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Section Report
School Law

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Dear School Law Section Members:

On behalf of the Executive Council of the School Law Section of the State Bar of Texas, I would like to thank each of you for joining the Section. The Fall of 2001 so far has been a time for reflection about the American response to unthinkable acts of injustice. However, as we all stand at the brink of America's greatest challenge, there is no better time to proudly participate in our distinguished legal system. We appreciate your membership and your commitment to the State Bar of Texas.

We encourage each member to consider working within the School Law Section. There are opportunities to serve on both the Editorial Board and on the Executive Committee each year. Additionally, there are sub-committees on which you may serve. Please contact any member of the Executive Board to express your interest.

We would like to extend our appreciation to all of the outgoing officers and directors for their contributions to this organization. We are very grateful to Roger Hepworth who served as Chair of the Section this past year. Roger served the Section for many years and we look forward to his continued participation as Immediate Past Chair. We would also like to thank Karen Johnson who served as the newsletter co-editor. The newsletter review board and co-editors have been and continue to be committed to providing our members with comprehensive and quality legal articles addressing significant issues in school law.

I want to remind the members that the School Law Section has a website which contains membership information, Section activities, and links useful for research. Log on at www.schoollawsection.org.

Additionally, the State Bar now has a web portal available to all attorneys. You can customize it for your particular areas of interest and practice areas. This is an excellent legal research tool. To participate, go to www.mytexasbar.com.

Finally, the 2001 retreat at the La Cantera Resort was indeed a success. We are already looking forward to the 2002 School Law Section Retreat, which will likewise be held at the La Cantera Resort in San Antonio. The dates are July 11-13, 2002. This is a fabulous facility. It is located on a hill overlooking San Antonio and is contiguous to Fiesta Texas. The resort has numerous pools, a spectacular pool slide and waterfall, an exercise facility and health spa. For the golf enthusiast, the nationally lauded Resort Course at La Cantera surrounds the resort with a layout designed by Jay Morrish and Tom Weiskopf. In the Spring of this year, the resort gained an additional 18 holes with the opening of The Palmer Course at La Cantera. Named among the top 50 golf resorts in the nation by *Condé Nast Traveler*, this retreat combines the best in golf with the best in luxury. Mark your calendars, as this is an opportunity to network with other attorneys and to learn the cutting-edge issues in school law while enjoying the scenic and relaxing atmosphere of this resort.

I look forward to a productive year serving the Section. As always, I welcome any and all input on how the Section can improve and meet the needs of all members.

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SCHOOL LAW SECTION
CALENDAR OF EVENTS & DATES TO REMEMBER

February 28-March 2, 2002	UT Law 17th Annual School Law Conference Hyatt Regency on Town Lake, Austin, Texas
June 12-15, 2002	State Bar of Texas Annual Meeting Wyndham Anatole Hotel, Dallas, Texas
June 14, 2002	School Law Section Business Meeting
July 11-13, 2002	School Law Section Retreat/Summer Conference La Cantera Resort, San Antonio, Texas

ELECTRICAL POWER DEREGULATION: IS YOUR SCHOOL DISTRICT READY FOR A COMPETITIVE POWER MARKET?

Daniel M. "Matt" Burns
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On June 18, 1999 Senate Bill 7[1] was signed into law, thus beginning the process of deregulating portions of the electric utility industry in Texas. The objective of this legislation is to increase the influence of competitive market forces where possible, and to dismantle corresponding portions of the traditional regulated monopoly structure. Key dates established by this legislation are:

January 2000 - Electrical Utilities file business separation or "unbundling" plans.

September 2000 - The Texas Public Utility Commissions begins the process of certifying retail electric providers.

June 1, 2001 - Pilot program begins for up to 5% of electric customers.

January 1, 2002 - Statewide retail competition begin in areas not exempt from deregulation.

As you can see, statewide retail competition is only months away. This article will provide a very brief overview of the electric utility industry deregulation, and its potential impact on school district purchasing practices as a result of deregulation.

WHAT IS DEREGULATION?

Deregulation represents a significant change in the way electrical power is delivered and sold to retail customers. Prior to deregulation Texas law permits a single service provider to establish a monopoly in specific geographical regions. Government entities such as the Texas Public Utility Commission have also been established to temper the potential abuses inherent in this lack of competition by regulating most aspects of the utility business.

At its most basic level, deregulation moves the electrical utility business closer to free market competition through a process known as "unbundling." Electrical utilities have been required to split their business activities into three separate categories: power generation; transmission and distribution utilities; and retail electric providers.[2] Each of these units is then managed as an distinct business entity which cannot subsidize operating losses incurred by the other units.[3] Improved management of these separate units, together with competition from other providers, is expected to result in lower overall prices for electric power.

The most visible effect of deregulation for most consumers is expected to be the availability of competing retail electric providers. For example, your current utility provider will continue to provide distribution services - the wires, transformers, switches, and other devices bringing power to the school. A different company may, however, purchase wholesale power from a generating company, pay the local utility a fee for the use of its distribution system, and sell electric power directly to the school.

Whether deregulation will ultimately benefit most consumers remains to be seen, and the results will likely be debated for some time to come. Regardless of the verdict, however, deregulation will result in significant changes in the business practices of many Texas school districts.

HOW DOES DEREGULATION AFFECT SCHOOL DISTRICT ELECTRICAL SERVICE PURCHASES IN GENERAL?

Under the regulatory scheme in effect prior to January 1, 2002, school districts are generally compelled to reach a service agreement with their local utility provider. Other providers have not been allowed to provide services in the local utility's service area, so electric service has been procured as a "sole source" item under Texas Education Code § 44.031(j).

The immediate effect of the move from regulated monopolies to competing retail electric providers means that competition for this aspect of the electrical service "package" is no longer precluded in many areas. Many school districts will therefore be required to procure retail electric service through competitive procurement, even if the district is completely satisfied with its current provider. Stated differently, while private sector consumers may elect to simply "ignore" deregulation, public sector consumer do not have this option.

WILL DEREGULATION AFFECT MY DISTRICT?

Whether deregulation will affect your school district depends on the nature of the utility currently providing your electrical service. If your facilities are served by a municipally owned utility, an electric cooperative, or certain river authorities, these entities can elect to continue operating as a monopoly under Public Utility Commission oversight law after January 1, 2002.[4] These entities may, however, opt to allow competition for retail electric power within their service areas. Since this decision is made at the discretion of the local authority, you will need to check with your current utility provider to determine whether competition will be allowed.. If your local utility does elect to continue the monopoly, then the service may continue to be procured as a "sole source" item.

School districts which are served by other investor-owned utilities will generally be required to seek competitive bids for electrical power.[5] In particular, the following companies will be subject to deregulation: American Electric Power (which includes Central Power & Light, Southwestern Electric Power Company and West Texas Utilities), Entergy, Texas New Mexico Power, Reliant Energy, TXU Electric, TXU SESCO, and Southwestern Public Service. Other providers are expected to enter the retail service market and will, of course, be subject to the same rules as existing providers. These companies include Entergy Solutions, Ltd., First Choice Power, Inc., Green Mountain Energy Company, Reliant Energy Retail Services, Shell Energy, The New Power Company, TXU Energy Services Company, and Xcel Energy.[6]

If your school district is currently purchasing electrical utility services under a fixed-term contract, S.B.-7 does not attempt to abrogate such contracts.[7] Contracts which were legally procured under then-existing law are not invalidated by a change in procurement requirements, so existing agreements should be enforceable for the remainder of their term. Be aware, however, that many service agreements do not have a specific term and or can be cancelled for the convenience of the customer.[8] If you have any question as to whether your current service agreement will be valid after December 31, 2001, please consult legal counsel.

HOW DO WE PURCHASE ELECTRICAL POWER IN A DEREGULATED MARKET?

Once it has been determined that the local utility is subject to deregulation - whether voluntarily or involuntarily - a school district will need to decide how best to purchase retail electric power in the open market. The initial question is whether the school district should attempt to make its best deal as part of a purchasing group, or as an independent entity.

School districts can aggregate their electrical purchasing requirements with other governmental units through representation by a "political subdivision aggregator," as authorized by Texas Local Government Code Chapter 303.[9],[10] These statutes permit two or more political subdivisions to form a "political subdivision corporation" in areas subject to deregulation, and permit the corporation to negotiate on behalf of the members. Whether a specific school district could benefit from participation in such an arrangement is clearly determined on a case-by-case basis, considering such factors as the size and geographical layout of the district, the size and number of other interested entities, and availability of competition in the area. As with other purchases, the underlying assumption is that group purchases shift more bargaining power to the purchasers, thus yielding lower prices. The principal disadvantages are, of course, limitation of choices by the individual members and the additional administrative burden imposed where multiple governing bodies are required to approve joint action.

School districts may, of course, purchase directly from a retail electric provider without participating in any type of cooperative venture. Without regard to whether the purchase is made jointly or independently, however, Texas Education Code § 44.031 would appear to govern any agreement expected to result in expenditures of $25,000 or more in any 12-month period. This limit would include most, if not all, school district electric power agreements.

Purchases of electrical power would appear to fall withing three of the eight possible procurement methods available under § 44.031: competitive sealed bids; competitive sealed proposals; or requests for proposals. Recall that the competitive sealed bid methodology requires the school district to specify what is to be purchased with some specificity, and bidders have limited ability to suggest other products or services. Bids received under this methodology will generally be the easiest to compare, but at the possible cost of limiting the number of bidders that can make a responsive bid. Competitive sealed proposals allow bidders more latitude in proposing alternative solutions or services, but the parameters of the district's ability to negotiate with bidders is not well defined outside of the context of contracts for construction.[11]

Requests for Proposals permit a school district to describe its requirements in fairly general terms, and offer bidders the highest degree of flexibility in proposing means by which the requirements can be met. The disadvantage of this purchasing methodology is that it can result in multiple proposals which are very difficult to compare. One electrical engineering consultant has remarked that competing service proposals may not be simply a matter of comparing "apples-to-oranges," but comparing "apples-to-dogs."

The purchasing methodology which is most appropriate is again a decision which is unique to the individual school district or political subdivision corporation. In preparing the bid documents and assessing bids, however, the following issues appear to have very broad application:[12]

- What is the total price per kilowatt-hour?
- Does the price per kilowatt-hour include fees imposed by the distribution network provider, or are these fees billed separately?
- Is the price per kilowatt-hour fixed, or does it change based on total usage?
- Is the price per kilowatt-hour affected by the time of day electricity is used?
- Is service subject to disconnection during peak periods, or is the school a "priority" customer?
- Are different rate structures available which would permit interruptions? If so, what are the cost benefits and potential interruption parameters?
- Are there minimum usage fees which would apply during vacation periods?
- What length of contract is required?
- Will there be a meter switching or meter reading fee?
- Is there a membership fee or any other fee?
- Can the contract be cancelled prior to expiration of the contract term, and if so, is there a cancellation fee?
- Is there a customer incentive for signing up?
- Are any other services offered in addition to electric service, and if so, can these services be declined?
- Does the contract contain an automatic extension upon expiration of the primary term?

This list obviously is not exhaustive, and school districts may wish to retain the services of a qualified consultant to assist in formulating bid documents and comparing competing offers.

SUMMARY

Deregulation of the electrical utility industry holds the potential for energy cost savings through the introduction of competitive markets. This legislation also adds additional purchasing formalities for many districts, and the potential need for professional guidance to determine which provider offers the "best value." School administrators are encouraged to begin planning now for the requirements of competitive markets in 2002.

ENDNOTES

1 H.B.-7 has been codified as Texas Utility Code §§ 39.001, *et seq.*

2 *See, generally,* Texas Utility Code § 39.051.

3 Texas Utility Code § 39.157(d).

4 *See, generally,* Texas Utility Code Chapters 40 and 41.

5 It is possible that some areas will continue to have only one available provider, although the deregulation scheme does ensure that all areas will continue to have a "provider of last resort." *See,* Texas Utility Code § 39.106.

6 Source: http://www.powertochoose.org/residential/choosing/choosearep.html. An updated list of retail electric service providers is maintained by the Texas Public Utility Commission at http://www.puc.state.tx.us/electric/business/replist.htm.

7 Texas Utility Code § 39.108. *See, also,* Texas Utility Code §§ 40.101, 41.101 [including similar provisions for municipally owned utilities and electric cooperatives.

8 An example of an agreement which would have a fixed term might be a situation in which the utility company has installed capital assets to serve a remote campus and has required that service be purchased for a minimum term of years.

9 Texas Utility Code § 39.3545.

10 There are currently two chapters numbered 303 in the Local Government Code. This article is concerned with Acts 1999, 76th Legis., ch. 405, § 42 [S.B.-7]. Changes to Chapter 303 are being considered during the 2001 legislative session.

11 *See, generally,* Texas Education Code § 44.039.

12 Most of these factors are based on suggestions by the Texas Public Utility Commission in its consumer education materials.

CONTRACT ISSUES RELATED TO CERTIFICATION OF PROFESSIONAL EDUCATORS

by Shellie Hoffman Crow[1]
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Three main statutory provisions in the Texas Education Code address professional educator certification requirements related to employment by school districts. First, § 21.003 prohibits a person from being employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B. Second, § 21.053(a) requires a person who desires to teach in a public school to present the person's certificate for filing with the District before the person's contract with the Board is binding. Finally, § 21.053(b) prohibits a school district from paying an educator who does not hold a valid certificate for teaching or work done before the effective date of issuance of a valid certificate.

In this age of modern technology, many school districts no longer rely on paper copies of Texas teacher certificates to verify the certification status of a current or prospective employee. Well, how does a school district verify that an applicant is properly certified? Now school districts may check the applicant's "virtual educator certificate" through a secured website at ***http://www.sbec.state.tx.us/virtcert***. The virtual certificate is the official record of the educator's certification status and satisfies § 21.053(a) of the Texas Education Code, which requires individuals to present their certificate prior to employment by a school district. Prior to the interview, the school district can check the applicant's certification status through the State Board for Educator Certification (SBEC) virtual certification process using the applicant's social security number from the completed application form. This will allow the school district to address any certification issues before the hiring decision is made and legal action is required.

Several school districts in Texas who have not confirmed certification before hiring have found themselves with employees who fail to provide the proper certification after being hired. In 1990, the Texas Supreme Court upheld a lower court's grant of summary judgment in favor of a school district on a breach of contract claim between the district and a teacher. The court found that the teacher's failure to provide his teaching credentials to the school district before the first day of school and before the issue date of the first paycheck resulted in the teacher voiding the contract between him and the district. The teacher was not certified and did not become certified until the end of October. Thus, the school district prevailed.[2]

Following this precedent, the Commissioner of Education in 1996 found that a teacher who lacked certification also voided his contract with the school district. Citing the *Grand Prairie* case, the Commissioner found that the teacher had violated the certification statute and the contract issued to him.[3] A summary of important findings by the Commissioner on this subject includes:

(1) Teacher contracts that contain language that the teacher is to obtain the requisite certification placed the burden on the teacher to do so;
(2) No duty is placed on a school district to obtain an emergency permit for a teacher;
(3) If the teacher does not have the requisite certification, it is the teacher who has voided the contract; and
(4) Teachers do not have a property interest in continued employment if they do not have a contract.

Recently, the Commissioner again placed the burden on the teacher to present the requisite certification in order to show a valid contract.[4] In *Peters v. Dallas Indep. Sch. Dist*., the teacher was employed under a probationary contract for the 1997-98 school year. She did not hold a valid Texas teaching certificate but was certified by another state. She was given a letter advising her that she had to pass the ExCET exam by August 8, 1997. SBEC may issue a certificate to an educator who holds an out-of-state certification and who passes the appropriate certification examination. Texas Education Code § 21.052. Ms. Peters did not complete or pass the ExCET exam, yet was given a contract for school year 1997-98 and then was given a three-year term contract beginning in 1998-99. Each one of her contracts contained a provision that the certification was required by law and the district. In December 1999, her contract was proposed for termination because she lacked certification. The Board terminated her contract after a hearing. The teacher appealed and the Commissioner held that (1) the teacher never held a Texas certificate, therefore, the teacher's contract was void *ab initio* (at its inception); and (2) the teacher voided the contract by failing to present proper teaching credentials. The Commissioner, however, found it indefensible that the school district employed the teacher for almost three years before realizing that the teacher lacked the proper credentials.

In closing, I suggest a few tips for your school district clients to follow with regard to teacher certification. First, have your districts check the SBEC Virtual Certification on every teacher applicant prior to the job interview. Second, have the districts confirm with each applicant that they possess the requisite certification, both during the interview and on the application form. Third, be sure the contract forms your districts are using

include a provision voiding the contract if the appropriate certification is not provided prior to the beginning of work. Fourth, encourage your districts to set up a system to monitor each applicant who has not provided the appropriate certification prior to the beginning work date. Fifth, school districts should send a letter to each serious candidate for employment whose certification has not been received, advising them of the requirement. Sixth, school districts must stay informed about the progress of employees who are working on alternative certification, while keeping an eye on relevant contract decision timelines. Finally, school attorneys and school districts alike should insure that appropriate due process is provided when ending the employment relationship with teachers who lack appropriate certification.

ENDNOTES

1. *The author gratefully acknowledges the assistance of Dorcas A. Green of Walsh, Anderson, Brown, Schulze & Aldridge, P.C., in writing this article.*
2. *Grand Prairie Indep. Sch. Dist. v. Vaughn*, 792 S.W.2d 944 (Tex. 1990)
3. *Pitts v. Houston Indep. Sch. Dist*., Tex. Comm'r of Educ., Decision No. 236-R1-995 (July 1996)
4. *Peters v. Dallas Indep. Sch. Dist*., Tex. Comm'r of Educ. Decision No. 087-R2-400 (June 2000)

TOP TEN THINGS I WANT TO SEE IN EVIDENTIARY HEARINGS POST *DAVIS*

By Karen Meinardus, Certified Hearing Examiner

In the following article three Certified Hearing Examiners, Karen Meinardus, Karl Quebe, and Victoria Guerra, offer advice on the conduct of hearings under Chapter 21, Subchapter F of the Texas Education Code, and on the conduct of those hearings in light of *Davis v. Montgomery County Independent School District*, 34 S.W.3d 559 (Tex. 2000).

Number Ten: Start singing your theme early on.

Use a prehearing statement to set out the elements of proof required, and to establish your legal theory or defense. Prepare a short legal brief on the legal theories of your case, providing the hearing examiner with copies of Commissioner decisions and copies of relevant case law. Remember, the different types of contract actions have distinct elements to be met. It is disheartening to have attorneys try to establish an incorrect legal standard utilizing improper or incomplete elements of proof.

Number Nine: Location, location, location.

Both sides are at a distinct disadvantage when an evidentiary hearing is scheduled for a teacher's lounge, for a small conference room around one conference table, or for a vacant classroom, especially when other employees disrupt the proceedings trying to get to the lounge facilities or when neither party is provided adequate space for presenting its case. This hearing is as important to both sides as any district court proceeding at the courthouse, so every effort should be made to schedule the hearing for the district's board room which is most conducive to a formal setting and approaches the advantages of a courtroom.

Number Eight: Timely disclose witnesses.

I allow time in the week prior to the evidentiary hearing for an amended witness list for parties to respond to facts, theories and witnesses revealed by the other side's prehearing statement and to identify necessary rebuttal witnesses. If you show up on the day of the evidentiary hearing and try to slip in new witnesses, they probably will not be allowed.

Number Seven: Be organized.

Please have your exhibits properly marked with four (4) sets available (one for each side, one for the court reporter and one for the hearing examiner). Please, do not show up with only two sets! I prefer indexed notebooks when the exhibits are voluminous. To the extent possible, approach prior to the commencement of the hearing and offer the exhibits to be admitted. If you anticipate objections to any exhibits (you will most likely know which ones they will be) please first confer with opposing counsel to try and resolve the dispute, then address any remaining evidentiary objections prior to commencement of the hearing.

Number Six: No hide, you'll seek.

If your client has failed to produce materials properly requested and the opposing side discovers this during the proceeding, I will grant a break to get the materials located and produced, but I will not ignore your duty to supplement discovery, especially if reference is made to the material during testimony and they appear to be relevant to the case

Number Five: Be professional and courteous.

Not only are all sidebar comments to opposing counsel unnecessary, unprofessional and extremely irritating to me, but arguing with a certified hearing examiner after rulings have been made on objections is inexcusable.

Number Four: What is it about a closed hearing that you do not understand?

If closed, in addition to counsel (which can be more than one on each side), the district gets one school representative and the employee gets himself or herself, not two or three additional administrators, or a preacher, spouse and support group for the employee.

Number Three: Cheap tricks do not fly.

Prepare your witnesses, but please do not "script" their testimony! Too often the entire credibility of a witness is sacrificed when an attorney tries to "change" the damaging deposition testimony of witnesses between the time of deposition and the hearing by prompting them what to say differently this time on the stand. There are proper ways to rehabilitate your witness, besides opposing counsel was at the deposition and will be on to cheap tricks.

Number Two: Orderly presentation of case.

If possible, present your case and your witnesses in a logical and chronological order. If you are properly prepared, you can avoid redundant witnesses (if they have nothing new to offer,

they are probably not going to help your case), and multiple re-directs and re-crosses, which can get confusing. Utilize your witnesses and exhibits to your best advantage.

And, the Number One thing I want to see in an Evidentiary Hearing post-Davis is: Present a logical, legal connection to the notice of proposed action.

District, you have the burden of proof and if you do not give a certified hearing examiner enough credible evidence to work with, you risk limited findings of fact. From *Davis* it is obvious that the hearing examiner is the sole judge of witnesses credibility and the weight given their testimony and is free to resolve any inconsistencies in their findings of fact. The school board as "reviewer" of the findings of fact determined by the certified hearing examiner is bound to a substantial evidence standard and cannot make its own findings of fact to reach its desired conclusion except when the findings of fact lack substantial evidence. The school board (still) retains the authority to make the ultimate policy decision by rejecting or changing the proposed conclusions of law, which preserves the school board's authority to interpret its own policies.

Employees, the evidentiary hearing is not the proper time or place for you to bring forth a grievance on the appraisal/evaluation process unless it has a relevant connection to the notice of proposed action. Your witnesses need to have a relevant connection to the proposed action.

TOP TEN THINGS I WANT TO SEE IN HEARINGS
KARL R. QUEBE, CERTIFIED HEARING EXAMINER

Number Ten: Get focused early.

Get a quick grasp of the ultimate goal, and the legal and evidentiary steps necessary to get you there, (or to keep the other side from getting there.)

Number Nine: Keep in touch.

Exchange documents and witness lists as soon as possible. If settlement is likely, let the certified hearing examiner know. We all have other business to attend to as well. Our clients and staff will be quite appreciative if we no longer need a couple of weeks blocked out to hold the hearing, review the transcript, and write the Recommendation.

Number Eight: Anticipate evidentiary disputes.

Try to work out disputes with each other early. If you cannot agree, set up a telephone hearing prior to D-Day. If we resolve the dispute early, the hearing examiner can focus on the substantive evidence and the issues, rather than the procedure.

Number Seven: Get your prehearing statement in on time.

When comparing your prehearing statement with the other side's, you might discover many areas of agreement, leading to factual and/or legal stipulations. Understand the applicable legal standard, and prepare your proof accordingly.

Number Six: Give us the relevant case law.

Provide us with citations or copies of all cases or Commissioner decisions you feel are significant. We will actually read them ahead of time.

Number Five: Get your exhibits in order.

Prepare four (4) exhibit notebooks (one for each side, one for me, and one for the court reporter.) Have them tabbed so that everyone can immediately find the exhibit to which you refer. If there is no objection to exhibits, we can admit them in bulk before beginning the hearing.

Number Four: Look at your case from our perspective.

Our recommendation will include findings of fact, conclusions of law, and a recommendation for the board. We will ask you for proposed findings of fact and conclusions of law at the conclusion of the evidence. Anticipate your proposed findings, and tailor your presentation accordingly.

Number Three: Provide an appropriate setting.

This proceeding is of critical importance to the teacher, the superintendent, and the board. Therefore, it deserves a proper setting. Do not put us in or near the break-room, or any other pass-through area. Give us enough room to separate the parties from each other and from the "bench". The witnesses need to perceive that they are in a courtroom setting, and that one or more of the parties livelihood is dependent upon the outcome of the proceeding,

Number Two: Realize we didn't just jump off the turnip truck.

We take our responsibility seriously. We prepare for the hearing and expect you to do the same.

And, the Number One thing I want to see in a hearing is: FOCUS.

The district wants to rid itself of the teacher's services, through termination or nonrenewal. To do so, it must prove that the facts it relies on meet the applicable substantive and procedural standards. Both sides need to focus on the applicable standards and plan their presentation accordingly. The prehearing statement forces you to focus on these issues prior to the hearing. A significant percentage of cases assigned to this hearing examiner seem to settle at or near the due date of the prehearing statement. Therefore, it appears the "forced focus" procedure works.

SCOPE OF REVIEW POST *DAVIS*

Remember, the hearing examiner becomes the"jury" with respect to Findings of Fact. We are the sole judge of witness credibility. Unless there is no substantial evidence present, the board cannot change findings of fact. The board can only revise conclusions of law. FOCUS on this distinction in presenting your case. Keep in mind, particularly in the case of lengthy or complex proceedings (such as *Davis* with five days of testimony and 250 exhibits), for the examiner, it's a one shot deal. We prepare and file the recommendation, with no opportunity for new trials, or reconsideration, and, typically, under a time

crunch. Therefore, make sure that none of your key points get lost in the shuffle.

TOP TEN THINGS I WANT TO SEE IN A HEARING
VICTORIA GUERRA,
CERTIFIED INDEPENDENT HEARING EXAMINER

Number Ten: Professionalism and amicability.

Verbal fighting, shouting, personal insults, or condescension among parties and their lawyers are unnecessary for this type of proceeding.

Number Nine: Prepare witnesses.

Get to the point of a witness's testimony quickly and concisely and avoid redundancy.

Number Eight: Avoid sidebar comments.

Counsel should avoid sidebar comments while raising or arguing objections; e.g., refrain from arguing one's entire case in chief while objecting to hearsay. Once a ruling has been made on an objection, do not argue with the hearing examiner's ruling.

Number Seven: Confer about anticipated objections.

Counsel should discuss documentary evidence and/or verbal testimony. If possible, address evidentiary objections as a preliminary matters prior to the commencement of the hearing.

Number Six: Organize voluminous exhibits in a notebook.

If a party has voluminous exhibits, the exihibits should be put in a notebook and indexed, and introduced all at once, if possible. If they cannot be introduced at one time without objection, remove objectionable exhibits from the notebook and introduce the remaining exhibits. This requires a conference with opposing counsel about exhibits.

Number Five: Avoid last minute subpoenas of witnesses.

The parties should not seek to subpoena witnesses on the day of the hearing, if at all possible. Subpoena witnesses well in advance of the hearing. Make sure that a good cause statement is given for the subpoena of non-school district employee witnesses.

Number Four: Provide support for your arguments.

During presentation of closing arguments or arguments on objections, provide copies of case law, Commissioner decisions, or other precedence to support your position.

Number Three: Avoid multiple re-directs and re-crosses.

Avoid multiple re-directs and re-crosses of witnesses, especially when redundancy exists.

Number Two: Be consistent.

Have a theory of your case and stick to it throughout the proceeding.

And, the Number One thing I want to see in a hearing is: Be prepared and organized.

Be familiar with your own case and know your own evidence. Make sure all evidence you present is relevant to your case and establish how the relevant evidence supports your theory of the case. Prepare your witnesses, organize your evidence, and anticipate all aspects of the other party's presentation.

COMMENTS ON POST-*DAVIS* STANDARD OF REVIEW
BY VICTORIA GUERRA
CERTIFIED HEARING EXAMINER

Davis v. Montgomery County Independent School District, 34 S.W.3d 559 (Tex. 2000) is a non-renewal case. Joanne Davis worked as a teacher for Montgomery County I.S.D. from 1992 to 1996 under a term contract. The proposal to not renew her contract was based on several reasons which included among others, "failure to maintain an effective working relationship or maintain good rapport with parents, the community, or colleagues" which became the primary contested issue between the parties.

Ruling in her favor, the hearing examiner found that Davis did *not* fail to maintain an effective working relationship or maintain good rapport with parents, the community, or colleagues. The school board reversed the decision of the hearing examiner and proceeded to terminate Davis. The district court reversed the board's decision and ordered reinstatement of Davis. The appellate court and the Supreme Court affirmed the decision of the district court and of the hearing examiner.

One of the issues presented in this case is whether a school board can make additional findings of fact to those made by the hearing examiner. Limited by TEX. EDUC. CODE §21.259(c)[1] and §21.259(b)[2], the school board re-classified the previously stated hearing examiner's finding of fact into a conclusion of law so that it could be changed as follows: "The Administration proved by a preponderance of the evidence that Davis failed to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.'' To support this *added* conclusion of law, the school board created three new findings of fact which all favored the non-renewal of Davis' contract.

On appeal, one primary issue became whether the school board could make additional findings of fact. The Texas Supreme Court held that it could not, reasoning that since the authority to make additional findings was not specifically granted by the legislature, then the school board could not do so.[3]

The Court reasoned that under the procedures of Subchapter F, the school board becomes the reviewer of the recommendation of the hearing examiner under the substantial evidence review. This limitation means that once a board chooses to delegate the fact-finding role to a hearing examiner, it cannot then sit in effect as a second fact-finder, reweighing evidence and judging witnesses' credibility in support of finding additional facts. Under the substantial evidence review, "the reviewing tribunal is restricted to the record, save in extraordinary circumstances, and it may not re-weigh the evidence, find facts or substitute its judgment for that of the original tribunal."[4]

The court emphasized: "while an independent fact-finder decides the facts under subchapter F, the board retains the

authority to make the ultimate decision of whether the facts demonstrate that board policy was violated."[5] The Court also held that the "label attached, 'finding of fact' or 'conclusion of law' is not determinative; the focus is on whether the issue determined is ultimately one of policy, and if so, whether a school board's decision is supported by substantial evidence and free of erroneous legal conclusions."[6]

In the future, it is unlikely that a school district will opt for the procedures under Subchapter F in non-renewal cases, now that its ability to make additional findings of fact is defunct. A school district's authority to review a hearing examiner's recommendation is now so limited by the substantial evidence rule, it renders Subchapter F procedures in non-renewal cases virtually obsolete. It remains to be seen whether the same discretion that a school board has in interpreting its own policies in non-renewal cases will extend to the issue of good cause in termination cases.

ENDNOTES

1 21 TEX. EDUC. CODE §21.259(c) states: "The board of trustees...may reject or change a finding of fact made by the hearing examiner only after reviewing the record of the proceedings before the hearing examiner and only if the finding of fact is not supported by substantial evidence".

2 21 TEX. EDUC. CODE §21.259(b) states: "the board of trustees...may adopt, reject, or change the hearing examiner's conclusion of law".

3 After receiving notice of non-renewal and the teacher requests a hearing, a school board has a choice between conducting the hearing itself under 21 TEX. EDUC. CODE §21.207(b), or utilizing the procedures under Subchapter F thereby requesting the Commissioner of Education to appoint an independent hearing examiner to conduct an evidentiary hearing and make finding of fact, conclusions of law and a recommendation on the proposed non-renewal to the board under 21 TEX. EDUC. CODE §21.257. In this instance, the school board opted the procedures under Subchapter F.

4 34 S.W.2d at 565 *citing Ysleta Independent School District v. Meno*, 933 S.W.2d 748, 751 n. 5 (Tex. App.-Austin 1996, writ denied).

5 34 S.W.2d at 565. Here, the Court noted that CH. 11 TEX. EDUC. CODE §11.151(b) charges the school board as the ultimate interpreter of its policy, including polices created pursuant to §21.203(b) which charges the school boards to enact policy reasons for non-renewal. These policy reasons may exist irrespective of good cause. See *Kirby v. College Station I.S.D.*, 109-R1-598 (July 1, 1998).

6 34 S.W.2d at 566.

LEGISLATIVE UPDATE: EDUCATION-RELATED LAWS ENACTED BY THE 77TH LEGISLATURE

John R. Elrod & Debra M. Esterak[1]

The 77th Legislative Session has come and gone, leaving us a number of new education-related laws. Following is a brief summary of those laws. For more information, such as a copy of the bill text, a list of the sections affected, or the history of a particular bill, the Texas Legislature Online website at www.capitol.state.tx.us is very helpful. Additionally, most associations affiliated with education issues, such as TASB (the Texas Association of School Boards), TASA (the Texas Association of School Administrators), TCASE (the Texas Council of Administrators of Special Education), and the teachers' organizations like ATPE, TSTA, and TCTA, have governmental relations information on their websites.[2]

Personnel Matters

a. Salary & Benefits

HB 3343 (Sadler) — Relates to the operation and funding of certain group coverage programs for certain school and educational employees and their dependents. It provides financial assistance to school districts and public school employees for health insurance. Specifically, a $1000 per employee pass through may be used to purchase additional employee coverage or dependent coverage, to begin a medical savings account or as compensation. Districts that have 500 employees or less shall participate in the group plan. This includes over 80% of the school districts. Districts with 501-1000 employees may join the group plan within three years, as determined by TRS, or continue in the local insurance plan. Districts over 1000 employees or more may join within three years as determined by TRS. All school districts will receive $75 per month per covered employee to offset health insurance costs. Any district not making a minimum effort of a $150 monthly premium per covered employee will receive state funding to make up the difference.

This bill also addresses a number of school finance issues, such as changing the Equalized Wealth Level from $295,000 to $300,000 the first year and $305,000 for the second year of the biennium. It increases the Guaranteed Yield from $24.99 to $25.81 the first year and $27.14 the second year and provides hold harmless funding for gap districts which do not receive state aid.

HB 1188 (Telford) – Provides that a public school teacher assaulted by a student during the performance of regular duties may not be denied assault leave solely because of the age or disability of the student.

SB 1446 (Van de Putte) – Makes all payments to departing superintendents a "severance payment" for purposes of the FSP penalty, but only penalizes a district for severance payments made in excess of one year's salary and benefits.

HJR 85 (Bosse) – Requires the submission to the voters of a constitutional amendment authorizing a school teacher, retired schoolteacher, or retired school administrator to receive compensation for serving as a member of a governing body of a school district, city, town, water district, or other local government district.

b. Retirees

SB 477 (Bernsen) – Changes from 10 years to 15 years the

number of out-of-state credits a person can buy when becoming an employee of a school district.

SB 372 (Barrientos) – Allows a member of a participating retirement system (includes TRS) to reestablish credit for service the employee earned in another participating retirement system, even if the employee is not currently a member of the system of which he is buying back service. (See HB 1428, as well).

HB 1428 (Longoria) – Allows a member of a participating retirement system (includes TRS) to reestablish credit for service the employee earned in another participating retirement system, even if the employee is not currently a member of the system of which he is buying back service. (See also SB 372).

HB 927 (Hill) – Repeals the provisions of the Government Code requiring TRS system disability retirees under the age of 60 to submit an annual earnings statement (also contained in SB 273).

HB 3147 (Smith, Todd) – Allows certified principals who are members of the Teacher Retirement System of Texas who have been retired from teaching for 12 months to serve as principals or assistant principals on as much as a full time basis to receive a full-time salary without retirement benefit reduction.

SB 273 (Armbrister) – Authorizes the State Board for Educator Certification, rather than the commissioner, to cancel a teacher certificate. Authorizes a TRS member with at least seven years actual membership experience to establish up to three years' equivalent service credit by paying the actuarial cost of that credit. Allows any retiree who retired before 1/01/01 and who is employed by a school district or open-enrollment charter school in any position to return to work without loss of retirement benefits. Allows retirees to return to work as a bus driver without losing retirement payments.

Allows a school board, rather than the commissioner, to determine acute shortage areas and allows retirees to return to work without losing their retirement payments if they have been separated from service for at least 12 months. Requires a school board to adopt a policy that determines, based on commissioner guidelines, acute shortage areas. The commissioner's guidelines must include the following: a list of acute shortage areas; suggested criteria for identifying local acute shortage areas; and a requirement that a certified applicant for a position as a classroom teacher who is not a retiree be given preference in hiring.

c. Certification

SB 998 (Madla) – Allows a person who has taught in an AEP or JJAEP for three years to take the teacher certification exam without having to complete an alternative certification program.
HB 704 (Delisi) — Establishes the Careers to Classrooms Program within the Texas Education Agency to assist persons leaving one career to obtain certification as a teacher or teacher's aide and secure employment in a school districts experiencing a teacher shortage. This program will utilize federal funds from the Careers to Classrooms amendment to the President's Omnibus Education Bill. Modeled after the Troops to Teachers program, it establishes a procedure for application and selection of participants, and also provides for a stipend of up to $5,000 for a three year teaching commitment.

HB 1475 (Kitchen) – Establishes a master technology teacher program. The program requires the commissioner, to the extent that funds are appropriated and available, to award grants, with preference given to high need campuses, of $5,000 to pay stipends to certified master technology teachers. This bill also requires the board to certify as a master technology teacher a person (1) who holds a technology application certificate, completes a course of instruction on technology and teaching technology, and passes an examination developed by the TIF board, or (2) who holds a teaching certificate, has at least three years of teaching experience, and has completed a course of instruction on technology and teaching technology. The bill allows SBOE to provide such technology courses in cooperation with educational service centers and other public or private entities.

HB 1721 (Martinez-Fischer) – Provides that SBEC may issue a certificate to an educator who holds a certificate or other credential issued by another state or country, provided that the educator performs satisfactorily on an examination similar to and at least as rigorous as this state's certification examination administered to the educator under the authority of that state.

d. Miscellaneous Employment Matters

HB 108 (Flores) – Designates the second Wednesday in May of each year as Public School Paraprofessional day.

SB 1727 (Cain) – Requires that staff development must include training on teaching students with disabilities.

SB 518 (Lucio) – Requires all school districts to follow the guidelines for school counselors set forth in the Education Code regardless of whether the districts receive compensatory education funds.

SB 538 (Lucio) – Requires the Comptroller to conduct a statewide study on the duties school counselors perform.

HB 3463 (Turner, Sylvester) – Relating to allowing a public school district to release tape recordings of a closed meeting to the Commissioner of Education for the purposes of appellate review. See Open Meetings section, below

SB 139 (Carona) – Expands the offense of harassment to include harassment via electronic communication.

Student Issues

a. Admission and Attendance

HB 2143 (Delisi) – Prohibits a district from charging tuition for the attendance a student who is domiciled in another state and resides in military housing in the district but exempt from district taxation.

SB 108 (Lucio) – Prohibits districts from beginning instruction before the week in which August 21 falls, as opposed to the strict date of on or after August 21. The bill further designates Sunday as the first day of the week for purposes of determining the days of that week. A district seeking to start its school year before that week may ask the commissioner for a waiver after doing the following: (1) at least 60 days before the date the district submits the application for the waiver, it must publish notice in a newspaper having general circulation in the district stating that the district intends to apply for a waiver and specifying the date on which the district intends to begin instruction for students; (2) hold a public hearing concerning the date of the first day of instruction for students; and (3)

include in the application for a waiver a summary of the opinions expressed at the public hearing including any consensus of opinion expressed concerning the date of the first day of instruction for students. This bill will take effect in the 2002-2003 school year.

HB 1276 (Crownover) – Requires that a student must be identified by the student's legal surname as that name appears on the student's birth certificate or other document suitable as proof of the student's identity or in a court order changing the student's name.

HB 2125 (Hawley) – With regards to military personnel and their dependents, allows the Texas Education Agency to enter into reciprocity agreements with other states to facilitate the process of transferring records and awarding course credit for out-of-state transfers.

b. Discipline/Juvenile Justice

HB 1118 (Goodman) — This legislation makes extensive and technical changes to various laws related to juvenile justice. The bill also addresses matters relating to jurisdiction, appointment of counsel, definitions of "delinquent conduct" and "child," enforcement of court orders, court procedures, disposition, facility placement, restitution payments to courts, and court mandated mental health services. The juvenile board will assume responsibility for many of the administrative and procedural duties currently handled by the juvenile court.

In an effort to promote communication and efficiency in the flow of information, this bill permits juvenile justice agencies in a county or region to jointly create and maintain a local juvenile justice information system. If created, a local juvenile justice information system must include each public school district in the county or region as part of the partner agencies. The system establishes three information access levels with school districts having the ability to access only Level 1 information. The information included in the system, considered confidential, cannot be released to the public unless authorized by law.

If an officer takes a child into custody based on probable cause as detailed by the bill and cannot identify the child after making a reasonable attempt to identify, the officer can fingerprint or photograph the child for identification purposes. However, upon determining the child's identity, the officer must destroy these records immediately. A custodian of physical records and files in a juvenile case has the discretion to destroy the records and files if the custodian duplicates them using some form of electronic storage media. Certain persons may authorize the destruction of records and files of some closed juvenile cases. This legislation automatically restricts access to various records certified by the Department of Public Safety, subject to some exceptions.

Any reports of alleged abuse or neglect in any juvenile justice program, which includes a juvenile justice alternative education program, must be made to the Texas Juvenile Probation Commission and a local law enforcement agency for investigation. The bill allows for certain convicted persons to apply for the expunction of specified juvenile records. However, this legislation does not apply to the offense of failure to attend school under the Education Code, Section 25.094. A justice or municipal court that believes a child has violated an order relating to the child's failure to attend school has discretionary authority to hold the child in contempt and impose a fine of up to $500 or refer the child to juvenile court for delinquent conduct. The court no longer has to refer the case to the juvenile court for an adjudicative hearing. Also, the court no longer has to find a violation has occurred; it only has to believe such an occurrence has transpired.

SB 1074 (West) — This legislation pertains to racial profiling by law enforcement agencies. A law enforcement agency includes a political subdivision that employs peace officers who make traffic stops as a part of the routine performance of the officers' duties. In addition to prohibiting a peace officer from engaging in racial profiling, this bill requires each law enforcement agency to adopt a detailed written policy on racial profiling.

SB 189 (Lindsay) – Allows a JJAEP to apply to the Texas Juvenile Probation Commission for a waiver of the requirement that the JJAEP operate for 180 days. Also clarifies the conditions under which a special education student shall be placed in a JJAEP; requires a representative from a JJAEP to attend an ARD committee meeting to determine the appropriateness of the placement for students who are expelled for discretionary offenses; and specifies procedures if the JJAEP cannot meet students' needs.

SB 430 (Shapiro) – Creates the Texas School Safety Center and its governing board. The Center will provide school safety information and training while acting as a resource for preventing youth violence.

HB 1688 (McClendon) – Allows a student to possess and self-administer asthma medicine while on school property or at a school-related event if the school receives a written authorization statement from both the student's parent and the student's doctor. This provision does not waive any liability or immunity, or create any liability for or a cause of action against a governmental unit or its officers or employees.

HB 1901 (Turner, Sylvester) – Requires the Texas Council on Offenders with Mental Impairment to conduct a study and develop a comprehensive plan for juveniles with mental health and substance abuse disorders who are involved or at risk of becoming involved with the juvenile justice system. The plan must include a process to identify juveniles who may fall into this category, opportunities to improve coordination among local and state agencies, and a review of successful intervention programs. This bill also allows this council to collaborate with other state agencies to establish pilot programs.

SB 233 (Harris) – Lowers the age limit from 12 to 10 of a child for whom a parent or other person who has the duty of control can be liable for any property damage caused by the willful and malicious conduct of that child.

HB 822 (Giddings) – Extends from 90 days to 180 days the amount of time that a justice or municipal court may defer proceedings against certain defendants who are under the age of eighteen and have requested to participate in a teen court program. This bill also specifies that the teen court program must be completed by the earlier of (1) the 90th day after the teen court hearing is held, or (2) the last day of the deferral period.

HB 1088 (Grusendorf) – Requires a student who submits a false report (i.e. bomb threat) to be placed in an alternative education program, and provides that a student may be expelled for this conduct.

SB 1196 (Truan) – Requires the commissioner to adopt procedures for the use of restraint and time-out for a student receiving special education services, and prohibits a school district employee or volunteer from placing any student in a locked room of less than 50 square ft. that is designed for seclusion. An exception is made for emergency situations where a student possesses a weapon.

SB 1432 (West, Royce) – Extensive revision of the failure to attend school provisions. Makes the truancy provisions more user friendly for courts and districts and increases the penalties for truancy. Requires TEA to develop an application process for districts and charter schools wishing to operate a high school equivalency program and places conditions on such programs.

c. Compensatory Education/Dropout Prevention

SB 702 (West, Royce) – Expands the definition of at-risk students and establishes guidelines for administering and funding compensatory, intensive, and accelerated instruction programs in public schools. The bill defines a "student at risk of dropping out of school" to include criteria locally adopted by school boards. The bill also includes language that prohibits districts from spending more than 18 percent of their total compensatory education funds on their disciplinary alternative education program. In addition, SB 702 permits the commissioner to waive these limitations, but only upon a petition by the board of trustees and the district's site-based decision-making committee.

HB 457 (Clark) – Relates to the computation of dropout rates for purposes of public school accountability. Applies to school campuses or districts that are providing educational services to a juvenile alternative education program (JJAEP), pre-adjudication secure detention facility, or post-adjudication secure correctional facility. A student who is released from such a facility and who fails to enroll in school may not be considered to have dropped out from the campus or school district serving the facility unless that campus or district is the one to which the student is regularly assigned. In addition, a student who is receiving treatment for fewer than 25 days at a residential treatment center is not considered a dropout from the campus or district serving the center unless that is the one to which the student is regularly assigned.

HB 1144 (Grusendorf) – See below, at Instruction.

d. Graduation Issues

HB 1387 (Dukes) – Relates to automatic admission of students in the top ten or twenty percent of their graduating class to general academic teaching students. In cases where a high school magnet program is conducted at a high school attended by students not in the magnet program, the governing body of a school district may treat a magnet program as an independent program, if: the special program was in operation 2000-2001 school year, the students in the special program are recruited from the attendance zones of at least 10 regular high schools in the district, the students a identified as a separate student body, the student in the special program constitute at least 35% of graduating class of the high school, and the students have a different curriculum and receive a different high school conduced at a high school attended by students not in the special program

SB 387 (Bivins) – Allows a school district to issue, posthumously or not, a high school diploma to a person who was honorably discharged from the U.S. armed forces, was scheduled to graduate after 1940 and before 1951, and left high school to serve in World War II.

HB 234 (Hawley) – Exempts a student who is serving on active duty as a member of the U. S. armed forces from the requirement that he or she take the TASP.

e. Health

SB 19 (Nelson) – Allows SBOE by rule to require a student enrolled in kindergarten through grade six to participate in up to 30 minutes of *daily* physical activity as a part of the district's physical education curriculum or through a structured activity during campus daily recess. Requires TEA to make available to each school district a coordinated health program. Requires school districts to participate in training for the implementation of the coordinated health program and to implement the program in each elementary school according to schedule adopted by TEA.

HB 1124 (Turner,Bob) — Creates a community healthcare awareness and mentoring program to assist certain high school students interested in becoming health care professionals.

HCR 223 Coleman — Directs the Texas Department of Health to prepare a list of foods and beverages fortified with calcium for use by each primary and secondary school in Texas.

HB 2989 (Gutierrez) – Establishes an acanthosis nigricans screening program in certain public and private schools.

Curriculum, Instruction and Textbooks

a. Special Programs

SB 1735 (Cain) – Relates to special education, the reporting of performance data of students in certain special programs, and to the education rights of a minor whose disabilities are removed for general purposes. Adds the Texas Commission for the Blind, Texas Department of Human Services, Texas Workforce Commission, and Department of Protective and Regulatory Services to the list of agencies that are required to adopt a memorandum establishing the responsibilities of each agency to implement, with school districts, transition services according to the federal Individuals with Disabilities Act. Under current law, this group is comprised of TEA, Texas Department of Mental Health and Mental Retardation, and Texas Rehabilitation Commission. Removes the provision that prohibits this memorandum from requiring a school district to provide transitional services except when a district is already providing services. Requires that all disciplinary action regarding a student with disabilities be determined in accordance with federal law and regulations and that it is consistent with the disciplinary consequences that are applicable to a student without disability. Authorizes a special education hearing officer in a due process hearing brought under federal law to order, without parental consent, one or more evaluations of a student eligible for special education services. Under this bill, all educational rights accorded under state and federal law to a parent are transferred to the child, if the child is a minor whose disabilities of minority are removed for general purposes.

SCR 50 (Zaffirini) – Encourages school districts to develop and implement dual language bilingual programs.

SB 467 (Zaffirini) – Allows school districts to adopt dual-language immersion programs for students in elementary school grades. Programs must be designed to produce students with a demonstrated mastery in both English and one other language. Under this bill, the commissioner is required to adopt rules for the minimum requirements of a dual language immersion program and standards for evaluating the performance of those programs and the students in them.

SB 676 (Zaffirini) – Allows LEP exemptions from the TAAS of up to three years for "recent unschooled immigrants" as determined by LPAC committee.

SB 665 (Moncrief) – Creates an Office of Early Childhood Coordination with the goal of developing a statewide strategic plan and making recommendations to the Commission of Health and Human Services on methods to seamlessly deliver health and human services to children under six years of age. In addition to other duties, this office would be required to identify opportunities for collaboration between TEA and health and human service agencies and for coordination of early childhood services provided by Texas Head Start-State Collaboration Project, TEA, and the Texas Workforce Commission.

b. Textbooks

HB 623 (Hochberg) – Requires a district to allow, subject to availability, a student to take home a textbook if the student makes the request. Requires SBOE to adopt rules to prevent used textbook sellers from selling school districts and open-enrollment charter schools textbooks that are samples with factual errors. Requires the commissioner to study and present findings to the 79th Legislature on a program designed to allow participating districts to receive credit for textbooks purchased below the maximum allowable price. Allows a school district to requisition textbooks on the conforming and nonconforming lists for grades above the grade level in which a student is enrolled. Removes the requirement that districts mark their textbooks and have teachers keep records of the textbooks issued to each student. Permits schools to be compensated by the state textbook fund or the commissioner if insufficient additional copies of a textbook currently used by the school are not available. Requires a publisher or manufacturer of textbooks to provide accurate shipping state and guarantee deliver textbooks at least 10 days before the opening of school. Prohibits a trustee, administrator, or teacher from accepting gifts that might influence a selection of textbooks.

HB 992 (Hochberg) – Requires a publisher or manufacturer of textbooks who does not maintain a book depository within 300 miles of this state to sell textbooks free of delivery charge.

c. Instruction

HB 3028 (Dunnam) — Requires the Texas Higher Education Coordinating Board to annually organize and conduct the state science fair for middle and high school students, beginning in 2002. Board duties would include participant selection and coordination with local and regional fairs. The Board may contract with public and private groups to put on the fair and may use up to $10,000 of appropriated funds for this purpose.

HB 3313 (Dunnam) – Requires districts to notify parents of students in classes granted waivers from the commissioner regarding class size limits.

SB 158 (Truan) – Requires each elementary, middle, junior high and high school counselor to advise students and their parents regarding the importance of higher education.

SB 596 (Duncan) – Requires a district to offer free half-day prekindergarten if the district identifies 15 or more children who qualify for free and reduced price lunch program. This bill also allows a district to offer additional prekindergarten on a tuition basis or with district funds.

SB 826 (Truan) – Allows a school board to operate a school or program or hold a class on the campus of an institution of higher education in this state if the board obtains written consent from the president or other chief executive officer of the institution. The president may provide written consent to operate such a program regardless of whether the higher education institution is located inside or outside of the school district. Also allows a board of trustees of a school district to operate a school or program, including a class or extracurricular program, outside the boundaries of the district.

HB 1144 (Grusendorf) – Requires the commissioner to coordinate with the Higher Education Coordinating Board to ensure records of TEA and the Coordinating Board are maintained in standardized, compatible formats so that a particular student's academic performance may be assessed throughout the student's educational career. Requires, beginning with the freshman class of 2004-05, that students pursue at least the recommended high school graduation program, unless the student, parent, and a school counselor or administrator agree that the student should graduate under the minimum program. Allows the commissioner to participate in multi-state efforts to develop voluntary standardized end-of-course examinations. Requires the commissioner to develop an end-of-course exam for Algebra I. Requires the commissioner to develop appropriate assessment instruments for students who have dyslexia. Adds longitudinal dropout rates to the AEIS beginning with the 2001-02 school year. Adds to the district's annual performance report first-year higher education performance of students graduated from each of the district's high school campuses beginning with the 2001-02 school year. Requires districts at their own expense to have their dropout records audited annually by a licensed accountant who is not an employee of the district and who has successfully completed TEA training beginning with records of the 2001-02 school year. Adds high school completion rates to the list of items included in the comprehensive report delivered to the legislature biennially beginning with the 2001-02 school year. Creates a new "Exemplary Gold Rating" for exemplary schools who perform particularly well. Allows the commissioner to appoint a board of managers, the majority of whom are district residents, to govern a district if the district has had a monitor or management team for one year or more. Provides for grants to be issued to institutions that have a proven ability to conduct science-based research on effective math instruction strategies.

Requires the commissioner, from funds available for the purpose, to establish services that assist teachers in providing and grading math homework assignments. Requires SBEC to establish by January 1, 2003, a master mathematics teacher certificate for elementary, middle, and high school. Requires the commissioner to establish a master mathematics grant program for master mathematics certified teachers to receive $5,000 stipends at high-need campuses (this stipend counts for TRS annuity benefits determinations). Requires the commis-

sioner to develop training material for math instruction. Requires the commissioner to develop professional development institutes for 5th through 8th grade math teachers, and allows the commissioner to pay stipends to teachers who complete the course. Requires the commissioner to make available to districts assessment instruments for use in diagnosing students' mathematics skills. Permits districts in accordance with commissioner rules to provide intensive after school or summer school math programs to students not succeeding in mathematics courses or assessments.

HB 587 (Thompson) – An amendment to the "Hate Crimes Bill" was adopted on the Senate Floor to require the attorney general and TEA to develop a program providing grade appropriate instruction about state law on hate crimes. TEA must make the program available to schools upon the request of the school board.

SB 975 (Shapleigh) – Charges the commissioner with establishing a pilot program for public school district distance learning, i.e. offering electronic courses to students enrolled in the district or in another district. Districts are not required to participate and will be selected for the program based on applications submitted to the commissioner. The commissioner will submit a report on the program to the Lieutenant Governor and Speaker of the House no later than December1, 2002.

HB 821 (Giddings) – Allows TEA or a school district to accept donations for use in providing cardiopulmonary resuscitation (CPR) instruction to students. To the extent that TEA is able to provide a school district with resources to instruct students in CPR, that school district is required to provide instruction to students in principles of CPR. This bill clarifies that the legislature intends that each student in this state receive CPR instruction at least once between grades 9 through 12.

HB 946 (Telford) – Encourages school districts to implement character education programs after consulting with educators, parents, and community leaders. The bill would authorize TEA to accept money from the federal government and private sources to use in assisting districts in implementing character education programs, rather than requiring TEA to award grants to school districts.

HB 1776 (Green) – Designates the last full week of classes in September as Celebrate Freedom Week. Districts may include appropriate instruction, which should include a study of the U.S. Constitution, Declaration of Independence, and Bill of Rights and the relevance of the ideas contained in these documents to subsequent U.S. History. Under this bill, a school district may also require the students to recite the Declaration of Independence during Celebrate Freedom Week.

HB 3590 (Hunter) – Authorizes the Texas Higher Education Coordinating Board to make an agreement with National Geographic Society to operate a Texas Fund for Geography Education. Under the bill, National Geographic must provide matching funds to any funds appropriated for this purpose and is required to report on the investment of the fund. The Higher Education Coordinating Board is required to appoint a seven-member Geography Education Advisory Committee, to assist National Geographic in awarding grants.

SCR 24 (Nelson) – Resolution encouraging schools to emphasize the observance of Veteran's Day and to stress the importance of the sacrifices veterans made.

SB 701 (Ellis, Rodney) – Authorizes the Texas Department of Agriculture to award grants to districts with an enrollment of at least 49,000 students for any project that fosters an understanding of agriculture. This bill prohibits the TDA from awarding more than $2,500 to one school in one year, but allows the district to make awards to more than one school in a district.

SB 154 (Truan) – Requires that the curriculum of each driver education and driving safety course include information about anatomical gifts or organ, eye or tissue donation.

School Choice

a. Charter Schools

HB 6 (Dunnam) – Establishes a cap on open-enrollment charter schools at 215. Eliminates the distinction between "regular" open-enrollment charter schools and "at-risk" open-enrollment charter schools. Permits universities to receive charters from the SBOE for charter schools; however, these charters do not count against the 215 cap. Gives TEA broad authority to address charter school problems. Creates a nonprofit corporation to assist in charter school start-up costs. Requires criminal background checks for teachers at charter schools.

b. Private Schools

HB 688 (Woolley) — Extends limitations on the possession, consumption, and sale of alcohol to include areas near private and parochial schools.

School District Operations

a. Finance

HB 1902 (Turner, Sylvester) — Prioritizes the uses of the electric deregulation system benefit fund to be 1) a 10 percent discount for low income electric customers, 2) energy efficiency programs targeted at low income electric customers, 3) customer education and administrative costs, 4) school funding loss, and 5) a 20 percent discount for low income electric customers. The bill directs the Comptroller to adopt rules and establish procedures to 1) identify school districts directly affected by electric deregulation, 2) assess the effect changing gas prices have on the market value of nuclear power plants, 3) conduct an appraisal of the estimates of each school district with cross-reference to the Public Utility Commission's (PUC) stranded costs estimate, 4) adjust property tax reductions due to electric deregulation for increases in property tax value including new power plants constructed, and 5) ensure reimbursement to school districts is calculated by taking the difference of current year appraisal values and prior year values.

HB 3285 (Farrar) — Authorizes an eligible countywide district to issue anticipation notes, increases the maturity period to 15 years for anticipation notes, allows refunding bonds to be used, and provides funding for projects performed on behalf of a county. Appears to be bracketed to only affect the Houston Independent School District.

HB 2864 (Sadler) – Makes the mid-sized adjustment permanent but does not extend it to Chapter 41.

SB 1 Rider — Allows TEA to allocate up to $20 million in 2002 and 2003 to school districts and charter schools that serve high-cost students in residential facilities, state schools and hospitals. This program will be designed as a reimbursement program.

HB 2879 (Sadler) – Among the major provisions, this school finance bill provides for funding for the Instructional Facilities Allotment ("IFA")($100million), revises the date for the Existing Debt Allotment (EDA) to recognize debt incurred over the past biennium. Increases EDA limit from 12 cents to 29 cents. Allows districts that have experienced a decline in attendance of more than 2 percent to be funded up to 98 percent of their prior year's level. Allows the commissioner to fund a district that suffers a loss due to an inability to collect taxes from a major taxpayer protesting its valuation. The commissioner is required to recover the funds no later than the second year following the aid.

If excess funds are available, in the first year of the biennium, the following programs will be funded: property value decline, optional homestead, aid to districts due to tax protest payments, In the second year of the biennium, HB 2789 funds the following: funds $50 million in IFA aid, $40 million increase in EDA, property value decline, optional homestead, aid to districts due to tax protest payments. Additional programs funded are: Student Success Initiative ($57 million), reading and math programs ($30 million), Teach for Texas ($11 million), Joint Admissions Medical Program ($4 million), Public Awareness Campaign, Commissioner's discretionary fund, including funding for the UT Technology Charter School ($2 million), TEA funding and upgrade to school finance computer system ($0.3 million).

HB 3558 (Junell) – Authorizes the School Land Board to deposit the proceeds from future mineral leases and royalties in a fund that may use the funds to acquire additional real property and mineral interests.

SB 450 (Duncan) – Contingent upon specific appropriation, assists districts experiencing a rapid decline in enrollment by allowing them to base their ADA on 98 percent of the previous school year enrollment figures. (See HB 2879 (Sadler) for appropriation for this biennium.)

SB 1759 (Armbrister) — Amends Section 1207 of the Government Code to allow school districts with an ADA of 50,000 or more to issue public securities.

SB 218 (Shapiro) – Directs the Commissioner of Education to create a financial accountability system of public schools with indicators similar to the academic accountability system. Fairly extensive reporting requirements - districts are required to prepare an annual financial management report.

HB 2957 (King) — Amends the Public Funds Investment Act in the Government Code to provide that letters of credit by governmental entities constitute an authorized investment for purposes of providing security for a deposit of public funds.

b. Facilities/Purchasing

SB 510 (Armbrister) — Deletes one of the broad factors that a district may consider in determining to whom to award a contract. This bill deletes the broad category of "any relevant factor that a private business entity would consider in selecting a vendor." The bill replaces that factor with any other relevant factor specifically listed in the request for bids or proposals. In a design-build contract for facilities, a school district is now required rather than allowed to designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. In construction contracts using a method listed in Section 44.031(a) Education Code, a district must publish in its request for bids, proposals or qualifications the criteria that will be used to evaluate the offerors and the relative weights the district will give that criteria. Current law requires the weights to be included only if known at the time of the publication.

SB 510 also adds a new "right to work" provision applicable to a school district while the school district is engaged in procuring goods or services, awarding a contract or overseeing procurement or construction for a public work or improvement. In those situations, a school district may not consider whether a vendor is a member of or has a relationship with any organization and shall ensure that its bid specifications and any subsequent contract or agreement do not deny or diminish the right of a person to work because of the person's membership with respect to any organization.
This legislation also amends the definition of a facility in the Education Code's purchasing and construction provisions. A facility does not include highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects or related types of projects associated with civil engineering construction. Further, a facility does not mean a building or structure that is incidental to projects that are primarily civil engineering construction projects.

SB 311 (Zaffirni) — Transfers the powers and duties of the former General Services Commission related to providing telecommunication services to state and local governments to the Department of Information Resources (DIR), another state agency. Abolishes the General Services Commission (GSC) and creates a new Texas Building and Procurement Commission (TBPC). Gives the TBPC a new method of providing goods and services to state and local governments.

HB 2008 (Naishtat) — Extends the voluntary indoor air quality guidelines that currently apply to public school buildings to all state and local government owned or leased buildings. The Texas Department of Health retains rulemaking authority to issue and modify the guidelines. HB 2008 gives TDH the authority to enact different guidelines for buildings that are regularly occupied or visited by children. A government building is subject to the voluntary guidelines if the government owns or leases it for three months and either regularly holds it open to the public or uses it for a purpose that involves regular occupancy by an employee or person in the government's custody or control.

HB 2277 (Carter) — This bill requires the board of trustees of a school district, before entering into a contract for energy conservation measures, to require the provider of the energy conservation measures to file with the board a payment and performance bond relating to the installation of energy conservation measures in accordance with Chapter 2253 Government Code (Public Work Performance and Payment Bonds). HB 2277 also authorizes the board to require a separate bond to cover the value of the guaranteed savings on the contract. Current law regarding this type of contract prohibits a district from making an annual contractual payment that exceeds any resulting cost savings averaged over the term of the contract. HB 2277 changes this formula by using energy conservation measures instead of "automatic monitoring and control" in the

resulting cost savings calculation. This legislation also mandates a contract for energy conservation measures to be procured according to the Professional Services Procurement Act (the Act) and mandates use of the processes listed in Section 2254.004, Government Code. Currently, a district has a choice in what procurement method it uses for these contracts. HB 2277 deletes the legal requirements a district must follow if it chooses to use a competitive proposal method of procurement because that method is no longer available.

SB 484 (Duncan) — Allows the Texas Commission of Licensing and Regulation (the department) to set up a program to certify individuals to perform review and inspection functions. The department may adopt rules regarding education and examination requirements for this certification program.

The person with the overall responsibility for design and construction of a public building must submit any plans and specifications issued by that person to the department within five business days of issuance. A local government may not issue a building permit without verification of proper registration with the department.

An owner with a construction project with an estimated cost of at least $50,000 has the responsibility of having the building or facility inspected for compliance by a person authorized by the commission. Previously the department had to perform such inspections.

SB 1671 (Jackson) – Allows districts to buy new school buses with bond proceeds.

HB 1681 (Bosse) – Allows all political subdivision, not only municipalities, to regulate the operation of tow-trucks to the extent allowed by federal law and replaces "municipality" with "political subdivision" in provisions relating to tow truck regulation and registration.

HB 1279 (Coleman) – Requires any individual removing resilient tile (asbestos) to have at least an eight hour training course on the subject.

SB 116 (Wentworth) – Permits a school board, by resolution, to authorize the donation of unneeded real property, that was formerly used as a school campus and that has historical significance, to a municipality, county, or nonprofit organization for use as a community center. Implementation is contingent upon voter approval of a constitutional amendment allowing the donation of surplus school property.

SJR 2 (Wentworth) – Amends the Texas Constitution to permit laws that allow school districts to donate unneeded real property and improvements formerly used as a school campus that have historical significance for the purpose of preserving the improvements.

SB 509 (Moncrief) – Prohibits a municipality or county that requires a person to obtain a permit before renovating or demolishing a public building from issuing a permit unless the applicant provides evidence that an asbestos survey has been completed by a person licensed to perform that survey or certification from a licensed engineer or architect that the site does not contain asbestos.

HB 1697 (Ellis) — Allows an outdoor advertising sign to include a logo or an emblem of an entity if the sign is erected or maintained by a nonprofit county agricultural fair, a public or private elementary or secondary school or a public or private institution of higher education. The entity must either sponsor or provide significant funding to the agricultural fair, school or higher education institution and the entity's logo or emblem must occupy less than 25 percent of the area of the sign. Applies only to signs erected or maintained in a county with a population of 65,000 or less. State law prohibits certain outdoor advertising along state highways and other public roadways. HB 1697 makes signs that meet its requirements legal along such roadways.

HB 3286 (Lewis) — Under current law, a board of trustees of a school district may enter into a contract for energy conservation measures to reduce energy consumption or operating costs of school facilities so long as the board complies with the requirements set forth in Section 44.901, Education Code. HB 3286 allows the board to enter into this same type of contract for water conservation measures. A water conservation measure contract must comply with the same requirements that govern an energy conservation measure contract.

HB 2997 (Callagari) — Requires the Texas Natural Resource Conservation Commission (TNRCC) to adopt a comprehensive program that gives regulatory incentives to encourage the use of environmental management systems by regulated entities, including local governments. The incentives may include on-site technical assistance and accelerated access to information about programs. TNRCC must also develop model environmental management systems for local governments.

SB 5 (Brown) — Creates the Texas Emissions Reduction Plan to address air quality issues in nonattainment and near-nonattainment areas. Several state agencies and the comptroller have to establish and administer the Texas Emissions Reduction Plan in accordance with SB 5. The plan will expire August 31, 2008. Several state agencies and the comptroller must provide grants or other funding for programs established under the plan. Under the plan, grants and other funding will be provided for a diesel emissions reduction incentive program, a motor vehicle purchase or lease incentive program and an energy efficiency program. School districts in nonattainment areas or located in affected counties may apply for grants and other funding through these programs.

c. Tax Matters

HB 2888 (Truitt) — Currently districts are required to pass the AG's 50 cent test in order to get approval for bond issues. This has caused a number of fast growth districts to structure their debt over a long period of time - adding to interest costs. HB 2888 allows fast growth districts to demonstrate that projected and past property value increases allow them to afford more debt under the 50 cent test than the current test based only on current property values.

HB 3121 (Ritter) – Limits the pollution control property tax exemption. Provides that TNRCC rules shall ensure that the property used for the production of goods or services shall be denied a use determination. Also allows the chief appraiser to challenge the executive director's use determination in an appeal to the commission.

HB 3526 (Hochberg) – Allows a school district with a fiscal year beginning July 1 to use a certified estimate of the district property's taxable value in preparing public notice if the district has not received a certified appraisal roll by June 7.

HJR 44 (Flores) – Proposes a Constitutional amendment allowing taxing units other than school districts to exempt certain travel trailers from ad valorem taxation. See also HB 2076.

HB 2226 (Davis, John) – Requires the chief appraiser to prepare and certify to each taxing unit's assessor a list of properties that are likely to be taxable, but not included on the certified appraisal roll.

HB 16 (Corte) – Requires the chief appraiser to approve a late application for a disabled veterans exemption for ad valorem taxation for as long as a year after the date the taxes were paid or the date the taxes became delinquent.

HB 506 (Smith, Todd) – Allows a surviving spouse of an elderly person who receives a limitation on ad valorem taxes on a residence homestead to transfer that limitation to a different residence homestead that subsequently qualifies for an exemption as a residence homestead.

HB 1053 (Coleman) – Authorizes the governing body of a municipality or county to create commercial and industrial development zones in an area of pervasive poverty, unemployment, or economic distress. This bill establishes criteria and regulations for the administration of a development zone.

HB 1200 (Brimer) – Creates the Texas Economic Development Act and authorizes certain ad valorem tax incentives (for both companies and school districts) for economic development. Authorizes school districts to provide tax relief for certain corporations and limited liability companies that make large investments that create jobs in this state.

HB 1449 (Oliveira) – Extends the Property Redevelopment and Tax Abatement Act through 2009, but redefines "taxing unit" to exclude school districts.

HB 1532 (Kuempel) – Determines that, for the purposes of calculating the guaranteed yield allotment, the amount of taxes collected by a district with alternate tax dates will be the taxes collected after January 1 of a year and before December 31 of that same year.

HB 1689 (Chisum) – Allows the governing body of a taxing unit or a majority of qualified voters to exempt certain property of charitable organizations from taxation.

SB 1710 (Van de Putte) – Relates to the provision that allows the governing body of a taxing unit to enter into a tax abatement agreement regarding property located in that unit if the municipality in which the property is located has already entered in to a tax abatement agreement regarding that property. Under current law, a taxing unit must enter into this agreement within 90 days of the execution of the agreement with the municipality. This bill eliminates that deadline.

SB 650 (Carona) – Authorizes an appraisal district board of directors to increase the number of members on the appraisal review board to 40 members for a county with a population of at least 250,000 and to 75 members for a county with at least 500,000. Under current law an appraisal review board for a county of 250,000 may have up to 15 members, and a county of 1 million may have up to 30 members.

SB 862 (Staples) – Relates to the process of applying for exemption from ad valorem taxes on freeport goods, which are those goods that are imported into this state to be forwarded outside of the state, are detained in this state for assembly, storing, or manufacturing, or are transported out of this state within 175 days. Under this bill, a property owner who has filed a claim for this exemption may provide any required copies of inventory records after the 31 day deadline to provide the copies but before the date the appraisal review board approves the records. This bill allows such a property owner to still receive exempted status but requires this person to pay a penalty of ten percent of the amount of taxes that this person has been exempted from paying.

SB 863 (Staples) – Requires a taxing unit, if that unit is delinquent on making a required refund to a property owner who successfully appeals to change the appraisal rolls, to include, with the refund, interest on the amount refunded at an annual rate of 12 percent. This bill also entitles a property owner who prevails in a suit to compel this refund to court costs and reasonable attorney's fees.

SB 865 (Staples) – Requires the appraisal review board, on the motion of a property owner, to correct errors in the ad valorem tax appraisal roll for any of the five preceding years. Current law allows the appraisal review board to make such corrections on the motion of the property owner or of the chief appraiser.

SB 986 (Duncan) – Allows certain abatement agreements to provide for the recapture of lost ad valorem tax revenue if a property owner fails to comply with a tax abatement agreement requirement for creating jobs.

SB 1095 (Carona) – Currently, no property tax is levied at the state level; however, the laws governing the operation and administration of such a tax is made at the state level to ensure consistency and uniformity. Senate Bill 1095 deletes the requirement that the technical advisory committee meet at least twice a year and allows the comptroller of public accounts to certify supplemental records for rolling stock as soon as practicable after receiving supplemental information from the chief appraiser of a county.

SB 1315 (Staples) – Currently, the use of revenue from the municipal hotel occupancy tax is limited to construction and maintenance of convention center facilities and visitor centers; the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants (delegates); advertising and promotional programs to attract tourists and delegates; the encouragement and promotion of the arts; or historical restoration and the preservation of projects to encourage tourists and delegates to visit these sites. Although most rural areas do not have convention centers, rural areas could benefit by using this tax to fund event costs associated with sporting events that attract visitors. Senate Bill 1315 authorizes revenue from the municipal hotel occupancy tax to be used for expenses directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity.

SB 1689 (Ellis, Rodney) – Under current law, a corporation that is an insurance company, surety, guaranty, or fidelity company required to pay or who pays an annual tax measured by their gross receipts is exempted from the franchise tax. However, there is no provision that exempts from the franchise tax an insurance organization performing management or accounting activities in this state on behalf of a nonadmitted captive insurance company. In addition, current law is not clear as to which corporation may claim a business loss in a merger of two corpo-

rations. Senate Bill 1689 exempts from the franchise tax certain insurance organizations, title insurance companies, or title insurance agents and authorizes the surviving corporation of a merger to claim the business loss of the nonsurviving corporation.

SB 1736 (Cain) – Current statute requires a taxing unit to waive penalties on a delinquent tax bill that is delinquent because of the taxing unit's mistake. The taxing unit is authorized but not required to waive the interest in such a situation. S.B. 1736 requires the taxing unit to waive the interest and allows the delinquent tax to be paid over three years instead of 21 days.

SB 1737 (Cain) – The Tax Code states that property owners or their agents can view and inspect appraisal records relating to their properties. However, some appraisal firms operating under contract for appraisal districts have taken this language as permissive and not allowed full inspection or copying of appraisal documents. S.B. 1737 clarifies and affirms that property owners or their agents are entitled to inspect and copy all information pertaining to the property that the firm considers in appraising the property and prohibits action by an appraisal review board until the requested information has been provided.

SJR 6 (Duncan) – Under current law, certain tangible personal property is exempt from ad valorem taxation if the property is detained in this state for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property. Warehouse inventory that otherwise would be exempt is subject to taxation by the state, which may place the Texas warehousing industry at a competitive disadvantage with similar industries in neighboring states and across the border. As proposed, Senate Joint Resolution 6 requires the submission to the voters of a constitutional amendment authorizing the legislature by general law to exempt specified tangible property from ad valorem taxation that is detained for specified operations in this state in a location that is not owned or under control of the property owner.

d. Miscellaneous

HB 2760 (Brown, Betty) – Current law provides that it is the policy of this state that disputes before governmental bodies be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the governmental body's operations and programs. However, provisions regulating interlocal cooperation contracts do not provide for the application of existing alternative dispute resolution procedures. H.B. 2760 authorizes parties to an interlocal cooperation contracts to use alternative dispute resolution procedures.

SB 393 (Carona) — Comprehensive state law governing the use of electronic signatures, contracts, and records. Applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. By its terms, the new law must be construed and applied to facilitate electronic transactions and to be consistent with reasonable practices and the continued expansion of those practices. This new law does not require a state or local government to use or permit the use of electronic records or electronic signatures.

SB 1458 (Duncan) — Establishes an electronic government program management office in the Department of Information Resources to guide, promote, and facilitate the implementation of select e-government projects and to manage the ongoing development of the Texas online portal.

HB 2778 (Farabee) – The unfunded mandates interagency work group was created in 1997 to review the legislative history of unfunded mandates, conduct evaluations on the benefits and costs of mandates on affected political subdivisions, and to present a written report on the findings to the legislature. Currently, the interagency work group comprises certain state entities. However, it does not have a representative from any local level of government. H.B. 2778 adds two county representatives to the interagency work group.

HB 2301 (Craddick) – Allows a district to purchase insurance against bodily injury sustained by a student during a school sponsored event on a school campus.

SB 335 (Carona) — Authorizes agencies and political subdivisions of states not bordering this state to contract with a local government in this state to perform governmental functions and services. Under this bill, any parties to a purchasing interlocal contract must comply with state regulations regarding historically underutilized businesses.

SB 1268 (Madla) – Provides that a governmental entity may not require a contractor for a construction project to obtain a surety bond from any specific insurance or surety company.

SB 565 (Armbrister) — Restores the Public Securities Code as the basic law governing security pledges for bonds and other obligations of governmental units.

Governance

a. Elections

HB 328 (Gallego) – Allows the school board in a county with a population of less than 10,000 to order that all or not less than 50 percent of their trustees be elected from single member districts. Current law allows all school boards to order that all or not less than 70 percent of their trustees be elected from single member districts.

HB 563 (Madden) — Provides for notice when the location of the polling place for an election precinct is different from the location used for the precinct in the preceding election ordered by the same authority. Also provides that in an election in which detailed poll location information is available at a polling place through a computer, an election officer shall provide that information to assist voters in determining the correct polling place location for the voter's election precinct. Requires that certain security precautions take place during polling place preparations.

HB 1419 (Jones) — Requires the Secretary of State to study the voting system of each county to determine compliance with applicable legal standards. The Secretary must also study innovative, available voting technologies and evaluate the potential for implementing the use of those technologies. The study must also examine the effectiveness of adopting a uniform voting system to be used by counties statewide.

HB 1599 (Danburg) — Creates an automatic recount in plurality tie votes. Also permits a winning candidate to obtain an initial recount if an opposing candidate's initial recount petition is

approved and does not include all of the precincts in the election. In effect, this change will allow the winning candidate to also select precincts for recount if an election recount petition that selects some but not all precincts by an opposing candidate is approved.

HB 2780 (Villarreal) — Specifies that submission of a recount petition delays the issuance of a certificate of election and delays qualification for the office involved in a recount pending completion of the recount. This legislation does not affect a candidate who has received a certificate of election and qualified for an office before the submission of a recount petition involving the office.

HB 2922 (Jones) — Requires the Secretary of State to establish a toll-free telephone number to allow a person to report an existing or potential abuse of voting rights. Notice informing voters of the telephone number and the purpose for the number must be continuously posted in a prominent location at each polling place during the early voting period and on election day for each election held on a uniform election date.

HB 2923 (Jones) — When the design of a voting system or voting system equipment is modified, upgraded or otherwise enhance by new technology, HB 2923 requires the equipment implementing the new technology to be distributed and used proportionately and equitably among the election precincts in which the particular system is used. This legislation applies to elections ordered by the governor and by county authorities.

HB 1639 (Yarbrough) — Deletes the requirement that the name of the election clerk must be printed or stamped on an application for early voting. Instead, the name, office or official title of the early voting clerk must be printed on such an application.

HB 1856 (Danburg) — Prohibits adoption of a punch-card ballot voting system for use in elections on or after September 1, 2001. A contract to acquire equipment necessary to operate a voting system that uses a punch-card ballot may not be executed or renewed on or after September 1, 2001.

SB 1023 (Brown) — Requires the appropriate authority holding an election, including a school district, to compensate election workers, judges, and clerks, at an amount equivalent at least to the federal minimum wage level.

SB 79 (Shapiro) – Changes the January and August uniform election dates to February and September and permits only one bond election on a non-uniform election date every two years.

SB 1180 (Gallegos) – Aligns the Houston Independent School District's filing deadline for candidacy for a school trustee position with the candidacy filing deadline of all other school districts.

b. Open Meetings

HB 35 (McClendon) – Allows a meeting of a state governmental body or a governmental body that extends into three or more counties to be held by videoconference call if a majority of the quorum of the governmental body is physically present at one location of the meeting. The notice of such a meeting must specify the location where a majority of the quorum will be physically present and the intent to have a majority of a quorum present at that location. Current law requires a quorum of the governmental body to be physically present at one location of a meeting if the meeting is to be held by videoconference call. Current law requiring a quorum of the governmental body to be physically present at one location of a meeting for a videoconference call meeting will continue to govern school districts that do not extend into three or more counties.

HB 371 (Glaze) — State agencies currently contract with nonprofit corporations throughout the state to expend federal community services block grant funds for various assistance programs, including Head Start. HB 371 would apply the open meetings and public information laws to nonprofit corporations eligible to receive federal community services block grant funds and authorized to serve geographic areas of Texas. The application of the Open Meetings Act to such organizations applies only to deliberation by an affected non-profit that begins on or after September 4, 2001. The application of the Public Information Act applies to information held by such an organization regardless of when the information was collected or assembled.

SB 170 (Wentworth) – Authorizes the attendance by a quorum of a governmental body at a meeting of a committee or agency of the legislature to publicly testify, comment, or respond to questions of that committee or agency without considering that attendance as a meeting subject to the Open Meetings Act.

HB 3463 (Smith) – Clarifies that disclosure to the Commissioner of a taped record of a local hearing made in closed session does not violate the Open Meetings Act's criminal prohibition against disclosure of a tape recording of a lawfully closed session.

SB 695 (Wentworth) – Amends the Texas Open Meetings Act to allow an attorney to be present at an open or closed meeting of a governmental body either in person, by telephone conference call, or by video conference call. This law does not provide the exception for a conference with an attorney who is an employee of the governmental entity. The attorney is an employee of the governmental entity if the governmental body withholds the attorney's employment taxes.

c. Public Information

SB 694 (Wentworth) – Makes confidential credit card, debit card, or access device numbers maintained by or for a governmental body.

HB 2589 (Hochberg) — Amends the Public Information Act to make confidential an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body. Such an e-mail address may be disclosed if the member of the public affirmatively consents to its release.

SB 11 (Nelson) – Enacts new Chapter 181, Medical Records Privacy, in the Health and Safety Code. Entities included in this law's definition of a "covered entity" must comply with the requirements in Chapter 181 by September 1, 2003. A "covered entity" means any person who for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity,

school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site. Protected health information includes a broad spectrum of individually identifiable health information, such as information relating to the past, present or future physical or mental health of an individual. Covered entities, including certain schools must also comply with federal Health Insurance Portability and Accountability Act and Privacy Standards relating to an individual's access to the individual's protected health information, amendment of protected health information, uses and disclosures of protected health information, including consent requirements, and notice of privacy practices for protected health information. A covered entity must also comply with detailed privacy protection requirements prior to disclosure of protected health information for health research purposes.

Chapter 181 prohibits entities from disclosing, using, selling or coercing an individual to consent to disclosure, use or sale of a person's protected health information for marketing purposes without consent of the person. Chapter 181 also prohibits reidentification of an individual who is the subject of any protected health information without obtaining consent required under Chapter 181 or under another state or federal law. Chapter 181 exempts many situations in which school districts use and disclose protected health information. For example, Chapter 181 does not apply to workers' compensation insurance or any person or entity in connection with providing, administering, supporting or coordinating a self-insured program for worker's compensation. Likewise, Chapter 181 does not apply to an employee benefit plan or any person acting in connection with an employee benefit plan. Chapter 181 also excludes any educational record as defined under the Federal Educational Rights and Privacy Act. A covered entity may disclose protected health information for public health activities, to any state agency in conjunction with a federal or state health benefit program, or to comply with requirements of any federal or state health benefit program or any federal or state law. Also, Chapter 181 allows a covered entity to disclose protected health information to a public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability. Chapter 181 specifically allows a covered entity to disclose protected health information to a public health authority or other appropriate government authority authorized by law to receive reports of child or adult abuse, neglect or exploitation.

The attorney general may seek civil penalties up to $3,000 per violation of this new chapter. A court may assess a civil penalty up to $250,000 if it finds violations occurred with enough frequency to amount to a pattern or practice. Further, upon such a finding regarding a covered entity, the covered entity must be excluded from participating in any state-funded health care program. The attorney general may also seek injunctive relief to restrain a violation of this legislation.

SB 840 (Wentworth) — Redefines a "correctional facility" under the Public Information Act (PIA). A correctional facility means a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense. This new definition makes it clear that federal prisons and other states' jails and prisons qualify as correctional facilities under PIA.

SB 247 (Shapleigh) – Makes information held in appraisal records confidential if the information identifies the home address of a peace officer, a college or university security officer, or an employee of the Texas Department of Criminal Justice and if that individual elects to restrict public access to his or her information.

Junior Colleges

HB 1467 (Maxey) – Requires the governing board of each post-secondary institution to set aside for Texas Public Education Grants anywhere between 6 and 20 percent of each resident's hourly tuition charges for academic courses at a public community or junior college and for vocational-technical courses at a public community or junior college. Current law requires that six percent be set aside.

SB 82 (Madla) – Allows a public junior college to offer courses to public or private high school student for which those students may receive joint credit for both high school and junior college. Under this bill a junior college may only do so under an agreement with the operator of the student''s school, whether that be the school district or an organization or other person operating a private school. The bill also requires a public junior college to apply the same criteria and conditions to each student wishing to enroll in these courses.

HB 1465 (Kitchen) — Requires the Coordinating Board to establish a pilot project to study the effect of reduced tuition on junior college access and participation.

HB 1754 (Gutierrez) — Clarifies the effect of redistricting by a junior college district on the terms of the current members of the district's board of trustees.

HB 2459 (Ehrhardt) — Allows certain junior college boards to divide the junior college district into an appropriate number of trustee districts, as opposed to a set number of seven, when redistricting following the census.

Miscellaneous

HB 121 (West, Buddy) – Requires a sex offender, regardless of whether they are supervised by an officer, to report to the local law enforcement authority a change in his or her health or job status.

SB 1293 (Van de Putte) – Requires Head Start programs to coordinate with the Texas Workforce Commission and local workforce development boards regarding subsidized childcare services.

SB 1294 (Van de Putte) – Directs the Texas Workforce Commission to create a pilot program to assist teachers in retaining employment in the field of child care.

ENDNOTES

1 The authors wish to thank the Texas Association of School Administrators and the Texas Association of School Boards for allowing their bill summaries to be used in this update.

2 To access these sites, simply type in ".org" after any the aforementioned abbreviations. For example, the TASB web address is www.tasb.org. The one exception is the TASA site, which can be found at www.tasanet.org.

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