, the State Securities Board, the Texas Department of Insurance, and the Public Utility Commission to share information on corporate fraud investigations, while maintaining current law with respect to the confidentiality of corporate documents.

Effective Date: June 20, 2003

House Bill 2415

Relating to the postjudgment interest rate.

Author: Hopson Sponsor: Averitt
Amends Section 304.003(c) of the Finance Code

Changes the postjudgment interest rate from the auction rate quoted on a discount basis for 52-week treasury bills to the prime rate as published by the Federal Reserve Bank of New York. Changes the minimum interest rate to 5% from 10% and the maximum from 20% to 15%.

Effective Date: June 20, 2003

Landlord and Tenant

House Bill 275

Relating to prosecution of theft of service.

Author: Keel
Amends Sections 31.04(b) and (c) of the Penal Code.

This section of the Penal Code provides that a person commits theft of service if, “with intent to avoid payment for service that he knows is provided only for compensation, . . . having control of personal property under a written rental agreement, he holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.” House Bill 275 adds Subsection (b)(4) to presume intent to avoid payment for personal property held under a rental agreement if a person does not return property held under a rental agreement within 5 days of notice demanding return if the property is worth less than \$1,500, or 3 days after such notice if the property is worth \$1,500 or more. “Rental agreement” is not defined in the Penal Code. **Query:** Could the criminal liability extend to a holdover tenant who also had the right to use furniture or equipment in connection with a real

property lease?

Effective Date: September 1, 2003

House Bill 2388

Relating to late fees for payment of a submetered water or allocated residential water bill.

Author: Cook, Robby

Amends Section 13.503 and 13.5031 of the Water Code.

Requires that rules promulgated by the Texas Commission on Environmental Quality allow an owner or manager (including a condominium manager in the case of allocated bills) to charge a late fee of not more than 5% on submetered or allocated water bills. Also permits TCEQ to allow use of certain radio based metering systems, subject to certain conditions.

Effective Date: September 1, 2003

House Bill 3190

Relating to the refund or retention by a landlord of a security deposit under a commercial lease.

Author: Uresti

Amends Section 93.005(a) and 93.011(d) of the Property Code.

Section 93.005 requires a landlord to return a security deposit not later than 60 days after a tenant surrenders the premises and provides notice of its forwarding address under Section 93.009. Section 93.011(d) provides that a landlord is presumed to have acted in bad faith (in retaining a security deposit) if a landlord fails to return a security deposit or provide a written description and itemized list of deductions within 30 days after a tenant surrenders possession. House Bill 3190 makes non-substantive changes to Section 93.005(a) and changes Section 93.011(d)'s 30 days to 60 days to conform with Section 93.005(a).

Effective Date: September 1, 2003. Does not apply to leases entered into or renewed prior to such date.

Senate Bill 92

Relating to a residential tenant's right to summon police or emergency assistance.

Author: West, Royce Sponsor: Kolkhorst

Adds Section 92.015 to the Property Code.

Prohibits a landlord from limiting a tenant's right to summon police or emergency assistance in response to "family violence" (as defined by Section 71.004 of the Family Code, including by evicting or imposing penalties on a tenant). Prohibits a landlord from imposing monetary or other penalties on a tenant who does so. Voids provisions of leases that attempt to waive tenant's right to summon such assistance or attempt to exempt any person from liability under this statute. Provides civil penalties (in addition to other remedies provided by law) including one month's rent, actual damages, injunctive relief, attorneys' fees and court costs.

Effective Date: June 20, 2003. Provisions of leases entered into or renewed before the effective date which do not comply with this statute are governed by prior law.

House Bill 408

See also House Bill 408 under Judgments and Litigation relating to a cap on fees for people who lease land for recreational purposes.

Lending and UCC

House Bill 276

Relating to the awarding of attorney's fees and costs in an action against a fraudulent transfer.

Author: Goodman

Amends Chapter 24 of the Business and Commerce Code (the Uniform Fraudulent Transfer Act) by adding Section 24.013

Allows the court to award costs and reasonable attorney's fees "as are equitable and just" in any action under Chapter 24 of the Business and Commerce Code to set aside a fraudulent transfer (no provision was formerly made in the Texas Uniform Fraudulent Transfer Act for awarding attorney's fees and costs).

Effective Date: September 1, 2003

House Bill 1247

Relating to the creation, funding, and operation of a firefighter and police officer home loan program.

Author: Ritter

Adds Section 1372.0222 to the Government Code, Amends Sections 2306.553 and 2306.563 of the Government Code

Directs the Texas State Affordable Housing Corporation (or the Texas Department of Housing and Community Affairs, if the TSAHC does not survive sunset review) to establish a home loan program for firefighters and police officers making no more than 115% of the area median family income, adjusted for family size. Program would expire September 1, 2014.

Effective Date: June 20, 2003

House Bill 1338

Relating to the amount of homeowners insurance or other residential property insurance required in connection with certain financing arrangements.

Author: Taylor

Adds Subsection (g) to Article 21.48A of the Insurance Code

Prohibits a lender from requiring (in connection with a residential mortgage or other residential property financing arrangements) homeowner's insurance, mobile or manufactured home insurance or other residential property insurance in excess of the replacement value of the dwelling and its contents, regardless of the amount of the loan.

Effective Date: September 1, 2003, but applies only to loans entered into on or after January 1, 2004.

House Bill 1394

Relating to a revision of the general provisions of the Uniform Commercial Code.

Author: Elkins

Amends or repeals various sections of Chapters 1, 2, 2A, 3, 4, 4A, 5, 8, and 9 of the Business and Commerce Code (the Uniform Commercial Code)

Adopts revisions to Chapter 1 of the Uniform Commercial Code approved by the American Law Institute and the National Conference of Commissioners on Uniform State Law. Restructures Chapter 1 (by relocating, revising, and/or repealing certain existing provisions of the chapter) into three rather than two subchapters: Subchapter A dealing with generally applicable provisions; Subchapter B dealing with definitions and rules of interpretation; and new Subchapter C dealing with territorial and other generally applicable rules. Contains many subtle revisions to definitions, the entire universe and effect of which are beyond the scope of this summary.

Adds provisions governing relation of the UCC to the federal Electronic Signatures in Global and National Commerce Act.

Relocates certain concepts from the definitions section (new Section 1.201) to stand-alone sections serving (per the title

of Subchapter B) as “Principles of Interpretation” (e.g., “value” moved from Section 1.201 to Section 1.204).

Explicitly contrasts “agreements” (briefly, the bargain of the parties in fact) to “contracts” (briefly, the total legal obligation resulting from the parties’ agreement). Adds definitions of “consumer,” and “record.” Expands the definition of “good faith” to include not only honesty in fact, but also “the observance of reasonable commercial standards of fair dealing.” Deletes definitions of “good faith” found in other chapters of the UCC.

Provides that rights and claims arising out of an alleged breach may be waived by “agreement of the aggrieved party in an authenticated record” rather than the more restrictive “written waiver or renunciation signed and delivered by the aggrieved party.”

Adds the concept of “course of performance” (in a nutshell [see Section 1.303 for particulars] the parties’ sequence of conduct in a particular transaction) and contrasts it to “course of dealing,” which term is redefined to limit it to sequences of conduct concerning previous transactions between the parties. Course of performance prevails over course of dealing and usage of trade.

Deletes existing Section 1.206 (statute of frauds for kinds of personal property not otherwise covered). According to the Senate Research Committee’s Bill Analysis of the engrossed bill, dated May 3, 2002, existing Section 1.206 is superfluous because all subsequent articles of the UCC have provisions regarding written requirements for transactions governed by such articles.

Effective Date: September 1, 2003

House Bill 1493

Relating to authorizing a mortgage servicer to conduct a foreclosure sale on behalf of a mortgagee.

Author: Solomons

Amends various sections of and adds certain sections to Chapter 51 of the Property Code

Allows a mortgage servicer to conduct a foreclosure sale on behalf of a mortgagee if the mortgage servicer and mortgagee have entered into a service agreement and the mortgage servicer discloses in its notice of sale under Section 51.002 (i) that it represents the mortgagee under a service agreement and (ii) the address of the mortgagee. Changes references to “holder of the debt” to “mortgage servicer” in Sections 51.002(b), (d), and (e)—would require a mortgagee who has not authorized a mortgage servicer to conduct a foreclosure sale to make sure the mortgage service provider sends the notice of foreclosure.

Adds definitions of “book entry system,” “debtor’s last known address,” “mortgage servicer” (“the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument”—a mortgagee may be the mortgage servicer), “mortgagee,” “mortgagor,” “security instrument,” “substitute trustee,” and “trustee.”

Requires debtors to inform the mortgage servicers of any change in address in a “reasonable manner” for purposes of providing notice under Section 51.002 (notice of foreclosure), but does not provide any penalty for not doing so.

Allows a trustee or substitute trustee to set reasonable conditions for conducting a public sale if such conditions are announced before bidding is opened for the first sale of the day by such trustee or substitute trustee (but does not clarify whether this means the first sale of any property [even another debtor’s property] or just property covered by a particular security agreement). Clarifies that a trustee or substitute trustee is not a debt collector and allows a mortgagee to appoint or allow a mortgage servicer to appoint a perpetual substitute trustee (but does not define what constitutes a “perpetual substitute trustee”).

Provides that a purchaser at a foreclosure sale takes the property “as is” with no express or implied warranties (other than title) and is not a consumer.

Effective Date: January 1, 2004

House Bill 2396

Relating to the administration of and insurance requirements for certain Veteran's Land Board programs.

Author: Corte

Amends and repeals various sections of Chapter 161 of the Natural Resource Code

Reduces from 5 acres to 1 acre the minimum acreage a veteran may purchase under Veterans Land Board programs and makes several other amendments designed to bring the Veterans Land Board requirements closer to industry standards (including, without limitation, increases in loan amounts to \$60,000 from \$40,000, changes to appraisal requirements [e.g., requiring use of licensed appraisers], and allowance of communications tower leases of 50 years or less on the purchased land). For those who even remember the use of abstracts, this bill updates practices by substituting "appropriate examination of title" for "abstracts of title" as a possible proof of ownership on purchase.

Makes provisions to expand the VLB's powers to impose charges for late payments, declare a forfeiture, to reinstate, and to release a veteran from the underlying liability on the purchase when the obligation has been assumed by someone else and then defaults.

Effective Date: September 1, 2003

House Bill 3414

Relating to the filing of a financing statement record under the Uniform Commercial Code.

Author: Marchant

Amends Section 9.516b, adds Section 9.5211, and repeals Section 9.521 of the Business and Commerce Code (Uniform Commercial Code, Article 9, Secured Transactions)

Section 9.516(a) of the UCC provides that, except as provided in Subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing. HB 3414 apparently mandates use of standardized forms by adding to Subsection (b) an eighth reason a filing office may refuse to accept a filing without such communication and tender constituting filing—the use of a form other than an "industry standard form, including a national standard form or a form approved by the International Association of Commercial Administrators, adopted by rule of the secretary of state." Note uncertainty as to extent of qualifier "adopted by rule of the Secretary of State" (do all industry standard forms have to be adopted or just "national standard" and IACA forms?). HB 3414 also deletes Section 9.521 (which graphically depicted the exact standard forms a filing office could not refuse except under Section 9.516(b)) and adds Section 9.5211 to prohibit a filing office that accepts written records from refusing, for reasons other than those listed in Section 9.516(b), an initial financing statement or other written record on such an "industry standard form."

Effective Date: January 1, 2004, but applies only to financing statements and written records filed or due to be filed on or after such date.

Senate Bill 533

Relating to certain practices of debt collectors and credit bureaus.

Author: Carona

Sponsor: Elkins

Amends Sections 392.202 and 392.304(a) of the Finance Code and Section 20.06(d) of the Business and Commerce Code

Requires third party debt collectors* to make written record of an individual's dispute of an item in a third party debt collector's or credit bureau's files and to cease collection efforts until an investigation (contemplated in Subsections 392.202(b)-(e)) determines the accurate amount of the debt, if any. Requires the third party debt collector (rather than a credit bureau) to complete the investigation before resuming collection efforts. Requires debt collectors to disclose in communications (other than formal pleadings) with a debtor that, in an initial communication, any information obtained will be used to collect a debt such collector is attempting to collect and, in subsequent communications, that the debt collector is in fact a debt collector. Provides that Section 392.202 does not affect application of Chapter 20 of the Business and Commerce Code (regulating consumer credit reporting agencies) to third party debt collectors subject to that chapter. Amends Section 20.06(d) by requiring credit reporting agencies to provide a revised consumer report to each party having requested a consumer's report within the previous six months (without requiring a consumer to request such action) if

disputed information is found to be inaccurate or cannot be verified after a reinvestigation under Subsection 20.06(a).

*Rather than credit bureaus—this bill amends Section 392.202 by removing credit bureaus as parties to whom a consumer may address a dispute so that credit bureaus are regulated principally by Chapter 20 of the Business and Commerce Code.

Effective Date: September 1, 2003

Senate Bill 1429

Relating to certain agreements offered in connection with a loan.

Author: Averitt Sponsor: Flynn

Amends Subsection 342.308(d) and Section 342.411 of and adds Section 342.4021 to the Finance Code

Allows lenders of secondary mortgage loans (and certain other consumer loans) to offer the borrower debt suspension or cancellation agreements consistent with those which may be offered by banks or savings associations. Lender must inform borrower that borrower is not required to accept such offers to obtain the loan. Gain or benefit derived by the lender from such an ancillary agreement does not constitute additional interest.

Effective Date: June 21, 2003

Senate Bill 1430

Relating to additional interest for default of certain secondary mortgage loans.

Author: Averitt

Amends Subsection 342.302(c) of and adds Subsection 342.302(e) to the Finance Code

Allows a secondary mortgage loan that includes simple interest to charge additional interest if any part of an installment remains unpaid more than 10 days after due date, including weekends and holidays.

Effective Date: May 12, 2003

Senate Bill 1527

Relating to a purchaser's right to cure a default under an executory contract for conveyance.

Author: Brimer Sponsor: Solomons

Amends Sections 5.064 and 5.065 of the Property Code

Decreases from 60 days to 30 days (after notice is given under Section 5.064) the cure period allowed a purchaser in default of an executory contract for conveyance of real property before a seller may enforce the remedy of rescission or of forfeiture and acceleration. Note that Section 5.064 and 5.065 apply only to executory contracts for property used or to be used as residential property by the purchaser or a person related to the purchaser within the second degree of consanguinity or affinity.

Effective Date: September 1, 2003

Local Law and State Regulations

House Bill 164

Relating to taxes for street maintenance.

Author: Truitt

Amends several sections of the Tax Code

A municipality may not increase sales and use tax rates if the increase imposed would exceed two percent (2%) from the preceding rate. A municipality may, by ordinance, decrease the sales and use tax rates to 1/8th of 1 percent, which would

be voted upon by the constituents.

Effective Date: June 20, 2003

House Bill 212

Relating to regulation of political signs.

Author: Keel

Add Section 216.903 to the Local Government Code

A municipal ordinance cannot regulate a private landowner's right to put a political sign on his real property. An ordinance may regulate a sign that temporarily contains a political message and is generally available for rent. The bill lists some exceptions for when a municipality may regulate this type of signage, such as being greater than 8 feet high.

Effective Date: September 1, 2003

House Bill 655

Relating to the sale of property by a Defense Base Development Authority.

Author: Menedez

Amends Section 272.001(b), of the Local Government Code

Requirement for notice and bidding for land owned by a political subdivision is expanded to include land owned by Defense Base Development Authority. The fair market value is determined by an appraisal obtained by the political subdivision that owns the land or interest.

Effective Date: May 29, 2003

House Bill 1014

Relating to the purposes for which a special utility district may be created.

Author: R. Cook

Amends Section 65.012 of the Water Code

Resolution establishing a Water District must now include the purpose for which the water district is being established.

Effective Date: June 20, 2003

House Bill 1129

Relating to the types of restrictions by certain municipalities that may be enforced.

Author: Farrar Sponsor: None.

Amends various sections of Chapter 212 of the Local Government Code

Modifies the definition of "Restriction" as an expanded laundry list of land-use regulations. Prohibits a municipality from maintaining a lawsuit regarding a restriction if a property owner's association (POA) with the authority to enforce the restriction files suit. Prohibits municipality from participating in a suit to foreclose on POA's lien on real property. House Bill 1129 applies only to the City of Houston.

Effective Date: September 1, 2003

House Bill 1331

Relating to the continuation of notice and consent procedures regarding the location of certain correctional or rehabilitation facilities.

Author: Solomons Sponsor: None

Amends Sections 244.002(a) and (b), Local Government Code

Requires Texas Department of Criminal Justice, Texas Youth Commission or another political subdivision of the state or a private contractor contracting to develop a correctional or rehabilitation facility within 1000 feet of a residential area, a primary or secondary school, church, synagogue or public park to provide written notice. The notice shall be to the commissioners court of any county and the governing body of any municipality that includes within its boundaries all or part of land within 1000 feet of a facility. The entity shall include in the notice: a statement of the entity's intent to construct or operate a correctional or rehabilitation facility; a description of the proposed location of the facility; and a statement that this subchapter governs the procedure for notice of and consent to the facility. Discusses requirements for public hearing.

Effective Date: September 1, 2003

House Bill 1369

Relating to local registration of retail electric providers.

Author: Baxter Sponsor: Brimer
Amends Section 17.051 of Utilities Code.

Public Utilities Commission will adopt rules governing local registration of retail service providers.

Effective Date: September 1, 2003

House Bill 1439

Relating to the application and enforcement of traffic regulations in private subdivisions in certain counties.

Author: Eissler
Amends Section 542.007 of the Transportation Code.

Enforcement of traffic regulations is amended to include private subdivisions in unincorporated county with a population up to 500,000 persons.

Effective Date: September 1, 2003

House Bill 1702

Relating to the sale and subsequent lease of property by certain counties.

Author: Taylor Sponsor: Jackson
Amends Section 263.053 of the Local Government Code

Reduces the population criteria for sale and subsequent lease transactions. The commissioner's court may enter into licensing agreements for wireless communications technology on property owned by a county with a population of more than 250,000 (previously 500,000).

Effective Date: June 20, 2003

House Bill 1952

Relating to local regulation of public swimming pools.

Author: Truitt
Amends several chapters of section 341 of the Health and Safety Code

A county or municipality can require an owner of a public swimming pool to obtain a permit for the operation of the pool; require inspection; impose and collect a reasonable fee in connection with a permit and inspection. Public pools may be closed if the owner violates any of these new requirements, and the owner may be assessed civil penalties.

Effective Date: June 20, 2003

House Bill 2031

Relating to the regulation of stormwater management by certain counties.

Author: Puente

Amends Section 423.001 of the Local Government Code

A county with a population of 1.3 million for which the primary source of drinking water is an underground aquifer (i.e., Bexar County) will now be regulated by storm water management regulations provided in this Code.

Effective Date: June 2, 2003

House Bill 2786

Relating to an extension of a strategic partnership agreement between a special purpose district and certain municipalities.

Author: Eiland

Adds Subsection (n-1) to Section 43.0751, Local Government Code.

Allows a municipality and a special purpose district to extend a strategic partnership agreement for a period of up to 10 years.

Effective Date: June 18, 2003

House Bill 3508

Relating to the adoption of a nonsubstantive revision of local laws concerning special districts, including conforming amendments.

Author: Marchant Sponsor: Harris

Adopts a non-substantive revision of Texas statutes prepared by the Texas Legislative Council as a continuing part of its long-range plan adopted in 1965 of compiling the law into codes arranged by general topics. Creates a new Special District Local Laws Code composed of the following six titles:

- Title 1, General Provisions;
- Title 2, Environment and Sanitation;
- Title 3, Health;
- Title 4, Development and Improvement;
- Title 5, Transportation; and
- Title 6, Water and Wastewater.

The code, which concerns special districts organized by type of district, is organized so that each district's local law is contained in a single, separate chapter. Revises local laws concerning certain hospital districts, certain development and improvement districts, a navigation district, and certain conservation and reclamation districts. Includes conforming amendments to certain of these local laws as necessary to continue without substantive change provisions of law not codified as part of the code. Repeals the local laws revised in the bill as well as the portions of those local laws that have expired or that have been impliedly repealed. Specifically includes a statement of the legislative intent to codify only, without substantive change.

Effective Date: April 1, 2005

Senate Bill 15

Relating to the use of appropriations in the Smart Jobs Fund as business location incentives; making an appropriation.

Author: Madla Sponsor: Puente

Creates an Act appropriating the unexpended funds of Smart Jobs Fund No. 891 for business incentives and authorizing the Texas Department of Economic Development to make grants to local governmental entities.

Authorizes the Texas Department of Economic Development to grant \$15 million from the Smart Jobs Fund Account to local governmental entities within Texas, for the purpose of diversifying the economy, reducing unemployment or

underemployment, or developing or expanding transportation or commerce. This bill is specifically aimed (inclusionary, not exclusionary) at the construction of a secondary rail line for the benefit of Toyota's recently announced new North American facility in San Antonio, which is the result of San Antonio's efforts to re-employ former defense workers.

Effective Date: April 1, 2003

Senate Bill 84

Relating to the prompt production of public information under the public information law.

Author: Wentworth Sponsor: Baxter

Amends subsection (a), Section 552.221, Government Code, known as the Public Information Act (PIA).

Codifies the Attorney General's Open Records Decision 664, which held that the Public Information Act's requirement that a governmental body "promptly" produce public information means "as soon as possible under the circumstances, meaning within a reasonable time, without delay."

Effective Date: June 20, 2003

Senate Bill 185

Relating to standing water as a nuisance.

Author: Janek Sponsor: Smith, Wayne

Amends Section 341.011, Health and Safety Code.

Specifically includes the following in the definition of "public health nuisance": a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12) (A), Water Code, occur. The purpose is to address the West Nile Virus and contain its effect in Texas. The *Culex Quinquefasciatus* mosquito breeds primarily in water with high organic content either from plant decay or human and animal waste, and reducing the number of these breeding sites should reduce the risk of West Nile Fever.

Effective Date: May 28, 2003

Senate Bill 275

Relating to the abolition of the Texas Department of Economic Development and the transfer of certain of its functions and the functions of the Texas Aerospace Commission to the Texas Economic Development and Tourism Office; to the establishment, operation, and funding of the Texas Economic Development Bank; and to the administration and operation of certain economic development programs; authorizing the issuance of bonds.

Author: Nelson Sponsor: Solomons

Amends various sections of Chapter 481, Government Code.

Abolishes the Department of Economic Development and transfers its primary economic development functions to the newly-created Texas Economic Development and Tourism Office within the office of the governor. Creates the Texas Economic Development Bank, under the direction of the Texas Economic Development and Tourism Office, and restructures the state Enterprise Zone Program to enhance existing incentive programs to help encourage job creation and retention opportunities. Adds new sections to create the aerospace and aviation office and the Texas economic development bank within the office of the governor. The changes are to solve the perceived lack of a direct link to the governor's office, which limits effective coordination and administration of the state's economic development efforts.

Effective Date: September 1, 2003

Senate Bill 501

Relating to the places where weapons are prohibited and to the application of criminal trespass laws to persons licensed to carry a concealed handgun.

Author: Armbrister Sponsor: Hupp
Adds Subsection (f) to Section 30.05, Penal Code

Provides as a defense to criminal trespass that: (1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden; and (2) the person was carrying a concealed handgun and a duly issued concealed weapon license. Adds Subsection (e) to Section 30.06, Penal Code (trespass by holder of license to carry concealed handgun), to add an exception to this type of trespass if the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035, Penal Code. The practical effect of these changes is to affirmatively provide that the state regulates where a concealed handgun licensee may or may not carry a concealed weapon, as opposed to cities or counties.

Effective Date: September 1, 2003

Senate Bill 653

Relating to the charges that may be imposed under the public information law for providing a copy of public information.

Author: Wentworth Sponsor: Baxter
Amends Section 552.261(a), Section 552.2615(b), and Section 552.269, Government Code.

Generally clarifies certain provisions in the Public Information Act relating to the charges that may be imposed by governmental bodies for providing copies of information and relating to procedures for resolving complaints of overcharging. Limits the charge for providing a copy of public information to the charge for each page of the paper record that is photocopied, rather than photocopying costs, and eliminates charges for costs of materials, labor, or overhead, if a request for a copy of public information is 50 pages or less. Changes the ten-day response timelines for requestors to ten business days, and transfers from the General Services Commission to the Texas Building and Procurement Commission (TBPC) the responsibility for handling complaints arising from the provision of copies of public information. Provides that a request for public information is not withdrawn if the requestor has filed a complaint with the TBPC concerning costs.

Effective Date: September 1, 2003

Senate Bill 656

Relating to the removal of certain on-premise signs in a municipality.

Author: Brimer Sponsor: Truitt
Amends Section 216.003(b), Local Government Code, and adds subsections (e) and (f).

Authorizes a municipality to require the removal of an on-premise sign, without appointing a board, not later than the first anniversary of the date the business, person, or activity that the sign identifies or advertises ceases to operate on the premises on which the sign is located, or two years after the most recent tenant ceases to operate on the premises if the premises containing the sign is leased. Authorizes a city to agree with the owner of the sign or sign structure to remove only a portion of the sign or sign structure.

Effective Date: September 1, 2003

Senate Bill 905

Relating to reimbursement for land removed from emergency service districts and dispute resolution relating to the amount of reimbursement.

Author: Madla Sponsor: Hamric
Amends Section 775.022 (b) and (c), and adds subsections (e) and (f) to Section 775.022, Health and Safety Code; adds

Section 775.0221, Health and Safety Code; amends Section 776.052 (c) and adds subsections (d) through (g) to Section 776.052, Health and Safety Code; adds Section 776.0521, Health and Safety Code.

Extends requirement that a municipality reimburse an emergency services district (ESD) an amount equal to the disannexed territory's pro rata share of the district's indebtedness, from only ESDs in counties with a population of 125,000 or more, to ESDs in all counties regardless of population. Adds loans and lease-purchase agreements to the types of debt included in the indebtedness total component of the compensation formula; requires the district to follow a specific formula to determine the indebtedness; and allows for binding arbitration of disputes between the city and district if an agreement on compensation is not met.

Effective Date: September 1, 2003

Senate Bill 1010

Relating to public and common nuisances; providing a penalty.

Author: West Sponsor: Giddings
Omnibus nuisance bill that repeals Subchapter B, Chapter 125, Civil Practice and Remedies Code, and Section 125.041, Civil Practice and Remedies Code, moving, harmonizing and adding to those provisions by a series of amendments to Subchapter A, Chapter 125 Civil Practice and Remedies Code.

Adds a substantial number of definitions for added clarity. Outlaws common and public nuisances. Allows local governments to address problem locations where owners, landlords, and property managers are not taking steps within their powers to prevent activities such as gambling, prostitution, production of obscene material, and illegal drug use from occurring, as well as the continual practice of certain criminal activities. Creates both private and public causes of action, provides for remedies (to include lis pendens) and imposes penalties. Requires creation of a nuisance abatement fund in municipalities with populations of 1.5 million or greater (i.e., Houston).

Effective Date: September 1, 2003

Senate Bill 1017

Relating to the ability of a county to sue and be sued.

Author: Wentworth Sponsor: Nixon
Amends Subchapter A, Chapter 262, Local Government Code.

Clearly states that a county that is a party to a written contract for engineering, architectural, or construction services or for goods related to engineering, architectural, or construction services may sue or be sued. Requires all claimants against counties to first provide written notice to commissioner's court and allow it 60 days to pay the claim. Only authorizes suit after such notice and expiration of this 60-day period if the commissioner's court fails or refuses to pay the claim. Limits the amount of damages available to: (1) the balance due and owed by the county under the contract; (2) the amount owed for change orders or additional work required to carry out the contract; (3) reasonable and necessary attorney's fees that are equitable and just; and (4) interest as allowed by law. Specifically excludes the following types of damages: (1) consequential damages in most instances; (2) exemplary damages; or (3) damages for unabsorbed home office overhead. Clarifies that this section does not waive a defense to a party to a contract, other than a bar against suit based on sovereign immunity. Also provides specific notice procedures, which must be followed within 30 days after filing suit. This bill directly addresses a May, 2002, Texas Supreme Court decision which held that Section 89.004, Local Government Code, does not clearly and unambiguously waive immunity from suit for claims against counties.

Effective Date: September 1, 2003

Senate Bill 1021

Relating to the conversion of all rural fire prevention districts to emergency services districts.

Author: Madla Sponsor: Lewis
Amends various sections and subsections of Chapter 775, Health and Safety Code.

Converts all "rural fire prevention districts" created under Section 794 to "emergency services districts"; resolves

overlapping territories/duplicate services in favor of the “first in time” created district; and includes a few changes to the ad valorem taxation of property owned by business entities which provide emergency fire protection services. Exempts certain business entities from the ad valorem tax authorized by this chapter or subject to the district's powers if the business entity meets a series of certain requirements.

Effective Date: September 1, 2003

Senate Bill 1022

Relating to emergency services districts.

Author: Madla Sponsor: Lewis

Reenacts and amends subsection (a), Section 775.013, Health and Safety Code, as amended by Chapters 886 and 1333.

Sets forth the procedure to transfer responsibility to service territory from an emergency services district to a municipality upon annexation; resolves fire code conflicts between a municipality or county, and an emergency services district, to favor the most stringent; and changes the flexibility of an emergency services district to impose a sales and use tax. It authorizes an emergency services district to employ a peace officer and clarifies that a district may contract with another political subdivision or the state for law enforcement services, as well as providing standards for adoption of a fire code by a district. This bill also expands the options for a district to construct public works to include the alternative bidding procedures and clarifies that districts may borrow money or enters into other financial arrangement to construct facilities.

Effective Date: September 1, 2003

Senate Bill 1708

Relating to the repurchase of real property acquired by a governmental entity through eminent domain.

Author: Wentworth Sponsor: Baxter

Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.023 and Subchapter E.

Provides a mechanism allowing a person whose property was acquired through eminent domain to re-acquire the property upon termination of the public use, other than through a bidding process (which was the only process available). If the public use for which the property was acquired through eminent domain is canceled before the 10th anniversary of the date of acquisition, the government must notify the current owner of such property, within 180 days of the cancellation, and offer them the opportunity to purchase the property at its then fair market value. The owner then has 180 days from the date of the postmark of that notice to accept the offer to purchase the property. The governmental entity must then issue a formal offer to sell the property as soon as practicable after receiving the owner’s written notice, and the owner must close the repurchase within 90 days after that notice. City, county and TxDOT rights of way are specifically excluded from these requirements.

Effective Date: January 1, 2004

Manufactured Housing

House Bill 543

Relating to certain restrictions on the delivery or installation of a new or used manufactured home in a flood-prone area.

Author: Jones, Jesse Sponsor: Lindsay

Adds Section 1201.512, Occupations Code

Prohibits a manufactured home retailer, broker, or salesperson from delivering or installing a manufactured home which will be used as a permanent dwelling within a special flood hazard area as designated by the director of the Federal Emergency Management Agency (FEMA unless done in compliance with the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.). The consumer has the burden of providing evidence (such as a permit to install a septic tank) that the area in which the manufactured home is to be located is not within such a special flood zone.

Effective Date: June 1, 2003

Senate Bill 510

Relating to the exemption of certain travel trailers from ad valorem taxation.

Author: Staples

Amends Section 11.14 and repeals Section 11.142, Tax Code

The 77th legislative session attempted to create an exemption for travel trailers from ad valorem taxes except at the school district level. Following the adoption of the constitutional amendment in November 2001, it became apparent that the exception was actually adding persons to the tax roles. This bill repeals the attempted exemption and authorizes the Legislature to exempt travel trailers from ad valorem taxation if the accompanying constitutional amendment is approved by voters. (See Senate Joint Resolution 25 below regarding constitutional amendment to permit this.)

Effective Date: September 1, 2003

Senate Bill 521

Relating to the acquisition and regulation of manufactured homes; providing penalties.

Author: Staples Sponsors: Estes, Lucio

Amends and adds numerous sections within Chapter 1201, Occupations Code

A very comprehensive modification of the world of manufactured home sales, financing, and taxation.

This is meant to correct an unintended consequence of 2001 legislation concerning the classification of manufactured homes as real property, the result of which was to make financing of a mobile home as a chattel (and not as realty) more difficult. This is intended to restore the viability of chattel loans to finance the purchase of a manufactured home by allowing the owner to elect whether to treat it as a real estate lien or chattel mortgage. The bill also protects local governments by requiring the mandatory escrow of ad valorem taxes on manufactured homes financed by chattel loans (exempting federally-insured banks from this requirement). Senate Bill 521 also enhances consumer protection passed by the 77th Legislature by requiring certification and continuing education for anyone involved in the sale of manufactured homes. The bill also establishes graduated penalties for individuals who transport a manufactured home without a proper permit.

Clarifies that a realtor may sell a mobile home attached to realty without being licensed as a manufactured home salesperson.

Imposes a 3-day cooling-off period for purchasers of manufactured homes and places restrictions on the forfeiture of earnest money under contracts for their purchase.

Substantially amends the “in quotes” notice previously required to be given to purchasers of manufactured homes and directs the Department of Housing to prescribe consumer protection notices which explain the difference between chattel and real estate mortgages, statements of estimated charges and fees, and disclosure of fees for obtaining financing, such notices to be provided not less than 24 hours before the contract is executed. If disclosure is not provided, then the consumer has 2 years within which to rescind the agreement and obtain virtually a full refund.

Effective Date: May 1, 2003

Senate Bill 1238

Relating to regulating leasing in manufactured home communities.

Author: Lucio

Amends Sections 94.001 and 94.051, Property Code

In 2001, the Legislature passed a comprehensive bill prescribing protections for people who lease spaces in mobile home parks. This bill exempts recreational vehicle lease parks from coverage under that law. A recreational vehicle is defined as a vehicle primarily designed as a temporary living quarters for recreational camping or travel use that is permanently

tied to, affixed, or anchored to the premises as in the case of a park model unit.

Effective Date: May 16, 2003

Senate Bill 1326

Relating to the municipal regulation of single-family and duplex industrialized housing.

Author: Carona

Amends Sections 1202.251 and adds 1202.253, Occupations Code

This bill permits municipalities to impose zoning restrictions on industrialized housing, including with respect to architecture, aesthetic features, taxable valuation, and construction materials in order to conform industrialized housing to single family and duplex homes already located within 500 feet of the site for industrial housing.

Effective Date: June 18, 2003

Senate Joint Resolution 25

Proposing a constitutional amendment authorizing the Legislature to exempt certain travel trailers from ad valorem taxation.

Author: Staples

Sponsor: Lucio

Proposes constitutional amendment to Art. VIII(1)(d), Texas Constitution

The 2001 Session of the Legislature intended to create an ad valorem exemption for travel trailers used as homesteads, but inadvertently subjected them to taxation instead of exempting them from taxation. This constitutional amendment would permit enactment of Senate Bill 510 which would exempt travel trailers used as homestead, but not substantially affixed to real estate.

Effective Date: If passed by the voters at the September 13, 2003 election, will take effect on January 1, 2004.

Miscellaneous

House Bill 1

Relating to the appropriations of money for the 2004-2005 Biennium.

Author: Heflin

Sponsor: Bivins

Amends, adds and deletes various codes

This is the bill addressing the state budget for the next biennium. The bill can be reviewed at the Legislative Budget Board's Web site. The URL is <http://www.lbb.state.tx.us>. A detailed summary is beyond the scope of this paper. Note: The Governor vetoed several line items in the enrolled version of the bill in order to obtain certification from the Comptroller. See also HB 2424 relating to state fiscal matters and making substantial changes to various state agencies and boards.

Effective Date: September 1, 2003

House Bill 599

Relating to the continuation and functions of the State Bar.

Author: Chisum

Amends various sections of the Government Code.

The State Bar will continue in existence until September 1, 2015, at which time it will be up for another Sunset law review to justify its continued existence. The State Bar bill provides many new procedures for the State Bar. It has improved procedures for rule changes, for nominating the President by direct action of 5% of the members, and for appointing public members. Appointments must be made without regard to color, disabilities, or age, which were not previously covered.

The bill provides for a training plan for board members, a strategic plan with measurable goals, and a yearly budget plan. The bill provides for an indigent representation fund. A particular focus of the legislation is to allow for internet voting and for public access to the State Bar through the Internet. Provisions that directly affect the practice of law include the keeping of a file of all complaints, other than grievances, against attorneys, including the identity of the complainant, the nature of the complaint, and a summary of why no action was taken. Complainants will receive a copy of the State Bar's complaint procedures and a quarterly status report on their complaint.

Effective Date: September 1, 2003

House Bill 2292

Relating to state policy relating to financing of certain health and human services programs.

Author: Wohlgemuth Sponsor: Heflin
(The part of this bill discussed below was added as an amendment by Reps. Uresti and Van De Putte)
Among many other things, adds Section 531.077 of the Government Code

This adds a relatively benign-sounding phrase: "The commissioner shall ensure that the state Medicaid program implements 42 U.S.C. Section 1396p(b)(1)." This represents a radical change in the handling of recovery by the State for Medicare costs. Previously, Texas did not pursue any action against the residence homestead of a person confined to a nursing home or other care provider (either before or after the death of the patient) if the patient entered the nursing facility with an intention to return to the residence. The Federal law stated above requires the State to pursue collection of costs of the provision of such care unless the residence is occupied by certain members of the patient's family (spouse, minor children, and some qualified siblings).

CAVEAT: If you have been telling your clients that they do not need to worry about the family home when grandma enters the nursing home, tell them otherwise now.

Effective Date: September 1, 2003

House Bill 3507

Relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes.

Author: Marchant
Additions to and corrections in various enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes.

This bill is intended to make nonsubstantive additions to and corrections to enacted codes, as well as nonsubstantive codifications and conforming codifications to the acts enacted by the previous Legislature.

Effective Date: September 1, 2003

Senate Bill 236

Relating to exempting landowners from the requirements of obtaining a hunting license to hunt feral hogs on the landowner's property.

Author: Fraser Sponsor: Hupp
Adds Section 42.002 Subsection (c), Parks and Wildlife Code

In Texas, no one may hunt any bird or animal without a hunting license except as provided in Section 42's exceptions in the Parks and Wildlife Code. SB 236 amends the exceptions to include feral pigs. Depredating wild pigs may be "taken" on the landowner's land without a permit by the landowner or the landowner's agent or lessee. The law makes no distinction between pigs who get fat and hogs who get slaughtered - depredating pigs may be killed, period, without a license.

Effective Date: June 20, 2003

Senate Bill 279

Relating to the continuation of the Department of Licensing and Regulation.

Author: Jackson Sponsor: Solomons

Amends, adds and deletes provisions of the Occupations Code, Health and Safety Code, Civil Statutes and other various codes

Under the Sunset Laws, the Texas Department of Licensing and Regulation ("TDLR") was due for Sunset review this year. The Agency will be continued with slightly different functions. However, the bill transfers certain functions from the Texas Department of Agriculture to the TDLR and in turn transfers certain of the TDLR's functions to the Texas Department of Public Safety. The bill also deals with the financial responsibilities of valet parking services, the powers and duties of the Department of Information Resources, and the licensing authority of this State regarding on-line license information.

Effective Date: June 20, 2003

Senate Bill 1295

Relating to providing financial assistance to defense communities.

Author: Van de Putte Sponsor: Corte

Adds Sections 481.501 through 481.505, Government Code

Senate Bill 1295 requires the Office of Defense Affairs to assist defense communities in obtaining financing from local economic development corporations and state agencies with lending authority, who may arrange loans to defense communities adjacent to military bases that are to be closed. The bill also addresses the foreclosure rights of the state agencies in connection with loan defaults by defense communities. ("Defense community" means a political entity that is adjacent to, is near, or encompasses any part of a federally owned or operated military installation, facility, or mission.)

Effective Date: June 18, 2003

Property Owners Association

House Bill 645

Relating to prohibiting the creation or enforcement of certain restrictive covenants that undermine water conservation.

Author: Puente Sponsor: Armbrister

Adds Section 202.007, Property Code

House Bill 645 is intended to minimize (or in some cases, even invalidate) any restrictive covenants that are at odds with water conservation initiatives. The Act prohibits enactment and enforcement of, and voids existing, deed restrictions, covenants, or property association rules that discourage water conservation. Restrictive covenants may not prohibit the use of any turf or landscaping that is intended to conserve water, or prohibit the use of composting and water conservation systems such of rain barrels, rain water harvesting systems, or underground drip systems. A property owners' association may, however, reasonably restrict the aesthetic aspects of water conservation activities, such as, among others, the location, shielding, and materials that are used in such water conservation system. Las Colinas (which is mostly commercial) in Dallas is exempted from the Act.

Effective Date: September 1, 2003; with application to instruments recorded on or after that date.

House Bill 1454

Relating to powers of a property owners' association relating to restrictive covenants in certain subdivisions.

Author: Eiland Sponsor: Janek

Amends Section 204.002(a), Property Code

Currently, Section 204.002(a) of the Property Code, governing the powers of a property owner's association regarding

restrictive covenants, applies only to residential real estate subdivisions located in a county with a population of 2.8 million or more (i.e., Harris County only). House Bill 1454 extends the applicability of this section to residential subdivisions in Galveston County.

Effective Date: September 1, 2003

House Bill 2200

Relating to restrictions on apartment owners in a condominium regime relating to club membership.

Author: Solomons Sponsor: Fraser
Adds Sections 81.112 and 82.0675, Property Code

House Bill 2200 provides that a declaration, deed, lease, or other recorded contract that requires owners of an apartment in a condominium association to join a particular club is invalidated after ten years unless renewed by a super majority of 67 percent vote of the ownership interests in the condominium; provided that such renewal must be recorded and occur within the ninth year following the recording of the provision. The Act also forbids owners in a condominium from enacting or renewing a provision requiring membership in a private club within the condominium's by laws.

Effective Date: September 1, 2003; with application only to declarations, master deeds, master leases, contracts and bylaws recorded, enacted or renewed on or after that date.

Senate Bill 1582

Relating to authorizing political subdivisions and property owners' associations to trap and transport white-tailed deer.

Author: Wentworth
Adds Section 43.0612, Parks and Wildlife Code

In order to remedy overpopulation of white-tailed deer in urban areas, Senate Bill 1582 authorizes the Parks and Wildlife Department to issue permits to any political subdivision or property owners' association to trap and relocate white-tailed deer in a safe and humane manner to a suitable location designated by the Department. Unless the white-tailed deer pose a threat to human health or safety, the trap and relocate programs may only be administered between October 1 and March 1.

Effective Date: September 1, 2003

Sales and Property Taxation

House Bill 217

Relating to limiting the amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

Author: Hamric
Amends Sections 11.26, 11.42(c), 11.43(k), 26.10(b), and 26.112, Tax Code, and Section 403.302(d)(7), Government Code

Extends to disabled persons the same exemptions which limit increases in school district taxes which and have previously only been granted for the residential homesteads of persons 65 years of age or older; the exemption remains so long as the property remains the residence homestead of the person who receives the exemption; the exemption continues on for the spouse of the disabled person.

Effective Date: January 1, 2004, with changes to Section 11.26, Tax Code, and to Section 403.302, Government Code, contingent on and taking effect upon voter approval of the constitutional amendment in House Joint Resolution 21 to establish an exemption from school district taxes for residential homesteads of disabled persons. Other provisions of this bill apply only to an ad valorem tax year beginning on or after January 1, 2004.

House Bill 335

Relating to the eligibility of persons to participate in the public sale of certain real property.

Author: Hamric Sponsor: Lindsay

Adds Section 34.00445 to the Civil Practice and Remedies Code and Section 34.015 to the Tax Code.

Prohibits persons owing ad valorem taxes (whether on real or business personal or mineral property) from purchasing real property at a judicial execution or tax sale. Prohibits the officer conducting a judicial execution or tax foreclosure sale from executing or delivering a deed unless the purchaser first exhibits an unexpired written statement from the county assessor-collector, issued in the manner prescribed in new Section 34.015 of the Tax Code, that such purchaser owes no ad valorem taxes to the county and that there are no known ad valorem taxes due any municipality or school district having territory in the county. The deed delivered by the executing officer must name the successful bidder as grantee and recite that said grantee exhibited the statement described above confirming the state of facts described above. If a deed contains the required recital, compliance with new Section 34.00445(CPRC) and new Section 34.015 (Tax Code), as applicable, is “conclusively presumed.”

New Section 34.00445 (but not new Section 34.015) prohibits individuals from bidding on or purchasing any property in the name of any other individual (otherwise, note the absence of anti-circumvention provisions). Knowing violation of either new Section 34.00445 or new Section 34.015 is a Class B misdemeanor.

New Section 34.015 (Tax Code) requires a county assessor-collector, upon written request, to deliver a written statement whether there are any delinquent taxes owed by the requesting person to that county or to a school district or municipality having territory in that county. Sets forth the requirements of a written request for such statement. Requires the county assessor-collector to send to each applicable school district and municipality (other than those for which the county assessor-collector acts as collector) a request for information about delinquent taxes owed. If the county assessor-collector does not receive a response from a school district or municipality, then the county assessor-collector must state that there are no reported delinquent taxes from such entity(ies). Statements from a county assessor-collector expire in 90 days and must be in recordable form.

Effective Date: September 1, 2003. Applies to judicial executions and tax foreclosures conducted on or after October 1, 2003.

House Bill 390

Relating to the effect of tax increment financing by certain taxing units in the calculation of ad valorem tax rates for those taxing units.

Author: Pitts

Amends Section 26.03(c), Tax Code

Specifies that a new property value, as defined by Section 26.012, Tax Code, is not included in determining when to omit captured appraised value and tax increment fund revenue from rollback and effective tax rate calculations. This bill is intended to remedy a situation by which an artificial increase in the effective tax rate not subject to rollback, which was the result of prior legislation inadvertently requiring new property value to be counted twice in the rollback calculation.

Effective Date: January 1, 2004, and applies to tax rate calculations under Chapter 26, Tax Code, only for tax years beginning on or after that date.

House Bill 500

Relating to the confidentiality of certain information contained in applications for ad valorem tax exemptions; providing criminal penalties.

Author: Goolsby

Adds Section 11.48, Tax Code

This bill is intended to prevent disclosure of sensitive personal information that could lead to identity theft. To do so, this bill establishes that a driver’s license number, personal identification certificate number, or social security account number provided in an application for a property tax exemption is confidential, not open to public inspection, and not discloseable

to anyone not an employee of the appraisal office except in response to specified judicial and administrative criteria. Establishes that a person with legal access to the application or confidential information therein who knowingly discloses or permits inspection of same by an unauthorized person commits a Class B misdemeanor.

CAVEAT: The applicant's attorney or property tax consultant may wish to review their internal procedures to ensure that the confidential information is knowingly disclosed only to authorized persons.

Effective Date: September 1, 2003

House Bill 703

Relating to the property tax appraisal of property located in more than one appraisal district.

Author: Solomons
Adds Section 6.025(d), Tax Code

Requires that by May 1 of each year, each appraisal district with property lying in more than one district must enter the lowest of the appraised or market values in all districts. Requires the chief appraiser in each district in which the appraised or market value is reduced by protest, appeal or other action to notify the other appraisal districts in which the property lies, upon which each district must enter the lowest of all reduced values.

Effective Date: January 1, 2004, and applies only to ad valorem tax appraisals for tax years beginning on or after that date.

House Bill 893

Relating to the correction of an appraisal roll, a tax roll, and other appropriate records following the final determination of an ad valorem tax appeal.

Author: Haggerty
Amends Section 42.41, Tax Code

Requires the chief appraiser to correct the appraisal roll and notify the assessor for each taxing entity within 45 days of the final determination of a taxpayer's appeal to district court.

Effective Date: September 1, 2003, and applies only to corrections related to appeals that are finally determined on or after this date.

House Bill 1125

Relating to the period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

Author: Flores
Amends Sections 34.21(a), (c) and (e), Tax Code

At one time, all property owners had two years to redeem property sold at tax foreclosure sales. After a 1993 constitutional amendment, only residential homesteads and agricultural property retained the two-year period, with all other property being subject to a reduced six-month redemption period. This was intended to encourage commercial purchase and redevelopment of abandoned urban property. However, many mineral owners were often not aware taxes were delinquent until non-payment of royalties, which could occur after the six-month period had expired, thereby barring their claim of redemption.

This returns the present six-month redemption period to two years for former owners of mineral interests sold at tax sales. Makes redemptions of mineral interests subject to the same requirements as for redemptions of residence homesteads or agricultural property.

Effective Date: January 1, 2004, contingent on voter approval of the constitutional amendment in HJR 51 to establish a two-year redemption period for mineral interests. This bill applies only to redemption of a mineral interest for which the tax sale purchaser's deed is filed for record on or after January 1, 2004.

House Bill 1223

Relating to continuation of a residence homestead ad valorem tax exemption when the owner temporarily ceases occupying the homestead due to military service, residency in certain health facilities, or for a period of less than two years with intent to reoccupy as a homestead.

Author: Madden
Amends Section 11.13(1), Tax Code

Prescribes that the property of a resident homeowner does not lose its homestead character if the owner temporarily ceases occupation of it so long as the owner does not establish a different principal residence and (1) the absence continues for less than two years and the owner intends to return and occupy it as the principal residence; (2) the owner's absence is due to military service outside the United States as a member of the United States or Texas armed forces; or (3) the absence is due to the residency of the owner in a facility providing services related to health, infirmity, or aging.

Effective Date: June 18, 2003

House Bill 1460

Relating to the appraisal of real property for ad valorem tax purposes.

Author: Eiland
Amends Section 23.012, Tax Code; adds Section 23.014, Tax Code

Requires the chief appraiser to use certain data when utilizing the income method of appraisal. Requires consideration of certain historical and current market data when developing financial statements and cash-flow projections. Requires the exclusion of the value of tangible personal property, including trade fixtures, intangible property, or property not subject to appraisal as real property, when determining real property market value.

Effective Date: January 1, 2004, and applies only to ad valorem tax appraisals for tax years beginning on or after that date.

House Bill 2073

Relating to the ad valorem tax rate of a hospital district created under general or special law.

Author: Hilderbran
Adds Subchapter M to Chapter 285, Health and Safety Code

Provides statutory authority for certain hospital districts to hold an election to increase a district's maximum tax rate after the filing of a petition by voters in the district and a hearing thereon. Provides for the expiration of Subchapter M on September 1, 2008.

Effective Date: June 18, 2003

House Bill 2147

Relating to the filing of a late application for a residence homestead exemption from ad valorem taxation.

Author: Gattis
Amends Section 11.431(a), Tax Code

Current law requires a late application for a homestead exemption to be filed by the earlier of one year after the delinquency date or the date the taxes were paid.

This extends the time for filing a late application for a residence homestead by providing it may be filed up to one year after the delinquency date for the homestead taxes.

Effective Date: June 20, 2003

House Bill 2148

Relating to the prohibition of a restriction or condition placed on a check tendered in payment of delinquent ad valorem taxes, penalties, and interest.

Author: Gattis
Adds Section 33.10, Tax Code

Makes void, unless otherwise authorized, any conditions or restrictions limiting the amounts owed or accrued which are placed by the maker on a check in payment of delinquent taxes, penalties, or interest. In short, it does the taxpayer no good to include "payment in full for all taxes due".

Effective Date: June 20, 2003

House Bill 2383

Relating to the eligibility for exemption from ad valorem taxation of public property used for certain religious purposes.

Author: Hegar
Amends Section 11.20(d), Tax Code, and adds Sections 11.20(h) and (i), Tax Code

Grants to a qualifying religious organization that leases publicly owned property the taxation exemptions available as if the organization owned the property. Requires that the property be reasonably necessary for and be used primarily as a place of regular religious worship.

Comment: Houston practitioners who followed the leasing of the Compaq Center by Lakewood Church will find this bill to be of special interest.

Effective Date: January 1, 2004, and applies only to an ad valorem tax year beginning on or after that date.

House Bill 2726

Relating to authorizing an owner of inventory to waive the right to have the inventory appraised for ad valorem tax purposes at the price for which it would sell as a unit.

Author: Talton
Amends Sections 23.20(a)-(e), Tax Code

Allows an owner of taxable property (real or personal) to waive the right to special appraisal as to one or more taxing units designated in the waiver. Specifies the timing for submitting a waiver. Clarifies that a waiver runs with any land to which the waiver applies and binds the successor in interest to the waiver.

Effective Date: January 1, 2004, and applies only to ad valorem tax appraisals for a tax year beginning on or after that date.

House Bill 2819

Relating to the confidentiality of certain home address information held by a tax appraisal district.

Author: Driver
Amends Section 25.025(a), Tax Code

Previously, only people involved in certain specifically-described areas of law enforcement could request that their home addresses as shown on tax rolls be restricted from public access. This adds victims of family violence by an actor convicted of a felony or Class A misdemeanor to the prescribed individuals who may designate that their home address information in appraisal records be restricted from public access.

Effective Date: June 20, 2003

House Bill 2844

Relating to the exemption from the requirement that a person register as a property tax consultant to perform certain property tax consulting services.

Author: Casteel
Amends Section 1152.002(a), Occupations Code

Exempts a person providing farm and ranch property tax consulting services from the registration requirements of Chapter 1152, Occupations Code, if that person holds an active real estate broker or salesperson license, or is a licensed or certified real estate appraiser.

(Currently, similarly-credentialed persons were exempt from the registration requirements only when providing single-family residence property tax consulting services.)

Effective Date: June 20, 2003

House Joint Resolution 21

Proposing a constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

Author: Hamric
Amends Section 1-b(d), Article VIII, Texas Constitution

Extends to disabled persons the exemption limiting increases in school district taxes which is granted for residential homesteads of persons 65 years of age or older, as long as the property remains the residence homestead of the person who receives the exemption or the surviving spouse of that person.

Effective Date: Subject to voter approval at an election on September 13, 2003, will become effective for the tax year beginning January 1, 2004.

House Joint Resolution 51

Proposing a constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

Author: Flores
Amends Sections 13(c) and (d), Article VIII, Texas Constitution

Grants an owner of a mineral interest the same rights for a two-year period for redeeming property sold at a tax foreclosure sale as an owner of a residential homestead or agricultural land. Clarifies that the Legislature cannot limit the application of the two-year period for mineral interest redemptions.

Effective Date: Subject to voter approval at an election to be held September 13, 2003, will become effective for deeds filed of record after January 1, 2004, but expires January 1, 2005. (*See House Bill 1125 above.*)

Senate Bill 173

Relating to deferred payment of property taxes for certain persons serving in the United States armed forces during a war or national emergency.

Author: Nelson
Amends Section 31.02, Tax Code

The 1991 Legislature passed *Article 31.02, Tax Code* to permit those in the armed services during the Gulf War and transferred out of the State to pay delinquent ad valorem taxes without penalty for a period of time after they had been discharged from active duty. SB 173 amends this to extend to those called up for service in a "war or national emergency declared in accordance with federal law." Members of the armed services are considered in active duty if covered by the Soldiers' and Sailors' Civil Relief Act or 50 App. U.S.C. Section 501 et seq.) or the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.).

Effective Date: May 28, 2003

Senate Bill 340

Relating to the rendition and appraisal of property for ad valorem tax purposes and to the use of electronic means for certain interactions between property owners and appraisal districts, taxing units, or other tax officials; providing civil penalties.

Author: Staples Sponsor: Averitt

Amends Sections 1.085, 1.09, 22.01, 22.02, 22.23, 22.24, 23.23, 25.19, 41.43, 41.41 and adds Sections 22.28, 22.29, and 22.30, Tax Code

The 1999 Legislature amended several sections of the *Tax Code* to permit notices and communications between taxpayers and appraisers to be in electronic media. The amendments allow the Comptroller to prescribe formats, the means of communication (and confirmation of receipts), etc. so as to reduce the amount of confusion which might arise regarding these means of communication. If a taxpayer has more than 25 separate renditions, it can insist on using electronic media rather than paper. If a taxpayer is required to file tax forms, they must be made available under one of the prescribed electronic means as well as the paper forms. (Effective date: January 1, 2005 except for Counties having a population of less than 500,000, which take effect January 1, 2006.)

The amendments to the *Tax Code, Chapter 22* relate to rendition of personal property. On rendering personal property for taxation, a taxpayer is given a laundry list of things which the rendition must contain (in addition to a "good faith estimate" of its value), including the identity of the owner of the property and its location as of January 1. If property is claimed to be exempt but the exemption is denied, then the taxpayer must render it within 30 days of the denial of the exemption. The appraiser can require the owner to make the rendition wherein the following would be in bold: **"If you make a false statement on this form, you could be found guilty of a Class A misdemeanor or a state jail felony under Section 37.10, Penal Code"**. The appraiser can assess a penalty of 10% for failing to timely render. Where there is an intent to defraud on a rendition, the appraiser can assess a 50% penalty; many subjective things can be taken into account for the appraiser to waive this.

Section 23.23, Tax Code is amended to allow improvements which have been made to property to remedy mold infestation or other casualty without raising the value of property for tax purposes. (Effective September 1, 2003, and applies to the rendition of property for ad valorem tax purposes for the 2003 tax year, regardless of whether the casualty or mold or water damage occurred before, on, or after the effective date of this Act.)

Heretofore, the burden of proof at Appraisal Review Board hearings has remained on the Chief Appraiser in raising valuations. *Section 41.43, Tax Code* is amended to shift the burden of proof in such hearings to the landowner if the property owner fails to deliver a rendition statement at or before the date of the hearing.

Effective Date: September 1, 2003 (except as otherwise noted above)

Senate Bill 353

Relating to tax increment financing under the Tax Increment Financing Act in certain cities that border Mexico.

Author: Shapleigh Sponsor: Pickett

Amends Section 311.013, Tax Code by deleting Subsection (h)

Eliminates the exception for tax increment zones created in cities having a population of more than 230,000 along the border with Mexico (i.e., El Paso), from the law that provides that tax entities are not required to pay into the tax increment fund any tax increment produced from property located in a reinvestment zone, unless the taxing unit enters into an agreement to do so with the governing body of the city that created the reinvestment zone.

Effective Date: April 24, 2003

Senate Bill 480

Relating to excepting certain land from the additional tax imposed on the change of use of land appraised for ad valorem tax purposes as open-space land.

Author: Madia Sponsor: Mercer
Amends Section 23.55, Tax Code

This affects the five-year “rollback” of taxes when the use of land that has been appraised changes to another use for which there is not an exemption. This allows the City of Houston (municipality having population of over one million) to make transfers to without rollback penalties when the new owner is a person or entity which will create economic development. Determination of this economic development is to be made by the Comptroller to qualify. Very limited application.

Effective Date: June 20, 2003

Senate Bill 657

Relating to the treatment of captured appraised value and tax increment in the calculation of ad valorem tax rates for a taxing unit.

Author: Brimer Sponsor: Lewis
Amends Section 26.03 (b) and (d), Tax Code

Under current law, taxing entities must include the total appraised value and all taxes imposed for all real property within their jurisdiction (even property that the entity has agreed to pay into the tax increment fund for a reinvestment zone) unless the entity is located within a county with a population of less than 500,000 or the entity is a school district. This Act eliminates the exception to provide that counties with populations of more than 500,000 will no longer have to include property that the taxing entity has agreed to pay into the tax increment for a reinvestment zone. However, a taxing entity (regardless of the size of the county) cannot take advantage of the exclusion if in the same tax rate calculation there is no portion of captured appraised value excluded from the value of the property taxable by the unit for the same reinvestment zone.

Effective Date: January 1, 2004

Senate Bill 725

Relating to the payment of ad valorem taxes on property erroneously omitted from a tax roll.

Author: Wentworth
Amends Section 31.04, Tax Code

Previously, if the taxing authorities discovered property which had been omitted from the tax rolls, the taxing authorities could send a statement for those taxes. If the property owner paid the tax within 21 days of the date the notice was sent, there was no penalty or interest; otherwise, penalties and interest were to be added. This extends the penalty-free payment time to the first February 1 following the date of notice that would create a delinquency date no earlier than 180 days after demand. Taxing authorities are required to waive penalties, and may waive interest accruing, until after the expiration of a 21-day grace period after the delinquency date.

Effective Date: September 1, 2003

Senate Bill 853

Relating to the disclosure of certain information by persons offering to aid homeowners in obtaining property tax refunds.

Author: Madia Sponsors: Martinez, Fischer
Amends Section 41.0051, Property Code

A person who solicits taxpayers only by telephone or mail to pay a fee to apply for a property tax refund must first (before accepting the money for the service) disclose to the taxpayer the governmental body which owes the taxpayer a refund. Failure to make the required disclosure is a violation of the Deceptive Trade Practices Act.

Effective Date: September 1, 2003

Senate Bill 948

Relating to ad valorem taxes imposed for the benefit of a hospital district.

Author: Lindsay Sponsor: Callegari
Adds Section 281.096, Health and Safety Code

Previously, the board of a hospital districts was the entity to rule on whether or not to grant tax exemptions from hospital district taxes. This is changed to impose that responsibility on the Commissioners Court rather than on the hospital board.

Effective Date: September 1, 2003 (except that the Act applies only to the exemption or taxation of property for a tax year that begins on or after January 1, 2004 and does not affect a contract entered into prior to September 1, 2003)

Senate Bill 1452

Relating to an offense for certain communications between an appraisal review board member and a chief appraiser or appraisal district employee concerning a matter related to an ad valorem tax protest.

Author: Harris Sponsor: Harper-Brown
Adds Section 6.411, Tax Code

This makes it a Class C misdemeanor for the appraisal district employees or the chief appraiser to have *ex parte* communications with appraisal review board members about matters pending before the appraisal review board.

Effective Date: September 1, 2003

Senate Bill 1646

Relating to the ad valorem tax appraisal of qualified timber land.

Author: Staples Sponsor: Christian
Amends Section 23.71, Tax Code

In an effort to make evaluation more uniform among the East Texas counties which are timber producing areas, this amends the guidelines for such evaluations, breaking them down into the specific type of timber which is found, and requiring that the quantities be expressed in estimated tonnage (the mode for determination of payment for harvested timber used by mills) and by establishing capitalization rates.

Effective Date: January 1, 2004

Senate Bill 1833

Relating to the use of electronic means for certain interactions between taxpayers and appraisal districts, taxing units, or other tax officials.

Author: Staples Sponsor: Christian
Amends Sections 1.085 and 1.09, Tax Code

Permits electronic agreements between taxpayers and the chief appraiser if certain requirements are met, including the specification of the taxpayer's email address and confirmation of delivery. Grants the Comptroller authority to establish media, format, content and methods for transmission and exchange of certain notices, renditions and other information. If a property owner with 25 or more accounts requests electronic dissemination of notices, then the chief appraiser must provide notices in that manner pursuant to an agreement to that effect with the property owner and provide electronic notices in a form authorized by the Comptroller.

Effective Date: January 1, 2005 for an agreement between a chief appraiser and a property owner entered into on or after that date, except in a county with a population of 500,000 or less, in which case the Act takes effect January 1, 2006 for an agreement between a chief appraiser and property owner entered into on or after that date.

Title & Survey

Senate Bill 260

Functions of Professional Board of Surveyors.

Author: Shapleigh Sponsor: Solomons
Amends various sections of Chapter 1071 of the Occupations Code

The Texas Board of Professional Land Surveying (the “Board”) underwent Sunset review, with its authorization extended to September 1, 2015. Requires a board member to complete a training program prior to voting on any issue that is considered by the Board. Board Employees are offered to participate in the State Employee Incentive Program. Requires the Board to develop and implement Alternative Dispute Resolution procedures as well as a policy regarding information technology and Internet availability for interaction between the Board and the public. Discusses items to be included in a complaint file. Defines frivolous complaints filed with the Board. Discusses surveying licensing requirements.

Effective Date: September 1, 2003

Senate Bill 641

Relating to presumption for state land records.

Author: West, Royce Sponsor: Turner
Adds Section 18.033 to Chapter 18 of Civil Practice & Remedies Code

In a boundary dispute, between the State of Texas and a landowner owning property fronting the Gulf coast and areas within the boundaries of the State of Texas, this law creates a presumption that any maps, surveys or other property descriptions drafted by a duly licensed and qualified surveyor and contained within the records of the General Land Office are accurate. This presumption may only be overcome by a showing clear and convincing evidence to the contrary.

Effective Date: September 1, 2003

Transportation

House Bill 471

Relating to the borrowing of money and issuance of notes by the Texas Transportation Commission; making an appropriation.

Author: Pickett Sponsor: Lucio
Amends Chapter 201 of the Transportation Code

Authorizes short-term borrowing by the Texas Transportation Commission subject to satisfaction of certain conditions, including submittal of a detailed financial forecast to the cash management committee, partially contingent upon a constitutional amendment (see HJR 28).

Effective Date: September 1, 2003

House Bill 1117

Relating to the clarification by a county of the existence of a public interest in certain roads.

Author: Keffer
Adds a new Chapter 258 to the Transportation Code

Sets up an elaborate procedure to “clarify” the public interest in county roads acquired by purchase, condemnation, dedication, adverse possession or long-term maintenance due to concerns that counties will have increasing trouble proving their rights when landowners challenge the county’s rights. Procedures includes: (1) proposal of a road map, (2) notice

and public meeting, (3) possible protests, (4) appointment of a “jury of view” comprised of five impartial property owners (5) public hearing and determination by the jury of view, (6) formal amendment of the county road map, and (7) possible contest in district court, subject to a two-year filing deadline. Provides that private interests in such roads—except mineral interests—are exempt from ad valorem taxation. Provides for reverter to private ownership “if the county ceases to maintain the road.” A county road map adopted under this Act is conclusive evidence of the public’s right of access and a county’s authority to spend public money to maintain a road included on the map. The county must include a notice of the adoption of a county road map with ad valorem tax statements for the prior and following year. (Note: As written, the reverter provision could cause uncertainties and controversies due to reversionary interest holders’ tax liability.) Expires September 1, 2009.

Effective Date: September 1, 2003

House Bill 1208

Relating to the mitigation of traffic congestion on highways; providing penalties.

Author: Lewis

Amends various sections of the Transportation Code

Designed to allow more high occupancy vehicle (HOV) lanes, toll lanes and exclusive lanes (i.e., lanes dedicated to one or more classifications of vehicles, including motorcycles and low emissions vehicles) and restricted lanes on state highways by expanding the Texas Department of Transportation’s powers and duties to provide and finance those lanes, including the right to enter into design, construction, maintenance and operation agreements with transit authorities, regional mobility authorities, municipalities and transportation corporations.

Effective Date: June 20, 2003

House Bill 2905

Relating to certain requirements concerning specific information logo signs, major agricultural interest signs, and major shopping area guide signs.

Author: Phillips

Amends various sections of the Transportation Code

Authorizes TxDOT, by contract, to erect “major agricultural interest signs,” and “major shopping area guide signs” on certain highways. Contracts need not be submitted to competitive bidding. Contractors may charge fees to businesses and “agricultural interests.” (Note: partly conflicts with HB 3330 because both Acts amend some of the same sections differently with respect to award of contracts.)

Effective Date: June 20, 2003

House Bill 3017

Relating to the organization, administration, and validation of the creation and certain action of a coordinated county transportation authority.

Author: Solomons

Amends Chapter 460 of the Transportation Code

Appears to have special application to Denton County Transportation Authority (which is validated), but also modifies governance, taxing and borrowing by transportation authorities created by suburban counties, and provides for adding municipalities as members.

Effective Date: September 1, 2003

House Bill 3330

Relating to the regulation of certain information logo signs along certain major highways.

Author: Crownover

Amends Chapter 391 of the Transportation Code

Broadens the types of highways where “logo signs” (for private businesses) may be erected by TXDOT contractors. Adds restrictions on contracts. (Note: partly conflicts with HB 2905 because both Acts amend some of the same sections differently with respect to award of contracts.)

Effective Date: September 1, 2003

House Bill 3588

Relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in the state; imposing criminal penalties.

Author: Krusee Sponsor: Ogden

Amends various sections, Transportation Code, Occupations Code, Health and Safety Code, Tax Code

A massive transportation bill, including provisions for: (1) Trans Texas Corridor (TTC) projects for highway, rail and utility facilities, (2) land acquisition, utility relocations and claims, (3) new types of contracts, including design-build agreements and “pass-through” or “shadow” toll contracts, (4) toll facilities and turnpikes, (5) exclusive lanes, (6) financing TTC projects and the Texas Mobility Fund; (7) new powers for TxDOT, including railroad projects, (8) expanded authority for regional mobility authorities, including turnpike and toll authority, (9) conversion of free roads to toll roads, (10) drivers licenses, including surcharges based on a point system and financial responsibility, (11) funding for trauma care facilities, (12) traffic enforcement and fines, (13) port security, (14) coordination of public transportation; (15) salvage motor vehicles, (16) electric vehicles, and (17) other matters.

Effective Date: Generally September 1, 2003, but some sections are different.

House Joint Resolution 28

Proposing a constitutional amendment providing for authorization of the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund.

Author: Pickett Sponsor: Lucio

If approved by the voters, would amend Article III of the Texas Constitution

Would authorize borrowing by the Texas Transportation Commission (with power to authorize Texas Department of Transportation), short-term and long-term. Would prohibit modification of any “dedication or appropriation of revenue” pledged to repay debt, unless debt is discharged. See, also, HB 471.

Effective Date: Subject to approval of voters by election on September 13, 2003.

Senate Bill 361

Relating to the precedence of certain municipal highway access rules and ordinances over highway access management orders of the Texas Transportation Commission.

Author: Shapiro Sponsor: Hill

Amends Section 203.032 of the Transportation Code

Provides that some orders of the Texas Transportation Commission governing highway access do not supercede a conflicting rule or ordinance of a municipality, unless failure to supercede would impair the right of the State to receive federal highway funds.

Effective Date: June 20, 2003

Senate Bill 409

Relating to the membership and duties of the Texas Transportation Commission.

Author: Lucio Sponsor: Chavez
Amends various sections of the Transportation Code

Increases TTC membership from three to five, with regional members to be “appointed to reflect the diverse geographic regions and population groups of this state.” Increases the powers of the governor-designated “chair” of the commission (formerly commissioner of transportation). The changes under the Act were apparently spurred by the existence of NAFTA and the corresponding increase in transportation needs for the Texas-Mexico border region.

Effective Date: September 1, 2003

Senate Bill 485

Relating to use of exclusive development agreements by an intermunicipal commuter rail district.

Author: Barrientos Sponsor: Krusee
Amends art. 6550c-1, TEX. REV. CIV. STAT. ANN.

Applies to intermunicipal commuter rail districts, bracketed to areas such as Dallas-Fort Worth and Austin-San Antonio (i.e., Travis and Bexar Counties). Allows such rural rail transportation districts to enter an “exclusive development agreement” with a private entity for design and construction of a commuter rail facility or system (and, optionally, financing, acquisition, maintenance or operation). Competitive bidding is not required.

Effective Date: June 20, 2003

Senate Bill 487

Relating to the relocation of utilities required for the improvement of the state highway system.

Author: Ogden Sponsor: Krusee
Amends Chapter 203 of the Transportation Code

Establishes a procedure to encourage affected utilities to enter into relocation agreements with TXDOT, failing which, TXDOT may unilaterally “relocate the facility at the sole cost and expense of the utility,” less possible reimbursements.

Effective Date: June 20, 2003

Senate Bill 972

Relating to the addition of certain municipalities to the territory of a regional transportation authority.

Author: Shapiro Sponsor: McCall
Amends Chapter 452, Transportation Code, art. 5190.6, TEX. REV. CIV. STAT., and various sections, Local Government Code

Allows a municipality to vote to join a Chapter 452 Regional Transportation Authority (“RTA”) (i.e., Dallas Rapid Transit Authority) and simultaneously reduce its special municipal sales taxes to provide “headroom” for the RTA sales tax in order to avoid exceeding the 25 cap for municipal sales tax.

Effective Date: June 20, 2003

Water

House Bill 803

Relating to the assessment of damages in a condemnation proceeding based on the market value of groundwater rights as property apart from the land.

Author: Geren

Adds Sections 21.0121 and 21.0421, Property Code

This bill amends the Texas Property Code to state that the court or special Commissioners in a condemnation proceeding shall admit evidence related to the market value of the groundwater rights associated with the property and may include the market value of groundwater rights in the damage award to property owners if the court determines that the groundwater could be used for public purposes and satisfies certain conditions in the condemnation petition for condemning groundwater rights. Opponents of the bill indicated concern that this legislation could eventually lead to ad valorem property taxes being applied to groundwater and inflated appraised values for property itself because of the increase attributable to groundwater, but the Act specifically states that it is not authorizing either of those results.

Effective Date: September 1, 2003, but does not affect litigation pending prior to that date

House Bill 1065

Relating to the eligibility requirements to serve as a director of a groundwater conservation district.

Author: Cook, Robby Sponsor: Averitt

Adds Section 36.051(d), Texas Water Code

This legislation sets certain minimum requirements for the qualification of service for a director of a Texas groundwater conservation district. Specifically, the bill nullifies the common law doctrine of incompatibility in counties of less than 50,000 people with regard to service on a groundwater conservation district board. This change applies to prevent disqualification of directors who serve on other boards of political subdivisions (excluding a county or a municipality). The bill causes an apparent defeat of the effort by local citizens and those tied to water marketing that have attempted to oust a board member of a GCD for various sundry reasons such as serving as a board member or holding another office in another political subdivision.

Effective Date: May 19, 2003

House Bill 1138

Relating to non-profit water supply and sewer service corporations in certain counties.

Author: Van Arsdale Sponsor: Lindsey

Amends Section 67.011, Texas Water Code

This bill removes the previously-existing population limitation to allow Harris County to form non-profit water and sewer supply corporations. Previously, Harris County was the only county that was not permitted to form these corporations, which can be instrumental in affording Harris County residents with contaminated water additional options for dealing with contamination. Under this Chapter, non-profit corporations can (1) own, hold, lease, or otherwise acquire water wells, springs, or other sources of water supply; (2) build, operate, and maintain pipelines to transport water or wastewater; (3) build and operate plants and equipment necessary to distribute water or to treat and dispose of wastewater; and (4) sell water or provide wastewater services to a political subdivision, a private corporation, or an individual.

Effective Date: May 15, 2003

House Bill 1150

Relating to the financing of certain local water conservation and open-space projects in accordance with the law governing sports and community venue projects.

Author: Puente

Amends Sections 334.001(4), 334.041(f), Local Government Code; Adds Sections 334.007, 334.081 Sub. (d), and

334.2517, Local Government Code

This bill enables the financing of surface water improvements by allowing for the expansion of the Development Corporation Act of 1979 (specifically 4A and 4B finance options) to be used for development outside of a municipality or county watershed protection and preservation projects, certain recharge projects, conservation easements or an open-space preservation program intended to protect water. Previously, this type of financing was only available to public venues such as stadiums, convention centers, rodeo arenas, etc. The City of San Antonio was seeking this financing to purchase land in the Edward's Aquifer and leave it undeveloped.

Effective Date: February 3, 2003

House Bill 1152

Relating to the authority of certain non-profit water supply corporations to establish and enforce customer water conservation measures.

Author: Puente
Amends Section 67.011, Texas Water Code

Allows non-profit water supply corporations to establish conservation policies (subject to review by the Texas Commission of Environmental Quality for reasonableness) for their customers and also to be able to enforce those measures by charging penalties under the corporate tariff to those who violate the policy. This bill is intended to extend to the non-profit water supply corporations the same authority that water supply districts and municipalities have to conserve and prevent the waste of potable water. It is applicable in counties of a population of less than 3.3 million (i.e., excludes Harris). Also establishes an appeals process for those who wish to contest the penalty.

Effective Date: June 20, 2003

House Bill 1370

Relating to the study and implementation of seawater desalination.

Author: Luna
Adds Section 16.060, Texas Water Code

Authorizes the Water Development Board to undergo research efforts, facility planning initiatives, surveys, and investigation of better and more cost-effective means for the conversion of saltwater into safe and potable water. The bill calls for a biennial report to be submitted to the Governor, Lt. Governor, and Speaker for progress review. This report will analyze the possibilities of federal monies available for research, the data resulting from studies procured, the role the state of Texas should play in the development of such efforts, and any expected appropriations due from the state for such efforts. The Board is authorized to pursue federal financing in connection with these projects.

Effective Date: May 15, 2003

House Bill 1378

Relating to the duties of the Water Development Board and the executive administrator of the board.

Author: Geren
Amends Sections 9.002 - 9.009, 9.016-9.017, 15.005(a)(b)(d), 16.012(m), 16.053 Sub. (d)(e), 17.183, and 17.276(a), Texas Water Code; Adds Sections 16.012 Sub. (n), 16.053 Sub. (e-1), and 30.003 Sub. (11), Texas Water Code; Repeals Sections 9.010 - 9.012, and 11.155(c), Texas Water Code

Makes administrative changes and clarifications to language regarding the Texas Water Advisory Council and provides that the Governor, Lt. Governor and Speaker of the House can issue charges to the Council regarding water resource management and other state water issues. This Act imposes confidentiality requirements on information obtained through field investigations for groundwater modeling upon request of a landowner.

Effective Date: June 20, 2003

House Bill 1534

Relating to the removal of certain powers of groundwater conservation districts.

Author: Cook, Robby

Amends Section 36.103(b), 36.104, 36.105(a)(b), 36.106, Texas Water Code

Removes the powers of groundwater conservation districts to provide facilities for purchase, sale or transport of water and restricts eminent domain powers to application only within a district that is necessary for conservation purposes (and not for production, sale or distribution of groundwater or surface water). The bill also restricts survey authority to surveys of aquifers for the purpose of determining the quantity of water improvements, development, and recharging needed. This bill is an example of the policy issues facing the Legislature related to the diminishment of the Rule of Capture in favor of groundwater conservation districts and the amount of power to give the groundwater conservation districts, as well as appropriate safeguards for such powers.

Effective Date: September 1, 2003

House Bill 1541

Relating to the general powers and authority of water districts.

Author: Callegari Sponsor: Lindsay

Amends, repeals and adds various sections of the Texas Water Code; Amends Section 388.005(a), Health and Safety Code; Amends Section 43.0751(a)(3), Section 43.0751 Sub. (d)(f)(i), and Section 43.127(a), Local Government Code; Adds Section 43.123 Subd. (e), and Section 43.0751 Sub. (q), Local Government Code

This bill makes a number of changes to the laws governing water districts, including, among others, the laws governing water district contracts, board member election procedures in certain water districts, clarifications that TCEQ's approval is not required in connection with certain bond refunds, and requirements for selling surplus land, bond financing initiatives, exclusion of land from tax rolls and that apply to construction contracts. The bill also contains procedures specific to municipal utility districts ("MUD"), including, among others, the authorization to adopt plumbing codes, and for MUDs with taxation powers, the ability to petition TCEQ for the right to exercise the powers of road improvement districts. There are also changes applicable to levee improvement districts and water supply corporations. In addition, the bill makes a number of changes to the provisions authorizing municipalities and water districts to join together in a "strategic partnership agreement" to clarify the laws pertaining to certain annexation agreements, including, among others, (i) limited-purpose annexation of the district on terms acceptable to the municipality and the district when the district continues to operate during and following the annexation, (ii) full annexation on terms acceptable to the municipality and the district, and (iii) in an apparent effort to promote more efficient means of handling water runoff, drainage and the disbursement of sewage in the City of Houston and Harris County, certain limited purpose annexation requirements that are applicable only to those governmental entities.

Effective Date: June 18, 2003

House Bill 1875

Relating to the water infrastructure fund, rural water assistance fund, rural community water and wastewater loan fund, and colonia self-help account.

Author: Wise

Amends Sections 15.903, 15.903 subd. (e), 15.051, 15.953, 15.952(a)(b), 49.153(e) and 49.183(a)(b), Texas Water Code

Expands the uses for the rural water assistance fund found within the state treasury to allow monetary assistance to rural areas and colonias for "water quality enhancement" projects (in addition to water projects). It also adds onsite or wetland wastewater treatment facilities to the list of water projects for which financing is available. The bill also deletes the \$250,000.00 loan amount cap for qualified projects and now provides for no cap on loan amounts.

Effective Date: June 20, 2003

House Bill 2660

Relating to the establishment of minimum levels of water conservation in water conservation plans.

Author: Puente

Amends 11.1271 Sub. (c), and adds 11.1271 Sub. (d)(e)(f), 15.106 Sub. (b-1), 17.125 Sub. (b-1), 17.125 Sub. (b-1), 17.277 Sub. (b-1), 17.857 Sub. (b-1), and 11.1271 Sub. (d)-(f), Texas Water Code

Requires, that, by May 1, 2005, all water conservation plans submitted to the Texas Water Development Board must present specific, quantified 5-year and 10-year targets for water savings when requested by TCEQ pursuant to 2001 Legislation in the Water Code. Most municipalities and water suppliers either failed to develop plans or to provide goals in the plans they did provide. The plans must include water loss contingency programs and goals for municipal usage of water in gallons per capita per day. The entity submitting the plan is responsible for establishing the targets so that the plans themselves are more goal oriented in nature rather than fluffy political rhetoric. The Texas Water Development Board is responsible for developing model plans to assist in this endeavor.

Effective Date: June 20, 2003

House Bill 2663

Relating to the establishment of quantifiable goals for drought contingency plans.

Author: Puente

Amends Section 11.1272, by adding Subsections (c), (d), and (e), Texas Water Code

Requires wholesale and retail public water supplier irrigation districts to submit by May 1, 2005 a specific drought contingency plan to TCEQ with specific and quantified targets for water use reductions to be achieved during times of drought and water shortage. The entity submitting the plan is responsible for setting the targets. The TCEQ must prepare a model drought contingency plan for different types of water suppliers that suggest the best management practices for the best ways to tackle water use reductions during times of shortage and drought.

Effective Date: June 20, 2003

House Bill 3338

Relating to requiring water rights applicants and holders.

Author: Puente

Adds Section 16.0121 and amends 16.053(j), Texas Water Code

Requires any "retail public utility" to submit to the Texas Water Development Board ("TWDB") a water loss audit to the state every five years, with the most recent annual data to be used for audit purposes. The TWDB must develop the appropriate methodologies for the audit depending on the population size served by the utility. The bill is intended to promote accountability with all water suppliers and utilities and continues the state's efforts to require plans for conservation and preservation of water.

Effective Date: September 1, 2003

Senate Bill 155

Relating to the protection of public freshwater areas.

Author: Zaffarini Sponsor: Puente

Amends Title 5, by adding Subtitle I, Sections 90.001 - 90.010, Parks and Wildlife Code

Prohibits the operation of a motor vehicle in certain freshwater areas and navigable rivers or streams (intended for the protection of such areas). There are exceptions to the prohibition (*e.g.*, among others, emergency, access to a mineral lease, law enforcement ingress and egress, governmental employees on official business or telecommunications representatives. Also requires local government entities to file plans for the collection of fees for such activities as well the establishment of rules and procedures consistent with this effort. This law represents an effort to diminish the destruction caused by the recreational use of four-wheelers and ATV's to the state's riverbeds and tributaries.

Effective Date: September 1, 2003

Senate Bill 347

Relating to the single member districts for the board of the Barton Springs-Edwards aquifer conservation districts.

Author: Barrientos Sponsor: Rose

Amends Section 7, Chapter 429, Acts of the 70th Legislature, Regular Session, 1987, by adding Subsections (d) through (h)

Provides for the revision (upon a new federal census) of the five numbered, single-member districts for the election of board members to the Barton Springs-Edwards aquifer conservation district. It also specifies that the City of Austin will have two of these member districts within its boundaries. The board has the power to revise the boundaries of the district as it deems necessary.

Effective Date: September 1, 2003

Senate Bill 392

Relating to tax assessment procedures in certain water districts.

Author: Williams Sponsor: Gattis

Amends Subchapter H, Chapter 49, by adding Section 49.236, Texas Water Code

Requires the board of certain conservation and reclamation districts to hold a public hearing (with public notices) prior to the adoption of an ad valorem tax rate for the purposes of debt service, operation and maintenance reasons, or for contract purposes. The vote of each director on the taxation issue (if a vote was taken) must be published. The bill is an apparent response to concern about taxing powers of political subdivisions in Montgomery County, Texas.

Effective Date: September 1, 2003

Senate Bill 542

Relating to exclusion of land from certain water districts for failure to provide facilities and services.

Author: Lindsay Sponsor: Howard

Adds Sections 49.3075, 49.3076, and 49.3077, Subchapter J, Chapter 49, Texas Water Code.

Permits a landowner to petition a water district board to have his land de-annexed from a water district should certain circumstances exist. One such circumstance would be if the land sought to be de-annexed has been located in the district and subject to taxes of the district for no less than 20 years (or 28 years if there is certain bonded indebtedness) and that the landowner has applied to the district for services but have yet to receive them.

Effective Date: June 20, 2003

Senate Bill 898

Relating to the applicability of provisions concerning bond approval by the Commission on Environmental Quality to certain water districts.

Author: Averitt

Amends Section 49.181 sub.(h), Texas Water Code

Exempts certain municipal utility districts from requirements to provide escrows with TCEQ in order to obtain bond financing for certain projects.

Effective Date: June 20, 2003

Senate Bill 1053

Relating to certain water pollution and conservation programs administered by the Water Development Board.

Author: Duncan Sponsor: Geren
Amends, adds and repeals various sections of the Texas Water Code

Consolidates loan programs within the Texas Water Development Board related to agricultural water conservation into one program. The bill defines certain lending institutions that are acceptable for participation in the loan programs and specifies ceilings for loan amounts, bond enhancement arrangements, sources of assets, various types of funds available, repayment policies and requirements for loans to political subdivisions. The bill also establishes a “linked deposits” program for agricultural and non-point source pollution loans. \$250,000.00 is the maximum loan allowed for linked deposit arrangements.

Effective Date: September 1, 2003

Senate Bill 1084

Relating to interest-free loans from the Water Development Board for water districts in economically distressed areas.

Author: Madla Sponsor: Quintanilla
Adds Section 17.933 sub.(b-1), Texas Water Code

Clarifies that loans made by the Texas Water Development Board to conservation and reclamation districts in the colonias shall be interest free loans.

Effective Date: May 16, 2003

Senate Bill 1094

Relating to the creation of a task force to evaluate matters regarding water conservation.

Author: Duncan Sponsor: Puente
Act creating the Water Conservation Implementation Task Force

Creates the Water Conservation Implementation Task Force comprised of representatives from various state and federal agencies, regional planning groups, local governmental authorities, public interest groups and professional organizations. The Task Force is charged with the duties of reviewing, evaluating and recommending optimum levels of water use and efficiency and conservation in Texas. Among other things, the Task Force will look at various Best Management Practices for water users and conduct a cost/benefit analysis of those practices, evaluate various recommendations in regional and state water plans and make related recommendations to the Legislature, including state funding of incentive programs, Best Management Practices and other water conservation strategies.

Effective Date: May 20, 2003

Senate Bill 1494

Relating to the powers of Bexar Metropolitan Water District.

Author: Madla Sponsor: Puente
Amends Article 8680-126, Vernon's Texas Civil Statutes

Removes the authority of the Bexar Metropolitan Water District to regulate certain underground water.

Effective Date: June 18, 2003

Senate Bill 1639

Relating to regulation of spacing and production of groundwater from aquifers by a groundwater conservation district.

Author: Staples Sponsor: Hope
Amends Section 36.116, by adding Subsections (d) and (e), Amends Subchapter B, Chapter 11, by adding Sections

11.0235, 11.0236, and 11.0237; Amends Section 11.147, Subsections (d) and (e), Texas Water Code

Permits the creation of different management zones and rules for those zones within one groundwater conservation district. Different aquifers (or portions of aquifers) within the same groundwater district can be governed by different rules. Also creates a Study Commission on Environmental Flows consisting of 15 members appointed by the Governor, Lt. Governor, Speaker and various other public officials. The goal of this Commission will be to reconcile the difficult task of maintaining sources of fresh water supply while at the same time protecting the state's freshwater inflows to allow for viable estuary systems and bays. The Commission will be in effect until September 1, 2005 and must issue by December 1, 2004 a report of its findings. The Commission is also charged with establishing rules governing its procedures. Further, this imposes a moratorium until September 1, 2005 for new TCEQ permits for instream flows dedicated to environmental needs or bay and estuary inflows

Effective Date: June 20, 2003

Zoning, Subdivision, County Regulations

House Bill 919

Relating to the review and approval of drainage reports by certain special districts.

Author: Eiland

Amends Section 49.211 of the Water Code

Adds authorization for districts to require drainage "reports" in connection with the subdivision process and imposes tight restrictions on the review and approval of such "reports." This approval is designed to allow special districts to ensure that the plat is consistent with drainage channels, streams and other drainage features in the district's master drainage plan. The district must approve or disapprove (if disapproved, with accompanying explanation and suggested revisions) the drainage report within thirty days after receipt of the report, which report must contain all applicable drainage features.

Effective Date: June 20, 2003

House Bill 1207

Relating to the application of certain municipal zoning regulations affecting the appearance of buildings or open space.

Author: Kuempel

Amends the Local Government Code by adding a new Section 211.016

Prohibits a municipality from applying certain residential zoning regulations subsequent to its approval of a plat for development of a residential subdivision. Specifically, grants a two-year exemption from new zoning regulations affecting: (1) "exterior appearance of a single-family house, including the type and amount of building materials" (e.g., brick); (2) "landscaping of a single-family residential lot, including the type or amount of plants or landscaping materials" (e.g., trees). The two-year period commences with subdivision approval or acceptance of subdivision improvements, whichever is later. Does not affect building codes or prohibition of "inherently dangerous" building materials.

Effective Date: September 1, 2003; Applies only to subdivisions approved on or after this date.

House Bill 2130

Relating to the exemptions from the requirements applicable to local permits.

Author: Kuempel

Amends Section 245.004 of the Local Government Code

Whittles down exceptions from the "vested rights" statute, sometimes called the "freeze law". Chapter 245 "freezes" local ordinances as they apply to certain projects. Therefore, if a project requires a series of permits, the laws and other

requirements in effect at the time the original application for the first permit was filed must be the sole basis for considering all subsequent permits. Could freeze the following types of regulations (even if they are designed to prevent "imminent destruction of property or injury to persons"): (1) lot size, (2) lot dimensions, (3) lot coverage, (4) building size, (5) residential or commercial density, (6) timing of a project, or (7) somewhat enigmatically, changes in "development permitted by a restrictive covenant required by a municipality." The bill also prohibits large groundwater districts (five counties or more) from regulating some ongoing projects.

Effective Date: September 1, 2003

House Bill 2212

Relating to the continuation of legal land use in newly incorporated areas.

Author: Mowery

Amends the Local Government Code by adding a new Section 211.016

"Grandfathers" certain land uses from some regulations imposed by a "municipality incorporated after September 1, 2003."

Effective Date: September 1, 2003

House Bill 2902

Relating to the assessment of costs for the improvement of a road in a part of a subdivision.

Author: Phillips

Amends Chapter 253 of the Transportation Code

Allows county commissioners courts to assess road costs against "a defined part" of a subdivision, rather than an entire subdivision as provided in current law.

Effective Date: June 20, 2003

House Bill 2931

Relating to administration and finances of counties and certain other entities.

Author: Lewis

Amends or repeals various sections of the Local Government Code and Government Code

Purports to allow appointments to local governing bodies to be "made with the intent to ensure that governing body is representative of the constituency served," and requires adoption of implementation procedures by local governments that choose to make such appointments. Allows commissioners courts to impose up-front application fees to cover cost of subdivision platting and inspection of improvements, subject to possible refund. Extends interlocal contracting statute (Chapter 791, Government Code) to include local government corporations and political subdivision corporations; allows interlocal contract supervision by some non-profit corporations; allows interlocal contract agencies (and counties) to acquire patents, copyrights, trademarks, service marks and similar rights. Allows county budgets to contain a "reserve or contingency item." Modifies record-keeping requirements for county or district attorneys, court clerks, officers collecting money. Repeals requirement for employment contracts for certain county positions. Allows price discrimination in licensing county software.

Effective Date: September 1, 2003

House Bill 3221

Relating to subdivision platting requirements in certain counties near an international border.

Author: Bohac

Amends Section 232.022 of the Local Government Code

Applies only to unincorporated areas of counties within 50 miles of international border. Provides an exemption from subdivision regulations if "each of the lots of the subdivision is 10 or more acres."

Legislative Update

Effective Date: September 1, 2003