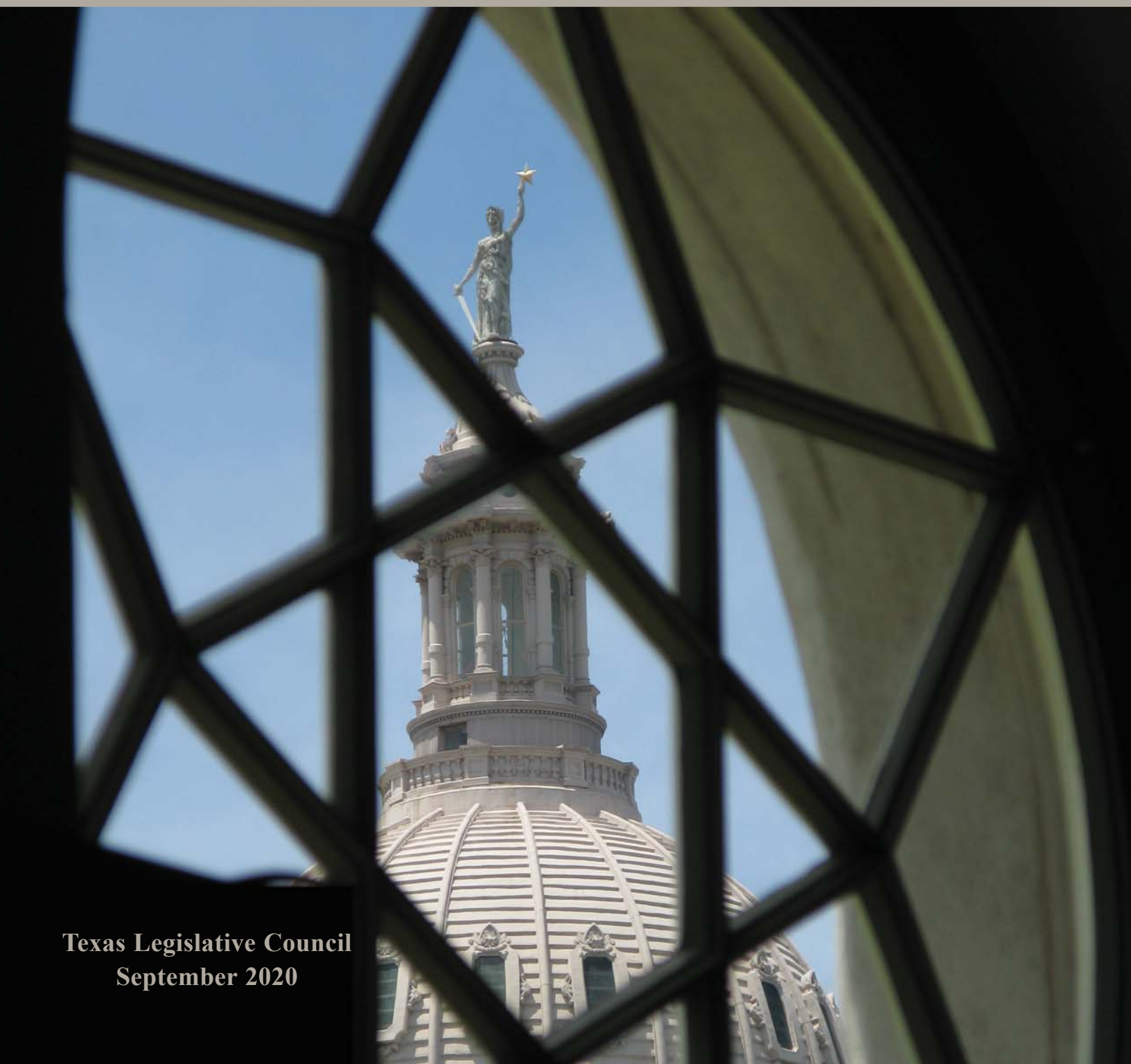
Texas Legislative Council Drafting Manual



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Texas Legislative Council Drafting Manual

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FOREWORD

This manual is intended primarily for use by the drafting staff of the Texas Legislative Council. However, the legislative council staff recognizes that a broader audience will find this manual useful, including legislators, legislative staff, lobbyists, and others with a particular interest in legislation and the legislative process.

This edition of the *Texas Legislative Council Drafting Manual* contains updated examples throughout the text. It also incorporates the following specific changes:

- clarified guidance on drafting captions for bills containing criminal offenses or penalties (Secs. 3.03(a) and (f))
- new examples of recitals for bill sections that create a new chapter or subchapter and populate the chapter or subchapter by transferring and redesignating sections of current law (Sec. 3.10(c))
- refined discussion of the date an act meeting the requirements for immediate effect takes effect (Sec. 3.14(d))
- clarified drafting considerations for effective dates for new programs requiring state or local funding (Sec. 3.14(l))
- updates to spelling and specific usage list (Sec. 7.09)
- new guideline for citing joint resolutions (Sec. 7.64)
- updated instruction for citing a particular item of appropriation in a general appropriations act (Sec. 7.65)
- revised guidelines for when to include a short title in a citation (Sec. 7.68)
- new guideline for citing attorney general open records letter rulings (Sec. 7.69)
- updated instruction for citing Texas courts of appeals to reflect a change in the 14th edition of *Texas Rules of Form*, which no longer requires the inclusion of "Civ." (Sec. 7.74)
- updated information on requirements applicable to local bills and bracket bills (Appendix 7)

The legal and research staffs contributed the bulk of the substantive text of the manual. Editor for this edition is Melanie Westerberg, assistant chief legal editor. Production of the manual is under the general supervision of Kristi Ayala, deputy director of the legal division. Comments and suggestions for improvement are solicited and may be directed to Ms. Ayala.

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CHAPTER 1
INTRODUCTION

This manual explains how legislative drafting is done by the staff of the Texas Legislative Council. Although it is primarily intended for use by the legislative council staff for training and as a reference guide, other participants in the legislative process, including legislators and legislative staff members, may find it helpful in analyzing legislative documents.

The reader of this manual should be aware of its shortcomings. A manual, by its nature, treats only the fundamental aspects of a subject, thus tending to make the complicated seem simple. The aspiring drafter should bear this in mind and should no more expect to become an expert drafter by studying this manual than a home handyman should expect to become a master carpenter by studying a do-it-yourself manual. While a few of the rules stated in this manual, such as the one requiring each bill to contain the constitutionally prescribed enacting clause, are absolute, most are more or less conditional. A new drafter gains through experience the ability to recognize circumstances justifying deviation from a general rule.

A second inherent shortcoming of a drafting manual is that by focusing on the more technical aspects of drafting such as citation form, style, and English usage, a simplistic image of the drafter as scrivener is fostered. This narrow focus is at the expense of the more challenging side of legislative drafting: working with a legislator to develop from scratch a legally sound and workable legislative solution to a real life problem. It is outside the scope of a drafting manual to develop those general legal skills a lawyer is supposed to have developed in law school, and it is beyond the powers of the authors of this manual to tell the would-be drafter how to acquire the creativity and common sense this part of the task requires.

In spite of these shortcomings, this manual is useful as a training aid for new drafters, as a reference for experienced drafters, and as a resource for nondrafters who wish to understand more about drafts and the drafting process.

This manual is arranged in chapters, the next five of which deal with legislative documents. Chapter 2 gives an overview of legislative documents and explains generally the function of each type. Chapters 3 through 6 discuss in detail the drafting of each particular type of document and point out relevant constitutional requirements. Chapter 7, “Style and Usage,” concerns itself with rules of composition, including rules of punctuation, capitalization, and English usage, all of which promote consistency and readability in legislative documents. The concluding chapter, “Other Things a Drafter Ought to Know,” offers information and advice about both formal and substantive difficulties drafters often face. Finally, the appendixes contain useful information, including population summaries, the Code Construction Act, a bibliography of works about legislative drafting, and other items.

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CHAPTER 2
LEGISLATIVE DOCUMENTS AND THEIR FUNCTIONS

SEC. 2.01. WHAT IS A LEGISLATIVE DOCUMENT? "Legislative document" is a term used in this manual to describe a bill, resolution, amendment, or other document prepared to be considered and voted on by at least one house of the legislature or a legislative committee. The next four chapters discuss the drafting of specific types of legislative documents.

SEC. 2.02. BILLS. A bill is the exclusive means by which the legislature may enact, amend, or repeal a statute. The bill is therefore the most commonly used type of legislative document. The drafting of bills is discussed in Chapter 3.

SEC. 2.03. JOINT RESOLUTIONS TO AMEND THE TEXAS CONSTITUTION. An amendment to the Texas Constitution is proposed by passage of a joint resolution, the drafting of which is discussed in Chapter 4.

SEC. 2.04. OTHER RESOLUTIONS. Resolutions are also used to deal with internal legislative matters (including the adoption of rules), take actions relating to amendment of the United States Constitution, grant private parties permission to sue the state, and state the opinion of the legislature or of either house. A resolution that must be passed by both houses is called either a concurrent or joint resolution. (Joint resolutions are also used for purposes other than proposing amendments to the state constitution.) A resolution to be passed by only one house is called a simple resolution. The drafting of all these types of resolutions is discussed in Chapter 5.

SEC. 2.05. AMENDMENTS, SUBSTITUTES, AND CONFERENCE COMMITTEE REPORTS. Amendments, substitutes, and conference committee reports are used in one way or another to change bills or resolutions as they make their way through the legislative process. Amendments are classified as committee or floor amendments. A **committee amendment** is adopted while a bill or resolution is being considered in committee and must be finally adopted by the house or senate when the bill or resolution reaches the floor.

A **committee substitute** for a bill or resolution is a completely new draft adopted by the committee for consideration by the house or senate in place of the original bill or resolution.

An amendment to a bill or resolution offered by a member during floor consideration is called, appropriately, a **floor amendment**.

When a bill or resolution has passed both houses in different forms, the house of origin must decide whether to agree to the changes made by the other house. If the house of origin concurs in those changes, the bill or resolution is considered finally passed. If the houses do not agree, they may vote to send the bill or resolution to a conference committee, which is composed of members of both houses and resolves "matters in disagreement" regarding the document. The **conference committee report** is a complete draft of the bill or resolution and usually represents a compromise. It is submitted to each house for consideration on an "as is" basis and *is not amendable*. If the conference committee report is adopted by both houses, that version of the bill or resolution is considered finally passed by the legislature.

The drafting of amendments, substitutes, and conference committee reports is discussed in Chapter 6.

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CHAPTER 3
BILLS

SEC. 3.01. INTRODUCTION. Section 30, Article III, Texas Constitution, provides that "[n]o law shall be passed, except by bill," making the bill the workhorse of legislative documents. This chapter discusses the principal parts of a bill and the function of each. These parts, and the section of this chapter where each is discussed, are:

- introductory formalities (each of these items *must* be included in every bill):
  - heading (Sec. 3.02)
  - title (also called "caption") (Sec. 3.03)
  - enacting clause (Sec. 3.04)
- general and permanent substantive provisions:
  - short title (Sec. 3.05)
  - statement of policy or purpose (Sec. 3.06)
  - definitions (Sec. 3.07)
  - principal operative provisions (Sec. 3.08)
  - enforcement provisions: criminal, civil, or administrative (Sec. 3.09)
  - amendment of existing law (Sec. 3.10)
  - repealers (Sec. 3.11)
- procedural or other technical provisions (some are of temporary significance):
  - saving clause or other transitional provisions (Sec. 3.12)
  - severability or nonseverability clause (Sec. 3.13)
  - effective date section (Sec. 3.14)

SEC. 3.02. HEADING. The heading of a bill shows the house in which it is introduced, the bill number, and the name of the legislator introducing it (the "author"). The author signs the bill before introducing it, and the bill number is assigned at the time of introduction. Legislative council staff does not indicate on the heading of a completed bill draft whether the bill is a house or senate bill but leaves a blank in which an "H" or "S" may be handwritten as appropriate. This enables the same draft to be used in both houses. The heading of a final draft as it is delivered to the author appears as follows:

By: _____ __.B. No. ____

SEC. 3.03. TITLE OR CAPTION. (a) In general. Just below the heading of each bill is a statement of what the bill is about, appearing in the following form:

A BILL TO BE ENTITLED[1]

AN ACT

relating to records of a notary public.

This "title" or "caption" is required for compliance with legislative rules adopted under Sections 35(b) and (c), Article III, Texas Constitution, which provide:

> (b) The rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. The legislature is solely responsible for determining compliance with the rule.
>
> (c) A law, including a law enacted before the effective date of this subsection, may not be held void on the basis of an insufficient title.

Before Section 35, Article III, was adopted in its current form in 1986, the caption requirement was enforceable by the courts, which could declare void any portion of an act not encompassed in its caption. The requirement is now contained in house and senate rules (for the 86th Legislature, House Rule 8, Section 1(a), and Senate Rule 7.02), and noncompliance exposes a bill to the raising of a point of order against further consideration in that form.

House Rule 8, Sections 1(b), (c), and (d), as adopted for the 86th Legislature, contain additional requirements that are not found in the senate rules.[2] These rules require a house bill to "include a short statement at the end of its title or caption indicating the general effect of the bill" if the bill contains specified provisions relating to:

- a "tax, assessment, surcharge, or fee" (House Rule 8, Section 1(b))
- the creation of a criminal offense, an increase in the punishment for an existing criminal offense, or a change in "the eligibility of a person for community supervision, parole, or mandatory supervision" (House Rule 8, Section 1(c))
- a "license, certificate, registration, permit, or other authorization" necessary for an individual or entity to engage in "a particular occupation or profession" (House Rule 8, Section 1(d))

Although drafters are encouraged to express in a caption the subject of a bill and not what the bill does, the requirement that the caption include a "short statement . . . indicating the general effect of the bill" may require the crafting of a caption that expresses what the bill does regardless of the advantages of the other approach. (See discussion in Subsection (c) of this section on how to express the subject.)

The caption is meant to give legislators and other interested persons a convenient way to determine what a pending bill is about without having to read the whole text. The caption

---

[1] The first line of the caption ("a bill to be entitled") is deleted from an enrolled bill (the version finally passed by both houses and sent to the governor).

[2] The caption rules set forth in this section may be changed by the 87th Legislature after the publication of this manual. Any changes to the caption rules could affect the suitability of examples contained in this manual. The drafter should take any relevant rule changes into account as soon as they are adopted.

requirement is designed to prevent the stealthy inclusion of extraneous provisions in a bill in an attempt to avoid legislative or public notice.

Most violations of caption requirements probably result from poor draftsmanship rather than an intent to deceive. When enforced judicially, the caption requirement produced much litigation—more, according to one commentator, "than all the other legislative process requirements [of the constitution] combined."[1]

Two factors make caption drafting a less hazardous pursuit than it was before the 70th Legislature. The "punishment" for a bad caption is now meted out, if at all, during the legislative session, when an opportunity to correct the error may still exist. (This may be little consolation to a legislator whose bill is delayed because of a bad caption during the waning days of a session, since the delay itself may kill the bill.) Also, enforcement is now the responsibility of the presiding officers of the house and senate—persons who have much more experience than the courts in reading legislation and who may be expected to attain a greater degree of consistency in caption rulings than the courts.

Still, the possible consequences of a bad caption are too great to not give careful attention to caption drafting. Drafters should initially look to appropriate parliamentary rulings for guidance on compliance with caption requirements, particularly in regard to the inclusion of specific provisions required by the house rules. In the absence of an appropriate parliamentary ruling, drafters would be wise to consider the rules developed from case law with respect to expressing the bill's subject.

(b) When to draft the caption. Experience shows that it is best to draft the caption after completing the body of the bill, since the finished draft of a bill often differs greatly from the drafter's original conception. By saving the caption for last, the drafter is better prepared to accurately and succinctly describe the subject of the bill. A prematurely drafted caption may be inaccurate, so it is safer for a drafter to leave blank space where the caption belongs than to draft a tentative caption and risk forgetting to revise it after finishing the body of the bill.

(c) How to express the subject. The fundamental requisite of a caption is that it express the bill's subject. An expression of the subject is nothing more than a statement of what the bill is *about*. This statement usually begins with the words "relating to" and thus is commonly called the "relating-to clause."

It is not uncommon to see captions that state what a bill *does* instead of what it is about. Suppose, for example, that a bill requires state agencies to dispose of their surplus motor vehicles by selling them at public auction. A good description of the subject of this bill would be "relating to the disposition of surplus motor vehicles owned by state agencies." A what-the-bill-does caption, on the other hand, might read "requiring state agencies to sell surplus motor vehicles at public auction."

While either caption would almost certainly comply with legislative caption requirements, and even though the latter version perhaps provides slightly more information, the "what-the-bill-does" caption has a hidden danger. Bills often are amended or completely rewritten as they pass through the legislature, so the text of a bill may bear little resemblance to the introduced version after legislative action. A statement of what a bill is about is more likely to remain accurate than is a statement of what the bill does. Suppose that, in the example

[1] Braden et al., *The Constitution of the State of Texas:* An Annotated and Comparative Analysis, p. 170.

just given, the bill were amended to provide for sale of surplus vehicles by sealed bidding instead of by public auction. The statement of what the bill is about would still be accurate, but the statement of what the bill does would not. While there are legislative procedures to revise captions to reflect amendments, those procedures are not foolproof, and drafting a caption that is less likely to need revision because of amendments helps insure against the possible failure of those safeguards. Besides, a caption stating what a bill is about is what the constitution calls for in the first place.

(d) Use of "relating to." It is customary, although not mandatory, to begin the expression of the subject with the words "relating to." The drafter should rarely, if ever, need to depart from this custom. "Relating to" automatically points the caption drafter in the direction of stating what the bill is *about* rather than what the bill *does*.

(e) Degree of specificity. To be a convenient means of learning quickly what a bill is about, the caption must be succinct. Because it is aimed at a broad audience, including not only legislators but the public generally, the caption should be drafted in plain language that avoids technical terms and jargon as much as possible.[1]

How specific a caption should be is a legal judgment that depends on the subject matter of the particular bill. The courts have held that if the caption describes the subject fairly and accurately, it need not itemize the details contained in the bill that are incidental to that subject. (But see, in this regard, the discussion of the house rule requirements in Subsection (a) of this section and the discussion of criminal offenses and penalties in Subsection (f) of this section.) As a rule, the subject of an "omnibus" bill containing diverse provisions centering on a general, unifying theme must be defined more broadly than the subject of a bill with a narrow focus.

Consider, for example, one bill that changes the qualifications for 30 different permits, licenses, and certificates of registration issued by the Texas Department of Licensing and Regulation and a second bill that merely affects the qualifications for a certificate of registration as a property tax consultant. Acceptable descriptions of the two bills would be, respectively, "relating to qualifications for a permit, license, or certificate of registration to engage in certain regulated occupations" and "relating to the qualifications for a certificate of registration to perform property tax consulting services."

An overly specific caption disserves the notice function. The caption reader needs to be given a brief, but fair, notice of what the bill is about. If the reader is interested in detail, he or she can read the text. A caption too specific is also dangerous because, like a "what-the-bill-does" caption, it is more likely than a general caption to become obsolete in the course of the legislative process. Also, a caption that gives much detail is more likely to be found misleading because it omits some detail.

How general is *too* general? Obviously, a caption is too general if it fails to give fair notice of the subject. Beyond this, it is difficult to state a precise guideline, though an example may be useful. Assume that a bill requires state agencies to dispose of their surplus motor vehicles by selling them at public auction. Assume further that the bill requires each agency to publish a newspaper notice of any auction at least 20 days in advance, allows the agency to set a minimum price for each vehicle, requires purchasers to pay cash, and provides for

[1] A hidden danger in using technical terminology in the caption is shown by *Fletcher v. State*, 439 S.W.2d 656 (Tex. 1969). The supreme court invalidated a caption referring to the licensing of polygraph operators because the act also applied to operators of lie detection devices not literally within the technical definition of "polygraph."

the disposition of the proceeds. Some possible relating-to clauses, in ascending order of specificity, are:

> (1) relating to state agencies;
>
> (2) relating to surplus motor vehicles owned by state agencies;
>
> (3) relating to the disposition of surplus motor vehicles owned by state agencies;
>
> (4) relating to the sale at public auction of surplus motor vehicles owned by state agencies; and
>
> (5) relating to the sale at public auction of surplus motor vehicles owned by state agencies, the publication of notice of the auctions, the right of an agency to set a minimum price, the manner of payment, and the disposition of the proceeds.

The first example is obviously uninformative, and it is probably defective under legislative caption rules. The second, while probably legally sufficient, fails to convey the idea that the bill is about *disposing* of the surplus vehicles. The third example is the best one because it expresses clearly and concisely the essence of the bill. The fourth example is too specific: it would not accommodate, for example, an amendment to substitute sealed bidding for public auction. The fifth example has the defects of the fourth writ large: it is an "index caption,"[1] a thing to avoid.

Index captions were involved disproportionately in caption litigation chiefly because they are naturally susceptible to appearing deceptive through a failure to include one detail that is of equal stature with others that are listed. They are difficult to draft because, once details are mentioned, it is hard to know when to stop. They also are difficult to defend as meeting the requirements of caption rules because they camouflage the expression of the subject with needless detail. Some index captions go beyond camouflaging a bill's subject. An index caption that recites with specificity the contents of each bill section may never express a coherent or unified subject at all and instead be a pure example of the "forest" being obfuscated by the "trees." The best caption is one that briefly and accurately expresses what the constitution requires, which is the subject of the bill, and complies with parliamentary rules and rulings.

(f) Criminal offenses and penalties. The chief rule that applies to captions generally is to avoid a misleading statement of the subject of the bill in the caption. This remains true for a bill that relates to criminal offenses and penalties.

Some bills that involve criminal offenses and penalties are straightforward, such as a bill that simply creates a new offense. Generally, no specific mention of penalties is needed if the caption clearly indicates that an offense is created. Because creating an offense requires prescribing a penalty, mentioning both the creation of the offense and the penalty in the caption would be redundant. Simplifying the caption in this way satisfies both the

[1] For a monstrous specimen of an index caption, see Chapter 184 (H.B. 8), Acts of the 47th Legislature, Regular Session, 1941. Over five pages of very fine print are required to reproduce this caption in the session law volumes.

requirements of Section 35(b), Article III, Texas Constitution,[1] and current house and senate rules.[2] However, the drafter should continue to consult the constitution and any applicable house or senate rules when more complicated situations arise.

One such situation is when a new offense is added to a law that has preexisting general penalties, and the new offense is subject to a different penalty. When the caption rule of Section 35, Article III, Texas Constitution, was enforceable by the courts, the court of criminal appeals held that, under these circumstances, a caption that indicates the creation of a new offense without mentioning the penalty for the offense is sufficient only if the newly created offense is covered by the preexisting general penalty.[3] The caption of the bill under consideration by the court of criminal appeals in that instance (an index caption) stated that the bill added to the Uniform Act Regulating Traffic on Highways a section on fleeing a peace officer. The offense carried a specific penalty that was different from the $200 maximum fine already prescribed by the general penalty provision of that act. The caption failed to mention the special penalty, although it specifically referred to another penalty change in the bill (for reckless driving). The court held that the creation of the new offense was valid, but that the special penalty was outside the scope of the caption and therefore void. As a result, the new offense of fleeing a peace officer was made punishable by the preexisting general penalty.

Another complicated situation is when penal laws are amended by changing the elements or punishments of existing offenses. Care must be taken to avoid drafting a caption that misleads the reader into thinking that the bill affects only elements of an existing offense when it also revises the punishment structure, or vice versa. When the caption rule of Section 35, Article III, Texas Constitution, was enforceable by the courts, the court of criminal appeals held that the caption of a revision of the drug laws was defective because, although it mentioned the addition of "LSD" and other substances to the list of dangerous drugs, it gave no indication that existing punishment provisions were changed.[4] If both the elements of an existing offense and the penalties for violating that offense are addressed by a bill, the caption should indicate this by referring to "the prosecution of and punishment for" the offense. This approach holds true regardless of whether the penalties are raised or lowered by the bill.

Furthermore, the drafter should keep in mind that house or senate rules may suggest specific phrases to include in a caption. For example, House Rule 8, Section 1(c), as adopted for the 86th Legislature, provides:

> (c) A house bill that would create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision must include a short statement at the end of its title or caption indicating the general effect of the bill on the offense, punishment, or eligibility, such as "creating a criminal offense," "increasing a criminal penalty," or "changing the eligibility for community supervision (or parole or mandatory supervision)."

A caption for a bill that would comply with that rule might read: "relating to the prosecution of and punishment for certain sexual criminal offenses; increasing criminal penalties."

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[1] Section 35(b), Article III, Texas Constitution, states that "[t]he rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. The legislature is solely responsible for determining compliance with the rule."

[2] See the discussion in Subsection (a) of this section on using guidance from both court cases and parliamentary rulings.

[3] *Stein v. State*, 515 S.W.2d 104 (Tex. Crim. App. 1974); *Harvey v. State*, 515 S.W.2d 108 (Tex. Crim. App. 1974).

[4] *See White v. State*, 440 S.W.2d 660 (Tex. Crim. App. 1969).

(g) Legislative council drafting convention. In addition to or as part of expressing the bill's subject, and before legislative rules were adopted requiring inclusion of specific provisions in the caption, the legislative council staff adopted a drafting convention of giving notice of the following in the caption:

- the imposition of civil, administrative, or criminal penalties
- the imposition or authorization of a tax or changes affecting an existing tax or taxing authority
- the making of an appropriation
- the granting of authority to issue a bond or other similar obligation or to create public debt
- the granting of the power of eminent domain

In many cases, the notice may be as simple as adding "; making an appropriation" or "; providing an administrative penalty" to the caption. In other cases, the notice may be given as part of the general description of the bill's subject. A caption is sufficient for these purposes, regardless of form, if clear notice of the listed issues is given in the caption.

If the rules of the house or senate require inclusion of specific provisions in the caption (see Subsections (a) and (f) of this section), a drafter should comply with those rules. In the absence of applicable caption rules, a drafter should follow the drafting conventions above.

SEC. 3.04. ENACTING CLAUSE. The enacting clause is required by Section 29, Article III, Texas Constitution, and is indispensable. The enacting clause must be in exactly the following words:

```
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
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A document without an enacting clause is not a bill, and under house precedents it may not be amended for the purpose of inserting an enacting clause and may not be referred to committee.

SEC. 3.05. SHORT TITLE. (a) Purpose of short title. A short title is used to conveniently cite a law that deals comprehensively with a subject. Because Texas law is now largely contained in codes that are easily cited and that are arranged and divided by subject, short titles are almost never necessary. Short titles should not be used to make otherwise routine bills look important.

If a short title is necessary, it is preferable to draft it as a nonamendatory section of law, rather than adding it to a code enacted as part of the legislative council's statutory revision program. Draft a short title section in this form:

```
   SECTION 1. SHORT TITLE.  This Act may be cited as the
Medical Practice Act.
```

(b) Practices to avoid. It is generally wise to avoid:

- including "the" as the first word of a short title[1]
- using "Texas" in a short title—it is superfluous

[1] This, in effect, means not capitalizing "the" immediately before the short title ("the Medical Practice Act" rather than "The Medical Practice Act").

- using a short title for a chapter or other part of an enacted code or other statute that itself already has a short title
- using a short title for a purely amendatory act
- using a year in a short title

SEC. 3.06. STATEMENT OF POLICY OR PURPOSE. Statements of policy or purpose are rarely needed and generally *should be avoided*. This kind of provision may be useful, however, when a substantial body of new law is introduced. See, for example, Section 1.02, Penal Code.

A purpose clause also may be helpful in a short bill if the operative provisions do not clearly indicate what the bill is intended to accomplish. If, for example, a statute dealing with the theft of apples is repealed in order for the theft of apples to be covered by the general theft laws, the repealing act may be misinterpreted, at least by legislators and the public if not by the courts, as legalizing the theft of apples. A purpose section such as the following may be useful:

```
   SECTION 1. PURPOSE. The purpose of this Act is to
eliminate the special offense of theft of apples so
that the general statutes dealing with theft may apply
to that conduct.
```

As is the case with short titles, purpose or policy statements should not be used to make routine acts appear important.

A more serious misuse of purpose or policy statements is their use in an attempt to compensate for careless drafting, to state, in effect, that "this Act may not say very clearly what it really means. What it is trying to say is . . . ." A purpose clause should not be put to such a use; it probably will not have the intended effect anyway.

SEC. 3.07. DEFINITIONS. (a) In general. A definitions section in a bill may define only one or two words or many. It can be very useful in making a bill precise, but if great care is not used, a definition may cause rather than eliminate confusion. One of the greatest abuses of definitions is their overuse. There is no need to define a term if, in the context in which the term appears, the meaning is clear without a definition.

(b) "Means" and "includes." A definition may be all-inclusive, in which the word "means" equates the terms on either side. For example:

```
        (4) "Alcoholic beverage" means alcohol, or any
beverage containing more than one-half of one percent of
alcohol by volume, which is capable of use for beverage
purposes, either alone or when diluted.
```

There are occasions when a term is generally unambiguous and in no need of definition except for one application that might be doubtful. In such a case, the ambiguity may be

eliminated by use of a definition in which "includes" or "does not include" is substituted for "means." For example:

> (4) "Oath" includes an affirmation.

OR

> (2) "Tax" does not include a special assessment for public improvements.

Note that "means" and "includes" are not interchangeable, and the former term should be used only for a general definition while the latter should be used only for a specific clarification of meaning. The two words should not be used in tandem as if they were equivalent ("means and includes"). However, it is permissible to attach an "includes" or "does not include" statement at the end of a general definition. For example:

> (1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

Sections 311.005(13) and 312.011(19), Government Code, which provide rules of statutory construction for codes and other statutes, respectively, specifically define "includes" and "including" as used in drafting:

> "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

These rules of statutory construction make it unnecessary for a drafter to use the phrase "includes but is not limited to" in composing a definition.

(c) Use of definition to avoid repetition. In addition to clarifying the meaning of a term, a definition may be useful in avoiding the repetition of long terms, as in the following example:

> Sec. 101.001. DEFINITION. In this chapter, "department" means the Texas Department of Transportation.

On the other hand, if a term such as the one defined in this example is used only a few times in a fairly short bill or code chapter, it may be equally precise and more readable to omit the definition and simply refer to the agency as the Texas Department of Transportation in the first instance and thereafter as the department. Definitions should be used only when they promote precision and readability.

(d) Artificial definitions. A word should never be given a strained or artificial meaning out of keeping with its ordinary usage. (An exception to this rule is "person." See Subsection (h) of this section.) A drafter may be tempted to violate this rule when it is necessary to extend the coverage of an existing bill or act and time is too short to revise each affected provision appropriately. An amendment such as the following may result:

> Sec. 101.001. DEFINITION. In this chapter, "statewide elected officer" means the holder of an office filled by an election at which all qualified voters in the

state are eligible to vote, including a person appointed to fill a vacancy in such an office, and including a member of the governing body of a municipality with a population of more than 500,000.

This is ludicrous; a municipal officer obviously is not a statewide officer. Although this amendment would probably achieve the desired substantive effect, even the stringent time limitations imposed by a legislative session do not warrant defining a term in an artificial way. If time pressure requires a relaxation of standards, it is preferable to insert a section such as the following:

Sec. 101.001A. LOCAL OFFICIALS. Each provision of this chapter that applies to a statewide elected officer also applies to a member of the governing body of an incorporated municipality with a population of more than 500,000.

(e) Substantive law as definition. Do not state an operative provision of law in the form of a definition. This hides the provision and perverts the use to which definitions should be put. For example, ***DO NOT WRITE***:

Sec. 101.001. DEFINITION. In this chapter, "qualified person" means a person who:

(1) is at least 18 years old;

(2) has graduated from an accredited school of dancing masters; and

(3) has successfully completed an approved dancing master apprenticeship program.

"Qualified person" usually does not denote a person with any particular qualifications. The definition makes that denotation, and so misuses the phrase. The example is not a definition, but a substantive rule of law, and should be treated as such. The following would be preferable:

Sec. 101.003. QUALIFICATIONS FOR EXAM. To qualify to take the dancing master examination, a person must:

(1) be at least 18 years old;

(2) have graduated from an accredited school of dancing masters; and

(3) have successfully completed an approved dancing master apprenticeship program.

(f) Location of definitions. If a definition applies to only one section or part of a law, it is generally better to put the definition with the part of the law to which it applies. For example:

Sec. 35.001. DEFINITION. In this chapter, "recording officer" means . . . .

A definition is usually placed at the beginning of the part of law to which it applies.

(g) Effect of existing definitions. When amending a statute, the drafter must take into account existing definitions that will apply automatically to added provisions. The obvious source of existing definitions is the statute being amended, but other sources may exist. Definitions in the Code Construction Act (Chapter 311, Government Code) apply to all the codes enacted as part of the legislature's statutory revision program, each of which also contains additional definitions. Definitions in Chapter 312, Government Code, apply to civil statutes generally, although definitions in the Code Construction Act prevail in applicable circumstances to the extent of any conflict. Definitions in Section 1.07, Penal Code, are among several provisions of that code that apply not only within the code itself but to penal laws generally. (See Section 1.03(b), Penal Code.)

(h) "Person." It is often desirable to define "person" broadly, such as "an individual, corporation, or association."[1] Although this violates the rule against giving a word an artificial meaning, the advantage of avoiding unnecessary repetition and the long-standing practice of defining "person" in this manner outweigh the policy behind the rule. Section 1.07 of the Penal Code defines "person" in this way and, as already noted, Penal Code definitions also apply to penal laws outside the code. While it is legally unnecessary to redefine "person" in a penal law outside the code (except to provide a different definition), the express adoption of that definition (see the following subsection) may be helpful to alert users of the statutes who may be unaware of the general application of Penal Code definitions. The definition of "person" in Section 311.005, Government Code, applies to those codes to which the Code Construction Act applies and that do not otherwise define the term.

(i) Adoption of definition by reference. When it is desired that a term have the same meaning when used in separate but related laws, it may be useful to include a definition in the second law that adopts by reference the definition in the first law. For example:

```
   Sec. 21.151. DEFINITION.  In this subchapter, "teacher"
has the meaning assigned by Section 21.101.
```

The incorporation by reference of a statute sometimes raises a question of whether the legislature intends for the incorporation to include future amendments of that statute or merely means to refer to the incorporated text as it exists on the date of incorporation. The question is answered by Sections 311.027 and 312.008, Government Code, both of which provide that a reference to a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation unless the opposite is expressly provided otherwise. See Section 8.11 of this manual for a more complete discussion of incorporation by reference.

A drafter should use adoption of a definition by reference only when it is desired to maintain parallel meaning and not merely to save words. In the latter circumstance, the future amendment of the adopted definition could produce unforeseen and unfortunate consequences.

(j) Form of definitions section. A definitions section containing a single definition should be in the following form:

```
   Sec. 101.001. DEFINITION.  In this chapter, "motor
vehicle" means . . . .
```

[1] Note that in some contexts it may also be necessary to define "association" or "corporation" or to exclude municipal corporations.

A section containing two or more definitions should be in the following form:

```
Sec. 101.001. DEFINITIONS.  In this chapter:

      (1) "Department" means the Texas Department of
Transportation.

      (2) "Oath" includes affirmation.

      (3) "Vehicle" does not include roller skates.
```


Note that in the second example each definition is a complete sentence, beginning with a capital letter and ending with a period. Individual definitions are enumerated with Arabic numbers in parentheses. This is an exception to the general rule that requires items in a tabular enumeration to begin with lowercase letters and end with a semicolon. Individual definitions set out as in the example, although resembling nonamendable subdivisions, are actually individually amendable units. (See Section 3.10(e) of this manual.) They are called subdivisions for citation purposes.

SEC. 3.08. PRINCIPAL OPERATIVE PROVISIONS. (a) Types of provisions. Most statutory provisions may be classified under four major categories:

(1) general provisions, such as short titles, purpose sections, and definitions, which relate primarily to the text of the statute rather than to persons or agencies;

(2) administrative provisions, which relate to the creation, organization, powers, and procedures of the governmental units that enforce or adjudicate the law;

(3) substantive provisions, which give to or impose on a class of persons rights, duties, powers, and privileges; and

(4) enforcement provisions, which provide a particular kind of enforcement that is in addition to the remedial powers of the governmental unit.

The second and third of these categories constitute the principal operative provisions.

Not all bills will have all these types of provisions. Many will contain only one or two of them, relying by implication on the operative provisions of existing law. For example, a bill creating a penal offense will rely on other law to create courts and to empower peace officers to arrest offenders. It is generally best to organize a new law so that the operative provisions appear in the order indicated by this subsection.

While the discussion in Subsections (b) and (c) of this section centers on organizing operative provisions of bills, the organizational principles discussed apply equally to the organization of a code chapter or section.

(b) Organizing operative provisions. Sorting the operative provisions of a bill into the categories indicated does not complete the task of organization: within each category, individual sections (and even smaller units) should be organized in a logical order to make the proposed statute as readable and easy to use as possible. Provisions amending existing code sections should be alphabetized by code and arranged in numerical order. Occasionally, it will be more effective for provisions to appear in the order of their importance,

beginning with the most important, with general provisions preceding special ones. Within this overall organizational framework, follow these general principles in organizing a draft:

- Assume that provisions will be read in the order in which they appear. When possible, avoid arranging a bill in such a way that a provision makes no sense until a subsequent provision is read.
- To the extent possible, provisions dealing with the same subject should be grouped together.

(c) Headings for parts of bills. After organizing the operative provisions of a bill, a drafter may want to compose captions or "headings" (as they will be called here to avoid confusion with captions of whole bills) to guide readers through the various parts of the bill. A heading is a brief, distinctively typed or printed "sign" designed to disclose the subject of the text that follows and to enable a reader to quickly find the various details contained in the bill.

By custom, headings are given to parts of a bill denominated as articles, parts, or sections, but not for smaller units. A heading is typed in all capital letters in an enrolled bill and follows the number of the article, part, or section (e.g., "SECTION 3. DUTY TO PAY TAX.").

Auxiliary verbs, adverbs, adjectives, and the parts of speech known as articles are usually excluded from headings to promote brevity and pithiness. If more than one central idea is expressed in the unit of text that follows the heading, phrases may be linked by semicolons. If several major thoughts are included in the unit of text, the unit probably should be divided.

Headings are only a helpful guide to the relative location of the contents of a bill and do not merit a great amount of concern. Section 311.024, Government Code, stipulates that a "heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute." While that section is technically inapplicable in determining the importance to give a bill heading, it is illustrative of the point that headings are simply helpful guides. A drafter may dispense with headings altogether, although statute publishers could supply them at the time of publication. When inserting a new section or article into an existing body of law, a drafter should conform to the precedent regarding headings that has been set in the law being amended.[1] It is legislative council policy that headings be provided for a bill containing *three or more* sections other than sections amending or repealing existing law or prescribing saving, other transition, or effective date provisions, if headings are provided at all. If headings are used, they should be used for all sections, including those exempted from consideration of *whether* to use them.

SEC. 3.09. ENFORCEMENT PROVISIONS. (a) Introduction. The purpose of the law is to govern conduct. This is often accomplished by announcing a rule, which may be a mandate or prohibition, and prescribing a punishment for noncompliance or a reward for compliance. The announcement of a rule is referred to in this manual as a *substantive provision,* and the prescribing of a consequence is called an *enforcement provision*.

Not every statute neatly segregates substantive provisions from enforcement provisions. A law that provides that "A person who slanders the king shall be hanged" is equivalent

[1] To determine whether the heading of a section or article as printed in a privately published compilation of statutes (such as Vernon's Texas Civil Statutes) was enacted by the legislature or supplied by the publisher, a drafter must check an "official" copy of the most recent enactment of the section or article (e.g., the enrolled bill or the act as printed in the session law volumes, the chronological compilation of laws enacted each legislative session).

to the substantive provision "A person may not slander the king" and the enforcement provision "A person who violates this law shall be hanged." However, it is usually better organization to separate substance and enforcement in all but the simplest statutes. The following discussion focuses on some of the more common types of enforcement provisions: criminal, civil, and administrative.

(b) Criminal enforcement. Before creating a criminal offense, a drafter should first determine whether the conduct sought to be prohibited is already proscribed by state law. Model acts often contain penal provisions that duplicate offenses contained in the Penal Code or other law. Model licensing laws, for example, often prohibit falsifying a license application, although Chapter 37 of the Penal Code, titled "Perjury and Other Falsification," covers this type of conduct. Creating an offense that duplicates an existing one not only wastes legislative effort, but may impliedly repeal or otherwise impair the effectiveness of existing law.

Another thing to consider when creating an offense is whether to place the new provision in the Penal Code. The code is generally concerned only with traditional criminal offenses, such as homicide, assault, theft, and bribery. To preserve this arrangement, a drafter should not include in the code an offense that, based on its subject matter, could logically be placed in another code or statute.

Competent drafting of a penal provision requires at least a working knowledge of substantive criminal law and, particularly, familiarity with the Penal Code. The Penal Code was enacted in 1973 as the culmination of a comprehensive study by the State Bar Committee on Revision of the Penal Code. The code was significantly revised in 1993 following another comprehensive study, this one by the Texas Punishment Standards Commission. A significant part of the revision consisted of repealing offenses that duplicated other offenses in the Penal Code or other law and repealing offenses that were not traditional criminal offenses. The legislative council provided drafting assistance in both 1973 and 1993. The code is, on the whole, well organized and well drafted. Not only is it a useful drafting model, but Titles 1–3 contain general provisions that apply to criminal laws outside the code.[1] *Knowledge of the contents of these titles is an absolute prerequisite to the drafting of a penal offense*.

Definition of an Offense

The preferred format for defining a criminal offense is that used by the Penal Code. To explain that format and at the same time raise some of the key drafting issues related to creation of an offense, Section 37.02 of the Penal Code, concerning perjury, is used here as an example. Each phrase is discussed in turn, and the purpose it serves and the general provisions of the code that relate to it are pointed out. Without exception, the code provisions cited in this discussion are included in the first three titles of the Penal Code and therefore apply to penal laws outside the code.

Section 37.02, Penal Code, reads:

> Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:
>
> (1) he makes a false statement under oath or swears to the truth of a false statement previously made

[1] Section 1.03(b), Penal Code, states: "The provisions of Titles 1, 2, and 3 apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code."

and the statement is required or authorized by law to be made under oath; or

(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

(b) An offense under this section is a Class A misdemeanor.

The phrase-by-phrase discussion of Section 37.02 follows:

1. "A person . . . ." "Person" is defined by Section 1.07(a)(38) of the code to mean "an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code." "Individual," "corporation," and "association" are also defined by Section 1.07. The current Penal Code, unlike earlier law, provides in detail in Sections 7.21–7.24 and 12.51 for the criminal punishment of corporations, associations, limited liability companies, and other business entities, as well as for the criminal responsibility of individuals who act for them. The drafter must use the terms "person," "individual," "association," "corporation," and "limited liability company" carefully to reach the precise class of potential violators intended to be covered.

Although the Penal Code generally says that "a person commits an offense if *he*" does so-and-so, because of the legislative council's policy concerning the use of masculine personal pronouns, "a person commits an offense if *the person* . . ." is now preferred.[1]

2. ". . . commits an offense . . . ." This phrase signals clearly the creation of a criminal offense as opposed to establishment of a mere civil rule of conduct. For that reason, this formulation is preferred, for criminal law purposes, to "a person may not . . .", "it is unlawful . . .", or something of the like.

3. ". . . if, with intent to deceive and with knowledge of the statement's meaning . . . ." "Intent" and "knowledge" establish necessary culpable mental states the actor must possess to commit the offense. Chapter 6 of the Penal Code addresses the issue of culpability. Section 6.03 defines four culpable mental states: intent, knowledge, recklessness, and criminal negligence. These definitions bear careful scrutiny. A close reading of Section 6.03 will show that although the four mental states are ranked according to seriousness, they are not precisely parallel and do not describe four degrees of intensity of a single phenomenon. Intent, for example, has to do with the actor's attitude toward the nature or result of the actor's conduct, while recklessness concerns the actor's awareness of circumstances surrounding the conduct and the actor's awareness of attendant risks. These culpable mental states are not semantically interchangeable.

A reference to a culpable mental state should be so placed in the definition of the offense that there is no question about what element it applies to. Section 37.02 requires that *intent* be directed toward the specific result "to deceive," and that *knowledge* be about "the statement's meaning," a circumstance surrounding the actor's conduct. The words describing these culpable mental states occur immediately before the result or circumstance they relate to; there is no doubt about what the terms modify. Compare this with the following example:

SECTION 14. A person commits an offense if the person knowingly sells a cigarette to a minor.

[1] The legislative council policy about the use of masculine terms in drafting appears in Section 7.26 of this manual.

In the preceding example, "knowingly" literally modifies "sells." If knowledge of the age of the buyer, rather than knowledge that the actor was selling, is meant to be required, the following formulation should be used:

> SECTION 14. A person commits an offense if the person sells a cigarette to an individual the person knows to be a minor.

4. ". . .

> "(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or
>
> "(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code."

This part of Section 37.02 states the essence of the crime and, in combination with the description of culpability, constitutes the elements of the offense. Federal and state constitutional requirements of due process require that the proscribed conduct be defined with sufficient certainty to give reasonable notice of what conduct is prohibited.

5. "(b) An offense under this section is a Class A misdemeanor." Chapter 12 of the code establishes eight standard punishments: three classes of misdemeanor (Classes A, B, and C) and five classes of felony (capital; first, second, and third degree; and state jail felonies). Section 12.01 enunciates as state policy that "Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter." Drafters are encouraged to adhere to this policy to preserve the logical classification scheme established by the code and to ensure that criminal laws outside the code dovetail with various general provisions of the code and the Code of Criminal Procedure that refer to these classifications. In accordance with the 1993 revision of the Penal Code, a defendant convicted of a misdemeanor is *confined* in jail, a defendant convicted of a felony is *imprisoned* in the institutional division, and a defendant convicted of a state jail felony is *confined* in state jail.

It is generally beyond the purpose of this manual to address the substantive issue of appropriate punishment for crimes. A drafter who must advise a legislator concerning the choice of punishment for an offense will often find it helpful to find a Penal Code offense of approximately equal seriousness to follow in suggesting a corresponding punishment.

Exceptions and Defenses

Chapter 2 of the Penal Code, titled "Burden of Proof," distinguishes between exceptions, defenses, and affirmative defenses.[1]

Although these three types of defensive provisions all serve to exclude from criminal responsibility conduct that would otherwise be included within the definition of an offense, they differ significantly regarding burden of proof.

An **exception** is, in effect, a negative element of the offense; its nonexistence must be alleged in the indictment or information and proved by the prosecution beyond a reasonable doubt. Exceptions are introduced in the Penal Code (and should be introduced in outside laws) by the phrase "It is an exception to the application of . . . ."

[1] Chapter 2 applies to criminal laws outside the Penal Code; see Section 1.03(b) of the code.

A **defense**, introduced by "It is a defense to prosecution," need not be negated in an indictment or information, and the question of its existence is not submitted to the jury unless evidence of its existence is introduced at the trial. When the issue is submitted, the jury is instructed to acquit the defendant if there is a reasonable doubt on the issue.

An **affirmative defense**, introduced by "It is an affirmative defense to prosecution," differs from a defense only as to the burden of proof; the defendant has the burden of establishing an affirmative defense by a preponderance of the evidence.

General Penalty

A general penalty is a provision, usually in a rather long and comprehensive statute, substantially as follows:

```
   Sec. 101.021. PENALTY.  (a) A person who violates this
chapter commits an offense.

   (b) An offense under this section is a Class C
misdemeanor.
```

Use of the general penalty is strongly discouraged. Because it typically defines an offense simply as "a violation of this chapter," the provision is inherently vague and likely overbroad. It literally seems to criminalize every possible deviation from the terms of the law in which it appears, including such conduct as the filing of a report one day late or filing two instead of three copies of a license application. To put it bluntly, a general penalty is a shot in the dark: one is not sure what it might hit. An additional problem with such a provision is that it ignores most of the key issues, such as culpability, criminal responsibility of corporations, associations, limited liability companies, and other business entities, and rationally graded punishment, that ought to be considered when an offense is created.

Enhancements Based on Criminal History

An enhancement is an increase, because of the circumstances of the offense or because of the criminal history of the defendant, to the punishment otherwise applicable to an offense. Sections 12.42, 12.425, and 12.43, Penal Code, provide general enhancements for repeat and habitual felony and misdemeanor offenders. Those sections apply to offenses under the Penal Code and also generally apply to offenses outside the Penal Code, absent a specific statement in the offense or the law in which the offense is contained that those sections do not apply.[1] Consequently, a drafter who is requested to add an internal enhancement, that is, one that will apply to the punishment for a particular offense, should first determine whether the desired increase in punishment is different from that provided by Section 12.42, 12.425, or 12.43. If the requested increase would result in the same penalty as the penalty provided by Section 12.42, 12.425, or 12.43, as applicable, then the drafter should advise the requestor accordingly. If the requested increase would create a different penalty than the penalty provided by the applicable enhancement provision under the Penal Code, then the drafter's new penalty will prevail based on Section 311.026, Government Code, which provides that a special provision that conflicts with a general provision prevails over that general provision.

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[1] See Section 1.03(b), Penal Code, and *Childress v. State*, 784 S.W.2d 361 (Tex. Crim. App. 1990).

If a drafter determines that an internal enhancement is appropriate, the drafter should use the terminology present in Sections 12.42, 12.425, and 12.43, Penal Code. Those sections increase punishment "if it is shown on the trial of [an offense] that the defendant" has been convicted. Requiring a "showing at trial" of a previous conviction properly requires the prosecution to allege the previous conviction in the information or indictment and to prove the existence of the conviction beyond a reasonable doubt. An example of an internal enhancement is as follows:

> (b) An offense under this section is a felony of the third degree unless it is shown on the trial of the offense that the defendant has previously been convicted under this section, in which event the offense is a felony of the first degree.

(c) Civil penalties. A civil penalty is an enforcement mechanism by which a wrongdoer is made civilly liable to the state or a political subdivision for an amount of money. Although the penalty resembles a fine, the fact that it is civil rather than criminal obviates the strict burden of proof required to establish criminal responsibility. The state or political subdivision files a civil action against the wrongdoer and need only show by a preponderance of the evidence that the prohibited conduct was committed.

Because the remedy is civil, the attorney general, instead of the local prosecuting attorney, may be authorized to prosecute the action on behalf of the state. Although Section 21, Article V, Texas Constitution, might seem to make representation of the state in a state trial court the prerogative of county and district attorneys, courts have approved laws providing for representation by the attorney general in legislatively created causes of action.[1]

Because the civil penalty has many attributes of criminal punishment without the corresponding procedural protections, some persons have questioned the propriety of the remedy. In spite of this, the civil penalty is well established in Texas law, its popularity largely due, no doubt, to the features that some find objectionable.

A civil penalty is typically provided for as follows:

> Sec. 35.034. CIVIL PENALTY. (a) A license holder who fails to file the report required by Section 35.033 within the time specified by that section is liable to the state for a civil penalty of $1,000 for each day the failure continues.
>
> (b) The attorney general may sue to collect the penalty.

(d) Private enforcement. The creation or extinguishment of civil liability between private parties may be used to create an enforcement mechanism that requires no governmental intervention other than the ordinary operation of the judicial process.

In cases in which liability already exists but is seldom enforced, enforcement may be made more attractive by such means as enhancing the measure of damages, creating favorable presumptions, authorizing extraordinary remedies (see the following subsection on injunctions), or providing for the award of attorney's fees.

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[1] See *State v. Walker-Tex. Inv. Co*., 325 S.W.2d 209 (Tex. App.—San Antonio), *writ ref'd n.r.e. per curiam*, 328 S.W.2d 294 (Tex. 1959).

Creation of Liability

A provision creating a cause of action is usually relatively uncomplicated and consists of a description of the conduct creating liability, a statement of the remedy, and, in some cases, treatment of defenses or evidentiary rules. For example:

> Sec. 44.032. CIVIL LIABILITY. (a) A landlord who causes the interruption of utility service to a tenant in violation of this subchapter is liable to the tenant for damages equal to the daily equivalent of the tenant's rent for each day or part of a day on which service is interrupted. A tenant who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorney's fees.
>
> (b) It is a defense to an action brought under this section that on the date the interruption of service began the tenant was at least 30 days delinquent in the payment of rent.
>
> (c) In an action brought under this section it is presumed that a landlord caused an interruption of utility service if the utility service is provided to the rental unit through a central distribution point under the landlord's control.

Extinguishment of Liability

Sometimes the harm sought to be remedied is the existence of liability the legislature considers to be contrary to the public interest. By extinguishing this liability and thereby denying the use of the courts to enforce it, an enforcement mechanism is created that requires no governmental action at all. The extinguishment of liability currently in existence raises the issues of unconstitutional retroactivity and impairment of contract.[1] This is not to say that *any* law having this effect is unconstitutional; abolition of existing liability has been upheld when done to protect the public health or safety or when enforcement of the abolished liability was contrary to public policy.[2] Of course, these issues are irrelevant to a law that applies only prospectively.

A law that partially invalidates private agreements in order to protect public safety is Section 5.025, Property Code, which reads:

> Sec. 5.025. WOOD SHINGLE ROOF. To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void.

(e) Injunctive relief. Injunctions are governed by Chapter 65, Civil Practice and Remedies Code, and Rules 680–693a of the Texas Rules of Civil Procedure. Chapter 65 provides that a district or county court may issue an injunction in several circumstances, including where "the applicant is entitled to a writ of injunction under the . . . statutes of this state relating to injunctions."[3]

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[1] See Section 16, Article I, Texas Constitution, and Section 10, Article I, U.S. Constitution.

[2] The decision in *Manigault v. Springs*, 199 U.S. 473 (1905), cites eight cases in which the U.S. Supreme Court had approved extinguishment of liability before the date of that decision.

[3] See Section 65.011, Civil Practice and Remedies Code.

All that is required to make the remedy available is to describe the circumstances under which the writ is available and who has standing to seek it. For example:

> Sec. 57.064. INJUNCTIVE RELIEF. An owner or occupant of a residential structure that is being damaged or is in danger of being damaged by a violation or threatened violation of this subchapter is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.

(f) Administrative penalties. An administrative penalty is an enforcement device similar in some respects to a civil penalty. In fact, some persons characterize the administrative penalty as a type of civil penalty, although others consider it to be a separate type of penalty. The administrative penalty is similar to the civil penalty discussed earlier in that it resembles a fine and in that the prohibited conduct must be proved only by a preponderance of the evidence instead of by the stricter burden of proof that applies to criminal cases.

The major differences between an administrative penalty and the civil penalty discussed earlier relate to the entity that assesses the penalty and to the assessment procedure. A court assesses a civil penalty, while an administrative agency assesses an administrative penalty.

Two examples of an administrative penalty are provided below. The first example is a short version that relies on the administrative procedure law, Chapter 2001, Government Code, to supply most of the procedures for imposing the administrative penalty. The second example is a longer version that includes many details for imposing the administrative penalty that differ from the procedures prescribed by the administrative procedure law. The drafter should consider, in each case in which an administrative penalty is to be established, whether those details are beneficial or whether the short version is adequate.

In each version of the administrative penalty, parts of the penalty need to be tailored to the needs of the specific agency. Parenthetical comments are included within each version to alert the drafter to those parts.

A short version of an administrative penalty, which is drafted here as a section in a code, is:

> Sec. 100.101. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. *(COMMENT: The description of the person on whom a penalty may be imposed should be tailored to each specific agency.)*
>
> (b) The amount of the penalty may not exceed $5,000, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. *(COMMENT: The maximum amount of the penalty should be tailored to each specific agency.)* The amount shall be based on:
>
> (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.
(COMMENT: These factors, especially Subdivision (2), should be tailored to each specific agency.)

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.
(COMMENT: It is probably not essential for this provision to be included because Section 2001.202, Government Code, and Chapter 2107, Government Code, adequately treat the attorney general's authority to sue to collect the penalty. However, this provision is included to be consistent with many of the other administrative penalty provisions found in state law.)

(COMMENT: As a general rule, Section 404.094(b), Government Code, requires money received by a state agency to be deposited in the general revenue fund. As a result, there is no need to require expressly that an administrative penalty be deposited in the general revenue fund. However, a few agencies still have special funds in which an administrative penalty, as well as some other revenue, would be deposited. If the drafter wants to supersede those special fund provisions and place the administrative penalty in the general revenue fund, the drafter will need to add an additional sentence at the end of Subsection (d) that reads: "A penalty collected under this section shall be deposited to the credit of the general revenue fund.")

(e) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

A longer version of an administrative penalty, which is drafted here as a subchapter in a code, is:

SUBCHAPTER E. ADMINISTRATIVE PENALTY

Sec. 100.101. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. *(COMMENT: The description of the person on whom a penalty may be imposed should be tailored to each specific agency.)*

Sec. 100.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $5,000, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. *(COMMENT: The maximum amount of the penalty should be tailored to each specific agency.)*

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require. *(COMMENT: These factors, especially Subdivision (2), should be tailored to each specific agency.)*

Sec. 100.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation occurred, the director may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the director's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 100.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended penalty of the executive director; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.

Sec. 100.105. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice:

(1) an administrative law judge of the State Office of Administrative Hearings shall set a hearing;

(2) the executive director shall give written notice of the hearing to the person; and

(3) an administrative law judge shall hold the hearing. *(COMMENT: Several of the larger agencies employ hearings officers to conduct contested case hearings. For those agencies, it is probably more appropriate to allow the governing board of the agency to designate a hearings officer to conduct the hearing. For those agencies, the law should require the executive director to set a hearing and give written notice of the hearing, and the following subsection should be added in place of the clause in Subsection (a)(3): "(a-1) The board may employ a hearings officer to hold the hearing." Also, the reference to "administrative law judge" in Subsection (b) should be changed to "hearings officer.")*

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to

the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 100.106. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 100.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 100.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 100.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(b) If the executive director receives a copy of an affidavit under Subsection (a)(2), the director may file

with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 100.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty. *(COMMENT: It is probably not essential for this provision to be included because Section 2001.202, Government Code, and Chapter 2107, Government Code, adequately treat the attorney general's authority to sue to collect the penalty. However, this provision is included to be consistent with many of the other administrative penalty provisions found in state law.)*

(COMMENT: As a general rule, Section 404.094(b), Government Code, requires money received by a state agency to be deposited in the general revenue fund. As a result, there is no need to require expressly that an administrative penalty be deposited in the general revenue fund. However, a few agencies still have special funds in which an administrative penalty, as well as some other revenue, would be deposited. If the drafter wants to supersede those special fund provisions and place the administrative penalty in the general revenue fund, the drafter will need to add an additional subsection to Section 100.109 to read as follows:

(c) A penalty collected under this subchapter shall be deposited to the credit of the general revenue fund.)

Sec. 100.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 100.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment

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becomes final, that the appropriate amount plus accrued
interest be remitted to the person.

   (b) The interest accrues at the rate charged on loans to
depository institutions by the New York Federal Reserve Bank.

   (c) The interest shall be paid for the period beginning
on the date the penalty is paid and ending on the date
the penalty is remitted.

   Sec. 100.112. RELEASE OF BOND.  (a) If the person gave
a supersedeas bond and the penalty is not upheld by the
court, the court shall order, when the court's judgment
becomes final, the release of the bond.

   (b) If the person gave a supersedeas bond and the amount
of the penalty is reduced, the court shall order the release
of the bond after the person pays the reduced amount.

   Sec. 100.113. ADMINISTRATIVE PROCEDURE.  A proceeding
to impose the penalty is considered to be a contested
case under Chapter 2001, Government Code.
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SEC. 3.10. AMENDMENT OF EXISTING LAW. (a) In general. Each enacted bill affects, by addition, deletion, or other alteration, the cumulative body of existing state law and is in that limited sense an amendment of existing law. However, a bill that *directly* amends an existing statute or code or other official compilation of statutes is subject to specific rules of form that do not apply to bills that affect existing statutes only by implication.

(b) When to amend. To structure a bill to accomplish its intended purpose, a drafter must be familiar with any existing law that covers the subject matter of the proposed bill. Law that exists on the same subject will largely determine the details the drafter must include and the policy decisions the requestor must make, so the bill, if enacted, can be integrated smoothly into the larger body of law. For these reasons, it is usually advisable to determine early in the process of preparing a bill the nature and extent of law existing on the same subject.

A central decision in this process is whether to amend directly any existing law on the subject. There are no exact standards for deciding whether to amend existing law, but the following principles are generally useful:

- If the proposed bill needs the existing law to supply much of its meaning, or if the proposal would provide an important change in the operation of the existing law, a direct amendment of the existing law is probably advisable.
- If the effect of the proposal on existing law, or vice versa, is collateral to the major purpose of the bill, a "conforming" amendment to existing law, describing how the two independent laws can be harmonized, may be in order.
- If the proposed bill is a complete substitute for the existing law, the drafter will probably want to repeal, rather than amend, the existing law.[1]

[1] See Section 3.11 of this manual for a discussion of repealers.

- If the proposed bill would create a comprehensive exception to existing law (as local laws often do relative to general laws), two independent laws may be desirable. (A drafter will want to consider a conforming amendment to existing law explaining that one law is an exception to the operation of the other.) An exception to existing law that is not very comprehensive or is simply stated, however, will usually be better placed as a direct amendment of the existing law.
- The chief rule of thumb is to determine where an interested person is most likely to look for the new law: if that is in an existing statute, an amendment is probably a good idea.

Any proposed permanent general law on a subject included in a code enacted as part of the legislature's statutory revision program should be drafted as an amendment to that code, whether or not the law amends an existing statute in the code. If the proposed law cannot reasonably be placed in a code, the drafter should make every effort to add it to the Revised Statutes and assign it a definite number rather than leaving numbering and placement to the discretion of the compilation publisher. In addition, when drafting a new part of a code or the Revised Statutes, the drafter should try to avoid assigning to that new part a number (or letter) already assigned by another bill in the same legislative session. Although duplicate numbering is practically impossible to avoid entirely, improvements in database searching capabilities should help minimize the number of duplicates and, as a result, the size of the general code update bill.

(c) Citation of amended statute; language introducing an amendment. The introductory language (or recital) describing the statute being amended should refer to the official citation for that statute. For statutes that have been codified by legislative act and for which the alphabetical or numerical designation as part of a code or the Revised Statutes is provided by legislative act, that designation is the official citation. In general, the designation of articles, sections, and the various subparts of a code are official citations.

West's (now Thomson Reuters/West) Vernon's Texas Civil Statutes, which includes the text of most uncodified laws, is an unofficial compilation of statutes based on the 1925 Revised Statutes, which was a bulk revision of all civil statutes at that time. West has editorially arranged in its publication nonamendatory laws enacted since 1925 and for that purpose has supplied alphabetical and numerical designations of those statutes.

For example, Article 3860 was enacted as part of the 1925 Revised Statutes, and the official citation of it and its subsequent amendments is "Article 3860, Revised Statutes." Similarly, Article 9023d is officially part of the Revised Statutes because the 1997 bill adopting the statute officially added it to the Revised Statutes by stating "Title 132, Revised Statutes, is amended by adding Article 9023d to read as follows:". The proper citation is "Article 9023d, Revised Statutes."

On the other hand, Article 9030 of Vernon's Texas Civil Statutes is an unofficial designation that the publishing company has assigned for the convenience of the users of its publication of Texas statutes. The text of the statute assigned that number is the text of H.B. 1208 from the 74th Legislature. Its official citation is "Chapter 910 (H.B. 1208), Acts of the 74th Legislature, Regular Session, 1995." In the introductory language of an amendatory bill, legislative council drafting convention is to include the Vernon's citation in parentheses following the official citation. For example:

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SECTION 5. Section 1, Chapter 910 (H.B. 1208), Acts
of the 74th Legislature, Regular Session, 1995 (Article
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> 9030, Vernon's Texas Civil Statutes), is amended to read as follows:

If the law has a short title, the short title may be substituted for the session citation.

When two or more statutes have the same designation (e.g., the same code section number), they are distinguished in a citation by a reference to the enacting session law. For example, separate bills enacted by the 86th Legislature added two statutes designated as Section 501.026, Government Code. The Section 501.026 that relates to access to programs by female inmates is cited as "Section 501.026, Government Code, as added by Chapter 1163 (H.B. 3227), Acts of the 86th Legislature, Regular Session, 2019."

Similarly, a constitutional provision that has the same designation (e.g., the same section and article number) as another provision is distinguished in a citation by a reference to the joint resolution that proposed it. For example, separate joint resolutions in the 78th Legislature proposed two constitutional provisions designated as Section 49-n, Article III, Texas Constitution. The Section 49-n authorizing the issuance of bonds for loans to defense-related communities is cited as "Section 49-n, Article III, Texas Constitution, as proposed by S.J.R. 55, 78th Legislature, Regular Session, 2003."

On occasion, text that has been *amended* in more than one way is printed in multiple versions by the statute compiler. In this situation, there is really only one statute—it is simply being printed in two or more versions because the compiler did not reconcile multiple amendments. (This differs from the circumstance described above, in which two or more statutes were given the same designation when they were *added* to the main body of law.) This section provides general guidelines to apply when a drafter must amend that statute. Each circumstance, however, must be considered on a case-by-case basis.

A statute that is printed in multiple versions should, if at all possible, be merged into a single version, or "reenacted." The introductory language will provide that the statute is "reenacted" or is "reenacted and amended," depending on whether the drafter is only creating a merged statute, which may or may not simply duplicate one of the versions, or is also amending it. Introductory language in the latter instance would read, for example:

> SECTION 1. Section 2256.008(a), Government Code, as amended by Chapters 222 (H.B. 1148) and 1248 (H.B. 870), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

The text of the merged statute either duplicates without underlining or bracketing the changes made by only one of the acts or incorporates without underlining or bracketing the changes made by both of the acts. If it is necessary to harmonize the versions, the drafter can insert minimal punctuation or connective language (e.g., an "and" between subdivisions) either with or without underlining.

If the versions are so contradictory that they cannot be harmonized, the drafter of a substantive bill amending the statute generally must determine, if possible, which of the versions is current law and reenact and amend that version. (See Section 8.08 of this manual.) The introductory language will cite the multiple amendments, but the text as set out will be only the version that is determined to be current law, along with underlining and bracketing that is used only to show the substantive amendments made in the bill being drafted.

Finally, note that the discussion above applies in the circumstance in which there is an existing statute that has been *amended* more than once. If two similar, but not identical, statutes have been *added* by separate bills, the drafter of a substantive bill must determine, if at all possible, which of the two statutes is current law or whether the two can be harmonized. (See Section 8.08 of this manual.) The drafter should amend the statute that is current law, including, if the two can be harmonized, any amendments necessary to conform to the other version, and repeal the other.

If a drafter is unsure of the official citation of a statute or is drafting legislation that adds a new section to a session law, the drafter should review the history of the statute to determine the official citation or available section numbers. For this purpose, the drafter should consult the history printed in Vernon's Texas Civil Statutes and refer to the session law enacting the statute and, if applicable, session laws that have amended the statute.

The recodification of laws on a topical basis through the continuing statutory revision program is progressively eliminating the difficulties in discovering and using the official citation of Texas statutes. Although legislative council staff should consistently use the official citation of statutes being amended, other drafters should be aware that use of an unofficial citation does not make a bill legally defective. However, use of unofficial citations invites error and should be scrupulously avoided.

Proper citation form is discussed at greater length in Subchapter C of Chapter 7. The following examples illustrate some ways citations appear in amendatory bill recitals:

SECTION 1. Section 321.007(a), Government Code, is amended to read as follows:

SECTION 2. Sections 408.121, 408.122, and 408.129, Labor Code, are amended to read as follows:

SECTION 3. Subchapter A, Chapter 22, Education Code, is amended to read as follows:

SECTION 4. Section 4, Chapter 775 (H.B. 3735), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

SECTION 5. Section 2(c), Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes), is amended to read as follows:

SECTION 6. Chapter 43, Parks and Wildlife Code, is amended by adding Subchapter Z to read as follows:

SECTION 7. Subtitle B, Title 2, Water Code, is amended by adding Chapter 14 to read as follows:

SECTION 8. Section 431.402, Health and Safety Code, is amended by adding Subsections (c) through (h) to read as follows:

SECTION 9. Section 13.004, Education Code, is amended by adding Subsection (a-1) and amending Subsection (d) to read as follows:

SECTION 10. Section 231.112, Family Code, is transferred to Subchapter B, Chapter 234, Family Code, redesignated as Section 234.106, Family Code, and amended to read as follows:

SECTION 11. Chapter 252, Election Code, is amended by designating Sections 252.001 through 252.015 as Subchapter A and adding a subchapter heading to read as follows:

SECTION 12. Section 51.3062(n), Education Code, is transferred to Subchapter F-1, Chapter 51, Education Code, as added by this Act, redesignated as Section 51.341, Education Code, and amended to read as follows:

SECTION 13. Section 39.054(f), Education Code, is transferred to Section 39.053, Education Code, redesignated as Section 39.053(g-3), Education Code, and amended to read as follows:

In addition, the following two examples illustrate the recital forms a drafter should use to create a new chapter or subchapter and to populate the new chapter or subchapter by transferring and redesignating sections of current law:

SECTION 1. Chapter 301, Agriculture Code, is amended by adding Subchapter H, and a heading is added to that subchapter to read as follows:

SECTION 2. Section 301.003, Agriculture Code, is transferred to Subchapter H, Chapter 301, Agriculture Code, as added by this Act, redesignated as Section 301.423, Agriculture Code, and amended to read as follows:

(d) Amendment by reference (aka blind amendment). Section 36, Article III, Texas Constitution, prohibits amendment by reference (sometimes called "blind amendment"). Amendment by reference is the amendment of existing text by reference to its short title or citation, use of directory language, and use of the language added or deleted, as appropriate, without setting out the complete provision as amended. (For example: "substitute '30 days' for '10 days' in the second sentence of Section 2" or "strike the fourth and fifth sentences of Section 1.") An amendment by reference provides little clue to its subject; an interested reader usually must make a careful, line-by-line comparison of the original text with the amendment.

Section 36 applies only to printings of complete bills that are amendatory in form. It does not apply to the form of committee or floor amendments to bills. (For a discussion of permissible forms for committee and floor amendments, see Section 6.03 of this manual.) Section 36 also does not apply to direct or implied repeals,[1] implied amendments,[2] incorporation by reference,[3] complete substitutes for existing statutes,[4] or recodification acts.[5]

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[1] See *Thompson v. United Gas Corp.*, 190 S.W.2d 504 (Tex. App.—Austin 1945, writ ref'd), and *State Bd. of Ins. v. Adams*, 316 S.W.2d 773 (Tex. App.—Houston 1958, writ ref'd n.r.e.).

[2] See *Popham v. Patterson*, 51 S.W.2d 680 (Tex. 1932).

[3] See *Dallas Cty. Levee Dist. No. 2 v. Looney*, 207 S.W. 310 (Tex. 1918).

[4] See *Johnson v. Martin*, 12 S.W. 321 (Tex. 1889).

[5] See Section 43, Article III, Texas Constitution, and *Am. Indem. Co. v. City of Austin*, 246 S.W. 1019 (Tex. 1922).

(e) Amendable unit. The constitutional prohibition of blind amendment requires the "section or sections amended" to be "re-enacted and published at length." The temptation to avoid consideration of blind amendment questions by reproducing the text of whole statutes in amendments, unless the changes are dispersed throughout all parts of the statute, should be resisted: it is a waste of time, buries the object of the bill, and often ensures that no one will read it.[1] Authors, drafters, and readers of bills are busy people: all would usually appreciate amendment of the fewest and smallest units that will safely do the job.

An amendatory portion of a bill that contains the text of one or more statutory parts denominated as sections, or something recognized as a larger unit than a section, complies with the publication requirement of the blind amendment prohibition. This is true even if, as in the case of a change of a definition in a statute, the change *impliedly* amends other parts of the statute.[2]

Courts in Texas and other jurisdictions prohibiting blind amendment have expended considerable effort in determining the *minimum* portion of a statute that is required to be reproduced in an amendatory bill. The common test is whether the portion of a statute that is reproduced in an amendment indicates the purpose of the amendment and expresses a complete thought.[3] A complete sentence is obviously a threshold requirement.[4] If the meaning of an amendment is clear from the text reproduced, the amendment probably will be upheld against a constitutional challenge that it is a blind amendment. Courts have not required that an amendment disclose effects that it necessarily has or might have on other laws or other parts of the same law.

In *Ellison v. Texas Liquor Control Board*, 154 S.W.2d 322 at 326 (Tex. App.—Galveston 1941, writ ref'd), the court upheld reenactments of subsections of a statute, saying "[t]here is no magic in words or designations." Courts elsewhere have agreed that nomenclature is not determinative, permitting reenactment or addition of denominated parts of a section that follow ordinary rules of grammar for development of paragraphs. However, some courts have been reluctant to approve amendatory paragraphs having text that does not begin with a denomination that identifies it as a part of a section or other unit.[5] This result cannot be explained in terms of the expressed judicial standard of review.

A part of a section specifically denominated as a unit of a section, as well as a larger denominated portion of a statute or compilation of statutes, is an amendable unit if it can reasonably be said to meet the standard of clarity based on meaning and purpose. A drafter in Texas is probably not safe in limiting the reproduced text of an amendment to an undenominated portion of a statute, whether or not its meaning and purpose are clear on the face of the bill.

(f) Relettering and renumbering. The practice of setting out an entire section to add, amend, or repeal one or two subsections creates a number of problems and should be avoided. The same is true for setting out any other large unit, such as a subchapter, and renumbering its smaller units to accommodate the addition or deletion of a smaller unit.

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[1] The practice of reproducing the entire text, or large portions, of a statute when only some of the reproduced portions are being amended does not necessarily make the whole statute, or even all of the reproduced portions, available for amendment when the bill is in committee or on the floor. See Section 6.02 of this manual.

[2] See *Nations v. State*, 43 S.W. 396 (Ark. 1897), for a discussion of this point in another state prohibiting blind amendment.

[3] An early case, *Henderson v. City of Galveston*, 114 S.W. 108 (Tex. 1908), rejected such a standard and applied the "section" requirement literally. The case has not been followed in Texas and has been virtually ignored in other jurisdictions.

[4] Common usage allows a single exception to even this basic requirement. Each in a series of definitions, separately denominated and punctuated with a period, is considered an amendable unit although the series is introduced by a phrase such as "In this Act:" or "In this chapter:".

[5] The result in *Henderson v. City of Galveston* can be reconciled with other court decisions on this ground.

Whenever possible, drafters should limit the text of a statute set out for amendment to the least amendable unit (discussed in Subsection (e) of this section). Drafters should adhere to the following guidelines to avoid nonsubstantive relettering and renumbering:

- A drafter should add a new subsection at the end of a section unless there is a substantive reason to insert it elsewhere in the section.
- When adding a subsection between two existing subsections, a drafter should use the previous subsection letter with a hyphen and a number. For example, if the drafter wants to add a new subsection between Subsections (a) and (b), the drafter should add Subsection (a-1) instead of adding a new Subsection (b) and relettering the subsequent subsections.
- When adding a definition to an alphabetized definitions section, a drafter should use the previous subdivision number with a hyphen and a letter. For example, when adding a definition between "(3) Kiwi" and "(4) Orange," the drafter should add "(3-a) Lemon."
- When repealing a subsection, a drafter should simply repeal that subsection rather than bracketing out the subsection and relettering subsequent subsections. A gap in the section is preferable to having several versions of the statute printed.
- A drafter should avoid reorganizing a statute (i.e., splitting or combining units of law) unless there is a substantive need to do so. Personal preference, aesthetics, or idiosyncrasy should not be a factor. Although it may at times be desirable to reorganize a section, reorganization should be left to the general code update bill.

Drafters should bear in mind that the constitutional prohibition of blind amendment discussed in Subsection (d) of this section applies to sections of bills (other than code or update bills) that redesignate or transfer statutes. So while it is permissible, and even usual, for the general code update bill to renumber a statute by simply stating, for example, "Section 5.012, Water Code, is redesignated as Section 5.013, Water Code," any other kind of bill must set out the text of the statute and accomplish the redesignating by amendment:

SECTION 1. Section 5.012, Water Code, is redesignated as Section 5.013, Water Code, to read as follows:

Sec. 5.013 [~~5.012~~]. DECLARATION OF POLICY. The commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment.

(g) Section numbering convention. Most of the recently enacted codes employ a section numbering system that uses three digits following the decimal point in the section number. This system has resulted in, or soon will result in, difficulty in assigning appropriate section numbers for added subchapters. The following drafting practices increase the expansion possibilities within chapters.

- **Proposed chapter:** A drafter of a bill or codification draft that proposes a **new chapter** should consider employing a section numbering system for the chapter that uses four digits following the decimal point in the section number instead of the three-digit system. Rather than designating the first section of the chapter

as Section AAA.001, for example, the drafter would designate that section as Section AAA.0001. Subsequent subchapters would begin with section numbers in increments of 20, 50, or another appropriate increment. **This practice increases the expansion possibilities within a new chapter.**

- **Proposed subchapter:** A drafter of a bill that amends an existing chapter by adding a **new subchapter** should avoid using the last available series of section numbers in the chapter. Often this means avoiding using the AAA.900s, but not always. The drafter should instead convert the last available series of section numbers to a four-digit system by adding an additional digit following the decimal point. If the last available series in the existing chapter is Section AAA.601 et seq., for example (because Sections AAA.001 through AAA.501 and AAA.701 through AAA.901 are already used in other subchapters), the drafter would instead use a series starting with Section AAA.6001. Subsequent subchapters could be added following the new subchapter with the four-digit system. Those subchapters could begin with section numbers in increments of 20, 50, or another appropriate increment. **This practice increases the expansion possibilities within an existing chapter.**

(h) Underlining and bracketing. Another requirement to be observed in the preparation of a direct amendment to existing law is imposed by rules of the senate and the house of representatives. The rules of both houses traditionally require the underlining of new material, and the striking through and bracketing of deleted material, in the printing of committee reports of bills containing direct amendments of existing law. The requirement enables a reader to easily compare the current version of the law with the proposed version.

The rule as adopted in the regular session of the 86th Legislature does not apply to appropriations bills, local or game bills, recodification bills, or redistricting bills, or to sections of a bill that revise the entire text of an existing statute, if the underlining and bracketing would "confuse rather than clarify" meaning.[1] The speaker of the house is authorized to overrule a point of order raised against a violation of the rule if the violation is "typographical or minor and does not tend to deceive or mislead."[2]

The senate version[3] is identical in substance to the house rule, except that game bills are not excluded from its operation. A drafter preparing a direct amendment to a nonlocal game law therefore should comply with the senate's underlining and bracketing requirement to avoid the time and trouble of preparing separate versions of the amendment for consideration in the two houses.

How to Underline and Bracket Material[4]

If language is being added to an existing statute, insert the new language in its appropriate place and underline. For example:

> Sec. 151.005. INSPECTION. The commission shall inspect each hospital <u>applying for a license. A commission inspector may enter the premises of an applicant at any time for the inspection</u>.

[1] House Rule 12, Section 1(b), 86th Legislature.
[2] House Rule 12, Section 1(c), 86th Legislature.
[3] Senate Rule 7.10, 86th Legislature.
[4] See also the footnote to Section 3.14(h) of this manual regarding multiple amendments of a single provision in one bill.

Language being deleted from an existing statute should be printed in its current form, enclosed in brackets, and marked through with a line. For example:

> Sec. 721.241. RESIDENT WITHOUT LICENSE. If the person is a resident without a license or permit to operate a motor vehicle in this state, the department may not issue the person a license or permit for the period ordered by the court[~~, but not to exceed one year~~].

If the language being added replaces existing language, insert the new language immediately before the old. For example:

> Sec. 14.162. ISSUANCE OF LICENSE. The members shall [~~committee may~~] issue a license to any health care facility [~~hospital~~] that meets the [~~its~~] requirements.

If a word is changed to any extent (such as a change in capitalization, number, tense, or spelling), the changed version of the word must be inserted as added language and the old version bracketed. For example:

> Sec. 12.324. DEPOSIT OF FEES. Except as provided by Section 12.325, all [~~All~~] fees collected under Section 12.323(b) [~~12.323~~] shall be deposited in the state [~~State~~] treasury for the commissioner's [~~commission's~~] use in the enforcement [~~enforcing~~] of this chapter.

If one or more amendable units (see Subsection (e) of this section) are being added to an existing statute or an existing code or other official compilation, the entire text of the added material should be underlined. For example:

> SECTION 1. Subchapter A, Chapter 4, Family Code, is amended by adding Section 4.004 to read as follows:
>
> Sec. 4.004. EFFECT OF MARRIAGE. A premarital agreement becomes effective on marriage.

The most common error in underlining and bracketing probably is the failure to treat punctuation with the same degree of care as words. The procedures for adding and deleting language apply equally to punctuation and to words.

(i) Arrangement of amendments. If the general and permanent substantive provisions of a bill consist only of amendments to existing law or only of amendments and repealers, it is frequently advisable to arrange the amendments in numerical order by and within a statute, followed by any repealers. There is no rule regarding placement of units of the enacted codes relative to session laws and the Revised Statutes, although session laws and the Revised Statutes are usually included within one sequential list.

If one or more of the amendments form the central subject of the bill and the rest of the amendments are designed primarily to conform other laws to those amendments, it is appropriate to place the most important amendments first, followed by a sequential listing of conforming amendments.

If a bill contains general and permanent substantive provisions that are not amendatory, such as a nonamendatory purpose section, those provisions usually precede the amendatory provisions of the bill. If the amendatory provisions are clearly more important than the nonamendatory provisions, a drafter should place the amendatory provisions before the nonamendatory provisions. An example of a nonamendatory provision that would be less important than amendatory provisions is a section addressing a one-time action, such as initial rulemaking or a study on a specified topic.

In drafting amendments, it is permissible to amend nonconsecutive parts of a single unit, such as Subsections (a), (c), and (g), in the same section of a bill. However, it is not permissible to amend unlike amendable units—e.g., sections and subsections, or subsections and section headings—in the same section: the possibilities for confusing the reader are too great.

SEC. 3.11. REPEALERS. (a) In general. The repeal of a law is accomplished by merely declaring that the law is repealed. The courts have expressly held that the repeal of a law is not covered by the constitutional prohibition of amendment by reference[1] and that the text of the repealed provision need not be set out in full.[2] A drafter may repeal a chapter, article, section, subsection, or other discrete part of an act or code but should not attempt to repeal a part smaller than the smallest segment that is amendable by itself. (See the discussion of "amendable units" in Section 3.10(e) of this manual.) A drafter should not, for example, try to repeal a single sentence of a subsection; instead, the subsection should be set out in full with the sentence bracketed out and stricken through.

When repealing the last remaining bit of a chapter, subchapter, or other unit, a drafter should repeal the entire unit. This will have the effect of also repealing the heading of the chapter, subchapter, or other unit.

(b) Examples of repealers. A simple repealer of one or more similar units of law is formed as shown in the following examples:

```
   SECTION 5.  Section 53.001(3), Water Code, is repealed.

   SECTION 5.  Section 841.082(b), Health and Safety
Code, is repealed.

   SECTION 5.  Sections 2054.264 and 2054.2645, Government
Code, are repealed.

   SECTION 5.  Subchapter E, Chapter 87, Election Code,
is repealed.

   SECTION 5.  Chapter 2052, Occupations Code, is
repealed.

   SECTION 5.  Title 2, Tax Code, is repealed.
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[1] Amendment by reference, or "blind amendment," is the amendment of text merely by providing a reference without setting out the text in full; for example: "the third sentence of the last paragraph of Section 4 is amended by substituting 'may' for 'shall'." Amendment by reference is prohibited by Section 36, Article III, Texas Constitution; see Section 3.10(d) of this manual.

[2] "[S]ince there is no constitutional inhibition against the repeal of a statute or a part thereof by reference to its title, the Legislature may exercise its power of repeal in any manner or form which clearly expresses its will or intention in that regard." *Thompson v. United Gas Corp.*, 190 S.W.2d 504 at 507 (Tex. App.—Austin 1945, writ ref'd).

SECTION 5. Section 7, Chapter 342 (S.B. 187), Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 5. Section 3, Chapter 528 (S.B. 155), Acts of the 76th Legislature, Regular Session, 1999 (Article 178d-1, Vernon's Texas Civil Statutes), is repealed.

SECTION 5. Section 2.08, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is repealed.

(c) Repeal of amendatory session law. If the statute being repealed is a session law that amended another provision, the repealer should specify the provision that was amended. This type of repealer is most common in the general code update bill but may appear in other bills. For example:

SECTION 6. Section 3, Chapter 535 (H.B. 2603), Acts of the 82nd Legislature, Regular Session, 2011, which amended Section 56.031, Utilities Code, is repealed.

(d) Omnibus repealers. A drafter can repeal multiple statutes in a single section using a format similar to any of the following:

SECTION 14. The following laws are repealed:

(1) the following articles and Acts as compiled in Vernon's Texas Civil Statutes:[1] 239, 240, 5207c, and 5221g;

(2) Sections 1.03, 1.05(b), 23.01, 23.02, 23.03, 23.04, and 25.19, Alcoholic Beverage Code; and

(3) Section 5, Dredge Materials Act (Article 5415e-4, Vernon's Texas Civil Statutes).

SECTION 22. The following provisions of the Election Code are repealed:

(1) Sections 15.002(d), 15.0215, and 18.064;

(2) Subchapter E, Chapter 87; and

(3) Chapter 126.

SECTION 36. The following laws are repealed:

(1) Section 2054.251(2), Government Code;

(2) Section 841.084, Health and Safety Code;

(3) Subchapters C, D, E, and O, Chapter 1601, Occupations Code; and

(4) Sections 7(b) and (c), Chapter 712 (S.B. 1635), Acts of the 71st Legislature, Regular Session, 1989.

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[1] The unofficial Vernon's Texas Civil Statutes citation, without an official citation, may be used in an omnibus repealer to avoid a long series of session law citations. See, however, Subchapter C of Chapter 7 of this manual.

(e) General repealer. A general repealer, rather than specifying which statutes are repealed, merely declares that "all laws in conflict with this Act are repealed to the extent of the conflict." Do not use a general repealer.

The rule of repeal by implication holds that when statutes conflict, the most recent enactment prevails to the extent of the conflict. This rule is fully effective without being restated in a bill as a general repealer.

A careful drafter does not rely on implied repeal; the cleaner, more professional way to deal with statutes in conflict with a new enactment is by conforming amendment or express repeal.

SEC. 3.12. SAVING AND TRANSITION PROVISIONS. (a) Introduction. Saving and transition provisions help to minimize the disruption and inequities that often attend the taking effect of legislation.

A saving provision "saves" from the application of a law certain conduct or legal relationships that occurred before or existed on the effective date of the law. One example is the "grandfather clause," which is discussed in Subsection (h) of this section. Another type, commonly used when a criminal statute is amended or repealed, provides for the continued application of the former law to conduct occurring before the effective date of the repeal or amendment. Section 311.031, Government Code, is a general saving clause applicable to those codes to which the Code Construction Act applies.[1]

Transition provisions provide for the orderly implementation of legislation, helping to avoid the shock that can result from an abrupt change in the law. The most common transition provision is the effective date section, which provides for orderly implementation of a statute by delaying its effective date or by providing staggered effective dates for various provisions. Section 3.14 of this manual specifically addresses delayed and staggered effective dates.

A legislator making a drafting request is usually much more concerned about the substance of the requested bill than about saving or transition problems, and it is the drafter's responsibility to attempt to foresee any problems of this type that might arise and to ensure that they are dealt with appropriately. Foreseeing these problems requires a combination of legal and practical analysis, imagination, and common sense. The task begins with the question: What are the undesirable consequences that might occur if this law were enacted with no saving or transition provisions? If the proposed law is covered by the Code Construction Act, the drafter must consider whether the general saving provisions of that act take care of the problems adequately. If that act does not apply or does not adequately resolve the problem, the drafter must fashion whatever provisions are necessary, consistent with the objectives and desires of the legislative client.

This section deals with some areas of law in which transition problems often arise. The sample transition and saving provisions that are included are merely illustrative and should not be blindly adopted. However, the discussion and examples should give the beginning drafter some understanding of saving and transition problems and an idea of how to approach them.

(b) Separate sections for transition and effective date provisions. Although effective date provisions are in fact a type of transition provision, this manual treats them

[1] The Code Construction Act is reproduced in full in Appendix 5 to this manual.

as separate from transition provisions because it is necessary to draft them in separate sections of a bill. The automated statute update program, used to update the statutes to incorporate changes enacted during each regular or special session, works most effectively when transition language is stored in the database separately from effective date provisions. Part of the reason for storing the two kinds of provisions differently is that transition provisions usually have continuing effect for some temporary period while effective dates immediately become executed law.

It is acceptable, if needed, to have more than one section in a bill contain transition language, as long as none of the transition sections contain effective date language.

(c) Insurance. A bill that affects the coverage of insurance policies, such as a bill providing for mandatory coverage of a particular condition, requires a transition and saving provision that preserves the law under which the policy was governed before the effective date of the bill. Insurance policies are a contract between the insurer and the insured; as a result, the legislature is limited by Section 16, Article I, Texas Constitution (no impairment of obligation of contract), in the extent to which it may enact laws that affect insurance contracts.

This model transition provision clearly preserves the prior applicable law, whatever the law may be, to govern contracts executed before the new statutory requirements apply. A typical transition provision (in this example, for a bill with an effective date of September 1, 2021) will read:

> SECTION 2. Section 1202.053, Insurance Code, as added by this Act, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2022. A policy delivered, issued for delivery, or renewed before January 1, 2022, is governed by the law as it existed immediately before the effective date of this Act,[1] and that law is continued in effect for that purpose.

This transition provision accomplishes two goals:

(1) it allows the commissioner of insurance the time between September 1 and January 1 to adopt rules and approve policies under a statute that is in effect but does not yet apply to policies; and

(2) it identifies clearly and preserves the prior law to govern policies issued either on or before September 1 or during the interim between September 1 and January 1.

(d) Occupational licensing. If a new occupational licensing act prescribes substantial educational or similar requirements for obtaining a license, the legislature occasionally will choose to include a "grandfather clause" (see Subsection (h) of this section) exempting from all or some of the requirements those persons who already have substantial experience in the occupation. For example:

> SECTION 14. A person who has engaged in the practice of cake decorating in this state for at least three years

[1] It is common in transition and applicability sections to refer to "the effective date of this Act." A drafter must be careful in using that phrase in bills that have provisions that take effect at different times (see Section 3.14(h) of this manual), as the potential for ambiguity (which "effective date" is meant?) exists. An alternative is to use, in a transition or applicability section, the specific effective date of the bill or provision. The danger this approach poses is that an amendment to the bill might change the effective date without addressing the date in the transition or applicability section.

preceding the effective date of this Act is entitled to obtain a license under Section 2754.101, Occupations Code, as added by this Act, without fulfilling the educational requirements prescribed by Section 2754.103, Occupations Code, as added by this Act, if the person has the other qualifications required by Section 2754.102, Occupations Code, as added by this Act, and if, before January 1, 2022, the person:

(1) submits an application as required by Section 2754.104, Occupations Code, as added by this Act;

(2) passes the examination required by Section 2754.105, Occupations Code, as added by this Act; and

(3) pays the required license fee.

The effective date prescribed for a new licensing law can also serve a transition purpose. See Section 3.14(k) of this manual.

(e) Criminal law. In criminal law, the three circumstances presenting the most significant possibility for trouble are: (1) repealing an offense; (2) changing the elements of an existing offense; and (3) changing the punishment for an existing offense.

Repealing an Offense

Under Texas law, repeal of a criminal law without a saving clause effectively prevents conviction of a person after the effective date of the repeal for an offense committed while the law was still in effect.[1] An appropriate saving clause to prevent this from occurring is as follows:

SECTION 3. The repeal by this Act of Subchapter G, Chapter 161, Health and Safety Code, does not apply to an offense committed under that subchapter before the effective date of the repeal. An offense committed before the effective date of the repeal is governed by that subchapter as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of the repeal if any element of the offense occurred before that date.

Section 311.031, Government Code, is a general saving clause for legislation to which the Code Construction Act applies, including the Penal Code. For reasons stated at the conclusion of this subsection, however, drafters are cautioned against routinely relying on this general clause for criminal law purposes.

Changing the Elements of an Offense

The amendment of a criminal statute to change the elements of an existing offense is

[1] See *Wall v. State*, 18 Tex. 682 (1857); *Greer v. State*, 22 Tex. 588 (1858); *Sheppard v. State*, 1 [Tex.] App. 522 (1877); *United States v. Tynen*, 78 U.S. (11 Wall.) 88 (1871); and *United States v. Chambers*, 291 U.S. 217 (1934).

often equivalent to the repeal of the former version of the statute. Assume that the section of the Penal Code prohibiting unauthorized use of a vehicle were amended as follows:

> Sec. 31.07. UNAUTHORIZED USE OF VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or bicycle [~~motor-propelled vehicle~~] without the effective consent of the owner.
>
> (b) An offense under this section is a state jail felony.

Before the effective date of the amendment, unauthorized use of a snowmobile constituted an offense under this section because a snowmobile is a "motor-propelled vehicle." Deleting that phrase from the statute is equivalent, as to snowmobiles, to repeal of a statute prohibiting the unauthorized use of those vehicles. If the former law were not appropriately "saved," a person who took a joyride in a snowmobile before the effective date of the amendment could not be prosecuted afterwards.

The usual saving clause for an amendment changing the elements of an offense is:

> SECTION 9. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Note that under the preceding clause an offense in the process of being committed at the instant the amendment takes effect will be prosecuted under the former law if any element of the crime occurred before the effective date; assigning such an offense for punishment under the new law could well be held to violate the constitutional prohibition against ex post facto laws.[1]

Changing the Punishment for an Offense

A bill changing only the punishment for an offense generally presents few problems and can be handled with the same saving clause as the one previously suggested for a change in the elements of the offense. If the change in punishment is clearly an *increase*, that clause will almost always be appropriate.

If the change in punishment is clearly a *reduction*, additional factors should be considered. If the reduced punishment is to apply only prospectively, the type of clause suggested for a change in the elements of an offense is appropriate. Since the constitutional prohibition against retroactive laws does not bar the retroactive reduction of punishment for offenses in which a conviction has not yet been obtained,[2] this option must be considered. The general saving clause in Section 311.031, Government Code, provides for retrospective reduction in punishment. Subsection (b) of that section states:

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[1] See Section 16, Article I, Texas Constitution, and Section 10, Article I, U.S. Constitution.

[2] See *Holt v. The State, 2* Tex. 363 (1847); *Millican v. State*, 167 S.W.2d 188 (Tex. Crim. App. 1942); *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798); and *Rooney v. North Dakota*, 196 U.S. 319 (1905).

> If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

Is a Change in Punishment an Increase or Reduction?

A word of caution should be offered here: not all changes in punishment are easily classified as either an increase or a reduction. Suppose, for example, that a punishment by a fine of "not more than $200" is amended to read "not less than $50 and not more than $150 [~~$200~~]."

The lowering of the maximum fine can be seen as a reduction in punishment, but the establishment of a minimum fine could be considered an increase. It would be shaky at best to attempt to require retroactive application of this change in punishment. In such a case as this, the drafter has two safe options. One is to simply treat the change as an ordinary enhancement of punishment and retain the former punishment for all offenses committed before the effective date of the change. On the other hand, an affected defendant could be permitted to elect, before the assessment of punishment, to be punished under the new law, as was provided for in the following saving provision in the 1973 act that enacted the current Penal Code:

> (c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.[1]

(If a clause such as this is used, it must be coupled with a general saving clause preserving the punishment prescribed by the former law for those defendants who do not elect to be punished under the new law.)

Drafters should note that the standard punishments established by Chapter 12 of the Penal Code are so designed that the punishment for each grade of offense is clearly greater than the punishment for the next lower grade. There can therefore be no question about whether changing the punishment for an offense from one of these standard punishments to another is an increase or reduction.

Reliance on the Code Construction Act for Criminal Law Purposes

Routine reliance on Section 311.031, Government Code, for bills amending or repealing criminal statutes is not advised. Section 311.031 fails to address the question of when an offense actually occurs; the sample clauses used earlier in this subsection assign an offense for treatment under the former law if any element of the offense occurred before the effective date of amendment or repeal. Section 311.031(b), which provides for retroactive application of a reduction in punishment, has three other shortcomings: (1) it distinguishes between cases on the basis of whether the punishment has been "already imposed" without defining what is meant by the imposition of punishment (*presumably* punishment is imposed at the time of sentencing); (2) it fails to recognize the fact that, as earlier explained, some changes in punishment defy classification as either a reduction or an enhancement; and (3) in many

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[1] Section 6(c), Chapter 399 (S.B. 34), Acts of the 63rd Legislature, Regular Session, 1973. The requirement that the defendant affirmatively choose to be punished under the new law is to avoid a later objection to the imposition of punishment under an ex post facto law.

instances, a legislative client will not desire the retroactive reduction in punishment Section 311.031 calls for.

(f) Taxation. Common changes in tax laws raising transition issues include repealing a tax, changing the rate of a tax, and adding or deleting exemptions. These types of changes often require a saving provision to ensure that a tax liability that accrued under the former version of the law remains enforceable. The general saving provisions in Section 311.031, Government Code, are often sufficient for this purpose, and since most taxes are imposed under the Tax Code, which is subject to the Code Construction Act, specific saving provisions are often unnecessary. When a specific saving provision is needed, one such as the following is often used:

> SECTION 8. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

Since taxes are generally computed and reported on a periodic basis (monthly, quarterly, or annually), implementing a change on the first day of a reporting period is usually less confusing to the payers and collectors of the tax. If a change is to take effect during a reporting period, it may be desirable to include specific transition language providing for administration of the tax during that particular reporting period or to merely provide that the official who administers the tax shall provide for the transition by rule or directive.

(g) Family law. The existence of continuing jurisdiction in family law cases presents a trap for the unwary drafter. The trial court in these cases usually retains jurisdiction over what would be final judgments in other kinds of cases. Much confusion can result if the drafter fails to address the question of whether a new law should apply to an old case that, after the effective date of a change in the law, comes back to the trial court on a motion to clarify or amend a previous order for enforcement purposes.

The simplest solution is to exempt from any change in the law litigation instituted before the effective date of the change. This may not be what the client desires, however, and is not always the fairest solution. Although a retroactive change in law affecting private rights is barred by the constitution, the legislature is not prohibited from changing the procedure by which those rights are enforced.[1]

The question of whether to apply a procedural change to pending litigation is not necessarily a simple yes or no proposition, as it is possible to adopt a middle ground that allows the courts to decide, on a case-by-case basis with appropriate guidelines, whether to apply a new procedural rule to pending litigation. For example, the transition clause of a 1983 act dealing with the filing in adoption cases of a report on a child's health, social, educational, and genetic history provided:

> A court having, on the effective date of this Act, jurisdiction of a suit affecting the parent-child relationship in which an adoption is sought may waive the requirement under Section 16.032 [now 162.008], Family Code, that

[1] See *Harrison v. Cox*, 524 S.W.2d 387 (Tex. App.—Fort Worth 1975, writ ref'd n.r.e.).

a copy of the summary report must be filed, if the court finds that the making or filing of the report is not feasible or would cause an injustice.[1]

(h) The "grandfather clause." "Grandfather clause" has come to refer to a provision in a licensing statute that automatically grants a license or similar prerogative to those established in an occupation or business before its regulation.[2]

Normally, these clauses function by exempting an applicant from a licensing examination on the justification that "those already practicing their profession were lawfully and satisfactorily performing their services on the date the regulatory act became effective . . . ."[3]

Like the regulatory statutes of which they are a part, grandfather clauses are subject to the constitutional considerations of equal protection and due process. Texas courts have found that a clause meets the requirements of equal protection if it is "neither capricious nor arbitrary" in its policy.[4]

These somewhat nebulous constitutional directives can be better understood by reference to statutory examples of two basic types of grandfather clauses. The first type includes clauses in which mandatory certification is meant to prevail. Those clauses flatly require certification of applicants meeting the grandfather stipulations and make no allowances for the regulatory authority to determine suitability of a questionable applicant. (For an example of this type of clause, see Section 1101.456, Occupations Code.) The second type includes somewhat modified clauses that allow for discretion on the part of the regulatory authority, yet retain the constitutionally necessary specificity. (See Section 605.254, Occupations Code, for an example of a modified clause.)

Even apart from constitutional issues, the need for specificity cannot be overemphasized when drafting a grandfather clause. Legal problems arising from these clauses can nearly always be traced to ambiguous language or the omission of certain elements necessary to determine eligibility. The following "grandfather's laundry list" is compiled from a review of case law and other sources:

- If a certification clause is meant to be mandatory, avoid using "may" (as in, "the board *may* issue a license to an applicant"). This has been held to imply a grant of discretion. Instead, say "the board *shall* issue a license to an applicant who . . ." or "an applicant who possesses these qualifications *is entitled to* a license."[5]
- State time limits, if any, under which applicants may file for grandfather exemptions and include this deadline information in the clause itself.[6]
- Be explicit about the type or length of service required for exemption and consider all eventualities. Must the service be continuous? Must it occur immediately before the act's effective date? Must it take place in the state?[7]
- Specify any applicable residence requirements. Does the grandfather clause apply to state residents only? Must applicants be residing in the state at the time of enactment?[8]

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[1] Section 8, Chapter 342 (H.B. 1174), Acts of the 68th Legislature, Regular Session, 1983.

[2] The name "grandfather clause" is derived from post–Civil War constitutional provisions in certain southern states. Those provisions imposed stringent property or literacy tests for voting in order to deny the franchise to the newly freed slaves. Most white citizens were exempted from the requirements by a "grandfather clause," applicable to descendants of persons eligible to vote before 1867.

[3] See *Bloom v. Tex. State Bd. of Exam'rs of Psychologists*, 492 S.W.2d 460, 461 (Tex. 1973).

[4] See *Hurt v. Cooper*, 113 S.W.2d 929, 934 (Tex. App.—Dallas 1938, no writ).

[5] Bloom, *supra*.

[6] See Tex. Att'y Gen. Op. Nos. V-595 (1948), V-1486 (1952).

[7] *Bloom, supra*.

[8] See the annotations at 4 ALR2d 688.

(i) The illusory saving clause. To conclude this section, a final caution is offered: Beware the illusory saving clause. This clause provides more or less as follows:

> SECTION 3. This Act applies to all litigation instituted on or after the effective date of this Act.

Such a provision is generally harmless—it merely states what would be the case in any event, given the general presumption that a law applies only prospectively. What the provision fails to do is save former law. The drafter of the preceding clause probably *meant* to say, but didn't, that the former law continues to apply to litigation instituted before the effective date of the act.

SEC. 3.13. SEVERABILITY AND NONSEVERABILITY CLAUSES. (a) Severability in general. When part of a statute is held to be invalid, the remainder of the statute is not affected by the invalidity if the court determines that the remainder of the statute is "severable" from the invalid part. A determination of severability requires an affirmative answer to two questions:

(1) Is the remainder of the statute capable of being given effect after the invalid part is removed?

(2) Would the legislature have enacted the remainder of the statute if the invalid part had not been included in the first place?

(b) Severability clauses. To encourage a finding of severability, drafters sometimes include in a bill a "severability clause" that reads substantially as follows:

> If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

The efficacy of the severability clause historically has been a matter for debate. Review of case law indicates that presence of the clause does not guarantee a finding of severability, while absence of the clause does not preclude such a finding. Probably the best that can be said for the clause is that it provides a clear statement of legislative intent that, in a close case, may influence a court to find that a statute is severable.

The question of whether to include a severability clause in a particular bill has largely been made moot in Texas by enactment of Sections 311.032 and 312.013, Government Code, which provide that all statutes are severable unless they declare that they are not.

Drafters are advised *not* to include a severability clause in a bill unless the requestor, after being advised of these general severability statutes, nonetheless insists on insertion of the clause.

(c) Nonseverability clauses. Nonseverability clauses come in two types: a "general" nonseverability clause, which declares that *none* of the provisions of an act are severable, and a "special" nonseverability clause, which declares that *specific* provisions of an act are not severable from one another.

The **general** nonseverability clause, if given effect according to its terms, would destroy a whole act because of a constitutional flaw in one minor provision. It should be used only when it is specifically requested.

A **special** nonseverability clause may be useful if the legislature wants to make clear that even though two provisions of an act could be given effect by themselves, both provisions are meant to be treated as a "package" and rise or fall together against a constitutional challenge. Language such as the following may be used for the purpose:

> SECTION 3. Section 1969.101, Occupations Code, as added by this Act, prohibiting the manufacture of bicycles without a license, and Section 1969.151, Occupations Code, as added by this Act, imposing a tax on the manufacture of bicycles, are not severable, and neither section would have been enacted without the other. If either provision is held invalid, both provisions are invalid.

SEC. 3.14. EFFECTIVE DATE. (a) In general. The need for the long-standing Texas practice of including an "emergency clause" in each bill was eliminated by constitutional amendment in 1999. The emergency clause, usually the last section of a bill, permitted the legislature by extraordinary vote to suspend either or both of two distinct constitutional rules: the rule requiring a bill to be read on three several days and the rule prohibiting an act from taking effect before 90 days after the date of adjournment. Although the extraordinary vote requirement remains, ***an emergency clause is no longer required or useful for bills. In its place, however, each bill should have a stated effective date.***

(b) Separate sections for effective date and transition provisions. The automated statute update program, used to update the statutes to incorporate changes enacted during each regular or special session, works most effectively when effective date language is stored in the database separately from transition provisions. Part of the reason for storing the two kinds of provisions differently is that while effective dates immediately become executed law, transition provisions usually have continuing effect for some temporary period.

A drafter must place effective date language and transition language in separate sections of a bill. It is acceptable, if needed, to have more than one section in a bill contain effective date language, as long as none of the effective date sections contain transition language.

(c) Constitutional effective date rule. Section 39, Article III, Texas Constitution, provides that a law may not take effect "until ninety days after the adjournment of the session at which it was enacted" unless the legislature provides for an earlier effective date by vote of two-thirds of the membership. If the effective date rule is not suspended, or if an act does not specify an effective date, it will take effect on the 91st day after the date of final adjournment.[1]

There is not a separate vote to suspend the effective date rule. The vote that determines whether the rule is suspended is the final vote in each house on passage of the version of the bill on which both houses agree, incorporating any amendments or conference committee report changes.[2]

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[1] See *Halbert v. San Saba Springs Land and Livestock Ass'n*, 34 S.W. 639 (Tex. 1896). See also the perpetual calendar in Section 7.87 of this manual.

[2] See *Caples v. Cole*, 102 S.W.2d 173 (Tex. 1937); *Ex parte May*, 40 S.W.2d 811 (Tex. Crim. App. 1931); Tex. Att'y Gen. Op. Nos. O-5471 (1943), O-5185 (1943).

(d) Immediate effect. To make an act effective immediately, the drafter should include the following section, using one of the bracketed options:

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   SECTION 5. This Act takes effect immediately if it
receives a vote of two-thirds of all the members elected
to each house, as provided by Section 39, Article III,
Texas Constitution.  If this Act does not receive the
vote necessary for immediate effect, this Act takes
effect [September 1, 2021] [(stated date), 2021] [on the
91st day after the last day of the legislative session].
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In choosing the stated effective date in the second sentence of this clause, the drafter should choose September 1 for a bill to be enacted at a regular session unless considerations specific to the bill require another date. The 91st day is a mobile, arbitrary date dictated as the constitutional default but without any specific governmental purpose and can fall on any date from August 26 to September 1. A date in the last week of August (for instance, August 30, 2021—the 91st day after the scheduled adjournment sine die of the 87th Legislature) is an odd date that confuses many as a date for laws to take effect. Because the state fiscal year begins September 1, a date that falls on or within a few days after the 91st day of a 140-day session, it is a common practice to choose September 1 as the effective date of a bill, particularly if the bill has fiscal implications.

An act that meets requirements for immediate effect takes effect on the date of the last event necessary for it to become law. Although there are some inconsistent precedents, that date is generally considered to be:

(1) the date the governor approves the act;[1]

(2) for a vetoed bill, the date the veto is overridden;[2] or

(3) for a bill the governor neither approves nor vetoes before the expiration of the period for the governor to act under Section 14, Article IV, Texas Constitution, the date that period expires.[3]

(e) Specific effective date. If an act is to take effect on a specific date, whether before or after the 91st day after adjournment, but not immediately, the drafter should use an effective date section that specifies the date.

For effect before the 91st day after adjournment, but not immediately:

```
   SECTION 5. This Act takes effect July 1, 2021, if it
receives a vote of two-thirds of all the members elected
to each house, as provided by Section 39, Article III,
Texas Constitution.  If this Act does not receive the
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[1] *Tex. Co. v. Stephens*, 103 S.W. 481 (Tex. 1907); *Worbes v. State*, 71 S.W. 2d 872 (Tex. Crim. App. 1934); but see *Lawson v. Baker*, 220 S.W. 260 at 266 (Tex. App.—Austin 1920, no writ) ("The act [that received the necessary vote for immediate effect] was approved by the Governor March 31, 1919, and filed with the secretary of state the following day. Therefore it is undisputed that the act purported to become a law on April 1, 1919.").

[2] But see *United Emp'rs Cas. Co. v. Skinner*, 141 S.W.2d 955 (Tex. App.—Waco 1940, no writ) (bill enacting the law at issue was vetoed by the governor, the veto was overridden by the legislature by votes taken on May 29 and 31, 1939, and the court determined the effective date was June 1, 1939, which was the date the bill was filed with the secretary of state).

[3] See Tex. Att'y Gen. Op. No. O-3131 (1941) (governor's function of vetoing, approving, or letting bills become law without approval is a legislative function, and in the absence of the governor's veto or approval of a bill, the expiration of the period for the governor to act is necessary for the bill to become law).

vote necessary for effect on that date, this Act takes effect [September 1, 2021] [(stated date), 2021] [on the 91st day after the last day of the legislative session].

A law may be given an effective date *later* than the 91st day without suspending the constitutional effective date rule.[1] As noted in the previous subsection of this section, because the state fiscal year begins September 1, the drafter should choose September 1 as the effective date unless considerations specific to the bill require a different date. For example:

SECTION 5. This Act takes effect September 1, 2021.

(f) Effective date contingent on event or expiration of period. A drafter may need to provide for a bill to go into effect on the occurrence of an event or on the expiration of a specified period after that event takes place. (If the occurrence of an event may be disputed, an appropriate public official should be assigned responsibility for officially and publicly finding that the event has occurred.)

If the contingency on which a bill is to take effect *may* occur sooner than the constitutional effective date, a suspension of the effective date rule is necessary to account for that possibility. (Of course, if the contingency actually occurs on or after the constitutional effective date, the unnecessary suspension of the rule will have done no harm.) The following example assumes that the contingency may, but will not necessarily, occur sooner than the constitutional effective date:

SECTION 7. (a) This Act takes effect on the date the commissioner of education publishes the report required by Section 6 of this Act if that date:

(1) occurs before the 91st day after the last day of the legislative session and this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; or

(2) occurs on or after the 91st day after the last day of the legislative session.

(b) If that date of publication occurs before the 91st day after the last day of the legislative session and this Act does not receive the vote necessary for effect on that publication date, this Act takes effect [September 1, 2021] [(stated date), 2021] [on the 91st day after the last day of the legislative session].

(g) Effective date contingent on another bill or a constitutional amendment. The following is an example of language used to make a bill contingent on another bill:

SECTION 6. This Act takes effect September 1, 2021, but only if House Bill 1676, 87th Legislature, Regular

[1] See *Norton v. Kleberg County*, 231 S.W.2d 716 (Tex. 1950); *Popham v. Patterson*, 51 S.W.2d 680 (Tex. 1932); *Calvert v. Gen. Asphalt Co.*, 409 S.W.2d 935 (Tex. App.—Austin 1966, no writ).

Session, 2021, becomes law. If that bill does not become law, this Act has no effect.

To make a bill effective on adoption of a proposed constitutional amendment, an effective date section such as one of the following is generally used:

SECTION 2. This Act takes effect on the date on which the constitutional amendment proposed by H.J.R. 45, 87th Legislature, Regular Session, 2021, takes effect.[1] If that amendment is not approved by the voters, this Act has no effect.

OR

SECTION 12. This Act takes effect January 1, 2022, but only if the constitutional amendment proposed by S.J.R. 9, 87th Legislature, Regular Session, 2021, is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

OR

SECTION 2. This Act takes effect on the date on which the constitutional amendment proposed by the 87th Legislature, Regular Session, 2021, authorizing a home-rule municipality to provide in its charter the procedure to fill a vacancy on its governing body for which the unexpired term is 12 months or less is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

At the time a bill contingent on the adoption of a constitutional amendment is drafted, the drafter often does not know the number of the joint resolution proposing the amendment, either because the resolution has not yet been introduced or because two or more resolutions have been introduced and it is not known which one will eventually pass. Referring to an amendment generically, as in the third example above, gets around this problem. This procedure works well if multiple, differing joint resolutions on the same subject have not been introduced and are not anticipated. If differing resolutions on the same subject are expected, the drafter may be able to distinguish the relevant constitutional amendment from the others by referring to the amendment with slightly more detail.

Another drafting approach is to leave blanks in the effective date section, to be filled in later ("__J.R. __"). The intense activity of the legislative session makes this approach somewhat dangerous, however. Through an oversight, the appropriate letter and number might never be inserted in the blanks. Therefore, this approach should be used with caution.

(h) Parts of a bill to take effect on different dates. To provide different effective dates for different parts of a bill, one of the following forms may be used:

- If none of the effective dates is sooner than the constitutional effective date:

[1] See Section 4.07(c) of this manual concerning the effective date of amendments to the state constitution.

SECTION 3. Section 171.002, Tax Code, as amended by this Act, takes effect January 1, 2022.

- If part, but not all, of an act is to take effect sooner than the constitutional effective date:

SECTION 8. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect [September 1, 2021] [(stated date), 2021] [on the 91st day after the last day of the legislative session].

(b) Section 38.022, Utilities Code, as added by this Act, takes effect January 1, 2022.

OR

SECTION 18. This Act takes effect September 1, 2021, except that Section 21.002, Government Code, as amended by this Act, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 21.002, Government Code, as amended by this Act, takes effect September 1, 2021.

- To delay or accelerate the effective date of particular sections or applications of an act:

SECTION 2. The Department of Agriculture may not destroy or treat cotton as permitted by Section 74.118, Agriculture Code, as added by this Act, before June 1, 2022.

SECTION 3. Except as provided by Section 2 of this Act:

(1) this Act takes effect June 1, 2021, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for effect on that date, this Act takes effect [September 1, 2021] [(stated date), 2021] [on the 91st day after the last day of the legislative session].

OR

SECTION 14. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2022.

(b) Section 231.014, Family Code, as added by this Act, takes effect September 1, 2021.

Stating an effective date for a section within the section itself is permissible if the section is amendatory and the effective date is contained in the recital of the law to be amended. For example:

SECTION 14. Effective January 1, 2022, Section 154.021(b), Tax Code, is amended to read as follows:

This technique may be particularly useful in a long amendatory bill, such as an omnibus tax bill. Placing the effective date in the section to which it applies eliminates the possibility that amendment of the bill during the legislative process and attendant renumbering of sections may result in incorrect references in a separate effective date section.

Occasionally, it is necessary to amend the same statute in different ways to take effect at different times, as to increase the rate of a tax by degrees. To accomplish this, multiple amendatory sections are required. The first section amends the current law as appropriate to accomplish the initial change. Subsequent sections amend the same law and take effect at later dates specified in the recitals.[1] In this instance, placing the effective date in the recital not only eliminates possible renumbering problems but also makes it readily apparent to a reader why the same law is being amended more than once in the same bill.

(i) Appropriations acts. Section 39, Article III, Texas Constitution, expressly exempts "the general appropriation act" from the effective date rule. As a result, a general appropriations act takes effect according to its terms without the requirement of an extraordinary affirmative vote in each house. For a general appropriations act that is a biennial budget bill passed at a regular session, this exception is not needed because the state fiscal year begins on September 1, which always falls more than 90 days after adjournment. Ordinary acts that merely contain an appropriation are not exempted from the effective date rule.

(j) Effectiveness contingent on appropriations. It is a widely believed myth that an executive agency is required to implement a statute only if the legislature appropriates funds for that implementation. The lack of specific appropriations for a new statutory duty does not, as a rule of law, relieve the agency of its duty.

From time to time, the legislature seeks to make a bill or a portion of a bill expressly effective contingent on appropriations. In such a case, unless a clear and specific appropriation is made, the contingency may create ambiguity as to whether the bill has taken effect. In each case, the drafter should carefully consider the specific language of the contingency. If, at the time the provision is drafted, the related language contained in the General Appropriations Act is unknown, it may be impossible to ensure that the ambiguity is resolved or that the legislative client's purpose is achieved.

If it is necessary to provide a contingency for the failure of appropriations specific to the purpose of an act, an alternative would be to expressly provide that *implementation* of a statute is contingent on appropriations specific to that purpose. This provides certainty

[1] Each subsequent amendment is underlined and bracketed against current law and not against the law that would be in effect immediately preceding the subsequent amendment's effective date, as proposed in the bill.

as to whether a particular bill became law but requires the affected agency to act only if it is determined the appropriation was made. The following provision would accomplish that result:

> SECTION 8. The Texas Historical Commission is required to implement [this Act] [specified provisions of the Act] only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement [this Act] [the specified provisions] using other appropriations available for the purpose.

(k) Occupational licensing. Putting a licensing law into effect all at once will likely create a period, while licensing procedures are being established, during which no one in the state is legally authorized to pursue the affected occupation.

This problem can be avoided by staggered implementation, delaying the effective date of the mandatory licensing requirement until the administering agency has had time to get organized and is ready to do business. For example:

> SECTION 14. This Act takes effect January 1, 2022, except that Section 204.151, Occupations Code, as added by this Act, takes effect January 1, 2023. [Section 204.151 establishes the licensing requirement.]

If enforcement of a mandatory licensing requirement is accomplished through imposition of a penalty, the effective date of the penalty provision should be delayed to the same effective date as the mandatory licensing provision.

(l) Drafting considerations. An appropriate effective date can be critical to the orderly implementation of a new law. The larger body of law within which the new law will operate sometimes provides guidance regarding an appropriate effective date. A change in sales tax law, for example, might create less confusion if it takes effect on the first day of an existing reporting period instead of during one, and a change in a requirement, qualification, or exemption that is determinable on a specific annual date, such as property tax exemptions determined as of January 1, could most easily be administered by becoming effective on that date. The establishment of a new program before funding is available creates obvious difficulties. For this reason, many laws requiring state funding are drafted to take effect on the first day of a state fiscal biennium, and many laws requiring local funding are drafted to take effect on the first day of the local government's state fiscal year, which varies but is often October 1.

Another consideration with a new program is whether rules under the program must be adopted for the program to work; it is often necessary to have rulemaking provisions take effect before portions of the act that are dependent on the rules become effective. A drafter should be aware, however, that Section 2001.006, Government Code, expressly permits state agencies to adopt rules or take other administrative action in preparation for implementation of a statute that has become law but has not yet taken effect.[1] The question of notice must also be considered, particularly if affected persons may need time to adjust their conduct to a new law. Attention to the effective date issue at the drafting stage can save much trouble later on.

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[1] Rules adopted in preparation for implementation of legislation may not take effect earlier than the legislation being implemented.

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CHAPTER 4
JOINT RESOLUTIONS TO AMEND TEXAS CONSTITUTION

SEC. 4.01. INTRODUCTION. Section 1, Article XVII, Texas Constitution, provides that the legislature, "by a vote of two-thirds of all the members elected to each House," may propose amendments to the state constitution. Amendments may be proposed "at any regular session, or at any special session when the matter is included within the purposes for which the session is convened."

Although the constitution does not specify that a particular type of legislative document be used to propose a constitutional amendment, a joint resolution is always used for the purpose. Rules of the house of representatives require the use of the joint resolution to propose a constitutional amendment.[1] Senate rules, while not specifically imposing such a requirement, clearly assume that a joint resolution will be used.[2]

Joint resolutions proposing constitutional amendments differ in form only slightly from bills. The parts of a joint resolution and the sections in this chapter where they are discussed are:

- introductory formalities:
  - heading (Sec. 4.02)
  - title or caption (Sec. 4.03)
  - resolving clause (Sec. 4.04)
- amendatory sections (Sec. 4.05)
- repealers (Sec. 4.06)
- temporary provisions (Sec. 4.07)
- submission clause (Sec. 4.08)

This chapter concludes with a discussion in Section 4.09 of the permissible scope of a single proposed amendment.

SEC. 4.02. HEADING. The heading of a joint resolution is the same as that of a bill except that the blank for the resolution number is labeled "_____.J.R." The reason for the blank and the procedure for filling in all blanks in the heading are the same as for bills. See Section 3.02 of this manual. The heading on a final draft as delivered to the author appears as follows:

By: _____ _____.J.R. No. _____

[1] House Rule 9, Section 1, 86th Legislature, provides that a proposed constitutional amendment "shall take the form of a joint resolution."
[2] See Senate Rules 10.01–10.03, 86th Legislature, and the accompanying commentary in the *Texas Legislative Manual*.

SEC. 4.03. TITLE OR CAPTION. Although proposed constitutional amendments are not subject to the constitutional title (or caption) rule,[1] a title, similar in format to a bill title, is always included in a joint resolution. It appears as follows:

A JOINT RESOLUTION

proposing a constitutional amendment relating to the manner in which a vacancy in the office of lieutenant governor is to be filled.

The description of the subject of the amendment should be introduced with the phrase "proposing a constitutional amendment . . . ." The singular term "amendment" should be used even if the resolution proposes changes in two or more distinct provisions of the constitution, proposes two or more discrete additions to the constitution, or proposes a combination of additions and changes in existing provisions. The plural term "amendments" is appropriate only if the resolution proposes distinct amendments, each of which is to be submitted under a separate ballot proposition.[2] The subject of the amendment should be described in general terms, omitting any reference to the specific sections of the constitution affected or to other detail.

SEC. 4.04. RESOLVING CLAUSE. There is no constitutional requirement of a particular resolving clause for a joint resolution, but the following clause is always used:

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SEC. 4.05. AMENDATORY SECTIONS. The substance of the proposed amendment is contained in one or more sections that are exactly parallel in format to amendatory sections of a bill. Each section simply announces that a specific provision of the constitution is amended "to read as follows," with the changes in the text indicated by underlining and bracketing as is done in a bill.

Although the constitutional rule against "blind amendment" is probably inapplicable to proposed constitutional amendments,[3] it is customary to draft proposed amendments as if the rule applied, reproducing at length the entire section or subsection to be amended. This practice makes the effect of a proposed amendment more obvious to the reader.

An amendatory section of a joint resolution appears as follows:

SECTION 1. Article VIII, Texas Constitution, is amended by adding Section 1-m to read as follows:

Sec. 1-m. The legislature by general law may authorize a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.

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[1] Section 35, Article III, Texas Constitution, by its own terms applies only to bills. However, house precedents assert that by operation of House Rule 9, Section 1(a), most recently adopted for the 86th Legislature, certain caption rules contained in Rule 8, Section 1, apply to house joint resolutions proposing constitutional amendments. See H.J. of Tex., 84th Leg., R.S. 1405-1406 (2015); H.J. of Tex., 83rd Leg., R.S. 1615-1616 (2013). Title and caption rules are discussed in Section 3.03 of this manual.

[2] See Section 4.09 of this manual concerning the permissible breadth of a single proposed amendment.

[3] See Section 36, Article III, Texas Constitution, and Section 3.10(d) of this manual.

As is shown in this example, sections of the constitution do not have official headings, although unofficial headings are usually supplied in published versions.

SEC. 4.06. REPEALERS. A repealer in a joint resolution is exactly parallel to the repealer in a bill (see Section 3.11 of this manual). For example:

```
      SECTION 3. Section 24, Article XVI, Texas Constitution,
   is repealed.
```

SEC. 4.07. TEMPORARY PROVISIONS. (a) Introduction. Joint resolutions that have as their primary purpose the making of temporary changes in the constitution are rare. The processes of gaining legislative and voter approval of a constitutional amendment are usually seen as too daunting to make the joint resolution an attractive instrument for changes of intentionally limited duration. However, a drafter may want to consider including in a joint resolution a variety of temporary provisions, in addition to the submission clause (see Section 4.08 of this manual), to accomplish the purpose of easing a constitutional change into effect.

(b) Placement in the constitution. Although temporary provisions in joint resolutions are similar in many ways to saving and transition provisions in bills, there are differences. The most obvious of these is their placement within the existing body of laws. A bill provision of only temporary significance ordinarily is not drafted as a direct amendment to an existing statute. As a freestanding provision, it usually is printed only in publications containing the texts of bills rather than compiled statutes or as a notation in a compilation of statutes following the text of the existing statute. Its terms are as forceful as those of any other part of a bill, but because it acts on the law for a limited time, it is not put in a place where it must continue to be printed as clutter after it has become obsolete.

The conventional wisdom is that *all* terms relating to the operation of a constitutional amendment once it is adopted must be prepared as amendments to the constitution. A reason for this belief is that constitutional provisions, being superior to other laws, cannot be qualified or explained according to terms that are in a document of lesser legal stature. Also, the voters, rather than the legislature, give effect to a constitutional amendment, and they vote literally to adopt what is termed on the ballot proposition an "amendment," not the whole resolution.

Excluded from this principle by common sense is the repealer, since it amends by *removing* language from the constitution rather than by adding to it.

Minimization of clutter is the reason a temporary provision inserted into the constitution needs to be self-destructing. Since the constitution is relatively difficult to change, a provision that is not of lasting significance could outlive its welcome in that document by many years if it does not prescribe its own removal.

It is sometimes possible to place temporary provisions in the constitution as severable parts of the permanent amendments; a subsection with its own expiration date is an example. When this is awkward or not feasible, a completely separate temporary provision is in order. The provision does not need to be put in a particular place in the constitution; in fact, it is desirable not to specify placement. The essential element is that the provision contain its own expiration date.

The form of a section proposing a temporary constitutional provision that includes the joint resolution number is as follows:

> SECTION 2. The following temporary provision is added to the Texas Constitution:
>
> TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by H.J.R. 4, 85th Legislature, Regular Session, 2017.
>
> (b) The amendment to Section 1-b(c), Article VIII, of this constitution takes effect January 1, 2018.
>
> (c) This temporary provision expires January 2, 2018.

The form of a section that proposes a temporary constitutional provision without indicating the joint resolution number is as follows:

> SECTION 2. The following temporary provision is added to the Texas Constitution:
>
> TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a first responder who is killed or fatally injured in the line of duty.
>
> (b) Sections 1-b(o) and (p), Article VIII, of this constitution take effect January 1, 2018, and apply only to a tax year beginning on or after that date.
>
> (c) This temporary provision expires January 1, 2019.

(c) Effective date. Section 1, Article XVII, Texas Constitution, states that an adopted amendment becomes part of the constitution, but doesn't specify when. The issue was before Texas courts as early as 1892. Their consistent interpretation has been that, unless otherwise clearly indicated, an amendment takes effect as part of the constitution on the date of the official canvass of returns showing adoption.[1] That date as prescribed by Section 67.012, Election Code, is:

(1) not earlier than the 15th or later than the 30th day after election day; or

(2) for an election described by Section 65.051(a-1), not earlier than the 18th or later than the 33rd day after election day.

The usual effective date of constitutional amendments is not appropriate for some types of amendments. If an amendment applies to a right or duty that should be exercised at specific times, such as the first day of a month or year, the terms of the amendment should become operational at those times. Of course, the amendment can contain a recital such as "beginning with the 2023 tax year" or "beginning with the report due for December 2022," but

[1] *Torres v. State*, 278 S.W.2d 853 (Tex. Crim. App. 1955); *Tex. Water & Gas Co. v. City of Cleburne*, 21 S.W. 393 (Tex. App. 1892, no writ).

the cleaner procedure is to insert a separate section or subsection that provides a specific effective date. The provision should itself expire on a certain date. If the effective date is not included in the constitution, the drafter runs the risk that a court will determine that the usual date applies since that date was construed from the language of Section 1, Article XVII.

(d) "Self-enacting" clause. Occasionally, a constitutional amendment is proposed or adopted that declares itself to be "self-enacting" or "self-executing." A self-enacting or self-executing amendment is one that prescribes all details necessary for giving it effect without the need for implementing legislation. Drafters should not use the "self-enacting" clause because it is the prescribing of those necessary details that makes an amendment self-enacting, not the fact that the amendment describes itself as self-enacting. Even if an amendment describes itself in that way, the amendment is in fact *not* self-enacting and will not be so construed if it fails to describe those details.

(e) Validation of anticipatory legislation. The constitution contains random occurrences of a sentence substantially as follows:

> Should the legislature enact any enabling laws in anticipation of this amendment, no such law shall be void by reason of its anticipatory nature.

There is no legally sound basis on which to argue that "anticipatory legislation," the taking effect of which is conditioned on adoption of a constitutional amendment,[1] is void because of its "anticipatory nature." The clause is meaningless and should not be used.

SEC. 4.08. SUBMISSION CLAUSE. (a) Purpose of clause. The last section of a joint resolution proposing a constitutional amendment is the submission clause, the purpose of which is to specify the date of the election on the proposed amendment and the wording of the ballot proposition. The following standard form is used:

> SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held (DATE). The ballot shall be printed to permit [*or* "provide for"] voting for or against the proposition: "(WORDING OF BALLOT PROPOSITION)."

(b) Election date. In prescribing the mode by which the constitution is to be amended, Section 1, Article XVII, Texas Constitution, provides that "[t]he date of the elections shall be specified by the Legislature."

It is, of course, the client's prerogative to decide the date of the election at which the amendment is to be submitted to the voters. If the client does not prefer a particular date, the general practice of the legislative council staff is to provide for submission of the amendment on the uniform election date in November, which is the first Tuesday after the first Monday in November. The drafter then must determine whether to use the November date in an odd-numbered year or an even-numbered year. For an amendment proposed in a regular session of the legislature, the November date in the same *odd-numbered year* as the regular session is the date most often used. An advantage of using that date is that it will result in a timely submission of the amendment to the voters. A disadvantage is that the date will result in a statewide special election on the proposed amendment since no

[1] See Section 3.14 of this manual for a discussion of effective dates for statutes contingent on the adoption of constitutional amendments.

other statewide election is ordinarily scheduled for that date. Section 7.86 of this manual lists the November election dates through 2032.

Occasionally, for an amendment proposed in a regular session of the legislature the uniform election date in November of the *even-numbered year* following the regular session is used. A disadvantage in using that date is that it will result in a delay in submitting the amendment to the voters. An advantage is that the date will preclude a special election by causing the amendment to be submitted on the date of the regular statewide general election.

A joint resolution proposing a constitutional amendment may be amended after introduction to provide a different election date if necessary. (When drafting such an amendment, the drafter should carefully review the rest of the resolution to determine whether other dates or provisions must be changed to conform to the changed election date.)

The legislature occasionally wishes to submit an amendment at the earliest possible date after passage of the resolution. Because of the time required to comply with the procedural requirements applicable to elections on proposed amendments, the earliest possible date on which such an election can be held under current election law is *about* 70 days after passage of the resolution,[1] and that schedule can be met only if the secretary of state and attorney general act as quickly as possible in carrying out their constitutional duties relating to preparation and approval of an analysis of the proposed amendment.

(c) Ballot proposition. The ballot proposition should be a simple affirmative statement of the substance of the proposed amendment. Although attempts have been made to challenge a proposed constitutional amendment in court on the ground that the ballot proposition is inaccurate or misleading, such an attack has never succeeded. Courts have held that the role of the ballot proposition is to identify a proposed amendment in a way that distinguishes it from the other proposed amendments on the ballot. This can be accomplished by language that shows the "character and purpose" of the amendment.[2] A ballot proposition does not need to contain a lengthy or exhaustive explanation of the effect of the amendment. Ideally, a ballot proposition should describe the proposed amendment accurately, concisely, and in plain English understandable by a typical voter. The degree of precision that may be needed in the amendment itself may be inappropriate on the ballot, and legal or technical jargon should be avoided as much as possible. These propositions, which appeared on past ballots, illustrate the type of wording a drafter should strive for:

> H.J.R. 48, 70th Legislature, Regular Session: "The constitutional amendment to limit school tax increases on the residence homestead of the surviving spouse of an elderly person if the surviving spouse is at least 55 years of age."
>
> H.J.R. 23, 78th Legislature, Regular Session: "The constitutional amendment permitting refinancing of a home equity loan with a reverse mortgage."
>
> H.J.R. 79, 79th Legislature, Regular Session: "The constitutional amendment authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority."
>
> S.J.R. 5, 84th Legislature, Regular Session: "The constitutional amendment dedicating certain sales and use tax revenue and motor vehicle sales, use, and

[1] This schedule does not apply to an election to be held on a uniform election date. Under Section 3.005(c), Election Code, an election to be held on a uniform election date must be ordered not later than the 78th day before election day.

[2] *Hill v. Evans*, 414 S.W.2d 684 (Tex. App.—Austin 1967, writ ref'd n.r.e.).

rental tax revenue to the state highway fund to provide funding for nontolled roads and the reduction of certain transportation-related debt."

SEC. 4.09. PERMISSIBLE SCOPE OF AMENDMENT. Section 1, Article XVII, Texas Constitution, does not mention the permissible scope of a single constitutional amendment. In practice, the legislature has interpreted this provision as vesting it with broad discretion concerning the scope of a single amendment. As long ago as 1891 the legislature by a single resolution proposed a wholesale revision of the entire judiciary article of the constitution, which was approved by the voters.

The only judicial interpretation of the permissible scope of a proposed amendment was a 1948 court of civil appeals case involving a 1947 amendment establishing a method for funding state college construction. Several arguments against the validity of the amendment were raised, including the argument that it contained several distinct proposals that should have been submitted to the voters as separate amendments. In overruling this contention, the court said:

> Art. 3, Sec. 35, of the Constitution provides that no legislative bill, except appropriation bills, shall contain more than one subject.
>
> Significantly, it seems to us, *there is no such limitation upon proposed amendments to the Constitution*. To limit a constitutional amendment to one subject would be to place a restriction upon the right of the legislature to propose and the people to adopt an amendment to the Constitution which is not contained in such document.[1] (Emphasis added.)

Whether the legislature may, through the ordinary amendment process, propose a complete revision of the constitution as a single amendment is another question, one no Texas court has ever had to answer. The courts in other states are divided on the issue.[2]

In 1975 the legislature by a single resolution proposed a virtually complete revision of the constitution, but the revision was proposed as eight distinct amendments, each pertaining to a different part of the constitution, and each of which was ultimately defeated by the voters. The 1975 proposal was an attempt to salvage the work of the 1974 constitutional convention, authorized by a 1972 constitutional amendment. That convention, of which every member of the legislature was an ex officio member, although authorized to submit a proposed new constitution, was unable to obtain the two-thirds agreement required by the constitutional amendment providing for the convention.

The fact that the most recent attempt to submit a completely new constitution to the voters of Texas as a single proposal was through the 1974 constitutional convention, specifically authorized by a constitutional amendment, contributes to a widely held assumption that the legislature lacks authority under Section 1, Article XVII, to propose a new constitution as a single amendment. This assumption may well be wrong.

It is worth noting that the same legislature that proposed the amendment providing for the 1974 constitutional convention also proposed an amendment, adopted by the voters, to Section 1, Article XVII. The main purpose of that amendment was to authorize called sessions of the legislature to propose constitutional amendments, but the amendment also

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[1] *Whiteside v. Brown*, 214 S.W.2d 844 at 850 (Tex. App.—Austin 1948, writ dism'd).
[2] See Braden et al., *The Texas Constitution: An Annotated and Comparative Analysis*, pp. 824–826.

changed the wording of the first sentence of that section to expressly authorize the proposal of amendments "revising" the Texas Constitution.

In view of the specific constitutional authorization of amendments "revising" the constitution, the legislature's own broad construction of its amendment authority as evidenced by the 1891 complete revision of the judiciary article, and what the court of civil appeals had to say about the 1947 college funding amendment, it is difficult to argue for a restrictive interpretation of Section 1, Article XVII. That section likely would be interpreted to permit the legislature to propose single amendments that are sweeping in scope, perhaps including even a complete revision of the constitution.

CHAPTER 5
OTHER RESOLUTIONS

SEC. 5.01. INTRODUCTION. The resolution is the vehicle for a range of legislative and nonlegislative actions besides amendment of the Texas Constitution. This chapter discusses the principal parts of a resolution and the function of each (Sec. 5.02), then reviews the principal types of resolutions, other than resolutions to amend the state constitution, and their uses. The types of resolutions and their principal parts are:

- concurrent resolutions generally (Sec. 5.03)
- concurrent resolutions granting permission to sue the state (Sec. 5.04)
- simple resolutions (Sec. 5.05)
- captions for simple and concurrent resolutions (Sec. 5.06)
- resolutions related to amendment of the United States Constitution (Sec. 5.07)
- member resolutions (Sec. 5.08)

SEC. 5.02. PARTS OF A RESOLUTION. (a) The heading. The heading of a joint, concurrent, or simple resolution is constructed in much the same manner as the heading of a bill. Member resolutions do not have a heading. The heading of a final draft of a **concurrent resolution** as it is delivered to the author appears as follows:

By: _____ __.C.R. No. _____

The heading of a final draft of a **simple resolution** appears as follows:

By: _____ H.R. No. _____

OR

By: _____ S.R. No. _____

The heading of a final draft of a **joint resolution** appears as follows:

By: _____ __.J.R. No. _____

(b) The title. Just after the heading of each resolution is a title, which simply identifies the document. The title of a concurrent resolution appears as follows:

CONCURRENT RESOLUTION

The title of a simple resolution or member resolution appears as follows:

R E S O L U T I O N

The title of a joint resolution, except one used to ratify an amendment to the U.S. Constitution (see Section 5.07(c) of this manual), to call for a U.S. constitutional convention (see Section

5.07(d) of this manual), or to amend the Texas Constitution (see Section 4.03 of this manual), appears as follows:

A JOINT RESOLUTION

(c) The preamble. The preamble of a resolution supplies general information or arguments that give a reason for the action that is proposed in the resolution. A preamble is not a necessary part of a resolution but is often viewed as the most important because it provides a forum for presenting ideas and expressing sentiments. A preamble is not used in a resolution that:

- establishes or amends the rules of procedure of the legislature
- calls for sine die adjournment
- authorizes the adjournment of either house for more than three days
- proposes an amendment to the Texas Constitution

A preamble is drafted in this form:

> WHEREAS, Texas has a large number of laws relating to persons with disabilities, and those laws are spread throughout the state's statutes; and
>
> WHEREAS, A compilation and explanation of those laws, including an index, cross-references, and notes on the purpose of this legislation, would be a useful tool not only for persons with disabilities but also for agencies and organizations serving those persons; now, therefore, be it
>
> [RESOLVED . . . .]

(d) General substantive provisions. The substantive provisions of a resolution may be classified into two major categories:

(1) the declaration of intention or adoption of a course of action; and

(2) subordinate provisions for carrying out the main intention or course of action.

General substantive provisions appear in this form:

> RESOLVED, That the 87th Legislature of the State of Texas hereby request the Texas Legislative Council to make a compilation of state laws relating to persons with disabilities that would include the text of all such laws, appropriate annotations, explanations, and a comprehensive index; and, be it further
>
> RESOLVED, That the council staff be authorized to request the assistance of private organizations, state agencies, and knowledgeable individuals as needed in the discharge of its duties relating to this project.

The examples above follow the traditional practices of capitalizing "WHEREAS" and "RESOLVED" for emphasis, capitalizing the first letter of each word immediately following "WHEREAS" or "RESOLVED," and constructing the resolution as a single complex sentence.

SEC. 5.03. CONCURRENT RESOLUTIONS GENERALLY. (a) Introduction. A concurrent resolution must be adopted by both houses of the legislature and deals with a matter that is of interest to the entire legislature. Because this type of resolution requires the concurrence of both houses, it usually must be presented to the governor for signing before it can take effect.[1] Either house may initiate a resolution to be concurred in by the other house. A concurrent resolution must be used to:

- establish or amend the joint rules of procedure of the legislature
- designate an official state symbol
- adopt an official place designation
- authorize a joint session of the legislature
- instruct the enrolling clerk of the applicable house to make minor clerical corrections on enrollment of a bill or resolution that has passed both houses
- authorize adjournment of either or both houses for more than three days
- provide for sine die adjournment of the legislature

Either a concurrent resolution or a simple resolution may be used to:

- recognize a group or individual, commemorate a special occasion, welcome or invite a distinguished guest, or pay tribute to the life of a deceased individual
- endorse a policy, position, or course of action
- petition or memorialize the U.S. Congress, the president, or other persons or entities in the federal government, expressing an opinion or requesting action
- direct a state agency, commission, or board to take an action

(b) Corrective resolutions. Concurrent resolutions instructing the enrolling clerk of the applicable house to make corrections on enrollment of a bill or resolution are customarily known as corrective resolutions. Grammatical, technical, and typographical errors are the types of mistakes this form of resolution is most commonly used to correct. In writing directions to the enrolling clerk, the drafter should follow the conventions used in the drafting of committee and floor amendments described in Section 6.03 of this manual. Corrective resolutions should originate in the chamber of origin of the bill being corrected and should instruct the enrolling clerk of that chamber to make the corrections. The following is an example of a corrective resolution for a house bill:

By: _____ __.C.R. No. ____

CONCURRENT RESOLUTION

WHEREAS, House Bill 1483 has been adopted by the house of representatives and the senate; and

[1] Section 15, Article IV, Texas Constitution, expressly excepts from this requirement resolutions on questions of adjournment. Precedent has also excepted resolutions about purely internal concerns of the legislature, such as resolutions adopting joint rules.

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED by the 86th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to make the following corrections:

(1) In SECTION 1 of the bill, in added Section 551.125(b)(1), Government Code, strike "meeting" and substitute "meaning".

(2) In SECTION 6 of the bill, in amended Section 2308.314(a), Government Code, strike "[~~the committee~~]" and substitute "the [~~committee~~]".

(3) Strike SECTION 22 of the bill and substitute the following:

SECTION 22. Section 13.156, Education Code, is repealed.

SEC. 5.04. CONCURRENT RESOLUTIONS GRANTING PERMISSION TO SUE STATE.

(a) Introduction. For centuries the doctrine of sovereign immunity, common to some degree among all recorded systems of law, shielded government from accountability for torts it committed against private individuals or entities. Courts and statutes have created doctrinal exceptions through which recovery against the government is possible,[1] but the state and, to a lesser extent, its subdivisions are still immune from liability in many circumstances. The legislature by statute may waive immunity from liability and by statute or resolution waive immunity from suit in cases in which the state is alleged to be liable. It is with immunity from suit that this section is concerned.

A drafter who does not specialize in preparing resolutions granting the state's permission to be sued probably cannot give a client advice about the possibilities for recovery in a particular instance but should be generally familiar with the types of provisions that can be effectively included in a resolution granting permission to sue.[2]

(b) Form of permission. The usual legislative vehicle for grants of permission to sue the state is a concurrent resolution (although permission also may be given by special law). A concurrent resolution is preferred because it can take effect immediately on the governor's signature without the two-thirds vote required for a bill to take immediate effect.[3]

Chapter 107, Civil Practice and Remedies Code, provides general rules applicable to all resolutions granting permission to sue the state.

(c) Effect of permission. The only effect of a legislative grant of permission to sue the state is a waiver of the state's immunity from suit. This is true whether or not the resolution recites a reservation of defenses.[4] Several cases have held that it is a violation of Section

[1] See, for example, Chapters 101 and 104, Civil Practice and Remedies Code. Chapter 101 expressly waives immunity from suit as well as immunity from liability; therefore, no further legislative permission is required in a circumstance to which that chapter applies.

[2] For a discussion of the scope of the state's liability, see 55 Tex. L. Rev. 719 (1977).

[3] A drafter contemplating preparing a special bill granting permission to sue the state needs to be aware of the constitutional restrictions on special laws provided by Section 56, Article III, Texas Constitution, and judicial decisions construing that section.

[4] See, for example, *State v. McKinney*, 76 S.W.2d 556 (Tex. App.—Beaumont 1934, no writ), and *State v. Brannan*, 111 S.W.2d 347 (Tex. App.—Waco 1937, writ ref'd).

3, Article I, Texas Constitution, for the state to waive immunity from *liability* in a specific suit because it results in granting to the beneficiary of the waiver a right that others do not have.[1]

Section 107.002, Civil Practice and Remedies Code, establishes the effect of permission granted by resolution. A resolution may not alter the effect of the permission described by that section but may further limit the available relief.

(d) Strict construction of grant of permission. Courts have stated that laws in derogation of the state's sovereignty are to be strictly construed, but this typically has resulted only in producing determinations that grants of permission are not effective to waive liability. A grant will not be narrowly or technically construed to deny a suit.[2]

A statement of facts, included in a resolution, that indicates a cause of action probably will support any cause of action arising out of those facts. However, at least one court has stated in dictum "the suit must follow the clear intent of the Legislature expressed in the resolution."[3] For this reason, it is probably the better practice to avoid the potential problem by *not* stating the theory of recovery in the resolution but rather stating only the facts, that the claimant alleges that the state is liable, and that the claimant is authorized to bring suit for whatever relief to which the claimant may be entitled based on those facts.

(e) Conditions on bringing suit. Section 107.002, Civil Practice and Remedies Code, imposes the general conditions on bringing a suit against the state. However, under Section 107.004, the resolution granting permission to sue may impose additional conditions on the bringing of the suit.[4] The most common condition imposed is the specifying of the county in which the suit may be brought. This becomes a jurisdictional, not venue, requirement; therefore, the county designated may be a county in which the suit could not properly be maintained under the general venue statute (under which venue is not a jurisdictional requirement).

Under Section 107.002(a)(2), Civil Practice and Remedies Code, the suit must be filed before the second anniversary of the effective date of the resolution. The resolution may provide for a shorter filing period. Although either filing period may be shorter than is provided under the statute of limitations,[5] a resolution may not extend the statutory limit in a particular case.[6] It is important to remember that when legislative permission is required for a suit against the state, the statute of limitations does not begin to run until permission to sue takes effect (although the equitable doctrine of laches may bar some old claims).

When permission to sue the state is granted by resolution, the state is subject to rules of evidence and procedure to the same extent as any other litigant in a particular circumstance, regardless of any recitation that might appear in the resolution.[7]

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[1] *Matkins v. State*, 123 S.W.2d 953 (Tex. App.—Beaumont 1939, writ dism'd, judgm't correct); *State Highway Dep't v. Gorham*, 162 S.W.2d 934 (Tex. 1942); *Martin v. Sheppard*, 201 S.W.2d 810 (Tex. 1947).

[2] *State v. Hale*, 146 S.W.2d 731 (Tex. 1941); *Commercial Standard Fire and Marine Co. v. Comm'r of Ins.*, 429 S.W.2d 930 (Tex.App.—Austin 1968, no writ).

[3] *State v. Lindley*, 133 S.W.2d 802, 805 (Tex. App.—Dallas 1939, writ dism'd, judgm't correct).

[4] *Martin v. State*, 75 S.W.2d 950 (Tex. App.—El Paso 1934, no writ).

[5] *Tex. Mexican Ry. Co. v. Jarvis*, 15 S.W. 1089 (Tex. 1891); *State v. Williams*, 326 S.W.2d 551 (Tex. App.—Austin 1959), *rev'd on other grounds*, 335 S.W.2d 834 (Tex. 1960).

[6] *Buford v. State*, 322 S.W.2d 366 (Tex. App.—Austin, writ ref'd n.r.e.), *cert. denied*, 361 U.S. 837 (1959).

[7] *State v. Stanolind Oil & Gas Co.*, 190 S.W.2d 510 (Tex. App.—Beaumont 1945, writ ref'd); *Tex. Dep't of Corrs. v. Herring*, 513 S.W.2d 6 (Tex.), *aff'd*, 513 S.W.2d 6 (Tex. 1974); *State v. Jasco Aluminum Prods. Corp.*, 421 S.W.2d 409 (Tex. App.—Austin 1967, no writ).

(f) Form of resolution. The following form is used for resolutions granting permission to sue the state:[1]

By: _____ __.C.R. No. _____

CONCURRENT RESOLUTION

WHEREAS, _____ alleges that:

(1) _____ ; and

(2) _____ ;

now, therefore, be it

RESOLVED by the Legislature of the State of Texas,

That_____

(is)(are) granted permission to sue the State of Texas

and_____

subject to Chapter 107, Civil Practice and Remedies Code; and, be it further

RESOLVED, That the _____

be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code.

SEC. 5.05. SIMPLE RESOLUTIONS. A simple resolution is voted on only by the house in which it is introduced and is not sent to the governor for signing. The effect of its adoption does not go beyond the bounds and the authority of the house that acts on it. A simple resolution is used to:

- establish or amend the rules of procedure or administrative and budgetary policies of a single house
- initiate a study by a single house
- name a mascot

Either a simple resolution or a concurrent resolution may be used to:

- recognize a group or individual, commemorate a special occasion, welcome or invite a distinguished guest, or pay tribute to the life of a deceased individual
- endorse a policy, position, or course of action
- petition or memorialize the United States Congress, the president, or other persons or entities in the federal government, expressing an opinion or requesting an action
- direct a state agency, commission, or board to take an action

SEC. 5.06. CAPTIONS FOR SIMPLE AND CONCURRENT RESOLUTIONS. Each simple and concurrent resolution is given a caption that serves as a description of the

[1] A drafter may want to add to the form desired limiting conditions (see Subsection (e) of this section).

subject matter or the purpose of that particular resolution. The caption ordinarily does not appear in the body of the resolution, but a descriptive caption must be provided at the time a resolution is filed. Although not required by rules or the Texas Constitution, captions for these types of resolutions are needed for calendars, TLIS, journals, and session laws.

Captions should be succinct and do not have to match the resolving clause of the resolution as long as the general purpose of the resolution is accurately expressed. The general convention for such captions is to make the first word the key to identifying the resolution's subject matter or purpose.

Congratulatory Resolutions

Captions for congratulatory resolutions typically start with any one of several common verbs, state the name of the person or entity being honored, and provide a succinct description of the reason for the recognition. Examples include:

> Congratulating David Campbell of Athens on his induction into the National Freshwater Fishing Hall of Fame.
>
> Commemorating the 100th anniversary of the Rotary Club of Austin.
>
> Honoring Ambassador Ron Kirk for his service as United States Trade Representative.
>
> Commending the Dallas/Fort Worth Humane Society for its service to the community.
>
> Recognizing the San Patricio County 4-H Livestock Ambassadors for their work in the community.

Memorial Resolutions

Captions for memorial resolutions generally begin with "In memory of . . ." and then name the person and give the person's hometown. For example:

> In memory of the Honorable M. A. Taylor of Waco.

Other Simple and Concurrent Resolutions

Other types of simple and concurrent resolutions include those relating to legislative policy and procedural matters. Examples of appropriate captions include:

> Granting the legislature permission to adjourn for more than three days during the period beginning on Wednesday, January 20, 2021, and ending on Tuesday, January 26, 2021.

Inviting the chief justice of the Supreme Court of Texas to address a joint session of the legislature on March 6, 2021.

Encouraging participation in the National Fire Protection Association's Firewise Communities program.

Requesting the creation of a joint interim committee to study education policy as it relates to developing a skilled workforce.

Designating the Kemp's ridley sea turtle as the official State Sea Turtle of Texas.

Urging Congress to designate election day as a national holiday.

Directing the Texas Facilities Commission to rename the State Insurance Building Annex in the Capitol Complex the John G. Tower State Office Building.

If a resolution serves a dual purpose and one of those purposes is related to legislative policy and the other is congratulatory, the policy-related issue should be the primary element:

Designating Jewett as the Sculpture Capital of Texas and commemorating the third annual Leon County Art Trail.

SEC. 5.07. RESOLUTIONS RELATING TO AMENDMENT OF UNITED STATES CONSTITUTION. (a) Categories. There are three categories of resolutions relating to amendment of the United States Constitution:

(1) resolutions memorializing or petitioning Congress to propose an amendment;

(2) resolutions requesting that Congress call a convention for proposing amendments; and

(3) resolutions ratifying an amendment that has been proposed by Congress.

A resolution that memorializes Congress to propose an amendment is a simple expression of opinion and, as such, may be a simple or concurrent resolution that is subject to the ordinary rules for those resolutions. Although it is not binding on Congress as is a resolution calling for a constitutional convention that is adopted by the required number of states, a resolution memorializing or petitioning Congress is used much more frequently than a resolution calling for a convention because a convention, once convened, almost certainly is not restricted to the purpose for which it was called.

Because the United States Constitution provides that the state legislature alone shall apply to Congress to call a constitutional convention or ratify a proposed amendment, a resolution that performs one of those actions is not subject to the governor's approval and does not have to be included as a subject in the governor's call for a special session.

(b) Nomenclature. The rules of procedure of the house of representatives call for the designation of a resolution ratifying a proposed amendment as a "joint" resolution, rather than a concurrent resolution. The state constitution is silent on the subject. To eliminate confusion and facilitate the processing of these resolutions, the designation "joint resolution," which in the past has been the usual, but not exclusive, designation, should be consistently used to distinguish these resolutions from those that are subject to the governor's approval. A resolution that simply memorializes Congress, and therefore is subject to gubernatorial approval, should be designated as a "concurrent resolution."

(c) Resolution to ratify an amendment. A joint resolution to ratify a proposed amendment to the United States Constitution requires a caption that identifies its specific purpose. The caption for this type of resolution is drafted as follows:

```
A JOINT RESOLUTION

ratifying a proposed amendment to the Constitution of
the United States providing for representation of the
District of Columbia in the United States Congress.
```

When preparing a resolution to ratify an amendment to the United States Constitution, a drafter should consider including the text of the proposed amendment in the resolution. The practice is not mandatory but is a convenient way of providing to the legislators information that may help determine votes on the resolution. Some ratification resolutions have included the entire text of the congressional resolution proposing the amendment. This is informational when Congress specifies ratification deadlines or other procedural details for legislative actions.[1]

(d) Resolution to call a convention. A joint resolution to call for a convention to amend the United States Constitution requires a caption identifying its specific purpose but otherwise follows the normal resolution format of preamble and substantive provisions. The caption for a resolution of this type appears as follows:

```
A JOINT RESOLUTION

applying to the Congress of the United States for a
convention to amend the United States Constitution to
provide for representation of the District of Columbia
in the United States Congress.
```

SEC. 5.08. MEMBER RESOLUTIONS. This type of resolution is often used to convey congratulations or condolences to individuals or groups. Member resolutions are not introduced or acted on by the legislature, so they have only a signature line for the requesting legislator. Because member resolutions express the sentiments of an individual legislator and not the house or senate, they cannot effect legislative action. For this reason, a member resolution cannot "proclaim" or "designate," but it can "recognize" or "honor."

[1] For an example of a ratification resolution that includes the text of the congressional resolution proposing the amendment, see S.C.R. 1, 62nd Legislature, 2nd Called Session, 1972.

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CHAPTER 6
AMENDMENTS, SUBSTITUTES, AND CONFERENCE COMMITTEE REPORTS

SEC. 6.01. INTRODUCTION. The type of **amendment** discussed in this chapter is one that proposes to change the text of a bill or resolution during its consideration by the legislature, as opposed to the amendment of a statute or the constitution.[1]

A **substitute** is a type of amendment that is offered as an alternative to something else. A complete substitute for a bill or resolution is an alternative version of the whole bill or resolution. It is called a **committee substitute** if adopted by a committee, or a **floor substitute** if offered on the floor by an individual member. An amendment to only part of a bill or resolution can also be a substitute if it is offered as an alternative to another amendment under consideration, either in committee or on the floor. The drafting of this latter type of substitute is not specifically addressed in this chapter because it is drafted exactly the same as any other simple amendment, achieving its status as a substitute not by how it is drafted but by how it is offered.

A **conference committee report**, as its name indicates, is the product of a conference committee, which is a joint committee appointed by the lieutenant governor and speaker of the house to resolve matters in disagreement between the two houses on a bill or resolution. Like an ordinary committee substitute, it consists of a complete version of the bill or resolution.

The drafting of these various types of documents is addressed in the remainder of this chapter following a discussion of germaneness, a constitutional and parliamentary rule that limits the range of amendments that may be made to a legislative document.

SEC. 6.02. GERMANENESS. The essence of the germaneness rule is that a bill or resolution may not be amended by an amendment on a different subject. House Rule 11, Section 2,[2] provides:

> No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate. "Proposition" as used in this section shall include a bill, resolution, joint resolution, or any other motion which is amendable.
>
> Amendments pertaining to the organization, powers, regulation, and management of the agency, commission, or advisory committee under consideration are germane to bills extending state agencies, commissions, or advisory committees under the provisions of the Texas Sunset Act . . . .

Senate Rule 7.15 is substantially identical to the first sentence of the house rule.

---

[1] Parts of a bill that propose to amend a statute and parts of a joint resolution that propose to amend the constitution are discussed in Chapters 3 and 4 of this manual, respectively.

[2] All references in this chapter to legislative rules are to house and senate rules for the 86th Legislature.

In addition, Section 30, Article III, Texas Constitution, provides that "no bill shall be so amended in its passage through either House, as to change its original purpose."[1]

The subject or original purpose of a bill is determined by the body of the bill, notwithstanding the common notion that the caption controls in these matters. Although the caption, to the extent it fulfills its constitutional function, indicates what a bill is about, a "broad" caption does not broaden the range of possible amendments, nor does a "narrow" caption restrict the range.

Another common misconception is that the amendment of an existing law by a bill necessarily opens the existing law to any amendment by way of that bill that would be germane to the subject of the *law*. Germaneness to existing law of a proposed amendment or substitute is beside the point; the proposed amendment or substitute must be germane to the subject or purpose of the pending *bill*.[2]

What matters is whether the text of the bill shows an intent to deal comprehensively with a broad subject or an intent to deal with only a specific, narrow subject. An omnibus tax bill, for example, may be a proper host for a broad variety of amendments dealing with almost any aspect of state taxation, but an amendment to change the rate of the sales tax would probably not be germane to a bill dealing only with the allocation of cigarette tax revenue.

It is the responsibility of the presiding officer of the senate or house of representatives, or of the chair of a committee as to legislation in committee, to rule on a point of order raised under the germaneness rule or Section 30, Article III, Texas Constitution.

A drafter is not expected to give definitive advice about the germaneness of a particular amendment a member asks to have drafted, but should know at least enough about the subject to advise a member when a possible germaneness problem exists. Careful review of the house and senate precedents in the *Texas Legislative Manual* is helpful for this purpose. As such a review will show, there are so many close cases that are clearly "judgment calls" that it is foolish to attempt to give categorical opinions on specific germaneness questions.

In deciding whether to proceed with an amendment of doubtful germaneness, a member will probably wish to consider the consequences of an adverse ruling. If a point of order is sustained, the amendment is dead. For a simple floor or committee amendment, the risk may be worth taking, but an adverse germaneness ruling on a committee substitute is a different matter.

In the senate, when a committee reports a complete substitute, the original bill or resolution is "dead," according to Senate Rule 7.11, unless reported according to the procedures applicable to a minority report.[3] If a committee substitute is killed on the floor by a point of order, the original bill or resolution does not automatically become eligible for consideration.

In the house of representatives, Rule 4, Section 41, provides:

> If a point of order is raised that a complete committee substitute is not germane, in whole or in part, and the point of order is sustained, the committee substitute shall be returned to the Committee on Calendars, which may have

---

[1] This constitutional rule is repeated as House Rule 11, Section 3, and is cited as a reference at the end of Senate Rule 7.15.

[2] A house precedent containing a general statement on germaneness, including a remark about the standard against which germaneness is measured, is found on page 1733 of the house journal for the 58th Legislature, Regular Session, 1963.

[3] See Senate Rule 11.17.

the original bill printed and distributed and placed on a calendar in lieu of the substitute or may return the original bill to the committee from which it was reported for further action.

In either house, the sustaining of a germaneness point against a committee substitute late in the session may effectively kill the affected bill because there is not enough time left for its resurrection.

Rulings on germaneness or Section 30, Article III, of the constitution are shielded from judicial review by the enrolled bill rule.[1] So even if an ungermane amendment becomes a part of an act, the validity of the act is not in jeopardy *unless* (and this is a big "unless") the amendment results in a violation of the constitutional one-subject rule (Section 35, Article III, Texas Constitution), compliance with which is not covered by the enrolled bill rule.

SEC. 6.03. COMMITTEE AND FLOOR AMENDMENTS. The constitutional rule against amendment by reference[2] applies only to the amendment of a statute by an act, not to the amendment of a bill during the legislative process. It is entirely permissible, and indeed customary, to draft floor and committee amendments that merely specify how the text of a bill or resolution is to be changed, without setting out the entire text of the affected section.

The only formal difference between a floor and committee amendment for either house is the heading.

A **floor amendment** is headed as follows:

FLOOR AMENDMENT NO._____ BY: _____

The draft amendment is delivered to the client with the lines left blank. The legislator offering the amendment signs it after "BY," and an officer of the senate or house enters an amendment number at the time the amendment is considered.

A **committee amendment** is headed as follows:

COMMITTEE AMENDMENT NO._____ BY: _____

As with a floor amendment, the legislator offering the amendment signs on the "BY" line. The first line is filled in with an appropriate number by an employee of the committee if the amendment is adopted.

[1] See, for example, *Parshall v. State*, 138 S.W. 759 (Tex. Crim. App. 1911). See Section 8.03 of this manual for a discussion of the enrolled bill rule.

[2] See Section 3.10(d) of this manual.

After the heading, there is a recital that a specific legislative document is to be amended, followed by a precise explanation of the amendment. The drafter must take care to draft the amendment to the version of the document that is to be under consideration when the amendment is offered. More specifically:

IF THE AMENDMENT IS TO BE OFFERED:	IT SHOULD BE DRAWN TO:
In committee in the house of origin	The introduced bill
In committee in the other house	The engrossment from the house of origin (the version as passed from the house of origin)
On second reading in either house	The version as reported from committee in that house
On third reading in the senate	The version considered on second reading, as amended[1] (procedure is the same for either a senate or a house bill)
On third reading in the house	In the case of a house bill, the second reading engrossment;[2] in the case of a senate bill, the procedure is the same as a third reading amendment in the senate

To draft an amendment, it is first necessary to examine the bill or resolution to be amended and, considering the substantive result desired, determine exactly how the text must be changed. Unless the amendment is very simple, it is advisable to actually mark up the text with whatever changes are required and use the marked-up text as a guide for drafting the amendment. An amendment is, in effect, instructions to the officer of the house or senate responsible for enrolling and engrossing, stating precisely in what respects the text of the bill or resolution is to be changed.[3] This manual describes drafting conventions that the legislative council employs for clarity and precision in setting out instructions that the members and enrolling clerks can easily follow.

The text of any amendment may be introduced by the phrase “Amend (name of document) as follows:”, with the specific instructions following directly and, if more than one change is to be made, listed in order of appearance.

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[1] If an amendment was adopted on second reading, it may be necessary to refer to the amendment in identifying the text to be amended on third reading.

[2] Occasionally, engrossed riders are printed in lieu of a second reading engrossment. When this occurs, the bill or an engrossed rider, as appropriate, is amended.

[3] A point of order may be sustained against consideration of an amendment on the ground that it is indefinite: that is, that it does not clearly state how the text (as opposed to effect) of the measure is to be changed. See, for example, page 52 of the house journal for the 41st Legislature, 4th Called Session, 1930.

A certain vocabulary has evolved for drafting amendments. The following terms are preferable to any synonyms because their meaning is clear and participants in the legislative process are accustomed to them:

insert	used to provide for the addition of text between two points, as "between 'bananas,' and 'oranges,' insert 'apples,'" or "on page 14, between lines 14 and 15, insert the following:"
add	used to add text at the end of a section or other unit, as "at the end of SECTION 4, add 'This section does not apply to retired members.'"
strike	used to delete text, as "strike SECTION 2" or "on page 8, strike lines 14–19."
strike and substitute	to delete something and put something else in its place, as "strike 'collies' and substitute 'bulldogs'."

Most legislative documents have both page and line numbers to facilitate reference to specific text. If lines are not numbered, the drafter must use some other point of reference, such as "the third sentence of SECTION 4." It should be noted that a reference to a specific section of an *amendatory* bill or joint resolution can be ambiguous because there may be sections of the bill or resolution with section numbers identical to sections of law being amended. If the potential for ambiguity or confusion exists, reference to a section should be qualified. For example, the reference may be to "SECTION 5 of the bill" or, if to a section of law set out for amendment, to "amended Section 11.004, Health and Safety Code, in SECTION 18 of the bill."

In drafting amendments for the house of representatives, the legislative council staff generally prefers to complete the description of the location of the amendment before describing the action to be taken. This pattern enhances quick understanding of the amendment. For example:

WRITE

On page 3, line 22, between "go" and "away", insert "far".

DO NOT WRITE

On page 3, line 22, insert "far" between "go" and "away".

OR

Insert "far" between "go" and "away" on page 3, line 22.

OR

Between "go" and "away" on page 3, line 22, insert "far".

Of course, if a certain formulation makes the preferred pattern unreasonable and convoluted, the drafter should deviate from the pattern in that situation.

Because of the senate's distinct committee report form, which is single-spaced, the officers of the **senate** prefer that committee and floor amendments drafted for use in the senate **begin the instructions with a reference to the appropriate section** of the bill or section of amended law, as applicable. A reference to a page and line number should follow in parentheses, and the version of the document referred to should be identified. For example:

FLOOR AMENDMENT NO._____ BY: _____

Amend C.S.S.B. 897, in SECTION 3 of the bill (senate committee report page 12, lines 65-69), by striking Subsection (e).

COMMITTEE AMENDMENT NO._____ BY: _____

Amend S.B. 14 (introduced version) as follows:

(1) In SECTION 1 of the bill, in added Section 25.002(b)(2)(A), Finance Code (page 1, line 16), strike "commission" and substitute "department".

(2) In SECTION 2 of the bill, in the introductory language (page 1, line 25), strike "adding Subsection (m)" and substitute "adding Subsections (m) and (n)".

(3) In SECTION 2 of the bill, in amended Section 25.2292, Government Code (page 2, between lines 9 and 10), insert the following:

(n) The court does not have jurisdiction in civil cases in which the amount in controversy exceeds the limit prescribed by Section 25.0003(c)(1).

FLOOR AMENDMENT NO._____ BY: _____

Amend C.S.S.B. 457 (senate committee report) in SECTION 1 of the bill, in amended Section 615.0225(a), Government Code, as follows:

(1) On page 1, line 10, strike "or" and substitute "[~~or~~]".

(2) On page 1, line 12, strike "615.001" and substitute "615.001; or

(4) a state agency".

FLOOR AMENDMENT NO._____ BY: _____

Amend C.S.S.B. 1788 (senate committee report) in SECTION 1 of the bill, in added Section 30.103, Education Code (page 4, between lines 60 and 61), by inserting the following appropriately lettered subsection and relettering subsequent subsections and cross-references to the subsections accordingly:

( ) The criteria must satisfy applicable requirements under Subchapter M, Chapter 2054, Government Code.

FLOOR AMENDMENT NO._____ BY: _____

Amend C.S.S.B. 943 (senate committee report) as follows:

(1) Strike SECTION 8 of the bill, adding Sections 431.4101 and 431.4102, Health and Safety Code (page 12, line 22, through page 13, line 5).

(2) In the recital to SECTION 9 of the bill (page 13, lines 7 and 8), strike "adding Subsections (a-1), (a-2), and (e)" and substitute "adding Subsections (a-1) and (a-2)".

(3) In SECTION 9 of the bill (page 13, lines 9-15), strike amended Section 431.411(a), Health and Safety Code, and substitute the following:

(a) A distributor shall receive returns or exchanges from a pharmacy or [~~chain~~] pharmacy warehouse in accordance with the terms of the agreement between the distributor and the pharmacy or [~~chain~~] pharmacy warehouse.

(4) In SECTION 9 of the bill (page 14, line 20, through page 15, line 5), strike added Section 431.411(e), Health and Safety Code.

(5) Renumber SECTIONS of the bill appropriately.

A drafter should generally use house style in drafting house amendments to senate bills and senate style in drafting senate amendments to house bills.

The following examples provide guidance in the drafting of amendments for the **house of representatives**. The same principles apply to senate floor and committee amendments, but the order of instructions for those documents should conform with the order given in the above examples.

EXAMPLE 1. Committee amendment to delete an entire sentence:

COMMITTEE AMENDMENT NO._____ BY: _____

Amend H.J.R. 18 (introduced version) by striking the sentence that begins on page 4, line 17.

EXAMPLE 2. Floor amendment to a committee substitute to substitute a phrase and add a sentence:

FLOOR AMENDMENT NO._____ BY: _____

Amend C.S.H.B. 49 (house committee report) as follows:

(1) On page 3, line 12, strike "within fifteen days of" and substitute "not later than the 20th day after".

(2) On page 4, line 16, between the period and "The", insert "The application must be in writing.".

EXAMPLE 3. Floor amendment to strike one section of a bill and part of another:

FLOOR AMENDMENT NO._____ BY: _____

Amend H.B. 592 (house committee report) as follows:

(1) Strike SECTION 5 of the bill and renumber the subsequent sections and cross-references to those sections appropriately.

(2) Strike the last sentence of SECTION 6 of the bill.

EXAMPLE 4. Floor amendment to a committee amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend Committee Amendment 4 to H.B. 399, on page 14, line 7, by striking "$25" and substituting "$50".

EXAMPLE 5. Floor amendment to a floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend the Smith amendment[1] to C.S.H.B. 4, in the first sentence of proposed Section 34.003, Government Code, by striking "constable" and substituting "peace officer".

EXAMPLE 6. Floor amendment to a floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend Floor Amendment _____[2] by Jones to C.S.H.B. 99, on page 3, line 27, by striking "3.4 million" and substituting "2.2 million".

EXAMPLE 7. Floor amendment to add a new item to a floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend Amendment No. ___ by Rivas to C.S.H.B. 11 (page 5, prefiled amendments packet)[3] by adding the following appropriately numbered item to the amendment and renumbering subsequent items of the amendment accordingly:

(_) On page 11, between lines 1 and 2, insert the following and reletter subsequent subsections of added Section 2351.153, Occupations Code, accordingly:

---

[1] A pending floor amendment may be identified, among other ways, by the name of the author. Since only one amendment can be pending at a time, this identification is unambiguous. But see footnote 2 below.

[2] If a bill is being amended multiple times, it may be preferable to additionally identify the pending floor amendment by number.

[3] The house or senate may adopt a rule governing floor consideration of particular legislation that requires the prefiling of amendments to that legislation in order for those amendments to be eligible for floor consideration. The prefiled amendments are frequently compiled in a packet and distributed. When drafting a floor amendment to a prefiled floor amendment, a drafter may include a reference to the prefiled amendment packet page on which the amendment to be amended appears to aid in identification of that amendment.

( ) A referral under Subsection (c) must be made in a manner that does not unreasonably delay the provision of service to the requesting passenger.

EXAMPLE 8. Floor amendment to a floor substitute:

FLOOR AMENDMENT NO._____ BY: _____

Amend the proposed floor substitute[1] to H.B. 234 by striking SECTIONS 7-14 and renumbering the subsequent sections and cross-references to those sections appropriately.

EXAMPLE 9. Third reading floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend S.B. 3 on third reading as follows:

(1) Strike SECTION 1 of the bill.

(2) In SECTION 2 of the bill, strike amended Section 26.04(c)(2), Tax Code, and substitute the following:

(2) "Rollback tax rate" means a rate expressed in dollars per $100 of taxable value calculated according to the following formula:

ROLLBACK TAX RATE = (EFFECTIVE MAINTENANCE AND OPERATIONS RATE x 1.06 [~~1.08~~]) + CURRENT DEBT RATE

Part of the text of Example 2 is underlined. The underlining and bracketing rules of the house of representatives and senate[2] apply to committee amendments and substitutes, and it is customary to prepare all amendments and substitutes to conform to those requirements. Material should be underlined or bracketed in an amendment or substitute if the material is an amendment to existing law; that is, if it would have been underlined or bracketed if included in the original bill or resolution. Underlining or bracketing is *not* used for the purpose of indicating changes between the amendment or substitute and the text of the original bill or resolution.

Contrary to ordinary rules of punctuation, the sentence-ending period in Examples 2, 4, 5, and 6 is placed *outside* the quoted material. Amendments and substitutes to bills and resolutions are read literally, and a punctuation mark should be included inside quotation marks only if it is part of the text affected by the amendment.

Drafters are sometimes confused by the effect of an instruction to renumber sections, as is provided in Examples 3 and 8. If one paragraph of an amendment provides for renumbering Sections 8–14, should another paragraph of the same amendment refer to one of the renumbered sections by its "old" or "new" number? Reference should be to the "old" number because the renumbering does not occur until the bill is actually engrossed or enrolled, as the case may be, which occurs after all amendments have been considered and the bill passes to the next step of the legislative process. Even if an amendment that

[1] It is unambiguous for a pending floor substitute to be so identified, since only one substitute may be pending at any one time.
[2] See Section 3.10(h) of this manual.

renumbers Section 9 as Section 10 is adopted, subsequent amendments at the same reading should continue to refer to the section as Section 9.

A final word about renumbering sections: It is not necessary that a committee or floor amendment specify exactly how sections are to be renumbered, or even that they will be renumbered; the enrolling and engrossing staff will take care of necessary renumbering without being told to do so. Still, it tends to reduce confusion if an amendment that will require renumbering at least recites "renumber subsequent sections and cross-references to those sections appropriately" or something to that effect.

In drafting amendments, drafters should keep in mind that clarity and precision must be balanced with ease of understanding. For example, it may be clearer to strike a sentence in its entirety and provide a substitute instead of making numerous individual word changes. Similarly, a change that is to be made in multiple places in the bill may be more easily understood if described in a list format. For example:

FLOOR AMENDMENT NO._____ BY: _____

Amend H.B. 138 (house committee report) by striking "executive director" and substituting "commissioner" in each of the following places it appears:

(1) page 3, lines 4 and 16;

(2) page 4, lines 8, 11, and 20;

(3) page 6, line 3;

(4) page 8, lines 2, 5, 8, and 17; and

(5) page 9, line 10.

Even though an amendment may be precise, it may be confusing for the members and clerks to attempt to follow a puzzle-like set of instructions. Drafting amendments, like drafting a bill, is not a mechanical function. Common sense and judgment are as important as technical compliance with drafting conventions developed to provide order and consistency to the process.

SEC. 6.04. COMMITTEE AND FLOOR SUBSTITUTES. A committee or floor substitute is simply an alternative version of a bill, a resolution, or a committee or floor amendment to an amendment.

The only difference in form between a committee substitute and a bill is the heading. The heading of a **committee substitute for a bill**, as delivered to the client, appears as follows:

By: _____ __.B. No. _____

Substitute the following for __.B. No. _____:

By: _____ C.S.__.B. No. _____

A BILL TO BE ENTITLED

AN ACT

The heading of a **committee substitute for a joint resolution**, as delivered to the client, appears as follows:

By: _____ __.J.R. No. _____

Substitute the following for __.J.R. No. _____:

By: _____ C.S.__.J.R. No. _____

A JOINT RESOLUTION

The document continues in exactly the same form as a bill or joint resolution. The committee member who offers the substitute fills in the blanks with the author, number, and house of origin of the affected bill or resolution and signs on the line following the second "By."

Because it is customary in the senate, and mandatory in the house of representatives,[1] to defer consideration of a caption amendment until all amendments to the body of a bill have been considered, a **floor substitute** amends the body of a bill but not its caption. The heading of a floor substitute is identical to the heading of a floor amendment, and the amendment is to "strike all below the enacting clause and substitute the following:", followed by the entire text of the bill, beginning with Section 1. If the caption needs to be changed, a commonly used procedure is for a member to move, after adoption of the floor substitute, to "amend the caption to conform to the body," in which event the enrolling and engrossing staff of the house or senate will draft an appropriate caption. In the house, even this action is unnecessary, as the rules permit the chief clerk to make this sort of conforming amendment to a house bill or joint resolution.[2]

Because joint resolutions are drafted and considered much the same way as bills, a floor substitute for a joint resolution generally is drafted in the same way as a floor substitute for a bill. But since simple and concurrent resolutions do not have captions (other than the descriptions printed on the backing), a floor substitute for one of them may merely provide for amending the resolution "to read as follows:", followed by the entire new text and with only the heading omitted.

Amendments to floor and committee amendments take the forms described in Section 6.03 of this manual, but an amendment to an amendment to an amendment takes the form of a floor substitute:

FLOOR AMENDMENT NO._____ BY:_____

Substitute the following for the Davis amendment to the Jones amendment to C.S.H.B. 4:

SEC. 6.05. CONFERENCE COMMITTEE REPORTS. A conference committee report, like a committee substitute, consists of an entire version of the affected bill or

[1] This requirement appears in House Rule 11, Section 9(a).
[2] See House Rule 2, Section 1(a)(10).

resolution, the only formal difference being a slightly different heading, in which "Conference Committee Report" and "Bill Text" appear at the top of the page and the author's name is deleted.[1] For example:

CONFERENCE COMMITTEE REPORT

BILL TEXT

H.B. No. 25

A BILL TO BE ENTITLED

AN ACT

relating to....

While the form of a conference committee report is simple enough, compliance with procedural rules governing the content of the report is a different matter. Rules of both houses[2] limit the discussions and actions of conference committees to "matters in disagreement" between the house and senate versions of the bill or resolution. This means, in general, that text that is the same in both house and senate versions may not be changed or deleted, and substance that is in neither bill may not be added. Where there is disagreement between versions, there is a certain amount of leeway. For example, if one version of a tax bill proposes a tax at the rate of three percent and the other version proposes the same tax but at a rate of six percent, the conference committee may set the rate at three or six percent or anywhere in between. On the other hand, if a tax appears in only one version, the conference committee may delete the tax, include the tax at the rate proposed, or include the tax at a lower rate, but may not include the tax at a higher rate.[3] While it is not a drafter's responsibility to make a definitive determination about whether a proposed conference committee report complies with applicable rules of procedure, the drafter should generally understand these rules to be able to alert a client when a problem appears to exist.[4]

A conference committee report is presented to each house for adoption or rejection on a "take-it-or-leave-it" basis. *It is not amendable*.

SEC. 6.06. SIDE-BY-SIDE ANALYSES. (a) Purpose. The purpose of the side-by-side analysis is to enable legislators to compare the bill sections that are in disagreement in the senate and house versions and to see how the conference committee resolved the disagreements.

(b) Rules requirements. The rules of the house and the senate[5] require that a conference committee report include an analysis of the differences between the senate, house, and conference committee versions of a bill. The rules of the senate further require the analysis to be a section-by-section analysis that, for each section in disagreement, shows in parallel columns (i.e., side by side): (1) the substance of the house version; (2)

[1] The rationale for deletion of the author's name is that the conference committee is the author of a conference committee report.
[2] Senate Rule 12.03 and House Rule 13, Section 9.
[3] See Senate Rule 12.05 and House Rule 13, Section 9(c).
[4] Rules limiting jurisdiction of a conference committee, like other procedural rules, may be suspended. See Senate Rule 12.08 and House Rule 13, Section 9(f), for suspension procedures.
[5] House Rule 13, Section 11, and Senate Rule 12.10.

the substance of the senate version; and (3) the substance of the recommendation by the conference committee.

(c) Retrieving the two-column side-by-side analysis. To prepare a three-column side-by-side analysis, the drafter should start by retrieving the two-column senate or house amendments analysis (SAA or HAA) from TLIS. Prepared by the legislative council's research division for each bill or joint resolution amended in the opposite chamber, the SAA/HAA shows the differences between the senate and house versions. An SAA for a house bill or joint resolution is posted on the TLIS text page with the senate amendments printing. An HAA for a senate bill or joint resolution is posted on the TLIS text page under Additional Documents. Both types of analyses are provided as Word documents. Once a document is downloaded and saved to the drafter's Y:\ drive, the drafter is ready to begin adding content to the blank third column.

(d) Retrieving the conference committee report bill text. The conference committee report (CCR) bill text will be the text analyzed in the blank third column of the SAA/HAA. Ideally, the drafter should have an electronic version of the bill text, as the drafter may need to copy and paste all or part of the CCR bill text into the third column. If the text is not yet available, it may be possible to draft at least some of the third column from instructions.

(e) Drafting a side-by-side

Layout

The SAA/HAA includes a row for the corresponding versions of each bill section. These corresponding versions will not always have the same bill section number or be organized in the same manner.

Describing Differences

The drafter will begin the side-by-side analysis by changing the document heading from "Senate Amendments" or "House Amendments" to "Conference Committee Report."

Now the drafter is ready to compare the CCR bill text to the versions in the first (COL. 1) and second (COL. 2) columns of the analysis and to populate the third column (COL. 3). The COL. 3 entry inserted by the drafter in a corresponding bill section row may be a description that applies to the entire bill section, or it may be the CCR bill text for that section. This is demonstrated in the examples below.

If COL. 3 is IDENTICAL to COL. 1 and COL. 2. Use "Same as (COL. 1) version" in COL. 3. Stylistic differences in the recitation should be ignored. The text in COL. 1 can be deleted except for the recitation.

House Version	Senate Version	Conference
SECTION 2. Chapter 21, Penal Code, is amended by adding Section 21.02. (text deleted)	SECTION 2. Same as House version.	SECTION 2. Same as House version.

If COL. 3 is SIMILAR to COL. 1 or COL. 2. Use "Same as (COL. 1 or COL. 2) version except …" and describe the difference. Use bold italics to help point out the difference.

Senate Version	House Version	Conference
No equivalent provision.	SECTION __. Section 11.168, Education Code, is amended by adding Subsection (b) as follows: (b) A school district may not enter into an ***agreement*** for the design, construction, or renovation of real property not owned or leased by the district.	SECTION 3. Same as House version except a school district may not enter into a ***contract***.

If COL. 3 is SIGNIFICANTLY DIFFERENT from COL. 1 and COL. 2. Copy and paste the CCR bill text into COL. 3. After aligning like provisions, use bold italics to show the differences.

House Version	Senate Version	Conference
SECTION 2. Section 364.034(e), Health and Safety Code, is amended to read as follows: (e) ***This section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity.*** ***Except as provided by Section 364.035,*** nothing [~~Nothing~~] in this section shall limit the authority of a ***municipality*** to enforce its grant of a ***franchise*** for solid waste collection and transportation services within its territory.	SECTION 3. Section 364.034(e), Health and Safety Code, is amended to read as follows: (e) ***[~~This section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity.~~*** ~~Nothing~~**]** ***Except as provided by Section 364.035 and Section 364.036,*** nothing in this section shall limit the authority of *a* ***public agency, including a county or a municipality,*** to enforce its grant of a ***franchise*** for solid waste collection and transportation services within its territory.	SECTION 3. Section 364.034(e), Health and Safety Code, is amended to read as follows: (e) ***Except as provided by Section 364.035(b), this [~~This~~] section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity.*** Nothing in this section shall limit the authority of *a* ***public agency, including a county or a municipality***, to enforce its grant of *a* ***franchise or contract*** for solid waste collection and transportation services within its territory.

If COL. 3 OMITS A BILL SECTION seen in COL. 1 and COL. 2. Use "No equivalent provision" in COL. 3. There will not be a bill section number. Add an "outside the bounds" statement if there may be a question as to whether limitations were exceeded.

Senate Version	House Version	Conference
SECTION 1.07. Section 4(d), Article 42.12, Code of Criminal Procedure, is amended to read as follows: (d) A defendant is not eligible for community supervision under this section if the defendant is convicted of an offense listed in Section 3g(a)(1)(C), (E), ***(H), or (I),*** if the victim of the offense was younger than 14 years of age at the time the offense was committed.	SECTION 1.06. Section 4(d), Article 42.12, Code of Criminal Procedure, is amended to read as follows: (d) A defendant is not eligible for community supervision under this section if the defendant is convicted of an offense listed in Section 3g(a)(1)(C), (E), ***or (H),*** if the victim of the offense was younger than 14 years of age at the time the offense was committed; ***or the defendant is convicted of an offense listed in Section 3g(a)(1)(I).***	***No equivalent provision.*** *[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]*[1]

6

[1] See House Rule 13, Section 11(b), requiring the analysis to indicate "to the extent practical . . . any instance wherein the conference committee in its report appears to have exceeded the limitations imposed on its jurisdiction" by House Rule 13, Section 9.

If COL. 3 ADDS A BILL SECTION not seen in COL. 1 or COL. 2. Insert a row and copy and paste the CCR bill text into COL. 3. Add an "outside the bounds" statement if there may be a question as to whether limitations were exceeded. Put "No equivalent provision" in COL. 1 and "Same as (COL. 1) version" in COL. 2.

House Version	Senate Version	Conference
SECTION 8. Chapter 1302, Occupations Code, is amended by adding Section 1302.510.	SECTION 8. Same as House version.	SECTION 8. Same as House version.
No equivalent provision.	Same as House version.	SECTION 9. Not later than January 1, 2022, the Texas Commission of Licensing and Regulation shall adopt rules, procedures, and fees under Subchapter L, Chapter 1302, Occupations Code, as added by this Act, including rules regarding the initial date that a license will be required under Subchapter L for a person to perform commercial sheet metal work in a county with a population of more than 200,000. *[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]*
SECTION 9. Effective date.	SECTION 9. Same as House version.	SECTION 10. Same as House version.

CHAPTER 7
STYLE AND USAGE

A well-drafted statute expresses the legislature's intent as precisely and readably as the English language permits. Good draftsmanship is simply good writing. A well-drafted statute is distinguished by clarity, economical use of language, logical organization, and adherence to generally recognized standards of grammar and usage. In the words of Justice Holmes, a good piece of drafting excludes "every misinterpretation capable of occurring to intelligence fired with a desire to pervert."[1]

The Texas Legislative Council staff follows the rules of standard American English style and grammar in drafting legislative documents. The purpose of this chapter is to ensure consistency in instances where more than one style is considered correct or where the unique characteristics of legislative documents require a deviation from the generally accepted standards. The rules in this chapter should usually be adhered to, but when current law is being amended, the style of the statute being amended should be followed. These rules are not meant to be applied arbitrarily, although a drafter should not deviate from them without good reason.

This chapter is organized as follows:

[1] *Paraiso v. United States*, 207 U.S. 368, 372 (1907).

Subchapter A
Rules of Style

SEC. 7.01. ABBREVIATIONS. Put a space between the initials of a personal name. Other abbreviations using the first letters of words do not require a space:

```
J. S. Jones
U.S. Department of Commerce
Washington, D.C.
H.B.
S.J.R.
Ph.D.
B.A.
```

Some commonly used abbreviations are acceptable:

```
6 a.m.
```

Abbreviations of the names of agencies and organizations should be avoided:

DO NOT WRITE	*WRITE*
TDCJ	Texas Department of Criminal Justice

Often in legislation, the agency will be defined in a definitions section. If there is no definitions section, or if the reference appears in a letter, memorandum, resolution, or other such document, the drafter should write in full the name of the agency or organization at its first mention and refer to it later in the document by a generic term (e.g., "the department"). It is also occasionally acceptable in resolutions and nonlegislative documents to spell out the first reference to the entity, write its initials in parentheses directly after, and use only the initials in subsequent references. When referring in these documents to an entity that is commonly known by its initials (e.g., ISD, USPS, UT), the drafter may omit the parenthetical reference and simply use the initials in references following the first spelled-out one. For entities and items commonly identified by initials only (e.g., AARP, FFA, IBM, NAACP, SALSA, SAT, UIL, YMCA), the drafter may use just the initials.

In general, preference should be given to using generic terms instead of abbreviations that are not well known. A generic term is usually easily understood, but an artificial system of encoded initials often contributes more to confusion than to clarity.

SEC. 7.02. CAPITALIZATION. This section discusses capitalization in relation to:

- administrative bodies
- judicial bodies
- legislative bodies

- documents
- educational institutions
- funds
- nationalities
- place names
- plurals
- prepositions in headings
- titles and offices

Administrative Bodies

Capitalize only the official name of a federal, state, or local agency:

Texas Ethics Commission; the ethics commission; the commission

Texas Legislative Council; the council

Lower Colorado River Authority; the authority

Lowercase the name of a division or department within an agency:

the legal division of the Texas Legislative Council

Capitalize the official name of an advisory body:

Texas Historical Records Advisory Board; the advisory board

Judicial Bodies

Capitalize the names of courts as follows:

United States Supreme Court (in legislation); U.S. Supreme Court, Supreme Court, the court (permissible in resolutions and nonlegislative documents)

Supreme Court of Texas; Texas Supreme Court; supreme court; the court

Texas Court of Criminal Appeals; court of criminal appeals; appeals court

Twelfth Court of Appeals; court of appeals

4th District Court; County Court of Travis County; Probate Court of Harris County; district court; county court; probate court

Legislative Bodies

Capitalize only the official name of a legislative body or the name referring to a specific legislative session:

> Texas Legislature; Legislature of the State of Texas; 79th Legislature, 3rd Called Session; 87th Legislature, Regular Session; 87th Regular Session; 87th Legislative Session; the legislature; the state legislature
>
> Texas Senate; Senate of the State of Texas; Senate of the 87th Texas Legislature; the senate; state senate
>
> Texas House of Representatives; House of Representatives of the State of Texas; House of Representatives of the 87th Texas Legislature; the house; the house of representatives
>
> United States Congress; Congress of the United States; 71st Congress; 117th Congress; Congress (an exception to the rule); congressional
>
> Travis County Commissioners Court; Commissioners Court of Travis County; the commissioners court

Documents

Capitalize only the official name of a document:

> Texas Constitution; the state constitution; the constitution

Capitalize the name of a specific act, short title, or statute revision or compilation:

> State Medical Education Act
>
> Revised Statutes
>
> Penal Code

Capitalize “act” only when it is used in a citation or in an act of legislation or when it is part of the short title of an act:

> Acts of the 87th Legislature
>
> this Act
>
> Texas Racing Act

Capitalize a word describing a part of a law only if it is followed by a specific number or letter designation:

> Chapter 623; this chapter
>
> Section 2; this section
>
> Subsection (a); this subsection

Always lowercase “page” and “line”:

```
page 10, line 22
```

Educational Institutions

Capitalize only the full name of an educational institution:

```
The University of Texas; The University of Texas at El Paso; The University of Texas System; the university

Texas A&M University; The Texas A&M University System
```

Funds

Do not capitalize the names of funds:

```
the general revenue fund
```

Nationalities

Capitalize proper names of races, tribes, peoples, and nationalities:

```
African American, American, Asian American, English, American Indian, Mexican American, Hispanic
```

(Note: No hyphen is used in the adjectival or noun form of terms such as “African American.”)

Lowercase designations based on color or local usage:

```
black, brown, white
```

Place Names

Capitalize common nouns and adjectives that form an essential part of a proper name. Do not capitalize nouns or adjectives that are merely used with a proper name:

```
Travis County; County of Travis

City of Austin (governmental unit); city of Austin (the actual place)

Trinity River

West Texas (a specific region); western Texas
```

Capitalize “State of Texas” in bills and resolutions even though “state” is not an essential part of the name.

Capitalize the names of buildings and monuments:

```
the Alamo
```

the Capitol; the State Capitol; Capitol Complex

the Governor's Mansion

the Robert E. Johnson Building

Plurals

Common-noun elements of proper nouns used in the plural are capitalized:

Travis and Hays Counties; counties of Travis and Hays

Trinity and Brazos Rivers

United States and Texas Constitutions

Sections 2 and 3 of this Act

Lakes Austin and Travis

Prepositions in Headings

In mixed-case headings in nonlegislative documents, capitalize the first letter of prepositions of four or more letters:

How Significant Is the Shift in Focus From Rural to Urban?

Titles and Offices

Capitalize a formal title only when used before a personal name. Lowercase a title when it follows a name or is used in place of or in apposition to a name:

Governor Jones; James Jones, governor of Texas; former governor James Jones; the governor of Texas; the governor

Senator Doe; John Doe, state senator

Texas state representative Mary Smith; State Representative Smith

the president of the United States

the comptroller; the secretary of state; the commissioner of the General Land Office

SEC. 7.03. NUMBERS. Included in this section are rules about numbers as follows:

- general rules
- dates
- fractions and decimal fractions
- money
- ordinal numbers
- percentages
- time

See Section 7.27 of this manual for expression of age and Section 8.07 of this manual for standard numerical classification formats.

General Rules

Express a number under 10 in words unless it is a number such as a dollar amount, date, decimal fraction, or section number. These and exact numbers of 10 and above are expressed in figures. Express rounded numbers of one million or more by spelling out "million" (or "billion," etc.) and following the general rules for the rest of the number:

1,952,476; 4,392,675,001

two million; 14 million

3.5 million; 11.6 billion

If a sentence begins with a number, either express the number as a word or rearrange the sentence so that the number does not appear at the beginning.

If any number in a group is 10 or more, express all the numbers in the group in figures:

The board may have 7, 9, or 11 members.

The board may have three, five, or seven members.

They have 5 children, 18 grandchildren, and 9 great-grandchildren.

She weighed 6 pounds, 14 ounces at birth.

Section 52.011 applies to students in grades 7 through 11.

Her teams claimed 5 regional titles and 4 state championships, as well as 13 SWAC championships.

Do not express a number in both words and figures:

DO NOT WRITE	*WRITE*
four (4); six dollars ($6)	four; $6

In legislation, do not use "over" to express an indefinite number of people or things:

DO NOT WRITE	*WRITE*
over 17 members	at least 18 members
	OR
	not fewer than 18 members

Dates

Express dates as follows:

June 2021
June 30, 2021 (not June 30th, 2021)
June 30 to July 15, 2021
January 15 (not 15 January, January 15th, or the 15th day of January)

Fractions and Decimal Fractions

Express common fractions in words:

three-fourths inch; one-tenth of the cost

Quantities consisting of both whole numbers and fractions, or fractions that contain three figures or more, should be expressed in figures or as decimal fractions:

7/64; 55/100; 3-5/8
0.36; 1.7; 16.25

Money

Express monetary amounts as follows:

one cent
10 cents
$5; $138 (with no decimal point or ".00")
$7.25
$6,000 (with a comma)
$300,000
$4.5 million
$22 million
$22,347,688.66
$100 valuation

Ordinal Numbers

Express ordinal numbers under 10 in words, 10 or greater in figures:

first; ninth
10th; 23rd; 61st; 145th

When referring to a specific legislative session, use figures:

85th Legislature, 1st Called Session
48th Legislature, Regular Session

When referring to centuries, use figures:

the 21st century

When referring to constitutional amendments, use words and initial capitals:

the Eighteenth Amendment

Percentages

Follow the general rule when expressing percentages:

one percent; 10 percent
two-tenths of one percent
5.3 percent; 25.7 percent

Time

Express time as follows:

8:30 p.m.
11 p.m.
1 p.m.
12 noon; noon
12 midnight; midnight[1]
three hours
25 minutes

SEC. 7.04. MATHEMATICAL COMPUTATIONS. In expressing a mathematical computation, the drafter either may choose a mathematical formula to express the computation or may use words to describe the computation. The drafter should choose whichever approach makes the computation easier to understand and apply in the context of the statute. For a very simple computation that is as easily expressed in words as it is in mathematical symbols, the drafter should use words. For complex computations that are more easily understood expressed in symbols (such as a school funding formula), the drafter should use mathematical symbols.

SEC. 7.05. PLURALS. Legislative council style follows the accepted practice of forming plurals by adding "s" or "es" to a noun.

[1] Note that the use of "12 midnight" or "midnight" is ambiguous as to whether the reference is to the beginning or end of a day. For that reason, referring to "11:59 p.m." (end of a day) or "12:01 a.m." (beginning of a day) is preferred when clarity is required.

If the plural of a word borrowed from another language has an anglicized form, that form is used:

```
appendix = appendixes
stadium = stadiums
biennium = bienniums
```

Some borrowed words retain their foreign endings in the plural:

```
alumna = alumnae
alumnus = alumni
curriculum = curricula
medium = media
```

The word "data" may be used as either a singular or plural noun:

```
The data (a unit or collection of information) is current.
The data (discrete units of information) are current.
```

For titles consisting of two or more words, make the important word plural:

```
attorneys general
general counsels
notaries public
```

The plural of figures, initials, and acronyms is formed by adding "s":

```
1960s
GEDs
```


SEC. 7.06. POSSESSIVES. The following rules apply to both common and proper nouns.

To form the possessive case of a singular noun or of an irregular plural noun, add an apostrophe and an "s" to the word:

```
one month's worth
the dog's collar
Dr. Jones's research
the women's hammers
```

To form the possessive case of a plural noun that ends in "s," add an apostrophe:

```
six days' worth
the cats' noses
the Collinses' dog
```

To form the possessive case of a singular noun that ends in "s," add an apostrophe and an "s" to the word. If a sibilant occurs before the final syllable, adding an apostrophe and an "s" would make the word awkward to pronounce. To avoid a triple sibilant in pronouncing the possessive form, add only an apostrophe:

```
the alumnus's books
the witness's answer
Texas' wildlife
Moses' guidance
```

SEC. 7.07. PREFIXES. Most prefixes are joined to their nouns without the use of hyphens. Consult a dictionary when determining when to use a hyphen. Most dictionaries contain lists of words that start with a prefix and indicate whether a hyphen should be used in those words.

A hyphen is inserted between a prefix and a noun if the omission would cause confusion about the meaning of the word, if it seems awkward, or if it would affect the pronunciation:

```
re-creation
re-present
co-owner
intra-agency
```

When a proper noun has a prefix, a hyphen is inserted:

```
mid-Atlantic
```

SEC. 7.08. PUNCTUATION. This section discusses:

- colons
- commas
- dashes
- ellipses
- parentheses
- quotation marks
- semicolons
- underscoring

Colons

Use a colon to introduce a series of dependent subdivisions or to introduce subdivisions of a definitions section. See examples under "Semicolons" below.

Commas

Use commas to set off the name of a state when used with the name of a city:

```
Austin, Texas,
```

Use commas to set off the year of a date when month, day, and year are given. Do not use commas when only month and year are given:

```
July 19, 2021,
July 2021
```

Use a comma in numerals of 1,000 or more:

```
5,280
23,555
```

Do not use commas to set off "Jr." or "Sr." or a Roman numeral in a personal name:

```
John Smith Jr. was here.
John Smith III was not here.
```

Use commas between words in a series:

```
apples, oranges, and peaches
red, amber, and green lights
```

See Subchapter C of this chapter for special uses of commas in citations.

Dashes

A dash is made up of two hyphens with no spaces in between or at either side:

```
WORKING DRAFT--FOR STAFF REVIEW ONLY
```


Ellipses

An ellipsis, three spaced periods, indicates that a part of a quotation has been omitted. If the omission occurs after the end of a sentence, four spaced dots are used: the period at the end of the sentence and the three ellipsis points. If the omission occurs before the period, four spaced dots are used, with a space between the final word and the first dot:

```
Immediately after they are assembled . . . they shall
be equally divided into three classes. . . . The third
class shall be . . . .
```

Parentheses

Except to indicate unofficial citations of statutes and to enclose bill numbers in official citations of session laws, parentheses are seldom used in legislative documents. A descriptive, nonrestrictive clause is properly set off by commas. A truly parenthetical phrase is inappropriate. See Section 7.36 of this manual for a description of nonrestrictive clauses.

Quotation Marks

When quoting within textual matter, place periods and commas inside quotation marks and colons and semicolons outside. (See Section 6.03 of this manual for exceptions to this rule in floor and committee amendments.) Use quotation marks to make clear the meaning or use of words or phrases:

> In this Act, "department" means the Texas Department of Transportation.

Semicolons

Use a semicolon if needed for clarity in a list that also contains commas:

> Mr. Smith is survived by his sons, Joe, Jack, and Jim; his daughters, Joan, Jane, and Jean; his brother, Jerry; and his sister, Jasmine.

Use a semicolon between subdivisions that constitute a list or that are dependent on the same introductory language:

> (b) The surveyor shall certify that the surveyor:
>
> (1) has examined the field notes;
>
> (2) finds the field notes correct; and
>
> (3) has recorded the survey.

Treat subdivisions of a definitions section as complete sentences, even though there is introductory language, and end them with periods, not semicolons:

> In this Act:
>
> (1) "Board" means the School Land Board.
>
> (2) "Commissioner" means the commissioner of the General Land Office.
>
> (3) "Land office" means the General Land Office.

Use a semicolon between clauses of a simple or concurrent resolution.

Underscoring

Always use a solid underscore. Do not underscore familiar foreign terms:

> et al.
>
> et seq.
>
> de facto

See Section 3.10 of this manual for the use of underlining and bracketing in amendatory drafts.

SEC. 7.09. SPELLING AND SPECIFIC USAGE. As a general rule, follow these guidelines for capitalization, spacing, and style:

A&M
acknowledgment
Act (when used in an Act)
assessor-collector (assessors-collectors)
associate degree
at large (adv.)
at-large (adj.)
attorney general (attorneys general)
attorney's fees
Btu (no periods or spaces, singular or plural)
bachelor of arts or bachelor's degree
benefited, benefiting
canceled, canceling
cancellation
child-care (adj.)
citywide
Class A misdemeanor
co-chair
commissioners court (no apostrophe)
common law rule
countywide
coursework
cross-action (noun)
database
day-care (adj.)
doctoral degree, doctorate
e-mail
et al.
et seq.[1]
ex officio
farm-to-market road
Farm-to-Market Road 666
felony of the third degree
firefighter
firefighting
first class postage
flammable (not inflammable)
General Appropriations Act
general appropriations bill
general-law municipalities
general revenue fund
good faith effort
great-grandchild
health care facility
home-rule municipalities
the Honorable
impanel
inasmuch as (two words)
in-service (adj.)
insofar as (two words)
Internet
intra-agency
joint stock company
judgment (not judgement)
lieutenant governor (not lt. gov.)
Lloyd's plan
lump-sum (adj.)
master of arts or master's degree
Medicaid
Medicare
money (not moneys or monies)
nonprofit (except Non-Profit Corporation Act)
officeholder
online
on-site (adj.)
part-time (adj. and adv.)
percent
Ph.D.
policyholder
policy maker
policy-making (adj.)
policymaking (noun)
Pub. L. No.
recordkeeping
right-of-way (rights-of-way)
rulemaking
saving clause (not savings)
single-member district
special-interest (adj.)
state government
State of Texas
state-owned
state-supported
statewide
taxpayer (one word; but property tax payer)
Texas' (possessive)
Texas A&M University, The Texas A&M University System
Texas Constitution
The University of Texas (not U.T.), The University of Texas at Austin, The University of Texas System, the university
toll-free number
toward
United Mexican States (not Republic of Mexico)
Veterans' Land Board
vice president
videoconference (one word; but video conference call)
water (not waters, when applying to state water. See Section 31.003, Parks and Wildlife Code)
website
wilful, wilfully
workers' compensation
workforce
workplace
workweek
x-ray (noun, verb, and adj.)

[1] Article (singular) 689a (no comma) et seq.

SEC. 7.10. SYMBOLS. In general, use no symbols except the dollar sign in text. Spell out “percent,” “section,” “pounds,” “feet,” and “inches.” An exception may be made in formulas and tables, which often require the use of symbols for brevity.

Use an ampersand (&) in the following:

```
Texas A&M University
Texas A&I University
Business & Commerce Code
```

When amending language that uses symbols, conform the new language to the old:

```
fifty per cent
50%
```

SEC. 7.11. NOTES AND FOOTNOTES. In drafting reports and memoranda that contain end-of-document notes or footnotes, observe the following conventions generally. Notes and footnotes are keyed to the text with superscripted Arabic numerals or, if only one or two footnotes are needed, with asterisks. The number or asterisk may be placed at the end of the sentence, at the end of a clause, or after the specific word being referenced. The designator follows any punctuation mark except a dash, which it precedes.

Footnotes are set off from the text on the page by a solid line, and the number before each footnote is superscripted. End-of-document notes usually start on the page following the last page of text and are not set off by a solid line. They are titled “Notes” (not “Endnotes”). The number before each note is superscripted in the same way footnote numbers are.

Subchapter B
Drafting Rules

SEC. 7.21. ACTIVE VOICE. Use the active voice.

DO NOT WRITE

If it is found that the applicant is qualified, a license shall be issued.

WRITE

The department shall issue a license if it finds that the applicant is qualified.

It is permissible to use the passive voice to avoid awkward repetition, but only if the identity of the actor is clear.

For example:

The director of the institutional division shall assign each inmate to a unit in the institutional division. Assignments may not be made on the basis of race.

SEC. 7.22. CONCISENESS. Write concisely, but do not substitute brevity for accuracy or clarity. Do not use words or phrases that are longer or more complicated than necessary to express an idea.

Edit your work aggressively. Delete language that contributes to neither meaning nor readability. The italicized words in the following examples are typical statutory surplusage:

A person who violates *a provision of* this section . . . .

The application must show the *actual* age and *correct* mailing address of each employee. (That a false answer will not suffice goes without saying; besides, there are laws against falsification and perjury.)

referendum *election* . . . . (A referendum is by definition an election.)

On or after the effective date of this Act, a corporation may not . . . . (This phrase may be used in saving and transition clauses, but for all other purposes prospective application may be assumed without a statement to the contrary.)

the governor *of this state* . . . the attorney general *of Texas* . . . the *county* commissioners court . . . . (Identifying phrases such as these should be used only to avoid ambiguity.)

as *that term is* defined by . . . . (The phrase "as defined by" expresses the same relationship using fewer words.)

See also the list of legalese and preferred usage in Section 7.29 of this manual.

SEC. 7.23. CONSISTENCY. Avoid using more than one expression for the same thing, since a change in terminology may be construed as a shift in meaning. For example, if a statute refers to the mayor as "mayor" in one instance and "chief executive officer of the city" in another, the latter reference may be misconstrued to mean "city manager."

Whatever value the intentional variation of terminology may have in other types of writing,[1] it is out of place in legislative drafting, where readability and clarity are essential.

SEC. 7.24. COURT-CONSTRUED LANGUAGE. There is little, if any, validity to the idea that particular language, having been construed by a court, will be assigned the same meaning in another statutory context. It is some indication that the meaning of a phrase is unclear if a court is asked to construe it. Of course, if judicially construed language clearly expresses an idea, there is no reason to avoid it; by the same token, if judicially construed language is ambiguous, do not use it.

SEC. 7.25. FINITE VERBS. Use finite verbs instead of corresponding noun or adjective forms to denote action:

DO NOT WRITE	*WRITE*
give consideration to	consider
have knowledge of	know

SEC. 7.26. GENDER. The use of masculine pronouns is subject to criticism as an example of sex bias, and for that reason gender-neutral language is preferred in drafts of legislative documents.[2] Drafts should:

(1) follow accepted principles of grammar and usage and applicable rules of statutory construction to avoid constructions that imply that only men do important things, such as hold office; and

(2) express ideas to the extent possible with gender-neutral terms.

In drafting an amendment to existing law, the drafter must balance the preference for gender-neutral terms with the style of the law being amended. For example, even as the drafter avoids the use of personal pronouns and employs the other techniques suggested below, if the statute being amended uses "chairman" as a reference to the presiding officer of a body, the drafter should continue the use of "chairman" in the amendment (even though in original drafting "presiding officer" or a similar gender-neutral term is preferred). A drafter should not expand the size of a bill by amending other sections of the statute being amended simply to replace language that is not gender neutral. Most references in existing law that are not gender neutral occur in statutes that have not been recodified under the continuing statutory revision program. Those terms will be replaced with gender-neutral terms when legislative council staff drafts the proposed recodification of the statute at issue.

---

[1] Under the heading "Elegant Variation," Fowler's *Dictionary of Modern English Usage* (2nd ed. 1965) states:
It is the second-rate writers, those intent rather on expressing themselves prettily than on conveying their meaning clearly . . . that are chiefly open to the allurements of elegant variation. . . . The fatal influence is the advice given to young writers never to use the same word twice in a sentence—or within 20 lines or other limit.

[2] The traditional rule of construction that the masculine includes the feminine, and vice versa, is provided by Sections 311.012(c) and 312.003(c), Government Code. This rule was discussed in *Ex Parte Groves*, 571 S.W.2d 888 (Tex. Crim. App. 1978), where, in response to the argument that Texas' "statutory rape" statute violated the equal rights amendment to the state constitution, the Texas Court of Criminal Appeals, relying on Section 311.012(c), held that "female" and "wife," as used in the statute, included "male" and "husband," respectively.

This section incorporates some suggestions made by the Women in the Profession Committee of the State Bar of Texas.

A drafter may find the following techniques useful to comply with this policy:

- Use an article such as "the," "a," "an," or "that" to replace the personal pronoun:

  An applicant must include with *the* (rather than "his") application . . . .

- Use a possessive noun:

  The comptroller shall issue an annual report, and *the comptroller's* (rather than "his") recommendations . . . .

- Repeat the name or title of the actor:

  A person is entitled to a license if *the person* (not "he") . . . .

- Use an adjective instead of a pronoun to modify a noun:

  A judge may not lend the prestige of *judicial* (rather than "his") office to private interests.

- Use a subordinate clause that operates as an adjective:

  An attorney *who shows disrespect* to the court will be held in contempt. (Instead of "If an attorney shows disrespect, he will be held in contempt.")

SEC. 7.27. HOW TO EXPRESS AGE. When establishing a minimum age, use "at least 18 years of age" rather than "over 18 years of age." The latter expression is ambiguous because it is not clear whether a person becomes "over 18" on the person's 18th birthday, on the following day, or on the person's 19th birthday.

When referring to persons within a certain age range, make it clear exactly who is included. For example:

DO NOT WRITE	*WRITE*
persons between the ages of 30 and 40 (It is unclear whether persons exactly 30 or 40 years old are included.)	persons who are at least 30 years of age but younger than 40 years of age

In drafting criminal statutes, take note of Section 1.06, Penal Code, which provides:

> Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

This provision applies not only within the Penal Code, but to any statute defining an offense. (See Section 1.03(b), Penal Code.)

SEC. 7.28. HOW TO EXPRESS TIME. To refer to the **date** on which an event occurs, use "day" or "date," as the context requires, as opposed to "time." "The *time* when . . ." may be construed to mean a time of day. See Section 7.03 of this manual for guidance in expressing the time of day.

In expressing a **deadline**, leave no doubt about which is the last day on which action may be taken.

DO NOT WRITE	*WRITE*
The report must be filed within 20 days of (or "from") the entry of the order.	The report must be filed not later than the 20th day after the date the order is entered. *OR* The report must be filed before the 21st day after the date the order is entered.

What is objectionable about the preceding ***DO NOT WRITE*** example is not the word "within" but the word "of" or "from." "Within 20 days *after* . . ." is unambiguous and legally correct. However, either of the forms shown under ***WRITE*** more clearly indicates the method of computing the deadline: the day after the date of the order being the first day after that date, the next day being the second day, and so on until one reaches the 20th day, which is the last day on which action may be taken. "Within 20 days after the date" says the same thing, but unless the reader is aware of the common law and the Code Construction Act rules that provide that in computing a period the first day is excluded and the final day is included, the reader may erroneously count the date on which the order is entered as the first day.

Note also that the preferred method of time computation begins with the date of an event and not the event itself. This is done to avoid an erroneous inference that time is measured in 24-hour periods before or after the time of day at which the event occurs.

Describe a **period** in a way that makes the first and last days clear.

DO NOT WRITE	*WRITE*
between April and May 31	after March 31 and before June 1

Take note of Sections 311.005(10) and (12) and 311.014, Government Code, when drafting legislation covered by the Code Construction Act.

SEC. 7.29. LEGALESE AND PREFERRED USAGE. Avoid using words that merely make a draft look legal and impressive. Avoid also vogue or trendy words that may become obsolete. Except when necessary to conform an amendment to current law or to preserve an established term of art, avoid words or groups of words that can be stated more simply:

DO NOT WRITE	*WRITE*
above (adj.)	
afford	give
aforementioned	
and/or[1]	
any and all	any
as provided in	as provided by
authorized to	may
by and through	by, through
commence[2]	begin, start
deem	consider
duly	
effectuate	effect, cause
exclusive of	excluding
fix (a rate, amount, or date)	set
foregoing	preceding
forthwith	immediately
herein	in this Act, section, etc.
hereinafter	in this Act, section, etc.
in excess of	more than
in order to[3]	to
in the event that	if
in whole or in part	wholly or partly
moneys	money
null and void	void
on or after January 1, 2022,[4]	after December 31, 2021,
per annum[5]	a year
prior to	before
properties	property
pursuant to[6]	under
revenues	revenue
rules and regulations	rules
said (adj.)	
same (noun)	it, etc.
save	except
subsequent to	after

[1] To emphasize that a reference is to either or both, use a construction such as "The offense is punishable by a fine of not more than $200, by confinement in jail for not more than 30 days, or by both the fine and the confinement." As Follett comments in *Modern American Usage,* "[E]xcept for lawyers, English speakers and writers have managed to express this simple relationship without and/or for over six centuries."

[2] "Commence" is appropriate to use in reference to a suit or proceeding but should not be used as a substitute for "begin" in other contexts.

[3] "In order to" may be used to avoid ambiguity. For example, note the difference in meaning between these two sentences: "The law invalidates private agreements to protect public safety" and "The law invalidates private agreements in order to protect public safety."

[4] "On or after the effective date of this Act" may be used in saving and transition clauses.

[5] "Per diem," meaning compensation for expenses payable on a daily basis to a public officer or employee, is an established term of art that should not be anglicized. "Miles per hour" is also acceptable.

[6] "Pursuant to" is appropriate in a phrase such as "pursuant to a warrant."

DO NOT WRITE	*WRITE*
such (adj.)[1]	
terms and conditions	terms
time period	period, time
to wit	namely
under the provisions of	under
upon	on
utilize	use
valid license	license
via	through, by
whatsoever	what
whensoever	when

SEC. 7.30. "SHALL," "MUST," "MAY," ETC.[2] Use "shall" only to denote a duty imposed on a person or entity.

> The commissioner *shall* issue a license. (It is the commissioner's duty to do so.)

Use "must" to denote a condition precedent. The existence of a condition precedent means that a person, action, or other thing is required to comply with a stated condition as a prerequisite to having full legitimacy. The condition may be stated in a variety of ways, but typically the condition requires the person, action, or other thing to:

(1) meet certain stated conditions;
(2) possess certain stated characteristics; or
(3) consist of certain stated components.

> Before entering the premises, the inspector *must* obtain the consent of the property owner. (Obtaining the consent of the property owner is a condition to the inspector's authority to enter the premises.)

> To be eligible for appointment, a person *must* be at least 18 years of age. (A person is ineligible unless the person possesses the characteristic of being at least 18 years of age.)

> The board may appoint three persons to serve as an advisory committee to the board. The advisory committee *must* be composed of an engineer, an architect, and an attorney. (The required components of the advisory committee are the three specified professionals.)

A drafter may find the choice of whether to use "shall" or "must" difficult, particularly when using the passive voice. In general, "must" is used if the sentence's subject is an inanimate object (i.e., is not a person or body on which a duty can be imposed).

[1] "Such" may be used to avoid ambiguity.
[2] See Section 311.016, Government Code.

> The application *must* be in writing. (A required characteristic of an application is that it be in writing; an application that is not in writing is invalid.)

There are circumstances in which either "shall" or "must" is correct, and the better choice depends on the context or point of emphasis.

> A report *must* be filed on the form provided by the agency. (A required characteristic of a report is that it be on the form provided by the agency; a report not filed on the correct form is invalid.)

> A report *shall* be filed on the form provided by the agency. (An unidentified person or entity has the duty to file a report on a form provided by the agency. A preferable, more direct way of emphasizing the duty would be to identify the actor, if the actor is known, and use the active voice. See Section 7.21 of this manual.)

A drafter might also choose a drafting approach that eliminates the decision of whether to use "shall" or "must." Under this approach, the provision simply states a legal fact.

> The appointee qualifies for office by taking the official oath and filing the required bond. (The method by which the appointee qualifies for office is stated as a factual matter.)

Use "may" to denote a privilege or discretionary power.

> The commissioner *may* inspect records. (The commissioner has authority to inspect records, but may not be compelled to do so.)

NOT

> The commissioner *can* inspect records.
>
> The commissioner *has the right to* inspect records.
>
> The commissioner *has authority to* inspect records.

Use "is entitled to" to denote a right, as opposed to a discretionary power.

> A qualified person *is entitled to* a license. (The person has a right to a license.)

Use "may not" to denote a prohibition.

> The clerk *may not* release the report. (The clerk is prohibited from releasing the report.)

NOTE: To define a criminal offense, use the format recommended in Section 3.09(b) of this manual.

SEC. 7.31. MODIFIERS. Place modifying words and phrases so there is no doubt about what they modify. Poor placement of modifiers is probably the main contributor to ambiguity in statutes.

Consider the following examples:

> SECTION 4. A person is not required to hold an exterminator's license to apply a Class A insecticide or trap mice on the person's own property.

Does the qualification "on the person's own property" apply only to "trap mice" or does it also qualify "apply a Class A insecticide"? This ambiguity may be cured by one of the following reformulations, depending on the meaning intended:

> SECTION 4. A person is not required to hold an exterminator's license to do the following on the person's own property:
>
> (1) apply a Class A insecticide; or
>
> (2) trap mice.

OR

> SECTION 4. A person is not required to hold an exterminator's license to:
>
> (1) trap mice on the person's own property; or
>
> (2) apply a Class A insecticide.

If the modifier is meant to apply to more than the last antecedent[1] and it is not possible to draft the provision as an enumerated list, use punctuation to clarify the provision:

> SECTION 4. A person is not required to hold an exterminator's license to apply a Class A insecticide, or trap mice, on the person's own property.

In the above example, the comma between the last item, "trap mice," and the modifying phrase that follows the items, "on the person's own property," signals that the modifying phrase applies to all those items.

Placing the limiting modifier "only" in each possible position in the following sentence produces several different meanings:

> The river authority may provide wastewater service in the district.

[1] See *Sullivan v. Abraham*, 488 S.W.3d 294, 297 (Tex. 2016).

1. No one else may provide wastewater service in the district:

   Only the river authority may provide wastewater service in the district.

   OR

   The river authority only may provide wastewater service in the district.

2. The actions of the river authority are limited to providing wastewater service in the district:

   The river authority may only provide wastewater service in the district.

3. The river authority may not provide other services in the district:

   The river authority may provide only wastewater service in the district.

4. The district is the only place where the river authority may provide wastewater service:[1]

   The river authority may provide wastewater service in the district only.

Careful consideration of what, exactly, is being limited by a modifier decreases the chances that a sentence will convey an unintended meaning.

SEC. 7.32. PARALLEL CONSTRUCTION. Sentences, sections, chapters, and other units of a code or other statute that serve a parallel function should be organized and written in a parallel fashion.

If parts of a sentence are parallel in meaning, they should be parallel in structure.

Some examples of nonparallel construction are:

The bill was not only discriminatory but was drafted poorly also. (*WRITE:* The bill not only was discriminatory but also was drafted poorly.)

The problems are poverty, illiteracy, and using drugs. (*WRITE:* The problems are poverty, illiteracy, and drug use.)

The board's duties include the administration of this chapter and regulating license holders. (*WRITE:* The board's duties include administering this chapter and regulating license holders.)

The department shall collect fees for:

[1] Note that the sentence "[T]he river authority may provide wastewater service only in the district" produces an ambiguity. In this position, "only" is a squinting modifier: it can be read as limiting the place the river authority may provide wastewater service, or it can be read as modifying "wastewater service" and limiting the kind of service the river authority may provide in the district.

(1) renewing a license;

(2) amending a license; and

(3) an inspection of a license holder's premises.

(*WRITE:* The department shall collect fees for:

(1) renewing a license;

(2) amending a license; and

(3) inspecting a license holder's premises.)

SEC. 7.33. POSITIVE EXPRESSION. Express ideas as positively and directly as possible. For example:

DO NOT WRITE

If the annexed territory *does not have fewer than 10* registered voters . . . .

WRITE

If the annexed territory *has 10 or more* registered voters . . . .

SEC. 7.34. SINGULAR NUMBER. If either the singular or the plural number can be used to express an idea, use the singular.[1] This usually produces a clearer style and facilitates simpler constructions.

DO NOT WRITE

Persons may not operate trucks with more than two axles on Class C roads.

WRITE

A person may not operate a truck with more than two axles on a Class C road.

However, the plural is appropriate to refer to a class, as opposed to the individual members of the class. For example:

The Texas Education Agency shall establish a program to identify children with impaired hearing.

BUT

If it appears that a child has impaired hearing, the agency shall inform the child's parent and recommend appropriate treatment.

[1] The rule of construction that the singular includes the plural and vice versa is contained in Sections 311.012(b) and 312.003(b), Government Code.

SEC. 7.35. TENSE. Use present tense whenever possible. Future tense often requires the auxiliary "shall," which creates a false imperative. See Section 7.30 of this manual concerning the use of "shall."

DO NOT WRITE

```
The governor shall be the chief budget officer of the
state.
```

WRITE

```
The governor is the chief budget officer of the state.
```

However, if it is necessary to express a time relationship in a statute, state in past or present perfect tense facts that have occurred or will occur before the statute's effective date or facts that will necessarily have occurred before the event described. For example:

```
A person who was employed by the department on January
1, 2021, is . . . .

If, before the effective date of this Act, the governor
has determined that money is available to pay . . . .

A person who has been finally convicted of the offense
two or more times is ineligible . . . .
```

As to statutes to which the Code Construction Act applies, Section 311.012(a), Government Code, provides that "[w]ords in the present tense include the future tense." The attorney general has held that under this rule of construction the present tense does not include the past tense or the perfect tense.[1] Consequently, a statute that by its language applied to a municipality that "creates" a board of trustees to manage a municipally owned utility did not apply to a municipality that *had created* a board of trustees before the statute took effect.

A drafter has several options to clearly indicate that a statute applies to an existing entity or condition. Perhaps the best approach is to choose a verb that indicates an ongoing activity:

```
This section applies to a municipality that operates a
municipally owned utility.[2]
```

Another option is to use the passive voice:

```
This section applies to a board of trustees created by
a municipality.
```

Finally, the drafter can use both the present perfect and present tenses:

```
This section applies to a municipality that has created
or that creates a board of trustees.
```

[1] Tex. Att'y Gen. Op. No. JC-0509 (2002). The opinion's reference to "perfect tense" appears to include all the perfect tenses.
[2] The attorney general noted this distinction in JC-0509.

SEC. 7.36. "THAT" AND "WHICH." Use the pronoun "that," rather than "which," to introduce a restrictive relative clause. A restrictive relative clause is one that qualifies or limits the word it modifies, distinguishes it from others of the same class, and is essential to the meaning of the sentence. For example:

> This Act does not apply to a municipality *that has the commission form of government*.

A nonrestrictive relative clause, properly introduced by "which," makes a parenthetical descriptive statement about the word it modifies and may be deleted from the sentence without changing its sense. For example:

> Smallville, *which has the commission form of government,* is 50 miles from Metropolis.

As a rule of thumb, nonrestrictive clauses are surrounded by commas and restrictive clauses are not.

SEC. 7.37. THIRD PERSON. Use the third person.

SEC. 7.38. "FEWER" VS. "LESS" AND OTHER PERPLEXING PAIRS

affect/effect

"Affect" is a verb meaning "to influence or have an effect on":[1]

> This chapter does not affect a penalty under other state law.

"Effect" may be either a verb or a noun. As a verb, it means "to cause to come into being" or "to put into effect":

> The actor used a deadly weapon to effect his escape.
>
> The board shall adopt rules to effect the purposes of this chapter.

As a noun, "effect" means "a result or consequence." It also means "the quality or state of being operative," as in the second example below:

> The duplicate receipt has the same effect as the original.
>
> This Act takes effect September 1, 2021.

between/among

"Between" denotes a one-to-one relationship regardless of the number of items:

> distinguishing between levels of usage

[1] The noun form of "affect," referring to the conscious subjective aspect of an emotion, is rarely used in contexts other than psychology.

a contract between the insurer, the insured, and the health care provider

partnerships between parents and teachers

"Among" expresses a collective and undefined relationship and is used to emphasize distribution rather than individual relationships:

the board shall elect from among its members

that includes, among other information, the office address of the member

biannual/biennial

"Biannual" and "semiannual" refer to something that occurs twice a year, while "biennial" means "occurring every two years." To eliminate possible misinterpretations caused by the similarity between "biannual" and "biennial," a drafter should use "semiannual" whenever the former sense is intended:

The board shall hold semiannual meetings on dates set by the board.

The governor shall deliver a biennial report to the legislature based on the information submitted.

compose/comprise

Traditionally, the whole always comprised the parts, but in contemporary usage "comprise" has come to mean both "to include or be made up of" and "to constitute or compose." For the sake of clarity, drafters should avoid using this Janus-faced term and instead use words that are more readily understood:

The district may include more than one county.

The committee is composed of 12 members.

The fund consists of money appropriated to the fund.

Minorities constitute 15 percent of the precinct's population.[1]

Though often seen, "is comprised of" is never correct and should be replaced by one of the terms in the above examples.

continual/continuous

The distinction between these terms is slight but useful. In general, "continual" means "recurring at intervals," and "continuous" means "going on without interruption":

[1] A drafter should use "is" instead of "constitutes" when the intended sense does not include the idea of constituent parts making up a whole. For example, "Each day of violation is a separate offense" is preferable to " . . . constitutes a separate offense."

"Occupation" includes employment that requires continual supervision.

The person must keep the certification in continuous effect.

disburse/disperse

"Disburse" applies to the distribution of money, while "disperse" refers to the distribution of all other things:

Money disbursed by the department may not be included in the amounts under this section.

The institution may disburse the grant proceeds.

The department may contract with media representatives for the purpose of dispersing promotional materials.

farther/further

"Farther" and "further" are used differently as adjectives. "Farther" applies to distance, while "further" implies addition:

so that no entrance is farther than 25 feet from a sign

the court may not take further action

"Farther" and "further" are used interchangeably as adverbs describing spatial, temporal, or metaphorical distance. "Further" is used when there is no notion of distance:

a penalty that is further enhanced

Further, "further" is used as a sentence modifier, while "farther" is not.

fewer/less

"Fewer" applies to readily distinguishable or countable units:

fewer inmates
fewer votes

"Less" applies to mass nouns or to units and ideas that cannot be counted:

less paper
less importance

"Less" also is used with percentages and with terms that indicate units of time, distance, and money:

less than five percent

less than four years
less than 16 miles
less than $92 million

With words such as “population” and “enrollment,” use “fewer” when the figure is followed by a plural noun and “less” when it is not:

an enrollment of fewer than 10,000 students
a population of less than 300,000

historic/historical

Something that is “historic” is memorable or important or figures in history, while something that is “historical” merely relates to or deals with history:

A historic site or structure acquired under this chapter is under the control and management of the municipality.

The county may accept donations for a historical museum.

if/whether

Use “if” to express a conditional idea. Use “whether” to express an alternative or possibility:

The department shall provide a waiver if it is determined to be necessary.

The commissioner shall decide whether the defendant is manifestly dangerous.

practicable/practical

“Practicable” refers to something that is capable of being accomplished or feasible. “Practical” applies to what is useful or adapted to use or actual conditions:

The authority shall file the report with the legislature as soon as practicable.

The bonds may be issued in installments as the board finds feasible and practical in accomplishing the purposes of this section.

whether or not/whether

In most instances, “or not” may be omitted as superfluous or even as incorrect since “whether” can imply more alternatives than simply the opposite indicated by “or not.” However, when the alternative is clearly posed, “whether or not” or “regardless of whether” should be used:

The commission shall determine whether to fund the project.

The board shall hold meetings whether or not the public member attends.

A provider is liable under this section regardless of whether the provider had actual knowledge of the omission.

SEC. 7.39. PERSON FIRST RESPECTFUL LANGUAGE. (a) Preferred terms and phrases. Section 392.002, Government Code, requires the legislature and the Texas Legislative Council to avoid using certain terms and phrases that the legislature has found are "demeaning and create an invisible barrier to inclusion as equal community members"[1] and to instead use other preferred terms and phrases or variations of those terms and phrases.

AVOID USING THE FOLLOWING TERMS AND PHRASES:

disabled[2]
developmentally disabled
mentally disabled
mentally ill
mentally retarded
handicapped
cripple
crippled

PREFERRED TERMS AND PHRASES:

persons with disabilities
persons with developmental disabilities
persons with mental illness
persons with intellectual disabilities

(b) Replacing avoided terms and phrases. Section 392.002, Government Code, also directs the legislature and the Texas Legislative Council to replace avoided terms and phrases, as appropriate, with preferred terms and phrases as sections including the avoided terms and phrases are otherwise amended by law. In some cases it may not be appropriate to replace an avoided term or phrase, because the replacement will make an unwanted change in the law or will create ambiguity or confusion. In addition, Section 392.002 does not address the question of whether to expand the size of a bill to amend other sections of the statute being amended simply to replace terms and phrases that should be avoided. If there is a situation in which it is not appropriate to replace an avoided term or phrase or a decision is made to not expand the size of a bill to amend other sections, the drafter should use "person first" language to the extent possible.

[1] Section 392.001, Government Code.

[2] To ensure consistency with the Texas Constitution and existing code provisions, a drafter may use "disabled" in drafts amending Title 1, Tax Code (the Property Tax Code), or other property tax-related provisions. Use "person (or individual) who is disabled" where appropriate, but use "disabled veteran" to ensure consistency with Sections 1-b and 2, Article VIII, Texas Constitution.

SEC. 7.40. METES AND BOUNDS. When working with metes and bounds, follow the copy exactly. Legislative council staff does not make any changes in metes and bounds.

Subchapter C
Citations

SEC. 7.61. CODES. Examples of citations for Texas codes are as follows:[1]

Subtitle B, Title 3, Alcoholic Beverage Code,
Section 23.30, Business & Commerce Code,
Chapter 20, Business Organizations Code,
Section 15.013, Civil Practice and Remedies Code,
Article 13.19, Code of Criminal Procedure,
Article 3.51, Insurance Code, (for Title 1)
Section 31.001, Insurance Code, (for all other titles)
Section 41.006, Parks and Wildlife Code,
Section 1003.051, Special District Local Laws Code,

SEC. 7.62. CONSTITUTION. To cite the Texas Constitution or the United States Constitution, use Roman numerals for the articles and Arabic numerals for the sections.

To cite an article of the constitution:

Article IV, Texas Constitution,
Article V, United States Constitution,

To cite a section of the constitution:

Section 44, Article III, Texas Constitution,[2]
Section 1, Article II, United States Constitution,

To cite an amendment to the United States Constitution, use words instead of figures:

the Nineteenth Amendment to the United States Constitution

SEC. 7.63. REVISED STATUTES. To cite a title of the 1925 revision of the civil statutes:

Title 112, Revised Statutes,

To cite an article of the Revised Statutes:

Article 6228, Revised Statutes,

SEC. 7.64. SESSION LAWS AND BILLS. Observe the following forms when citing a session law, other than one that creates a special district or that amends an act creating a special district. Citations of session laws that are assigned an unofficial Vernon's Texas Civil Statutes article number include a parenthetical reference, as shown in the following examples. The parenthetical reference is omitted from citations of session laws that are not assigned a Vernon's article number:[3]

---

[1] For a complete listing of codes enacted or proposed under the legislative council's statutory revision program, see Section 8.09 of this manual. For an explanation of how to cite two or more statutes with the same designation, see Section 3.10(c) of this manual.

[2] A constitutional provision that has the same designation as another provision is distinguished in a citation by a reference to the joint resolution that proposed it. See Section 3.10(c) of this manual.

[3] The convention of including a parenthetical bill number reference in session law citations was adopted in 2008. Note also that "Regular Session" is used even for those legislatures, such as the 80th, that had no called session.

A chapter: Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes),

A section: Section 2, Chapter 1202 (S.B. 80), Acts of the 69th Legislature, Regular Session, 1985 (Article 6819a-55, Vernon's Texas Civil Statutes),

A part of a section: Section 2(a),[1] Chapter 910 (H.B. 1208), Acts of the 74th Legislature, Regular Session, 1995 (Article 9030, Vernon's Texas Civil Statutes),

A session law for a session for which special laws and general laws were published in separate volumes:[2] Chapter 185 (S.B. 481), General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 5330a, Vernon's Texas Civil Statutes),

A 1939 general law:[3] Chapter 9 (H.B. 960), page 105, General Laws, Acts of the 46th Legislature, Regular Session, 1939 (Article 6243d-1, Vernon's Texas Civil Statutes),

A 1939 special law:[3] Chapter 5 (H.B. 800), page 759, Special Laws, Acts of the 46th Legislature, Regular Session, 1939,

When citing a session law that creates a special district or that amends an act creating a special district, use the form indicated above but omit the parenthetical bill number and the unofficial Vernon's citation, if any. Parenthetical bill numbers may also be omitted from session law citations in code chapter revisor's notes.

A **bill citation** includes the bill number, the legislature, and the year:

H.B. [*or* House Bill] 1, 81st Legislature, 1st Called Session, 2009

S.B. [*or* Senate Bill] 289, 86th Legislature, Regular Session, 2019

When citing a **joint resolution**, include the resolution number, the legislature, and the year:

H.J.R. 95, 86th Legislature, Regular Session, 2019

S.J.R. 1, 83rd Legislature, Third Called Session, 2013

SEC. 7.65. GENERAL APPROPRIATIONS ACT. To refer to current and future general appropriations acts:

the General Appropriations Act

---

[1] In some instances, it is preferable to write "Subsection (a), Section 2." See Section 7.67 of this manual.

[2] See the list of legislative sessions in Section 7.85 of this manual, footnote 1.

[3] The session laws from the 1939 session are organized into titles, each of which begins with a Chapter 1. To specify which Chapter 1 is being cited, the drafter must include the page number as part of the citation.

To cite a particular general appropriations act:

> Chapter 1353 (H.B. 1), Acts of the 86th Legislature, Regular Session, 2019 (the General Appropriations Act),

To cite a particular item of appropriation in a general appropriations act:

> Strategy A.1.2, [insert strategy name], page III-26[1], Chapter 1353 (H.B. 1), Acts of the 86th Legislature, Regular Session, 2019 (the General Appropriations Act),

To cite a particular rider in a general appropriations act:

> Rider 4, page III-51,[1] Chapter 1353 (H.B. 1), Acts of the 86th Legislature, Regular Session, 2019 (the General Appropriations Act),

SEC. 7.66. INTERNAL CITATIONS. When internal citations refer to law other than the law in which they are found, they are the same as external citations.[2]

When internal citations refer to the law in which they are found, use these forms:

> **Another article in the Revised Statutes:** Article 4008, Revised Statutes,
>
> **Another section in the same code:** Section 21.021[3]
>
> **Another section in the same chapter of a session law:** Section 3 of this Act
>
> **Another part of a section in the same section:** Subsection (a) of this section[3]

If the reference is obvious, a drafter may choose to omit such phrases as “of this Act” and “of this section” in session laws and Revised Statutes that usually include them.

SEC. 7.67. LONG AND SHORT FORMS. Use the short, or compact, citation form if there is no possibility that it can be misunderstood. Create the short form by naming the highest level of indented organizational unit that appears in the reference and omitting the names of all levels of indented organizational units below the highest level, as follows:

> Section 15(a), instead of Subsection (a), Section 15
>
> Section 3.202(a)(7)(B), instead of Paragraph (B), Subdivision (7), Subsection (a), Section 3.202[4]

---

[1] When citing a page number to a general appropriations act, cite the page from the session laws, not the page from the electronic version as it appears on the Legislative Budget Board’s Internet website.

[2] See the discussion of incorporation by reference in Section 8.11 of this manual. It is not generally necessary to use “as amended” in references to statutes that may have subsequent amendments.

[3] The Code Construction Act makes it unnecessary to recite “of this code,” “of this section,” etc., in internal citations in codes. See Section 311.006, Government Code.

[4] For names of each indented organizational unit, see Section 7.83(a) of this manual.

For an internal reference within the same section:

Subsection(a)(7), instead of Subdivision (7), Subsection (a)

For a reference to multiple parts, add an "s":

Sections 3.202(a) and (b) instead of Subsections (a) and (b), Section 3.202

Use the long form if the act has a Section 15 and a Section 15(a), a Section 15a, or a Section 15A:

Subsection (a), Section 15,

If, by amendment, a citation is added to the text of a statute and another citation in the long form appears in the text close by, follow the usual practice of adapting the style of the amendment to the style of the law to which it applies, and use the long form.

SEC. 7.68. SHORT TITLES. In general, short titles are not used in citations. There are three exceptions to this rule. Two of the exceptions are acts found in Articles 5415e-4 and 6243e, Vernon's Texas Civil Statutes. Citations to those acts use the VTCS citation. The following are examples of citations to those acts:

Section 5, Dredge Materials Act (Article 5415e-4, Vernon's Texas Civil Statutes),

Section 3, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes),

The third exception to this rule is the Texas Sunset Act. Internal statutory references to that act should appear as follows:

Chapter 325, Government Code (Texas Sunset Act),

SEC. 7.69. ATTORNEY GENERAL OPINIONS. Consult *Texas Rules of Form* for guidance on citing attorney general opinions issued before 1939. Cite opinions of the attorney general issued after 1938 using the citation on the opinion as it was issued, which consists of the issuing attorney general's initials followed by either a 3- or 4-digit number, as follows:

Tex. Att'y Gen. Op. No. GA-0318 (2005)

Tex. Att'y Gen. Op. Nos. DM-475 (1998), JC-0179 (2000)

When citing a specific page of an opinion, place the pinpoint citation before the parenthetical date:

Tex. Att'y Gen. Op. No. KP-0178 at 2 (2018)

Citations to letters advisory and letter opinions omit "Op." and "No." and substitute "LA" or "LO," as appropriate, for the attorney general's initials:

Tex. Att'y Gen. LA-153 (1978)

Tex. Att'y Gen. LA-98-223 (1998)[1]
Tex. Att'y Gen. LO-94-018 (1994)

Both *Texas Rules of Form* and *The Bluebook* are silent on the subject of citing open records decisions. The following citation options are drawn from the attorney general's website, *Texas Rules of Form* and *Bluebook* style for citing other Texas attorney general documents, and court opinions, respectively. The drafter may select the style most appropriate for the document being drafted and should ensure internal consistency when citing multiple open records decisions in a memorandum or other document:

Single-reference citation: Open Records Decision No. 508 (1988)

Multi-reference citation: Open Records Decision Nos. 508 (1988); 394, 366 (1983)

Subsequent pinpoint citations: Open Records Decision No. 508 at 3

OR

Tex. Att'y Gen. ORD1988-508

OR

Tex. Att'y Gen. ORD-508 (1988)

Subsequent pinpoint citations: *Id.* ORD-508 at 3

Consult *Texas Rules of Form* for guidance on citing attorney general open records letter rulings. The following is an example of the proper citation for an open records letter ruling:

Tex. Att'y Gen. OR2018-09264

SEC. 7.70. ETHICS COMMISSION OPINIONS. Cite opinions of the Texas Ethics Commission as follows:

Tex. Ethics Comm'n Op. No. 412 (1999)

SEC. 7.71. TEXAS ADMINISTRATIVE CODE. Cite Texas Administrative Code provisions as follows:

40 T.A.C. Section 809.15(b)
28 T.A.C. Chapter 3
28 T.A.C. Chapter 3, Subchapter EE

SEC. 7.72. TEXAS REGISTER. To cite a proposed rule published in the Texas Register, provide the volume, the page on which the rule begins, and the year:

29 Tex. Reg. 7231 (2004)

[1] After 1978 the year is embedded in the letter number and is repeated in parentheses.

SEC. 7.73. FEDERAL LAW. (a) Statutes. The usual citation for a federal statute as enacted by the U.S. Congress is:

Pub. L. No. 114-152

A citation to the United States Code contains the title number, followed by "U.S.C." and the chapter or section number:

5 U.S.C. Chapter 85
36 U.S.C. Sections 300108-300111
42 U.S.C. Section 401 et seq.

A federal statute that uses a popular name includes the U.S.C. or Public Law citation in parentheses following the name:

Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.)
Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.)
Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.)[1] ***or*** (Pub. L. No. 99-603)
Section 1201(a)(1), Social Security Act (42 U.S.C. Section 1321(a)(1)),
Sections 203(b) and (k), National Housing Act (12 U.S.C. Section 1709)[2]

Citations to the Internal Revenue Code of 1986 do not require a parenthetical U.S.C. citation:

Section 501(c), Internal Revenue Code of 1986,

(b) Code of Federal Regulations. Cite the Code of Federal Regulations as follows:

14 C.F.R. Part 121
14 C.F.R. Part 121, Subpart J,
14 C.F.R. Section 121.221(a)

(c) Federal Register. Citations to the Federal Register include the volume, the page on which the cited rule or regulation begins, and the date:

69 Fed. Reg. 11736 (March 11, 2004)

SEC. 7.74. CASE CITATION. Format Texas and federal case citations in letters and memoranda in accordance with the following examples.

[1] Note INA and IRCA have the same U.S.C. citation. The Immigration Reform and Control Act of 1986 comprehensively amended and revised the Immigration and Nationality Act, which was enacted in 1952.

[2] In a parenthetical citation to a federal statute, subsection designations are acceptable but not necessary. Therefore, both the fourth (Subsection (a)(1) included) and fifth (Subsections (b) and (k) not included) examples cite the United States Code correctly.

TEXAS COURTS[1]

(a) Texas Courts of Appeals After 8-31-97

Civil Cases

No further action: *Urban v. Canada*, 963 S.W.2d 805 (Tex. App.—San Antonio 1998, no pet.)

No higher court action: *Pentico v. Mad-Wayle, Inc.*, 964 S.W.2d 708 (Tex. App.—Corpus Christi-Edinburg 1998, pet. denied)

With subsequent history: *Johnson v. Standard Fruit & Vegetable Co.*, 984 S.W.2d 633 (Tex. App.—Houston [1st Dist.] 1997), *rev'd*, 985 S.W.2d 62 (Tex. 1998)

With U.S. Supreme Court action in subsequent history: *Foreness v. Hexamer*, 971 S.W.2d 525 (Tex. App.—Dallas 1997, pet. denied), *cert. denied*, 525 U.S. 504 (1998)[2, 3]

Criminal Cases

No further action: *Brown v. State*, 960 S.W.2d 265 (Tex. App.—Corpus Christi-Edinburg 1997, no pet.)

No higher court action: *Rios v. State*, 1 S.W.3d 135 (Tex. App.—Tyler 1999, pet. ref'd)

With subsequent history: *Hidalgo v. State*, 945 S.W.2d 313 (Tex. App.—San Antonio 1997), *aff'd*, 983 S.W.2d 746 (Tex. Crim. App. 1999)

With U.S. Supreme Court action in subsequent history: *State v. Acosta*, 951 S.W.2d 291 (Tex. App.—Waco 1997, pet. ref'd), *cert. denied*, 523 U.S. 1119 (1998)

(b) Texas Courts of Appeals 1912 Through 8-31-97

Civil Cases[4]

No further action: *Burgess v. Jaramillo*, 914 S.W.2d 246 (Tex. App.—Fort Worth 1996, no writ)

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[1] Refer to *Texas Rules of Form* for petition and writ history designation forms, including forms for citing pending petitions for review.

[2] Both writ or petition history and subsequent history are given for any appeals court case with U.S. Supreme Court action, not just those with petitions filed after 8-31-97.

[3] Section 3.2, *Texas Rules of Form* (14th ed.), recommends omitting mention of denials of certiorari for opinions more than two years old, but we include it regardless of the opinion's age.

[4] Section 4.3.1, *Texas Rules of Form* (14th ed.), lists the cities in which the 14 current courts are located. Cites to cases from the Galveston Court of Civil Appeals (which became Houston [1st Dist.] in 1967) will refer to "Galveston."

No higher court action: *Bd. of Adjustment of Fort Worth v. Rich*, 328 S.W.2d 798 (Tex. App.—Fort Worth 1959, writ ref'd)[1]

With subsequent history: *Brinegar v. Porterfield*, 705 S.W.2d 236 (Tex. App.—Texarkana), *aff'd*, 719 S.W.2d 558 (Tex. 1986)[2]

With U.S. Supreme Court action in subsequent history: *Zetune v. Jafif-Zetune*, 774 S.W.2d 387 (Tex. App.—Dallas 1989, writ denied), *cert. denied*, 498 U.S. 813 (1990)

Criminal Cases

No further action: *Davis v. State*, 964 S.W.2d 14 (Tex. App.—Tyler 1997, no pet.)

No higher court action: *Ford v. State*, 908 S.W.2d 32 (Tex. App.—Fort Worth 1995, pet. ref'd)

With subsequent history: *Bellah v. State*, 641 S.W.2d 641 (Tex. App.—El Paso 1982), *aff'd*, 653 S.W.2d 795 (Tex. Crim. App. 1983) (per curium)

With U.S. Supreme Court action in subsequent history: *Carreras v. State*, 936 S.W.2d 727 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd), *cert. denied*, 522 U.S. 933 (1997)

(c) Texas Courts of (Civil) Appeals Before 1912[3]

No further action: *Moonshine Co. v. Dunman*, 111 S.W. 161 (Tex. App. 1908, no writ)

No higher court action: *Binyon v. Smith*, 112 S.W. 138 (Tex. App. 1908, writ ref'd)

With subsequent history: *Hancock v. Stacy*, 116 S.W. 177 (Tex. App. 1909), *aff'd*, 125 S.W. 884 (Tex. 1910)

(d) Texas Court of Criminal Appeals

Without subsequent history: *Parks v. State*, 437 S.W.2d 554 (Tex. Crim. App. 1969)

[1] The 14th edition of *Texas Rules of Form* eliminated the need for the "Civ." distinction for certain courts of civil appeals cases; therefore, cite all courts of civil appeals cases as "Tex. App." and not "Tex. Civ. App."

[2] There is no date after "Texarkana" because it is the same as the date of the higher court's decision (1986). For the same reason, no date is given after "Tex." in the Tarrant County cite under the Texas Supreme Court After 1885 heading.

[3] The courts were not designated by cities before 1912, so no city name will appear in these cites.

With subsequent history: *Johnson v. State*, 755 S.W.2d 92 (Tex. Crim. App. 1988) (en banc), *aff'd*, 491 U.S. 397 (1989)[1]

(e) Texas Supreme Court After 1885

Without subsequent history: *Garcia v. Travelers Ins. Co.*, 365 S.W.2d 916 (Tex. 1963)

With subsequent history: *Tarrant County v. Ashmore*, 635 S.W.2d 417 (Tex.), *cert. denied*, 459 U.S. 1038 (1982)

FEDERAL COURTS

(a) U.S. District Courts

Without subsequent history: T*orres v. Butz*, 397 F. Supp. 1015 (N.D. Ill. 1975)

With subsequent history: *United States v. Eller*, 114 F. Supp. 284 (M.D.N.C.), *rev'd*, 208 F.2d 716 (4th Cir. 1953), *cert. denied*, 347 U.S. 934 (1954)

(b) U.S. Courts of Appeals

Without subsequent history: *Resolution Trust Corp. v. Daddona*, 9 F.3d 312 (3d Cir. 1993)[2]

With subsequent history: *United States v. Kaiser Aetna*, 584 F.2d 378 (9th Cir. 1978), *rev'd*, 444 U.S. 164 (1979)

(c) U.S. Supreme Court

Collins v. Heinze, 352 U.S. 933 (1956)

[1] A parenthetical reference to the weight of the authority, such as "en banc" in this example, may be included.
[2] Note that it's "2d" and "3d" Cir., not "2nd" and "3rd."

Subchapter D
Other Useful Information

SEC. 7.81. CHECKLISTS. (a) Drafting checklist. When a drafter finishes a draft of a bill, the next step is to check for the following:

(1) Is there an enacting clause?

(2) Is there an effective date?

(3) In the caption of the bill are the following included, if applicable:

any specific provision required by the rules of the house or senate

the imposition of penalties

the imposition or authorization of a tax or changes that affect an existing tax or taxing authority

the making of an appropriation

the granting of authority to issue a bond or other similar obligation or to create a public debt

the granting of the power of eminent domain

(4) If appropriate, are saving and transition provisions included? See Section 3.12 of this manual.

(5) Are the sections of the bill in the correct order? See Section 3.10(i) of this manual.

(6) Are the sections of the bill numbered consecutively?

(7) Are the sections properly labeled "SECTION" or "Sec."? See Section 7.84 of this manual.

(8) If there are three or more nonamendatory, substantive sections in the bill, do all sections of the bill have headings?

(9) Does any section of the bill have a Subsection (a) but no Subsection (b)? Or is there a Subsection (b) without a Subsection (a)?

(10) Is the paragraphing correct? Should there be some double or triple paragraphing?

(11) Does the introductory language correctly identify what is being added or amended?

(12) If there is amendatory language, is the bracketing and underlining correct? Does the new language precede the old?

(13) Are all citations in the correct form?

(14) Are General Laws and Special Laws specified in citations for amendatory sections for those legislative sessions that have separately bound laws?

(15) Are the correct names used for state agencies?

(16) If a provision of existing law is renumbered or repealed, are there any cross-references to the provision that need to be corrected?

(b) Editing checklist. Editors should follow these steps when editing a bill:

(1) Check for correct document heading: bill? joint resolution? committee substitute?

(2) Read the caption before and after editing the draft, looking especially for any specific provision required by house or senate rules.

(3) Check for enacting clause.

(4) Check bill SECTION numbering.

(5) Correct any wrong paragraphing.

(6) Read statutes against current law.

(7) (a) Read the draft and ensure that:

correct citation style is used in recital

statute set out matches recital

smallest amendable unit is set out

<u>underlining</u> is before [~~bracketing~~]

cross-references and agency names are correct

(b) Check subsections and subdivisions for:

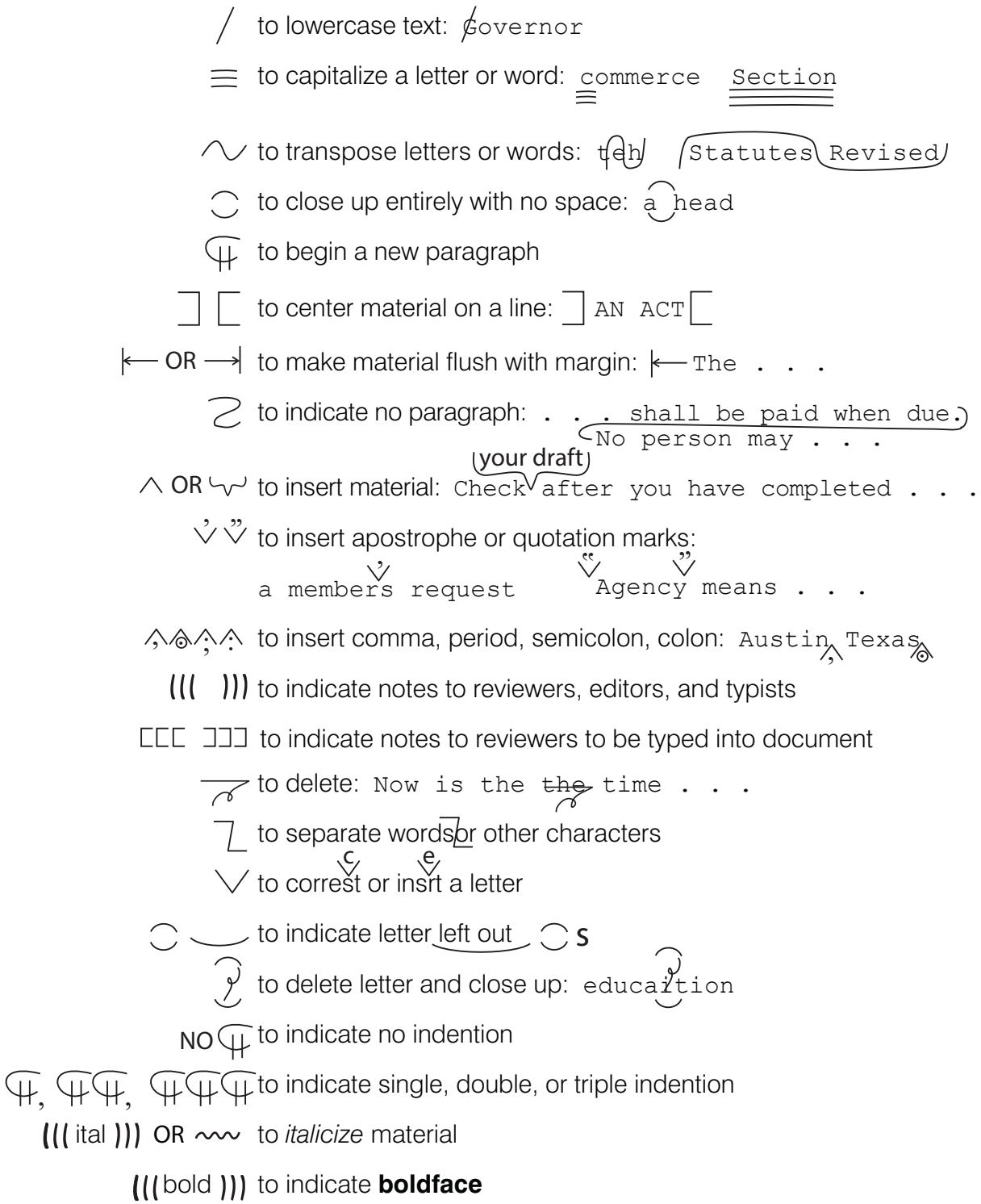
consecutive lettering and numbering; if there's an (a), there must be a (b)

"and" or "or" between the last two subdivisions, paragraphs, etc.

parallel language in subdivisions, paragraphs, etc.

(8) Carefully check transition language and effective date.

SEC. 7.82. EDITING MARKS



7

SEC. 7.83. FORMS OF DOCUMENTS. (a) Indention. Legislative council style is to indent sections and subsections once, subdivisions twice, paragraphs three times, subparagraphs four times, and sub-subparagraphs five times:[1]

```
SECTION 1. HEADING.  (a) (The first subsection)
(b) (Subsection)
     (1) (Subdivision)
         (A) (Paragraph)
             (i) (Subparagraph)
                 (a) (Sub-subparagraph)
```

(b) Code divisions. At levels above those described in Subsection (a) of this section, codes are organized as follows:

TITLE
SUBTITLE
CHAPTER
ARTICLE
SUBCHAPTER
PART

Division of chapters into articles and subchapters into parts is generally not necessary and should be resorted to only when other organizational schemes prove insufficient.

(c) Letters. The recommended form for inside address and salutation is:

- For the governor:

  The Honorable Greg Abbott
  Governor of Texas
  (((address)))

  Dear Governor Abbott:

- For the lieutenant governor:

  The Honorable Dan Patrick
  Lieutenant Governor of Texas
  (((address)))

  Dear Governor Patrick:

- For the speaker of the house:

  The Honorable Dennis Bonnen
  Speaker of the Texas House of Representatives
  (((address)))

  Dear Speaker Bonnen:

[1] The cycle then repeats, with sub-sub-subparagraphs indented six times and designated by Arabic numerals and sub-sub-sub-subparagraphs indented seven times and designated by uppercase letters.

- For the attorney general:

  The Honorable Ken Paxton
  Attorney General of Texas
  (((address)))

  Dear General Paxton:

- For a committee chair:

  The Honorable Mary Smith
  Chair, House (or Senate) . . . Committee
  (((address)))

  Dear Representative (or Senator) Smith:

- For senators:

  The Honorable Jane Jones
  State Senator
  (((address)))

  Dear Senator Jones:

- For representatives:

  The Honorable John Doe
  State Representative
  (((address)))

  Dear Representative Doe:

If additional material is sent with the letter, write "Enclosure" or "Attachment," as appropriate, under the signature line and flush with the left margin.

(d) Memoranda. Use the following form for the heading:

M E M O R A N D U M

TO:	The Honorable John Doe State Representative (or State Senator)
FROM:	Place name of author here Place title of author here (e.g., Legislative Counsel)
DATE:	Insert current date here
SUBJECT:	A brief title of the memorandum, such as Constitutional and Legal Issues

Appendixes 7 and 9 to this manual offer examples of common methods of memorandum formatting; the drafter may organize a memorandum using any formatting system that facilitates clarity and ease of internal citation. Major section headings are typically centered and styled in all capital letters, and these sections may be further subdivided using a consistent system of headings, lettering, and numbering. When additional material is included with the memorandum, "Enclosure" or "Attachment," as appropriate, should appear at the end, flush with the left margin.

SEC. 7.84. FORM OF SECTIONS OF BILLS AND JOINT RESOLUTIONS. **(a) Amendatory and nonamendatory language.** The difference in language between amendatory sections and nonamendatory sections is shown by the use of capitalization and abbreviation. Each section of a bill, or of a joint resolution to amend the Texas Constitution, is labeled "SECTION" followed by the appropriate number. A section or article being amended is labeled "Sec." or "Art.", as appropriate, followed by the number.

(b) Headings. Headings of articles and sections are in all capital letters. The text of an article or section immediately follows the heading unless the article is further divided into sections or subdivisions that are labeled as such.

EXAMPLES:

> SECTION 1. Section 3, Dredge Materials Act (Article 5415e-4, Vernon's Texas Civil Statutes), is amended to read as follows:
>
> Sec. 3. DEFINITIONS. As used in this Act . . . .
>
> SECTION 2. Section 1.01, Article 6243a-1, Revised Statutes, is amended to read as follows:
>
> Sec. 1.01. AMENDMENT, RESTATEMENT, AND CONSOLIDATION. (a) The purpose of this article is to restate and amend . . . .
>
> SECTION 3. Article 38.01, Code of Criminal Procedure, is amended to read as follows:
>
> Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION
>
> Sec. 1. CREATION. The Texas Forensic Science Commission . . . .

SEC. 7.85. LEGISLATIVE SESSIONS. Use this list for citing session laws:

39th Regular[1]	1925
1st Called[1]	1926
40th Regular	1927
1st Called	1927
41st Regular	1929
1st Called	1929
2nd Called[1]	1929
3rd Called[1]	1929
4th Called[1]	1930
5th Called[1]	1930
42nd Regular[1]	1931
1st Called	1931
2nd Called	1931
3rd Called	1932
4th Called	1932
43rd Regular[1]	1933
1st Called	1933
2nd Called	1934
3rd Called	1934
4th Called	1934
44th Regular[1]	1935
1st Called	1935
2nd Called	1935
3rd Called	1936
45th Regular	1937
1st Called	1937
2nd Called	1937
46th Regular[1, 2]	1939
47th Regular	1941
1st Called	1941
48th Regular	1943
49th Regular	1945
50th Regular	1947
51st Regular	1949
1st Called	1950
52nd Regular	1951
53rd Regular	1953
1st Called	1954
54th Regular	1955
55th Regular	1957
1st Called	1957
2nd Called	1957
56th Regular	1959
1st Called	1959
2nd Called	1959
3rd Called	1959
57th Regular	1961
1st Called	1961
2nd Called	1961
3rd Called	1962
58th Regular	1963
59th Regular	1965
1st Called	1966
60th Regular	1967
1st Called	1968
61st Regular	1969
1st Called	1969
2nd Called	1969
62nd Regular	1971
1st Called	1971
2nd Called	1972
3rd Called	1972
4th Called	1972
63rd Regular	1973
1st Called	1973
64th Regular	1975
65th Regular	1977
1st Called	1977
2nd Called	1978
66th Regular	1979
67th Regular	1981
1st Called	1981
2nd Called	1982
3rd Called	1982
68th Regular	1983
1st Called	1983
2nd Called	1984
69th Regular	1985
1st Called	1985
2nd Called	1986
3rd Called	1986
70th Regular	1987
1st Called	1987
2nd Called	1987
71st Regular	1989
1st Called	1989
2nd Called	1989
3rd Called	1990
4th Called	1990
5th Called	1990
6th Called	1990
72nd Regular	1991
1st Called	1991
2nd Called	1991
3rd Called	1992
4th Called	1992
73rd Regular	1993
74th Regular	1995
75th Regular	1997
76th Regular	1999
77th Regular	2001
78th Regular	2003
1st Called	2003
2nd Called	2003
3rd Called	2003
4th Called	2004
79th Regular	2005
1st Called	2005
2nd Called	2005
3rd Called	2006
80th Regular	2007
81st Regular	2009
1st Called	2009
82nd Regular	2011
1st Called	2011
83rd Regular	2013
1st Called	2013
2nd Called	2013
3rd Called	2013
84th Regular	2015
85th Regular	2017
1st Called	2017
86th Regular	2019

[1] Cite "General Laws" or "Special Laws," as applicable, because chapters of each were numbered separately.
[2] Cite page number as well as chapter number.

SEC. 7.86. NOVEMBER ELECTION DATES, 2019–2032. The first Tuesday after the first Monday in November is shown below for years through 2032:

November 5, 2019	November 3, 2026
November 3, 2020	November 2, 2027
November 2, 2021	November 7, 2028
November 8, 2022	November 6, 2029
November 7, 2023	November 5, 2030
November 5, 2024	November 4, 2031
November 4, 2025	November 2, 2032

See Section 4.08 of this manual for a discussion of appropriate dates for submission of proposed amendments to the Texas Constitution.

SEC. 7.87. REGULAR SESSION PERPETUAL CALENDAR

New Year's Day	Legislature Convenes (Second Tuesday of January)	60-Day Bill Filing Deadline	Adjournment Sine Die (140th Day or 20 Weeks)	Post-Session 20-Day Deadline for Governor to Sign or Veto	Effective Date (91st Day After Adjournment)
Monday January 1	Tuesday January 9	Friday March 9	Monday May 28	Sunday June 17	Monday August 27
Tuesday January 1	Tuesday January 8	Friday March 8	Monday May 27	Sunday June 16	Monday August 26
Wednesday January 1	Tuesday January 14	Friday March 14	Monday June 2	Sunday June 22	Monday September 1
Thursday January 1	Tuesday January 13	Friday March 13	Monday June 1	Sunday June 21	Monday August 31
Friday January 1	Tuesday January 12	Friday March 12	Monday May 31	Sunday June 20	Monday August 30
Saturday January 1	Tuesday January 11	Friday March 11	Monday May 30	Sunday June 19	Monday August 29
Sunday January 1	Tuesday January 10	Friday March 10	Monday May 29	Sunday June 18	Monday August 28

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CHAPTER 8
OTHER THINGS A DRAFTER OUGHT TO KNOW

SEC. 8.01. INTRODUCTION. This chapter contains a variety of information and advice that the authors of the manual consider important but could not fit neatly elsewhere. Subjects addressed here include important constitutional rules applicable to the legislative process such as the one-subject rule. The enrolled bill rule, which covers a multitude of legislative procedural sins, is explained. Constitutional limitations on terms of office, which can trip up an unwary drafter, are treated at some length. General laws of drafting significance, such as statutes establishing quorum requirements for state and local boards in general, are discussed. Advice on drafting classification schemes (such as a classification of cities by population or of individuals by age) is also included to help drafters avoid serious blunders that are all too easy to commit. In addition, this chapter addresses conflicting acts of the same session, the legislative council's statutory revision program, and laws amended the same session a code passes. It also discusses incorporating other law by reference and the drafting of a bill proposing a change or addition to civil procedure. Diagrams showing the path a bill follows through the legislative process conclude this chapter.

SEC. 8.02. ONE-SUBJECT RULE. Section 35(a), Article III, Texas Constitution, prescribes the one-subject rule:[1]

> No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

The policy behind the one-subject rule is that a legislative proposal should stand on its own merits and not be combined with unrelated proposals to generate broader support.

A bill containing more than one subject is subject to a point of order. A law enacted in violation of the rule is also subject to attack in court; because the existence of more than one subject can be discerned from the face of an act, the enrolled bill rule[2] does not apply.

The critical factor in determining compliance with the one-subject rule is understanding how the courts view the concept of "subject." In other words, how broad may the "subject" of a bill be without violating the rule? The courts have construed the rule liberally, permitting the inclusion of many provisions in a bill so long as there is a single, unifying theme to which every provision is germane[3] or if every provision has a logical relationship or is subsidiary to the same general subject matter.[4] Except for rather well-defined rules to be discussed in connection with general appropriations acts, it is difficult to lay down guidelines for compliance with the unity-of-subject requirement more specific than the general principles the courts have announced. A drafter does not need to be overly concerned with unity of subject so long as everything in a bill is held together by a common logical thread. Nothing prohibits "omnibus" legislation if every provision relates to a single subject. For example,

[1] See Section 3.03 of this manual for a discussion of Sections 35(b) and (c), Article III, which contain the title (or caption) requirement.
[2] See Section 8.03 of this manual.
[3] *Dellinger v. State*, 28 S.W.2d 537 (Tex. Crim. App. 1930); *Bd. of Sch. Trs. of Young Cty. v. Bullock Common Sch. Dist. No. 12*, 55 S.W.2d 538 (Tex. Comm'n App. 1932, judgm't adopted).
[4] *City of Beaumont v. Gulf States Utils. Co.*, 163 S.W.2d 426 (Tex. App.—Beaumont 1942, writ ref'd w.o.m.); *Ex parte Jimenez*, 317 S.W.2d 189 (Tex. 1958).

an omnibus tax bill may include provisions dealing with all facets of the general subject of financing state government operations, including taxes and fees and their allocation.

A signal that there may be a one-subject problem is difficulty in composing a caption (called the "title" in the constitution) that concisely describes a bill's subject; the inability to write any but an "index caption"[1] is symptomatic of multiple subjects.

It is in drafting amendments of doubtful germaneness,[2] rather than in drafting original bills, that a drafter is more likely to run afoul of the rule. A drafter should be particularly alert for possible violations of the one-subject rule when drafting end-of-the-session floor amendments intended to engraft on a still viable bill the substance of a bill that appears to be dead or dying. Legislators eager to salvage key parts of their legislative programs at the end of a session begin searching for "vehicle bills," that is, bills to which their programs might be added by amendment.[3]

General appropriations acts are given special treatment under the one-subject rule. The constitutional statement of the rule specifically defines the permissible scope of those acts as including "the various subjects and accounts, for and on account of which moneys are appropriated . . . ." The subject of appropriations includes appropriations proper (provisions whose sole purpose is to make state funds available to be spent), and details, limitations, or restrictions pertaining to those appropriations that are not inconsistent with general law. A rider that attempts to make or modify general law is void. For example, the state supreme court invalidated a rider that attempted to require that fees collected by certain public officers be deposited in the state treasury.[4]

Although the "one subject" to which a bill is limited is the one that is "expressed in its title," the courts have not generally focused on the connection between the caption and one-subject rules. Courts have not, for example, used the subject as stated in the caption as the sole criterion by which to judge compliance with the one-subject rule. Although the caption has been considered a relevant factor to the discernment of an act's subject,[5] it is the body of the act that determines compliance with the rule.[6] While a disjointed index caption does not necessarily mean that the bill has more than one subject, it alerts a critical reader to that possibility.

SEC. 8.03. ENROLLED BILL RULE. Long accepted as a rule of evidence by Texas courts, the enrolled bill rule provides that if an enrolled bill (the version finally passed by the legislature and sent to the governor) appears valid on its face, the court may not, in most cases, look behind the face of the bill to determine whether its enactment was procedurally correct.[7]

In practice, the rule shields from judicial review a variety of legislative irregularities, including:

8

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[1] See Section 3.03(e) of this manual.

[2] See Section 6.02 of this manual.

[3] The name has nothing to do with cars and trucks but is derived from the idea that the subject bill is a suitable "vehicle" to carry to fulfillment an otherwise lost cause.

[4] *Moore v. Sheppard*, 192 S.W.2d 559 (Tex. 1946): "We therefore hold that the fixing of fees for furnishing unofficial copies of opinions of the Courts of Civil Appeals, and the disposition of such fees, are matters of general legislation, and are 'subjects' within the meaning of Article III, Section 35, of the Texas Constitution."

[5] *Ex parte White*, 198 S.W. 583 (Tex. Crim. App. 1915).

[6] *Bd. of Sch. Trs. of Young Cty. v. Bullock Common Sch. Dist. No. 12, supra*.

[7] *Williams v. Taylor*, 19 S.W. 156 (Tex. 1892); *Teem v. State*, 183 S.W. 1144 (Tex. Crim. App. 1916); *Jackson v. Walker*, 49 S.W.2d 693 (Tex. 1932).

(1) violation of the three-reading rule (Section 32, Article III, Texas Constitution);[1]

(2) amendment of a bill to change its purpose (prohibited by Section 30, Article III, Texas Constitution);[2]

(3) passage of a bill not reported from committee before the last three days of a session (prohibited by Section 37, Article III, Texas Constitution);[3] or

(4) passage of an act at a special session that is outside the governor's "call" (in violation of Section 40, Article III, Texas Constitution).[4]

The enrolled bill rule's power to shield is not absolute, however. By its own terms the rule does not protect against flaws discernible on the face of an act, including violation of the one-subject rule (prescribed by Section 35, Article III, Texas Constitution)[5] or passage of a tax bill originating in the senate (in violation of Section 33, Article III).[6] It is doubtful that the enrolled bill rule governs the effective date of a bill containing a certification that the bill passed by at least the two-thirds vote required for immediate effect.[7] Courts in the past have looked to legislative journals to determine whether the two-thirds requirement was met,[8] and the attorney general has stated that because Section 39, Article III, Texas Constitution, requires that the vote for immediate effect be "entered upon the journals," "the journals of the legislature are the ultimate and determinative authorities on the question of whether or not the required two-thirds vote has been received."[9] More recent decisions have looked beyond the enrolled bill to determine whether the act took effect immediately.[10]

SEC. 8.04. TERMS OF OFFICE. (a) Maximum length. Section 30(a), Article XVI, Texas Constitution, provides that "[t]he duration of all offices not fixed by this Constitution shall never exceed two years." This limitation is sweeping in scope, applying to all state and local offices[11] not covered by a constitutional exception. The exceptions, which are numerous, fall into three classes: provisions fixing longer terms, provisions authorizing the legislature to provide for longer terms, and provisions authorizing the voters of a political subdivision to adopt longer terms. A law providing for a term of office longer than two years is valid only if it is authorized by and complies with one of those constitutional provisions.

The constitutional term-of-office exceptions are listed in the following tables:

[1] *Usener v. State*, 8 Cr.R. 177 (1880); *Williams v. Taylor, supra*.

[2] *Parshall v. State*, 138 S.W. 759 (Tex. Crim. App. 1911); *Knox v. State*, 138 S.W. 787 (Tex. Crim. App. 1911); *Harris Co. v. Hammond*, 203 S.W. 445 (Tex. App.—Galveston 1918, writ ref'd); see also Section 6.02 of this manual.

[3] *Williams v. Taylor, supra*.

[4] *Jackson v. Walker, supra*; *City of Houston v. Allred*, 71 S.W.2d 251 (Tex. Comm'n App. 1934, opinion adopted); *Maldonado v. State*, 473 S.W.2d 26 (Tex. Crim. App. 1971).

[5] No case has been found in which the possibility that the enrolled bill rule might apply to the one-subject or caption rule was discussed; there are numerous cases in which laws have been held invalid for violation of the caption rule; for a one-subject rule case, see *Moore v. Sheppard, supra*.

[6] See Braden et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, p. 167.

[7] See Section 3.14(d) of this manual.

[8] *Ewing v. Duncan*, 16 S.W. 1000 (Tex. 1891); see also *Missouri, K. & T. Ry. Co. v. McGlamory*, 41 S.W. 466 (Tex. 1897).

[9] Tex. Att'y Gen. Op. No. O-5171A (1943).

[10] *Bic Pen Corp. v. Carter*, 171 S.W.3d 657 (Tex. App.—Corpus Christi-Edinburg 2005), *rev'd on other grounds*, 346 S.W.3d 533 (Tex. 2011). The bill in question passed by more than the required two-thirds vote, but the legislature subsequently adopted a corrective resolution that the court of appeals found "affect[ed] a substantive provision of the bill." The corrective resolution was adopted on a voice vote, and the court found the bill did not take effect immediately. 171 S.W.3d at 679.

[11] The restriction does not apply to public employees or members of advisory boards. See Subsection (c) of this section.

TABLE 1 CONSTITUTIONALLY FIXED TERMS OF MORE THAN TWO YEARS		
Office	**Duration of Term**	**Constitutional Provision**
Governor	4 years	Sec. 4, Art. IV
Lieutenant governor	4 years	Sec. 16, Art. IV
Secretary of state	"during the term of service of the Governor"	Sec. 21, Art. IV
Attorney general	4 years	Sec. 23, Art. IV
Comptroller	4 years	Sec. 23, Art. IV
Land commissioner	4 years	Sec. 23, Art. IV
Railroad commissioner	6 years (staggered)	Sec. 30, Art. XVI
Any statutory office elected statewide and not covered by another constitutional term-of-office provision[1]	4 years	Sec. 23, Art. IV
State senator	4 years[2]	Sec. 3, Art. III
Justice of supreme court	6 years	Sec. 2, Art. V
Judge of court of criminal appeals	6 years	Sec. 4, Art. V
Member, judicial conduct commission	6 years (staggered)	Sec. 1-a, Art. V
Justice of court of appeals	6 years	Sec. 6, Art. V
District judge	4 years	Sec. 7, Art. V
Judge of statutory county court	4 years	Secs. 64, 65, Art. XVI
County judge ("constitutional county judge")	4 years	Sec. 15, Art. V; Secs. 64, 65, Art. XVI
County commissioner	4 years	Sec. 18, Art. V; Secs. 64, 65, Art. XVI
Justice of the peace	4 years	Sec. 18, Art. V; Secs. 64, 65, Art. XVI
Constable	4 years	Sec. 18, Art. V; Secs. 64, 65, Art. XVI
Clerk of supreme court, court of criminal appeals, court of appeals	4 years	Sec. 5a, Art. V
District clerk	4 years	Sec. 9, Art. V; Secs. 64, 65, Art. XVI

[1] The position of agriculture commissioner is at present the only office in this class.
[2] Some senate terms are shortened to two years to reestablish staggering after a reapportionment.

TABLE 1 (continued)		
County clerk	4 years	Sec. 20, Art. V; Secs. 64, 65, Art. XVI
County or district attorney	4 years	Sec. 21, Art. V; Secs. 64, 65, Art. XVI
Sheriff	4 years	Sec. 23, Art. V; Secs. 64, 65, Art. XVI
County treasurer	4 years	Secs. 44, 64, 65, Art. XVI
County surveyor	4 years	Secs. 44, 64, 65, Art. XVI
Other elective district, county, and precinct offices that "heretofore had terms of two years"	4 years	Secs. 64, 65, Art. XVI

TABLE 2

AUTHORIZATION FOR LEGISLATURE TO PROVIDE FOR TERMS LONGER THAN TWO YEARS

Office	Duration of Term	Constitutional Provision
Member of state board or commission (including the "Board of Regents of the State University")[1]	6 years (staggered)	Sec. 30a, Art. XVI
Offices of "the public school system" and of "State institutions of higher education"	Not to exceed 6 years	Sec. 16-a, Art. VII
Member of State Board of Education	Not to exceed 6 years	Sec. 8, Art. VII
Member of emergency services district governing board	Not to exceed 4 years	Sec. 30, Art. XVI
Director of water or navigation district	Not to exceed 4 years	Sec. 30, Art. XVI
Member of hospital district governing board	Not to exceed 4 years	Sec. 30, Art. XVI
Notary public	Not less than 2 or more than 4 years	Sec. 26, Art. IV
Municipal civil service[2]	No limit stated	Sec. 30b, Art. XVI

[1] To the extent this provision, which was adopted in 1912, applies to the regents of The University of Texas, it must be read together with the next listed exception (Section 16-a, Article VII), which dates from 1928.

[2] The significance of this provision is debatable; see the discussion in the *Annotated Texas Constitution.* This constitutional authorization applies both to statutes and to municipal charters; hence its inclusion in both this table and the following one.

TABLE 3 AUTHORIZATION FOR VOTERS TO ADOPT TERMS LONGER THAN TWO YEARS		
Office	**Duration of Term**	**Constitutional Provision**
Elective or appointive municipal office	Not to exceed 4 years	Sec. 11, Art. XI
Municipal civil service[1]	No limit stated	Sec. 30b, Art. XVI

(b) Six-year staggered terms. The constitutional exception to the two-year limit on terms of office of probably the greatest significance to legislative drafting is the authorization for six-year staggered terms in Section 30a, Article XVI:

> The Legislature may provide by law that the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may be composed of an odd number of three or more members who serve for a term of six (6) years, with one-third, or as near as one-third as possible, of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law, and the Legislature shall enact suitable laws to give effect to this section. The Legislature may provide by law that a board required by this constitution be composed of members of any number divisible by three (3) who serve for a term of six (6) years, with one-third of the members elected or appointed every two (2) years.

Three observations about the drafting significance of Section 30a should be made. First, the provision applies only to *state*, and not local government, boards.[2]

Second, according to the attorney general, voting ex officio members of a board are to be included in determining whether an odd number of members serve on a board for purposes of Section 30a. However, since an ex officio member serves on a board by reason of holding another position, Section 30a does not determine the length of the ex officio member's service on the board.[3]

Third, it should be noted that Section 30a provides two options for board composition. The first sentence, applicable to "such boards as have been, or may hereafter be established by law," provides for an odd number of three or more members. The second sentence, applicable to "a board required by this constitution," provides for any number of members divisible by three. The attorney general has opined that all boards "required by this constitution" are included in the group of boards established by law. Therefore, a board required by the constitution may be composed under the first or second sentence of Section 30a, while a board established by law but not required by the constitution may be composed only under the first sentence of Section 30a.[4]

[1] See footnote 2 in Table 2.
[2] *San Antonio I.S.D. v. State ex rel. Dechman*, 173 S.W. 525 (Tex. App.—San Antonio 1915, writ ref'd); see also *Lower Colo. River Auth. v. McCraw*, 83 S.W.2d 629 (Tex. 1935).
[3] Tex. Att'y Gen. Op. No. GA-0021 (2003).
[4] *Id.* (Also note that GA-0021 provides guidance as to whether certain boards are "required by this constitution.")

Drafting a Provision to Provide for Six-Year Staggered Terms

To create a board with six-year staggered terms, the following format is recommended:

[PERMANENT PROVISION]

Sec. 24.031. WIDGET BOARD. (a) The widget board is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) Members of the board serve staggered terms of six years, with one-third of the members' terms expiring February 1 of each odd-numbered year.

[TRANSITION PROVISION]

SECTION 19. INITIAL APPOINTEES. In appointing the initial members of the widget board, the governor shall appoint three persons to terms expiring February 1, 2023, three to terms expiring February 1, 2025, and three to terms expiring February 1, 2027.

Note that the preceding example, in which the number of members is a multiple of three, states that one-third, rather than a specific number, of the members' terms expire every other year. A fraction, unlike a whole number, requires no adjustment if the size of the board is changed by amendment to another number divisible by three. (Concerning the relationship between the size of a board and quorum requirements, see Section 8.05 of this manual.)

If the number of members of a board is not a multiple of three, the permanent provision should recognize the size of the respective classes. For that purpose, the following format is recommended (note that the transition clause establishes the two-two-three expiration cycle of a seven-member board):

[PERMANENT PROVISION]

Sec. 24.031. WIDGET BOARD. (a) The widget board is composed of seven members appointed by the governor with the advice and consent of the senate.

(b) Members of the board serve staggered terms of six years, with either two or three members' terms, as applicable, expiring February 1 of each odd-numbered year.

[TRANSITION PROVISION]

SECTION 19. INITIAL APPOINTEES. In appointing the initial members of the widget board, the governor shall appoint two persons to terms expiring February 1, 2023, two to terms expiring February 1, 2025, and three to terms expiring February 1, 2027.

The date on which terms are set to expire is important. The legislative council customarily provides in bills it drafts that terms expire February 1 of odd-numbered years, a date that falls in the first few weeks of a regular legislative session. This provides the senate an opportunity to fully exercise its confirmation authority, reducing the likelihood of an interim appointment

on expiration of a term.[1] It is also important to coordinate the date on which the provision authorizing initial appointments takes effect with the expiration dates of the initial terms to ensure that no initial term is scheduled to be longer than six years.

The examples authorize the governor to determine which of the initial appointees falls into each of the three membership classes for the staggering of terms. Although this is the usual method of handling the matter, an alternative is to require the initial appointees to determine by lot which fall into each class.

Note, finally, that using a transition provision to set the expiration dates for the initial terms avoids the inclusion in permanent law of material that will become deadwood soon after the law takes effect.

Drafting a Provision to Expand a Board With Six-Year Staggered Terms

Drafting legislation to expand the membership of a board whose members serve six-year staggered terms is much the same as the creation of such a board, consisting of an amendment to the statute fixing the size of the board plus a transition provision to provide for appointment of the additional members. The drafter must be alert to the need to make conforming amendments to other provisions, such as a provision that uses whole numbers to define a quorum. (See the discussion of quorum requirements in Section 8.05 of this manual.) The following format is recommended:

[AMENDMENT OF STATUTE]

SECTION 1. Sections 24.031(a) and (b), Widget Code, are amended to read as follows:

(a) The widget board is composed of 11 [~~nine~~] members appointed by the governor with the advice and consent of the senate.

(b) Members of the board serve staggered terms of six years, with either three or four [~~one-third of the~~] members' terms, as applicable, expiring February 1 of each odd-numbered year.

[TRANSITION PROVISION]

SECTION 2. Promptly after this Act takes effect, the governor shall appoint two additional members to the widget board. In appointing those members, the governor shall appoint one person to a term expiring February 1, 2023, and one to a term expiring February 1, 2025.

Most of the drafting considerations applicable to creation of a board of this type also apply to the expansion of membership,[2] including the need to coordinate the effective date of the expansion with the expiration date of the terms of the new appointees so that no initial term is longer than six years. Also, the terms of new appointees must coincide with

[1] See the discussion of Section 12, Article IV, Texas Constitution, in the *Annotated Texas Constitution*, concerning interim appointments and senate confirmation.

[2] See, however, the following discussion of special considerations that must be given to composition of a quorum for an expanded board.

the established term structure of the board. If the statute does not state when terms expire, that information may be obtained from the Legislative Reference Library.

Drafting a Provision to Exempt Current Board Members From Changes in Qualifications or Prohibitions

If the law relating to qualifications of, or prohibitions applying to, board members is changed, it may be appropriate to exempt current board members from the changes. The following format is recommended:

> [AMENDMENT OF STATUTE]
>
> SECTION 1. Section 24.031, Widget Code, is amended by adding Subsection (c) to read as follows:
>
> (c) A person may not serve as a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.
>
> [TRANSITION PROVISION]
>
> SECTION 2. The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the widget board do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to carry out the board's functions for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act. This Act does not prohibit a person who is a member of the board on the effective date of this Act from being reappointed to the board if the person has the qualifications required for a member under Section 24.031, Widget Code, as amended by this Act.

(c) Restrictions not applicable to public employees and advisory board members. The constitutional term-of-office limitations in Sections 30 and 30a, Article XVI, apply only to persons who exercise some part of the sovereign authority of the government largely independent of the control of others.

A person is a public officer subject to the term-of-office limitations if "any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others."[1] Conversely, a public employee who is not given that type of authority is not subject to the term-of-office limitations.

Similarly, according to the attorney general, members of purely advisory boards and commissions are not public officers and are not subject to the term-of-office limitations. However, the fact that a board or commission is titled "advisory" is not determinative of

[1] *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955) (citing *Dunbar v. Brazoria County*, 224 S.W.2d 738, 740–741 (Tex. App.—Galveston 1949, writ ref'd.)).

the applicability of the term-of-office limitations. If the constitutional or statutory provisions creating the board give the board authority to exercise some part of the sovereign authority of the government largely independent of the control of others, then the members of the board are subject to the term-of-office limitations. If the board is not given that type of authority, then the board is purely advisory and the members of the board are not subject to the term-of-office limitations.[1]

SEC. 8.05. QUORUM REQUIREMENTS FOR GOVERNMENTAL BODIES. The most important drafting advice about specifying the quorum requirement for a state or local governmental board or commission is that it is usually unnecessary to do so. Section 312.015, Government Code, provides that "[a] majority of a board or commission established under law is a quorum unless otherwise specifically provided." This provision has been construed as requiring the presence of a majority of the number of members fixed by law, as opposed to the number of members actually serving; a vacant position does not reduce the number of members required for a quorum.[2] Similarly, Section 311.013, Government Code, applicable to codes enacted as part of the state's continuing statutory revision program,[3] provides that "[a] quorum of a public body is a majority of the number of members fixed by statute." Therefore, the only legal reason to address the quorum issue is to provide a different rule.

When a quorum *is* specified, it is best to express the requirement as a fraction of the membership rather than as a specific number of members. A fractional requirement adjusts automatically to an amendment changing the size of the board or commission, while a whole number does not.

An increase in the number of members of a governmental body can create a practical problem that calls for specific transition language. Because a quorum is generally a majority of the membership fixed by law, a quorum may be especially hard to obtain in the period between enactment of the increase and appointment of the new members. For that reason, the following nonamendatory language is recommended:

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Until all appointees have taken office, a quorum of the
(board) (commission) is a majority of the number of
members who are qualified.
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SEC. 8.06. VALIDATING ACTS. Validating acts are statutes enacted to cure defects in the past official proceedings of governmental entities. Validation of local governments' proceedings is most common although occasionally the legislature validates actions by state agencies.

Validating legislation is often introduced to facilitate the issuance of local government bonds when there is reason to believe that a past procedural irregularity of the local government, if not validated, might affect the bonds' validity.

Most validating acts are relatively simple, consisting essentially of a statement that certain proceedings of governmental entities of a certain class are validated. The following act is typical:

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[1] Tex. Att'y Gen. Op. No. GA-0021 (2003).
[2] *Thomas v. Abernathy Cty. Line I.S.D.*, 290 S.W. 152 (Tex. Comm'n App. 1927); Tex. Att'y Gen. Op. No. O-761 (1939).
[3] See Section 311.002, Government Code.

[TITLE AND ENACTING CLAUSE]

SECTION 1. APPLICATION. This Act applies to a municipality with a population of 5,000 or more that annexed or attempted to annex territory before January 1, 2021.

SECTION 2. PROCEEDINGS VALIDATED. (a) The governmental acts and proceedings of the municipality relating to the annexation or attempted annexation of territory by the municipality are validated as of the dates they occurred. The acts and proceedings may not be held invalid because they were not performed in accordance with Chapter 42 or 43, Local Government Code, or other law.

(b) The governmental acts and proceedings of the municipality occurring after the annexation or attempted annexation may not be held invalid on the ground that the annexation or attempted annexation, in the absence of this Act, was invalid.

(c) This Act does not validate a governmental act or proceeding relating to the municipality's annexation or attempted annexation of territory in the extraterritorial jurisdiction of another municipality without the consent of that municipality in violation of Chapter 42 or 43, Local Government Code.

SECTION 3. EFFECT ON LITIGATION. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(2) has been held invalid by a final judgment of a court.

There is no such thing as a "standard" validating act, although certain versions, with variations, are commonly introduced at most regular sessions. A drafter often can find a bill or act from a previous session to use as a model for practically any circumstance. Care should be taken to avoid validating more than the client desires to cure. If, for example, a client wishes to cure certain "technical" violations of the open meetings law (Chapter 551, Government Code) without granting a wholesale forgiveness for all violations, a validating statute may be limited in application, subject to local and special law limitations to be discussed, along the following lines:

SECTION 1. Action taken before the effective date of this Act by the governing body of a general-law

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municipality may not be held invalid on the ground that
notice of the meeting was not posted at least 72 hours
in advance if the notice was published at least 60 hours
in advance and the publication was otherwise done as
required by law.
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A validating act applies only to events occurring before its effective date;[1] this is only logical since a "validating act" of prospective application would not really be a validating act at all but, in effect, a repeal of the legal requirements, violation of which it purports to cure.

The retrospective application of these statutes might appear to violate the constitutional prohibition against retroactive laws,[2] but the courts have not so held. The general rule in Texas is that the legislature may validate any governmental action that it could have authorized in advance.[3] Actually, the chief ground for unconstitutionality a drafter should watch for is the Section 56, Article III, prohibition of local and special laws. A legislator hoping to minimize anticipated opposition to a proposed validating act sometimes wishes to use a population classification or similar device to narrow the act's application.[4] This sometimes presents a dilemma because an overly narrow classification scheme not reasonably related to the purpose of the act will violate Section 56, Article III, while a reasonable, constitutional classification may be too broad to neutralize the opposition. The unhappy fact is that a validating act of doubtful constitutionality is hardly worth passing; a validating act will naturally be subjected to scrutiny and it is very unlikely that a constitutional flaw will go unnoticed.

A section that appears in almost every validating act is the so-called "nonlitigation clause," which exempts from the act's curative powers matters involved in pending litigation or (probably unnecessarily) that have been finally held invalid by a court. This clause is included because the legislature generally disfavors enacting legislation that affects pending litigation. The usual nonlitigation clause appears in the preceding sample validating act as Section 3.

A particular type of irregularity that often is the object of validation is the annexation of a territory by a municipality without full compliance with Chapters 42 and 43, Local Government Code. It is customary to include in such acts an exemption from validation of annexations outside a municipality's extraterritorial jurisdiction. (See Section 2(c) of the preceding sample act.) The justification for this customary exemption is that the annexation of remote territory is a substantive, rather than procedural, violation of the annexation law. It should also be noted that the state supreme court has held that an act validating municipal annexations generally, but not expressly purporting to validate the annexation of noncontiguous territory, will not be construed as having that effect.[5]

Since 1999, the number of validating acts enacted in regard to municipal acts and proceedings has been reduced by the enactment of Section 51.003, Local Government

[1] A validating act that takes effect the standard 90 days after adjournment would appear to validate not only conduct occurring before its passage but conduct occurring after passage but before its effective date; no case law on this point has been found.

[2] Section 16, Article I, Texas Constitution.

[3] See, for example, *City of Mason v. W. Tex. Utils. Co.*, 237 S.W.2d 273 (Tex. 1951); *La. Ry. & Nav. Co. v. State*, 298 S.W. 462 (Tex. App.—Dallas 1927), *aff'd*, 7 S.W.2d 71 (Tex. Comm'n App. 1928, judgm't adopted); *Miller v. State ex rel. Abney*, 155 S.W.2d 1012 (Tex. App.—Waco 1941, writ ref'd).

[4] Drafters should note that House Rule 8, Section 10, prohibits the house or a committee from considering "a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name." Exempted from this prohibition is legislation classifying subdivisions by population "or other criterion that bears a reasonable relation to the purpose of the proposed legislation . . . ." This rule, in effect, does not limit consideration of legislation to that complying with Section 56, Article III, but forces bills that violate that provision to be drafted in a way that makes the violation obvious. See Section 8.07 of this manual and Appendix 7 to this manual for more information about classification schemes.

[5] *City of Waco v. City of McGregor*, 523 S.W.2d 649 (Tex. 1975).

Code. That section has the effect of automatically validating municipal acts and proceedings if certain conditions are met. The section provides, in part:

> (a) A governmental act or proceeding of a municipality is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if:
>
> (1) the third anniversary of the effective date of the act or proceeding has expired; and
>
> (2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

Exceptions to the validation provided by Section 51.003(a) are described by Section 51.003(b).

SEC. 8.07. CLASSIFICATION SCHEMES. When classifying individuals, political subdivisions, or other entities into groups according to age, population, or other criteria, care should be taken to ensure that no entity is inadvertently assigned to more than one group and that no entity "falls between the cracks." The following classification has both these faults:

> Sec. 3.01. CLASSES OF COUNTIES. For purposes of this chapter, counties are classified as follows:
>
> (1) Class A includes all counties with a population of less than 5,000;
>
> (2) Class B includes all counties with a population of more than 5,000 but not more than 25,000; and
>
> (3) Class C includes all counties with a population of 25,000 or more.

There is a hiatus between Classes A and B: neither includes a county with a population of exactly 5,000. Also, a county with a population of exactly 25,000 is included in both Classes B and C.

A standard format is helpful to avoid these problems. The following may be used for population classifications, using the same number to express the upper limit of one class and the lower limit of the next higher class:

> (1) . . . a population of *less than* 5,000;
>
> (2) . . . a population of 5,000 *or more* but *less than* 25,000; and
>
> (3) . . . a population of 25,000 *or more*.

Section 311.015, Government Code, provides, "If a statute refers to a series of numbers or letters, the first and last numbers or letters are included." Therefore, in codes to which that section applies, the following format may be used:

> (1) . . . a population of 5,000 or less;
>
> (2) . . . a population of 5,001 to 24,999; and
>
> (3) . . . a population of 25,000 or more.

It is unnecessary to provide that population is "according to the most recent federal census." Sections 311.005 and 312.011, Government Code, define "population" to mean "the population shown by the most recent federal decennial census."

Many statutes that use a population bracket to limit application are unconstitutional because they violate Section 56, Article III, Texas Constitution, which prohibits the legislature from passing local laws regulating the affairs of counties or municipalities. However, a law that uses a population bracket to limit its application to a class of counties or municipalities does not violate Section 56 if, after considering the subject of the law, one finds a reasonable justification for applying the law to that particular class of counties or municipalities and not to counties or municipalities outside the class.[1, 2]

SEC. 8.08. CONFLICTING ACTS OF THE SAME SESSION. Common law provides that acts on the same subject are to be taken together and construed so that, if possible, effect is given to all the provisions of each.[3] This rule applies to acts passed at the same legislative session and applies with even greater force to acts passed on the same day. If it is impossible to read the acts together so that effect may be given to both, the latest enactment is to be read as an implied repeal of the earlier act to the extent of the conflict. These common law rules are codified in Sections 311.025 and 312.014, Government Code.

For one act to be given effect in favor of another, the acts must be in *irreconcilable* conflict, meaning that it is impossible to give effect to one act without abrogating the intended effect of the other act. The rule of giving effect to the last act is a mechanical rule that creates a fictional legislative intent, and it is used by courts and others construing statutes only if other evidence of legislative intent is not apparent.

Most conflicts between acts of the same session occur in amendatory acts in which more than one bill amends the same section of law.[4] Many of the apparent conflicts created by multiple amendments may be resolved by examining the underlined and bracketed changes in the respective bills to determine legislative intent. Sections 311.025(c) and 312.014(c), Government Code, are designed to facilitate the reconciliation of multiple amendments by recognizing that the constitutional prohibition on amendments by reference in Section 36, Article III, Texas Constitution, accounts for the majority of multiple amendments. Accordingly, these rules of construction provide that a bill that reenacts (i.e., sets out in its entirety) the text of an amendable unit[5] in compliance with the constitutional requirement "does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment."

The "date of enactment" is defined by statute to mean the date of the last legislative vote. Generally, that action will be passage by the second house, concurrence by the house of origin in amendments of the second house, or adoption of a conference committee report. If the journals and other legislative records fail to disclose which measure is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority, the date on which the last presiding officer signed the bill, the date on which the governor signed the bill, or the date on which the bill became law by operation of law.[6]

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[1] *Miller v. El Paso County*, 150 S.W.2d 1000 (Tex. 1941); *Smith v. Decker*, 312 S.W.2d 632 (Tex. 1958); *Robinson v. Hill*, 507 S.W.2d 521 (Tex. 1974). See also Appendix 7 to this manual.

[2] See Appendix 7 to this manual for a more detailed discussion of the local law prohibition.

[3] See *Wright v. Broeter*, 196 S.W.2d 82 (Tex. 1946); ***Ex Parte De Jesus de la O***, 227 S.W.2d 212 (Tex. Crim. App. 1950); ***Garrison v. Richards***, 107 S.W. 861 (Tex. App.—1908, writ dism'd w.o.j.); Tex. Att'y Gen. Op. No. MW-139 (1980).

[4] See Section 3.10(c) of this manual for a discussion of language used to introduce an amendment or a merging ("reenactment") of a statute published in multiple versions.

[5] See Section 3.10(e) of this manual for a description of an amendable unit.

[6] The attorney general applied these "fallback" dates where the legislative journals showed that the last legislative vote on the conflicting bills was taken on the same day *and* that the date on which the last presiding officer signed each bill was the same. *See* Tex. Att'y Gen. Op. No. GA-0432 (2005) at footnote 4. Accordingly, the attorney general determined which bill was the later enactment by looking to the dates on which the governor signed each bill.

In effect, this means that the legislative records "fail to disclose" which bill is the later enactment not only when the records are silent as to legislative action, but also when the records show the same action was taken on two or more conflicting bills on the same day.

Relative effective dates may also be used to resolve apparent conflicts. For example, if the act that is later in order of passage is also later in effective date, it is possible that the earlier of the acts will be effective in the interim between two effective dates.

SEC. 8.09. CONTINUING STATUTORY REVISION PROGRAM. The Texas Legislative Council is required by Section 323.007, Government Code, to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law. Before the initiation of the continuing statutory revision program in 1963, Texas statutes were last revised in 1925.

The 1925 Revised Statutes was a complete reenactment of all Texas law. The statutes were arranged alphabetically by subject (beginning with "accountants" and ending with "wrecks") and numbered sequentially from Article 1 to Article 8324. Laws enacted after 1925 that did not amend the Revised Statutes have been arranged unofficially and assigned an article number by a private publisher, West (now Thomson Reuters/West). In assigning article numbers, West editors are forced to add a letter or number suffix to a whole number because the 1925 revision left no room for expansion (e.g., between Articles 5159 and 5160, the editors added Articles 5159a–5159c). This compilation of Revised Statutes and unofficially arranged session laws is known as Vernon's Texas Civil Statutes.

As the result of this history and the passage of time, the user of Vernon's Texas Civil Statutes must wade through numerous printed statutes that are legally ineffective, must sort out surplus from substance, must adapt to confusing inconsistency of expression, capitalization, spelling, and punctuation, and must try to comprehend an alphabetical arrangement and often bizarre numbering scheme. The statutory revision program was created with the recognition that the existing Texas statutes were difficult to use and difficult to understand. The complexity of modern law further dictates both revision and a sensible statutory arrangement.

The continuing statutory revision program was created by a 1963 statute, which also created a statutory revision advisory committee. With the assistance of legislative council staff, the committee prepared for adoption by the legislative council a classification plan for Texas statutes and proposed a numbering and format system for the codes. Under the Texas statutory revision program, all Texas statutes will eventually be contained in one of 27 topical codes. The current state of the program is described at the end of this section.

The revision program should not be confused with a mere compilation of previously enacted statutes; revision is a labor-intensive process that involves complete redrafting of the statutory language. Members of the legislative council legal staff spend most of their work time during a legislative interim on statutory revision projects. After the staff proposes and the legislative council approves a project, the legal division director names a staff attorney as chief revisor for that project. The chief revisor is responsible for collecting the source law from which the new code (or portion of a code) will be drawn, proposing an arrangement for the code, and assigning the work among the legislative council attorneys assigned to the project. Work is usually assigned on a chapter-by-chapter basis. The attorney reviews in detail the statutes assigned to that chapter, reads and analyzes the case law interpreting

those statutes, identifies provisions that are invalid, duplicative, or ineffective, and redrafts those statutes into a single, well-organized, well-written statute that conforms to the format and consistent manner of expression in the enacted codes. The attorney's work product is prepared into a working draft that is meticulously reviewed by the chief revisor and at least two other experienced attorneys. After legal staff review, the draft is prepared as a preliminary draft and distributed to interested persons outside the agency for review and comment. Changes suggested by outside reviewers are considered and may be incorporated in the proposed revised law.

After considering outside reviewers' questions, comments, and suggestions and making any necessary changes to the proposed revised law, that proposed law is compiled into a bill for introduction to and consideration by the legislature. If the bill becomes law, the legislative council staff prepares a revisor's report based on the newly enacted revised law. In the report, each section of new law is presented as "Revised Law," which is immediately followed by the text of the statute from which the revised law is derived, identified as the "Source Law." If necessary or appropriate, the source law is followed by a "Revisor's Note" that explains changes and omissions made by the revisor other than those necessary to restate the law in modern American English. The revisor's report also includes disposition tables so that an interested person may quickly find the revised version of a particular statute. The revisor's report may also include conforming amendments to other laws made necessary by the revision as well as a list of the statutes to be repealed. Revisor's reports are available to any interested person.

For some projects, depending largely on the size and scope of the project, the legislative council staff asks the joint chairs of the legislative council to appoint an advisory committee to assist the staff in review of a proposed code. Some advisory committees include only legislative members, and some include other knowledgeable and interested persons. Advisory committees usually hold one or two public hearings on a proposed code to solicit public review and comment.

The statutory revision program is a continuing program that does not end even when the 27th code is enacted. The statute establishing the program calls for a "systematic and continuous study of the statutes of this state." Some of the earliest codes enacted, such as the Education Code, have undergone further revision. In addition, each interim the legislative council legal staff prepares a general code update bill that conforms the enacted codes to acts of the last legislature, codifies laws in the appropriate topical code, conforms recently enacted codes to other statutes enacted by the same legislature, and eliminates duplicate section numbers.

Statutory revision is an integral part of the whole legal staff mission. The work done by staff attorneys on statutory revision enables the attorneys to become substantive experts in the area of law being revised and provides training in drafting techniques and statutory analysis.

When the legislative council's statutory revision program is completed, all permanent statutes will be incorporated into the following 27 codes:

Agriculture Code
Alcoholic Beverage Code
Business & Commerce Code
Business Organizations Code
Civil Practice and Remedies Code
Criminal Procedure Code
Education Code
Election Code
Estates Code
Family Code
Finance Code
Government Code
Health and Safety Code
Human Resources Code
Insurance Code
Labor Code
Local Government Code
Natural Resources Code
Occupations Code
Parks and Wildlife Code
Penal Code
Property Code
Special District Local Laws Code
Tax Code
Transportation Code
Utilities Code
Water Code

The following are the codes that have been enacted and titles of codes that have been partially enacted and their years of enactment. Two or more dates indicate that the code was adopted in segments.

Agriculture Code (1981)
Alcoholic Beverage Code (1977)
Business & Commerce Code (1967)[1]
Business Organizations Code (2003)[2]
Civil Practice and Remedies Code (1985)
Education Code (1969, 1971)[3]
Election Code (1985)[4]
Estates Code (2009, 2011)[5]
Family Code (1969, 1973)[4]
Finance Code (1997)
Government Code (1985, 1987, 1989, 1991, 1993, 1999, 2001)[6]
Health and Safety Code (1989, 1991)
Human Resources Code (1979)
Insurance Code (1999, 2001, 2003, 2005, 2007) (part)[7]
Labor Code (1993)
Local Government Code (1987)
Natural Resources Code (1977)
Occupations Code (1999, 2001)[8]
Parks and Wildlife Code (1975)
Penal Code (1973)[4]
Property Code (1983)
Special District Local Laws Code (2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, 2019) (part)[9]
Tax Code (1979, 1981)[4]
Transportation Code (1995)[10]
Utilities Code (1997)
Water Code (1971)

The Criminal Procedure Code has not yet been enacted.[11]

[1] Title 4 was further revised and reorganized and Titles 5 through 15 and 99 were added in 2007, effective April 1, 2009.

[2] The Business Organizations Code was drafted by the Codification Committee of the Business Law Section of the State Bar of Texas. It was enacted in 2003 and took effect January 1, 2006.

[3] Titles 1 and 2 were substantively revised in 1995.

[4] The Election Code, Family Code, and Penal Code and Title 1, Tax Code, were substantive revisions for which the legislative council provided drafting assistance. Title 2, Family Code, was further revised and Title 5 of that code was added in 1995. The Penal Code was substantively revised in 1993.

[5] As part of the legislative council's statutory revision program, the general provisions and the decedents' estates provisions of the Texas Probate Code were revised in 2009, and in 2011 a nonsubstantive revision of the Durable Power of Attorney Act and of the statutes relating to guardianships was enacted. In addition, the substance of certain other Texas Probate Code provisions was amended in substantive enactments and incorporated in the Estates Code. The Estates Code took effect January 1, 2014.

[6] Article 5190.14, Vernon's Texas Civil Statutes, which related to the event reimbursement programs, was codified as Subtitle E-1, Title 4, Government Code, in 2019. The effective date of the codified provisions is April 1, 2021. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) was codified as Title 12, Government Code, in 2019. The effective date of the codified provisions is January 1, 2022.

[7] As part of the legislative council's statutory revision program, Title 2 was enacted in 1999, Titles 6 and 7 and part of Title 8 were enacted in 2001, Titles 3, 5, 9, 11, and 13 and the rest of Title 8 were enacted in 2003, and Titles 4, 10, 12, and 14 were enacted in 2005. Title 20 was enacted in 2007, along with several newly revised chapters and sections that were incorporated into existing titles. Title 1 includes provisions of the Insurance Code of 1951, as amended, that have not been revised as part of the legislative council's statutory revision program. It is appropriate to cite articles in Title 1 as part of the "Insurance Code."

[8] The Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), which related to the regulation of horse racing and greyhound racing and the control of pari-mutuel wagering in connection with that racing, was codified as Subtitle A-1, Title 13, Occupations Code, in 2017. The codified provisions took effect April 1, 2019.

[9] The large volume of statutes codified by this code requires that it be enacted in stages.

[10] The provisions relating to railroads in Title 112, Revised Statutes, were codified (mainly in Subtitles A, C, and D, Title 5, Transportation Code) in 2009. Provisions in Title 112, Revised Statutes, relating to the Railroad Commission of Texas were codified in Chapter 81, Natural Resources Code. The codified provisions took effect April 1, 2011.

[11] The Code of Criminal Procedure as originally enacted in 1965 was not part of the legislative council's statutory revision program. In 1985, Chapters 1 through 100 of the 1965 code were designated as Title 1 of that code, and a Title 2, Code of Criminal Procedure, codifying miscellaneous criminal procedure statutes omitted from the 1965 code, was enacted. Provisions of the Code of Criminal Procedure are being nonsubstantively revised on an incremental basis as part of the legislative council's statutory revision program in response to a recommendation made by the House Select Committee on Criminal Procedure Reform during the 83rd Legislature.

SEC. 8.10. LAWS AMENDED THE SAME SESSION A CODE PASSES. Perhaps the most common question asked of legislative council staff concerning a code bill is: "How does the code affect a bill passed the same session that amends one or more of the laws codified?"

Fortunately, the legislature foresaw this question soon after establishing the legislative council's continuing statutory revision program (Section 323.007, Government Code) and included a provision in the Code Construction Act (Chapter 311, Government Code) that specifically addresses the question. Section 311.031(c) of that act (which was enacted the same session as the first of the legislative council's codes) provides:

> (c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

The issue has arisen with every code the legislature has adopted, and the courts have recognized and given effect to the Code Construction Act provision. See, for example, the decision in *Miller v. State*, 708 S.W.2d 436 (Tex. Crim. App. 1984). In that case, the court decided that an amendment to a law codified the same session in the Penal Code was to be given effect even though clearly in conflict with the new Penal Code provision.

After each session in which a code bill passes, the legislative council legal staff prepares nonsubstantive conforming amendments to conform the new code to other acts of the same legislature for introduction in and consideration during the next legislative session. These conforming amendments generally are included as part of the general code update bill,[1] rather than compiled as a standalone bill.

SEC. 8.11. INCORPORATION BY REFERENCE. (a) Incorporation of statutory language by reference. In certain circumstances, a drafter may find it useful to incorporate another statute, or part of another statute, by reference. For example:

```
The penalty may be waived in situations in which
penalties would be waived under Section 111.103, Tax
Code.

Except as provided by Section 551.126, Government Code,
the board shall hold regular quarterly meetings in the
city of Austin.
```

This tool of legislative drafting should be used with caution. A drafter should be mindful that, under Sections 311.027 and 312.008, Government Code, any amendments to the referenced statute will automatically be incorporated into the meaning of the referencing statute.[2]

[1] See Section 8.09 of this manual for a description of the general code update bill.

[2] Section 311.027, Government Code, which applies to statutes subject to the Code Construction Act, provides, "Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule." Section 312.008, Government Code, which applies to all civil statutes, provides, "Unless expressly provided otherwise, a reference to any portion of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation."

Because Sections 311.027 and 312.008 alter the common law rule, which limits "specifically" referenced statutes to their content at the time of incorporation,[1] it is unnecessary for the drafter to expressly incorporate future amendments by including a phrase such as "as amended" or "and its subsequent amendments." On the other hand, if a drafter does not wish to incorporate future amendments or desires to incorporate a referenced statute as it exists on a particular date, the drafter must expressly limit the scope of the incorporation. For example:

> Subsections (a)-(d) do not apply to a person who has complied with the requirements of Section 382.060, as it existed on November 30, 2019.

(b) Incorporation of definition by reference. A drafter may find it useful to incorporate a definition by reference when the drafter desires that a term in one statute have the same meaning over time that the term has in a separate statute. For example:

> Sec. 1.202. DEFINITION. In this subchapter, "fish farming" has the meaning assigned by Section 134.001, Agriculture Code.

Because of the operation of Sections 311.027 and 312.008, Government Code, a drafter should incorporate a definition by reference only when the drafter wishes to maintain parallel meaning between the statutes over time and not merely to save words.

(c) Special considerations when referencing or incorporating law not enacted by Texas Legislature. On occasion, a drafter may wish to reference or to incorporate by reference a rule, regulation, or statute that has not been enacted by the Texas Legislature, such as a federal statute or a statute enacted by another state legislature. For example:

> (a) An organization is exempt from this chapter if the organization qualifies for a tax exemption under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(4) of that code.

The *general rule* for drafting in this circumstance is identical to the general rule for referencing or incorporating by reference other Texas statutes: a drafter should not use language such as "as amended" or "and its subsequent amendments" to incorporate subsequent amendments. With respect to referencing or incorporating by reference rules, regulations, and statutes other than statutes enacted by the Texas Legislature, this represents a drafting policy change for the Texas Legislative Council that began with the regular session of the 79th Legislature in 2005. This departure from previous drafting policies is based on the legislative council's reconsidered legal opinion that Sections 311.027 and 312.008, Government Code, apply by their terms to these types of references and incorporations by reference.[2]

[1] The common law rule that incorporation by reference to specific law incorporates only the provisions referred to "at the time of adoption, without subsequent amendments" is explained in Singer, *Sutherland Statutory Construction*, vol. 2B, Section 51:8 (7th ed. 2012).

[2] See memorandum in Appendix 9 to this manual.

In addition to the general rule, a drafter should note three important considerations:

(1) Phrases such as "as amended" and "and its subsequent amendments" were commonly used by drafters in the past to incorporate the subsequent amendments of rules, regulations, and statutes other than statutes enacted by the Texas Legislature. These references are found throughout the existing statutes, and drafters should not remove them when amending nearby law for the sole purpose of "cleaning up" the statutes.

(2) Because "as amended" and "and its subsequent amendments" are found throughout the existing statutes, there is one *drafting exception to the general rule*. This exception arises when a drafter is asked to reference a rule, regulation, or statute that was not enacted by the Texas Legislature, such as a federal statute, by adding the reference to an existing statute that contains in close proximity a reference to a statute "as amended" or "and its subsequent amendments." If the drafter determines that, by applying the general rule and leaving out an "as amended" type of reference the drafter would create a confusing contrast on the face of the law that in the opinion of the drafter might mislead the reader into thinking that there is a substantive difference in the way the new and existing references should be interpreted, the drafter should, in the interests of clarity and consistency, include a reference to the amendments of the referenced statute.

(3) A drafter should note that incorporation by reference of rules, regulations, and statutes that have not been enacted by the Texas Legislature, such as federal statutes, will in some circumstances raise a question regarding whether the incorporation by reference is an unconstitutional delegation of legislative power. In *Ex parte Elliott*, 973 S.W.2d 737 (Tex. App.—Austin 1998, pet. ref'd), a Texas appellate court held that provisions of the Texas Solid Waste Disposal Act that defined "solid waste" to mean waste identified as hazardous by the Environmental Protection Agency under certain federal statutes did not result in an unconstitutional delegation of state legislative authority to a federal agency because the Texas statute could be narrowly construed, even in the face of a reference to a federal statute "as amended," as merely adopting certain federal laws and rulemaking acts that were in existence *at the time the referencing Texas statute was enacted*. The court suggested that but for this narrow construction, the court would have found that the statute would have unconstitutionally delegated to the federal government the power to determine the definition of "solid waste" under the Texas law.

SEC. 8.12. PROVISIONS RELATING TO CIVIL PROCEDURE. This section addresses the drafting of a bill that proposes a change or addition to civil procedure.

Statutorily, the Texas Supreme Court has the power to both promulgate rules of civil procedure and repeal any legislative enactment that conflicts with the adopted rules. Section 22.004(a), Government Code, provides that the Texas Supreme Court has "full rulemaking power in the practice and procedure in civil actions." Subsection (c) of that section provides that a rule adopted by the supreme court "repeals all conflicting laws and parts of laws governing practice and procedure in civil actions." The supreme court has not hesitated to exercise its power under this section: a prime example is the court's repeal of Chapter 9, Civil Practice and Remedies Code, as being in conflict with Rule 13, Texas Rules of Civil Procedure. The only limitation on this statutory delegation is in Section 22.004(b), Government Code, which provides that the legislature may disapprove a supreme court rule or amendment to a rule. It is not clear whether the supreme court can reenact a rule that has been disapproved by the legislature.

Although the legislative delegation of power to the supreme court contained in Section 22.004, Government Code, to enact rules of civil procedure and repeal laws that conflict with those rules is fairly straightforward, the constitutional provisions relating to the authority of the court to adopt rules of civil procedure are more ambiguously expressed. Section 31, Article V, Texas Constitution, states that the supreme court shall "promulgate rules of civil procedure for all courts not inconsistent with the laws of the state . . . ." On its face, this language seems to indicate that the supreme court does not have the constitutional authority to either adopt rules that conflict with statutes or repeal statutes that conflict with its rules. This was the conclusion of the court itself in *Few v. Charter Oak Fire Insurance Company*, 463 S.W.2d 424 (Tex. 1971), in which the constitutional language "not inconsistent with the law of the State" (then found in Section 25, Article V, Texas Constitution) was construed as a limitation on the power of the court to have its rule supersede a conflicting statute. The supreme court found that "when a rule of the court conflicts with a legislative enactment, the rule must yield." *Id.* at 425.

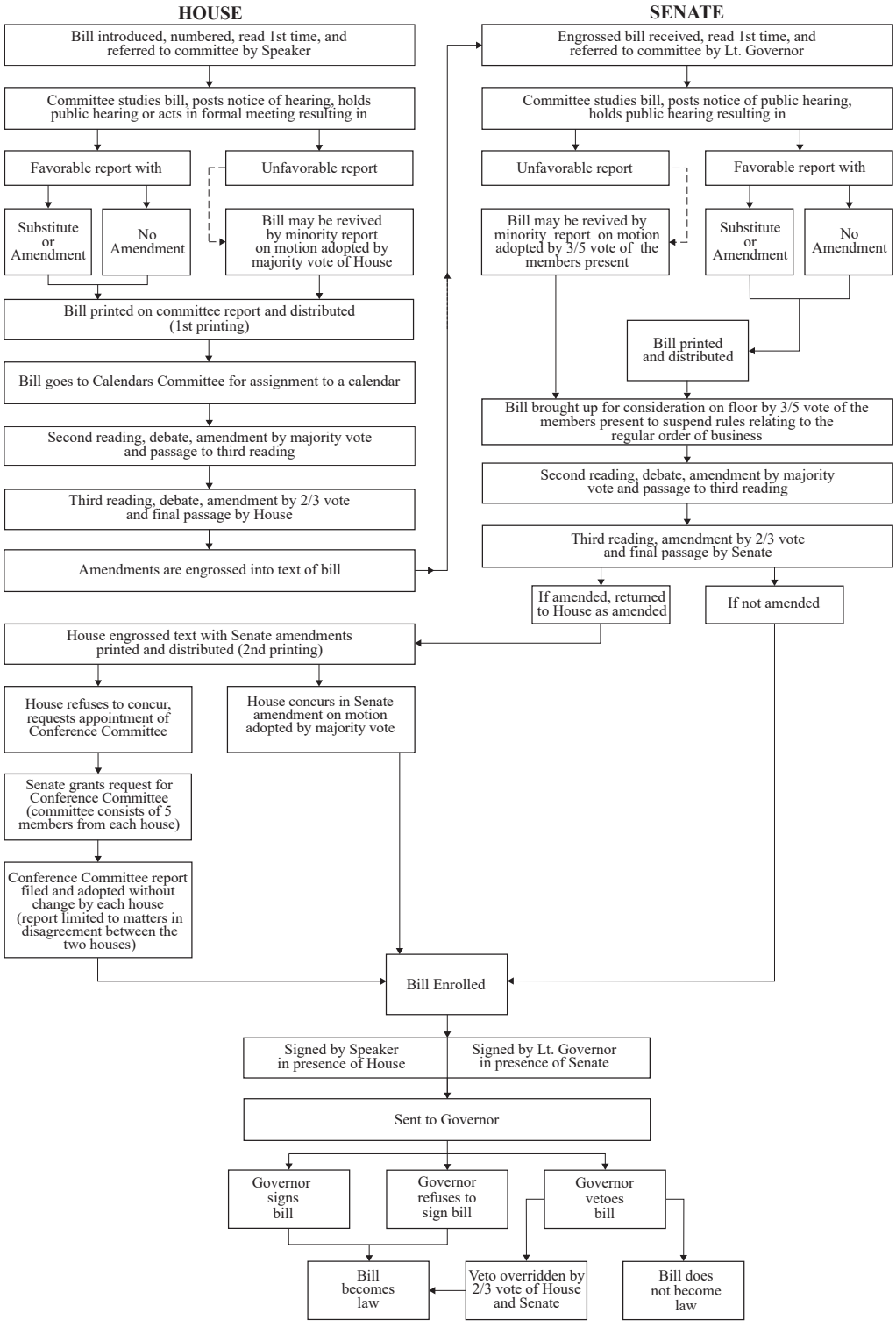
In drafting a bill that proposes what may be considered a change or addition to civil procedure, the drafter should consider in appropriate cases including language that attempts to withdraw the broad powers to repeal conflicting statutes granted the supreme court under Section 22.004, Government Code. The following is suggested language:

```
   (b) Notwithstanding Section 22.004, Government Code,
the supreme court may not amend or adopt rules in
conflict with this chapter [section, Act, etc.].
```

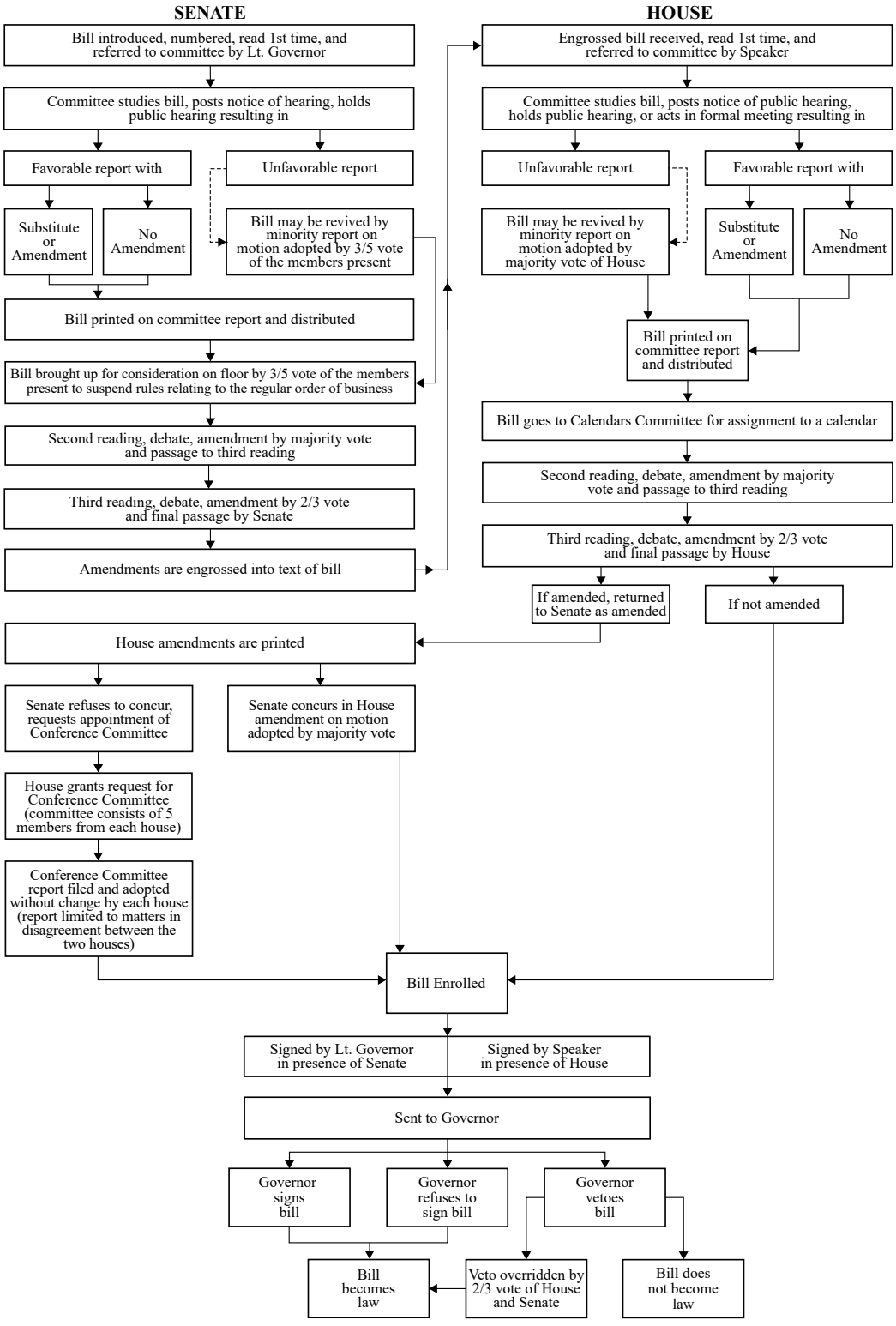
Examples of the use of this language can be found in Sections 52.005(b) and 64.091(k), Civil Practice and Remedies Code.[1] When drafting what is arguably a law relating to civil procedure, the drafter should realize that inclusion of the suggested language is essentially a matter of policy for the requestor to decide. The requestor must balance the likelihood of repeal of the law by a subsequent supreme court rule against the importance of adhering to the legislative goal, expressed in the delegation contained in Section 22.004, Government Code, of uniform and current rules for the courts.

[1] See *Laird v. King*, 866 S.W.2d 110 (Tex. App.—Beaumont 1993, no writ), relying on this language in Section 52.005, Civil Practice and Remedies Code, to give effect to a statute in preference to a conflicting rule of procedure.

SEC. 8.13. THE LEGISLATIVE PROCESS IN TEXAS. (a) House bills and resolutions. This diagram displays the sequential flow of a bill, under the rules as adopted for the 86th Legislature, from the time the bill is introduced in the house of representatives to final passage and transmittal to the governor.



(b) Senate bills and resolutions. This diagram displays the sequential flow of a bill, under the rules as adopted for the 86th Legislature, from the time the bill is introduced in the senate to final passage and transmittal to the governor.



Appendixes

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Appendix 1

2010 Texas Census City Summary

According to the official returns of the 23rd Decennial Census of the United States, as released by the Bureau of the Census on February 17, 2011.

(By population)

Texas Legislative Council
February 2011

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Population in Texas Cities and CDPs
2010 Census

City or CDP*	Population
Houston	2,099,451
San Antonio	1,327,407
Dallas	1,197,816
Austin	790,390
Fort Worth	741,206
El Paso	649,121
Arlington	365,438
Corpus Christi	305,215
Plano	259,841
Laredo	236,091
Lubbock	229,573
Garland	226,876
Irving	216,290
Amarillo	190,695
Grand Prairie	175,396
Brownsville	175,023
Pasadena	149,043
Mesquite (Dallas County)	139,824
McKinney	131,117
McAllen	129,877
Killeen	127,921
Waco	124,805
Carrollton	119,097
Beaumont	118,296
Abilene	117,063
Frisco	116,989
Denton	113,383
Midland	111,147
Wichita Falls	104,553
Odessa	99,940
Round Rock	99,887
Richardson	99,223
Tyler	96,900
Lewisville	95,290
College Station	93,857
The Woodlands CDP	93,847
San Angelo	93,200
Pearland	91,252
Allen	84,246
League City	83,560
Longview	80,455
Sugar Land	78,817
Edinburg	77,100

City or CDP*	Population
Mission	77,058
Bryan	76,201
Baytown	71,802
Pharr	70,400
Missouri City	67,358
Temple	66,102
Atascocita CDP	65,844
Harlingen	64,849
Flower Mound	64,669
North Richland Hills	63,343
Victoria	62,592
New Braunfels	57,740
Mansfield	56,368
Conroe	56,207
Rowlett	56,199
Spring CDP	54,298
Port Arthur	53,818
Euless	51,277
DeSoto	49,047
Cedar Park	48,937
Galveston	47,743
Georgetown	47,400
Bedford	46,979
Pflugerville	46,936
Grapevine	46,334
Texas City	45,099
Cedar Hill	45,028
San Marcos	44,894
Haltom City	42,409
Wylie	41,427
Keller	39,627
Coppell	38,659
Huntsville	38,548
Duncanville	38,524
Sherman	38,521
Channelview CDP	38,289
Rockwall	37,490
Hurst	37,337
Burleson	36,690
Mission Bend CDP	36,501
Texarkana	36,411
Lancaster	36,361
The Colony	36,328

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Friendswood	35,805
Weslaco	35,670
Del Rio	35,591
Lufkin	35,067
San Juan (Hidalgo County)	33,856
La Porte	33,800
Nacogdoches	32,996
Copperas Cove	32,032
Socorro	32,013
Deer Park	32,010
Schertz	31,465
Rosenberg	30,618
Waxahachie	29,621
Fort Hood CDP	29,589
Cleburne	29,337
Farmers Branch	28,616
Kyle	28,016
Big Spring	27,282
Lake Jackson	26,849
Harker Heights	26,700
Southlake	26,575
Leander	26,521
Eagle Pass	26,248
Kingsville	26,213
Little Elm	25,898
Greenville	25,557
Weatherford	25,250
Seguin	25,175
Paris	25,171
San Benito	24,250
Alvin	24,236
Corsicana	23,770
Balch Springs	23,728
Marshall	23,523
Watauga	23,497
University Park	23,068
Cloverleaf CDP	22,942
Colleyville	22,807
West Odessa CDP	22,707
Denison	22,682
Kerrville	22,347
Plainview	22,194
Brushy Creek CDP	21,764
Canyon Lake CDP	21,262
Benbrook	21,234
Sachse	20,329
Corinth	19,935
Saginaw	19,806

City or CDP*	Population
Brownwood	19,288
Alice	19,104
Fresno CDP	19,069
Angleton	18,862
Palestine	18,712
Dickinson	18,680
Orange	18,595
Universal City	18,530
Ennis	18,513
Alamo	18,353
Cinco Ranch CDP	18,274
Belton	18,216
Converse	18,198
Midlothian	18,037
Pampa	17,994
Murphy	17,708
Stafford	17,693
Bay City	17,614
Nederland	17,547
Stephenville	17,123
South Houston	16,983
Bellaire	16,855
Mineral Wells	16,788
Horizon City	16,735
Jollyville CDP	16,151
Groves	16,144
White Settlement	16,116
Gainesville	16,002
Pecan Grove CDP	15,963
Aldine CDP	15,869
Terrell	15,816
Donna	15,798
Gatesville	15,751
Uvalde	15,751
Brenham	15,716
Mercedes	15,570
Mount Pleasant	15,564
Sulphur Springs	15,449
Hereford	15,370
Cibolo	15,349
Taylor	15,191
New Territory CDP	15,186
Humble	15,133
Portland	15,099
Highland Village	15,056
Seagoville	14,835
West University Place	14,787
Hutto	14,698

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
Dumas	14,691
Forney	14,661
Jacksonville	14,544
La Marque	14,509
Katy	14,102
Rio Grande City	13,834
Sienna Plantation CDP	13,721
Henderson	13,712
San Elizario CDP	13,603
Hewitt	13,549
Levelland	13,542
Timberwood Park CDP	13,447
Canyon	13,303
Borger	13,251
Live Oak	13,131
Addison	13,056
Port Neches	13,040
Kilgore	12,975
Beeville	12,863
Crowley	12,838
Athens	12,710
Lockhart	12,698
Rendon CDP	12,552
Four Corners CDP	12,382
Forest Hill	12,355
Alton	12,341
Port Lavaca	12,248
Santa Fe	12,222
Wells Branch CDP	12,120
Freeport	12,049
La Homa CDP	11,985
Seabrook	11,952
Lumberton	11,943
Richmond	11,679
El Campo	11,602
Greatwood CDP	11,538
Robstown	11,487
Lakeway	11,391
Raymondville	11,284
Glenn Heights	11,278
Clute	11,211
Snyder	11,202
Hidalgo	11,198
Andrews	11,088
Vernon	11,002
Azle	10,947
Sweetwater	10,906
Galena Park	10,887

City or CDP*	Population
Burkburnett	10,811
Red Oak	10,769
Tomball	10,753
Vidor	10,579
Jacinto City	10,553
Fredericksburg	10,530
Robinson	10,509
Boerne	10,471
Webster	10,400
Leon Valley	10,151
Bonham	10,127
Lackland AFB CDP	9,918
Bellmead	9,901
Roma	9,765
Brownfield	9,657
Prosper	9,423
Lamesa	9,422
Ingleside	9,387
Royse City	9,349
Pearsall	9,146
Eidson Road CDP	8,960
Pleasanton	8,934
Graham	8,903
Wharton	8,832
Hondo	8,803
Perryton	8,802
Pecos	8,780
Rockport	8,766
Bacliff CDP	8,619
Fort Bliss CDP	8,591
Highland Park	8,564
Hillsboro	8,456
Woodway	8,452
Liberty	8,397
Fort Stockton	8,283
Fabens CDP	8,257
Anna	8,249
Aransas Pass	8,204
Elgin	8,135
Commerce	8,078
West Livingston CDP	8,071
Trophy Club	8,024
Kirby	8,000
Granbury	7,978
Dalhart	7,930
Bridge City	7,840
Richland Hills	7,801
Cleveland	7,675

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Whitehouse	7,660
Jersey Village	7,620
Jasper	7,590
Highlands CDP	7,522
Mexia	7,459
River Oaks	7,427
Murillo CDP	7,344
Helotes	7,341
La Feria	7,302
Buda	7,295
Fairview	7,248
Homestead Meadows South CDP	7,247
Dayton	7,242
Gonzales	7,237
Bastrop	7,218
Crystal City	7,138
Lake Dallas	7,105
Navasota	7,049
Alamo Heights	7,031
Cameron Park CDP	6,963
Hitchcock	6,961
Monahans	6,953
Crockett	6,950
Heath	6,921
Sanger	6,916
Lantana CDP	6,874
Cuero	6,841
Princeton	6,807
Hornsby Bend CDP	6,791
Carthage	6,779
Kennedale	6,763
Kaufman	6,703
Lampasas	6,681
Silsbee	6,611
Lacy-Lakeview	6,489
White Oak	6,469
Floresville	6,448
Gladewater	6,441
Seminole	6,430
Camp Swift CDP	6,383
Littlefield	6,372
Fate	6,357
Iowa Park	6,355
Canutillo CDP	6,321
Mila Doce CDP	6,222
Slaton	6,121
Everman	6,108
Keene	6,106

City or CDP*	Population
Childress	6,105
Marble Falls	6,077
Decatur	6,042
Lago Vista (Travis County)	6,041
Kingsland CDP	6,030
Celina	6,028
Sealy	6,019
Burnet	5,987
Fair Oaks Ranch	5,986
Bridgeport	5,976
Marlin	5,967
Roanoke	5,962
Joshua	5,910
Alpine	5,905
Yoakum	5,815
Breckenridge	5,780
Hempstead	5,770
Kermit	5,708
Atlanta	5,675
Gun Barrel City	5,672
Briar CDP	5,665
Sinton	5,665
Willis	5,662
Elsa	5,660
Rockdale	5,595
Prairie View	5,576
Palmview South CDP	5,575
Cameron	5,552
Rusk	5,551
Los Fresnos (Cameron County)	5,542
Selma	5,540
Brady	5,528
Progreso	5,507
Edna	5,499
Wake Village	5,492
Palmview	5,460
Luling	5,411
Perezville CDP	5,376
Post	5,376
Carrizo Springs	5,368
Windcrest	5,364
Hutchins	5,338
Livingston	5,335
Pecan Plantation CDP	5,294
Bowie	5,218
Center	5,193
Manvel	5,179
Lucas	5,166

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
Muleshoe	5,158
Lakehills CDP	5,150
Sunnyvale	5,130
Homestead Meadows North CDP	5,124
Doffing CDP	5,091
Zapata CDP	5,089
Manor	5,037
Anthony	5,011
Port Isabel	5,006
Shady Hollow CDP	5,004
McGregor	4,987
Falfurrias	4,981
San Leon CDP	4,970
Tulia	4,967
Scenic Oaks CDP	4,957
Mathis	4,942
Granite Shoals	4,910
Gilmer	4,905
Giddings	4,881
Terrell Hills	4,878
Lindale	4,818
Rio Bravo	4,794
Providence CDP	4,786
Diboll	4,776
Midway North CDP	4,752
Hudson	4,731
Palacios	4,718
Coleman	4,709
Brookshire	4,702
Melissa	4,695
Sansom Park	4,686
Meadows Place	4,660
La Grange	4,641
Bulverde	4,630
Pinehurst CDP (Montgomery County)	4,624
Lake Worth	4,584
Hebbronville CDP	4,558
New Boston	4,550
Sparks CDP	4,529
Mineola	4,515
Jacksboro	4,511
Lost Creek CDP	4,509
Pittsburg	4,497
San Diego	4,488
Denver City	4,479
Hearne	4,459
Presidio	4,426
Penitas	4,403

City or CDP*	Population
Madisonville	4,396
Dimmitt	4,393
Hunters Creek Village	4,367
Devine	4,350
Central Gardens CDP	4,347
Redwood CDP	4,338
Comanche	4,335
Lopezville CDP	4,333
Groesbeck	4,328
Nolanville	4,259
Cockrell Hill	4,193
Westway CDP	4,188
Morgan's Point Resort	4,170
Krum	4,157
Colorado City	4,146
Friona	4,123
Castle Hills	4,116
Caldwell	4,104
Pecan Acres CDP	4,099
Bellville	4,097
Primera	4,070
Nassau Bay	4,002
Sullivan City	4,002
La Joya	3,985
Willow Park	3,982
Eastland	3,960
Medina CDP	3,935
Bee Cave	3,925
West Columbia	3,905
Cisco	3,899
Dilley	3,894
Jourdanton	3,871
Pilot Point	3,856
Mont Belvieu	3,835
Olivarez CDP	3,827
Chula Vista CDP (Maverick County)	3,818
Smithville	3,817
Parker	3,811
Whitesboro	3,793
Alvarado	3,785
Ballinger	3,767
Spring Valley Village	3,715
Clyde	3,713
Laureles CDP	3,692
Sweeny	3,684
Wilmer	3,682
Wolfforth	3,670
Columbus	3,655

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Dublin	3,654
Eagle Lake	3,639
Bunker Hill Village	3,633
Cotulla	3,603
Canton	3,581
Hallsville	3,577
Teague	3,560
Taylor Lake Village	3,544
Wills Point	3,524
Richwood	3,510
Ovilla	3,492
Laguna Heights CDP	3,488
Port Aransas	3,480
West Orange	3,443
Clifton	3,442
Winnsboro	3,434
Cienegas Terrace CDP	3,424
Horseshoe Bay	3,418
Spearman	3,368
South Alamo CDP	3,361
Crane	3,353
Haskell	3,322
Savannah CDP	3,318
Farmersville	3,301
Kenedy	3,296
Las Quintas Fronterizas CDP	3,290
Clarksville	3,285
Olney	3,285
Argyle	3,282
El Cenizo (Webb County)	3,273
Poteet	3,260
Garden Ridge	3,259
Winnie CDP	3,254
Mauriceville CDP	3,252
Hickory Creek	3,247
Justin	3,246
North Alamo CDP	3,235
Llano	3,232
Ozona CDP	3,225
Barrett CDP	3,199
Scissors CDP	3,186
Cactus	3,179
Reno (Lamar County)	3,166
Edcouch	3,161
Grape Creek CDP	3,154
Las Lomas CDP	3,147
Henrietta	3,141
Grand Saline	3,136

City or CDP*	Population
Bishop	3,134
San Carlos CDP	3,130
Piney Point Village	3,125
Cross Mountain CDP	3,124
Stamford	3,124
Laguna Vista	3,117
San Saba	3,099
Hamilton	3,095
Hideaway	3,083
Barton Creek CDP	3,077
Lake Cherokee CDP	3,071
West Lake Hills	3,063
Hollywood Park	3,062
Oak Ridge North	3,049
Taft	3,048
Van Alstyne	3,046
Karnes City	3,042
Floydada	3,038
Mabank	3,035
Shavano Park	3,035
Nocona	3,033
Sonora	3,027
Brazoria	3,019
Agua Dulce CDP (El Paso County)	3,014
Llano Grande CDP	3,008
Potosi CDP	2,991
Hudson Bend CDP	2,981
Nash	2,960
Venus	2,960
Fairfield	2,951
Balcones Heights	2,941
Big Lake	2,936
La Paloma CDP	2,903
Combes	2,895
Refugio	2,890
Santa Rosa (Cameron County)	2,873
Double Oak	2,867
Crandall	2,858
Schulenburg	2,852
Needville	2,823
Freer	2,818
South Padre Island	2,816
West	2,807
Abernathy	2,805
Electra	2,791
Oak Point	2,786
Edgecliff Village	2,776
Holly Lake Ranch CDP	2,774

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Doolittle CDP	2,769
Hooks	2,769
Eden	2,766
Early	2,762
Oak Trail Shores CDP	2,755
Paloma Creek South CDP	2,753
Seymour	2,740
Chandler	2,734
Aledo	2,716
El Lago	2,706
Rosita CDP	2,704
Trinity	2,697
DeCordova	2,683
Castroville	2,680
Tahoka	2,673
Mount Vernon	2,662
Springtown	2,658
Premont	2,653
Canadian	2,649
Quanah	2,641
Van	2,632
Wimberley	2,626
Shady Shores	2,612
Lyford	2,611
Palmhurst	2,607
Howe	2,600
Aubrey	2,595
Indian Hills CDP	2,591
Merkel	2,590
Woodville	2,586
Junction	2,574
Winters	2,562
Daingerfield	2,560
Hedwig Village	2,557
Travis Ranch CDP	2,556
Overton	2,554
Hallettsville	2,550
McQueeney CDP	2,545
Wyldwood CDP	2,505
Paloma Creek CDP	2,501
Reno (Parker County)	2,494
Lytle	2,492
Stanton	2,492
La Blanca CDP	2,488
Fifth Street CDP	2,486
Shallowater	2,484
Weston Lakes	2,482
Newton	2,478

City or CDP*	Population
The Hills	2,472
Westworth Village	2,472
Elm Creek CDP	2,469
Ranger	2,468
Bullard	2,463
Bloomington CDP	2,459
Panhandle	2,452
Wild Peach Village CDP	2,452
George West	2,445
Glen Rose	2,444
Rancho Viejo (Cameron County)	2,437
Ferris	2,436
Anson	2,430
Bolivar Peninsula CDP	2,417
Seagraves	2,417
Blue Mound	2,394
Pantego	2,394
Circle D-KC Estates CDP	2,393
Odem	2,389
Nixon	2,385
Val Verde Park CDP	2,384
Comfort CDP	2,363
Rio Hondo	2,356
Liberty City CDP	2,351
Waller	2,326
Malakoff	2,324
Citrus City CDP	2,321
Shepherd	2,319
West Sharyland CDP	2,309
Crosby CDP	2,299
Memphis	2,290
East Bernard	2,272
Dalworthington Gardens	2,259
Encantada-Ranchito-El Calaboz CDP	2,255
Fannett CDP	2,252
Hale Center	2,252
Idalou	2,250
De Leon	2,246
Anahuac	2,243
Tool	2,240
Midway South CDP	2,239
Olmos Park	2,237
Lavon	2,219
Olton	2,215
Mart	2,209
Beach City	2,198
Wellington	2,189
Uvalde Estates CDP	2,171

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Panorama Village	2,170
Pottsboro	2,160
Waskom	2,160
Weimar	2,151
Buna CDP	2,142
Kirbyville	2,142
Shenandoah	2,134
Salado	2,126
Hamlin	2,124
Kountze	2,123
Huntington	2,118
Fritch	2,117
Mason	2,114
San Augustine	2,108
Jefferson	2,106
Inez CDP	2,098
Pinehurst (Orange County)	2,097
Preston CDP	2,096
St. Hedwig	2,094
Yorktown	2,092
Whitney	2,087
Shiner	2,069
Abram CDP	2,067
Van Horn	2,063
Albany	2,034
Clarendon	2,026
Seth Ward CDP	2,025
Jones Creek	2,020
Stratford	2,017
Morton	2,006
Ganado	2,003
Palmer	2,000
Beverly Hills	1,995
Leonard	1,990
Sheldon CDP	1,990
Linden	1,988
Marfa	1,981
Vinton	1,971
Cooper	1,969
Shadybrook CDP	1,967
Little River-Academy	1,961
La Villa	1,957
Eldorado	1,951
Ralls	1,944
Combine	1,942
Lake Dunlap CDP	1,934
Cesar Chavez CDP	1,929
Sunray	1,926

City or CDP*	Population
Monte Alto CDP	1,924
Sebastian CDP	1,917
Shamrock	1,910
Goliad	1,908
Poth	1,908
Gregory	1,907
Lake Kiowa CDP	1,906
McCamey	1,887
Siesta Acres CDP	1,885
Stinnett	1,881
Goldthwaite	1,878
Troup	1,869
Bovina	1,868
Italy	1,863
Buffalo	1,856
Three Rivers	1,848
Van Vleck CDP	1,844
Lockney	1,842
Archer City	1,834
Jonestown	1,834
Sour Lake	1,813
Quitman	1,809
Ingram	1,804
Dripping Springs	1,788
Meadowlakes	1,777
Kemah	1,773
Onalaska	1,764
Hughes Springs	1,760
Holliday	1,758
Stowell CDP	1,756
Fort Hancock CDP	1,750
Crosbyton	1,741
Blanco	1,739
Lake Bryan CDP	1,728
Heidelberg CDP	1,725
Northlake	1,724
Charlotte	1,715
Danbury	1,715
Southside Place	1,715
Lowry Crossing	1,711
Rancho Alegre CDP	1,704
De Kalb	1,699
Garfield CDP	1,698
Sabinal	1,695
Lorena	1,691
Brackettville	1,688
Pinewood Estates CDP	1,678
Honey Grove	1,668

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Hudson Oaks	1,662
Krugerville	1,662
Johnson City	1,656
Porter Heights CDP	1,653
Troy	1,645
Itasca	1,644
La Pryor CDP	1,643
Arcola	1,642
Serenada CDP	1,641
Somerset	1,631
Quail Creek CDP	1,628
Collinsville	1,624
Bartlett	1,623
La Grulla	1,622
Splendora	1,615
Las Palmas II CDP	1,605
Whitewright	1,604
Bangs	1,603
Corrigan	1,595
Wheeler	1,592
Lone Star	1,581
West Tawakoni	1,576
Gardendale CDP	1,574
Kerens	1,573
Laughlin AFB CDP	1,569
Tornillo CDP	1,568
Franklin	1,564
Cross Roads	1,563
Grandview	1,561
Patton Village	1,557
Pelican Bay	1,547
Muenster	1,544
Roman Forest	1,538
Bayou Vista	1,537
Talty	1,535
Lake Brownwood CDP	1,532
Western Lake CDP	1,525
Brookside Village	1,523
Rhome	1,522
Buchanan Dam CDP	1,519
Haslet	1,517
Booker	1,516
Woodsboro	1,512
Rotan	1,508
Gunter	1,498
Baird	1,496
Blossom	1,494
Meridian	1,493

City or CDP*	Population
Shoreacres	1,493
Grapeland	1,489
Elmendorf	1,488
Evadale CDP	1,483
Plains	1,481
Milam CDP	1,480
Queen City	1,476
Bruceville-Eddy	1,475
Menard	1,471
Bartonville	1,469
Taft Southwest CDP	1,460
Woodcreek	1,457
Seven Points	1,455
Stockdale	1,442
Edgewood	1,441
Briarcliff	1,438
Natalia	1,431
Hubbard	1,423
Granger	1,419
Rollingwood	1,412
Rosebud	1,412
Wolfe City	1,412
Sundown	1,397
Ponder	1,395
Quinlan	1,394
Magnolia	1,393
Bells	1,392
Tatum	1,385
Flatonia	1,383
Siesta Shores CDP	1,382
Hico	1,379
Naples	1,378
Somerville	1,376
South Point CDP	1,376
McLendon-Chisholm	1,373
Elkhart	1,371
Moody	1,371
Muniz CDP	1,370
Seadrift	1,364
Farwell	1,363
Benavides	1,362
Fulton	1,358
Bertram	1,353
Big Sandy	1,343
Caddo Mills	1,338
Thorndale	1,336
Alvord	1,334
Copper Canyon	1,334

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Roscoe	1,322
Orange Grove	1,318
Spur	1,318
Lakeside (Tarrant County)	1,307
Palm Valley	1,304
Munday	1,300
Oak Leaf	1,298
Annetta	1,288
Runaway Bay	1,286
Woodbranch	1,282
China Spring CDP	1,281
Hawkins	1,278
Laguna Park CDP	1,276
Bevil Oaks	1,274
Green Valley Farms CDP	1,272
New Fairview	1,258
Port O'Connor CDP	1,253
Wallis	1,252
Old River-Winfree	1,245
Tye	1,242
Randolph AFB CDP	1,241
Emory	1,239
Lake Medina Shores CDP	1,235
Wildwood CDP	1,235
Frankston	1,229
Iraan	1,229
Fort Clark Springs CDP	1,228
Alto	1,225
Aurora	1,220
Rogers	1,218
Olmito CDP	1,210
Boyd	1,207
Valley Mills	1,203
Petersburg	1,202
Fort Davis CDP	1,201
Hemphill	1,198
Claude	1,196
Gruver	1,194
Calvert	1,192
Harper CDP	1,192
Sherwood Shores CDP	1,190
Escobares	1,188
Paducah	1,186
Rocksprings	1,182
Sam Rayburn CDP	1,181
China Grove	1,179
Powderly CDP	1,178
Lexington	1,177
Iowa Colony	1,170
Jewett	1,167
Westwood Shores CDP	1,162
China	1,160
Tenaha	1,160
Timpson	1,155
Kemp	1,154
Bogata	1,153
Rosharon CDP	1,152
Lorenzo	1,147
Ore City	1,144
Florence	1,136
Fulshear	1,134
Manchaca CDP	1,133
Knox City	1,130
Anton	1,126
Cottonwood Shores	1,123
Boling CDP	1,122
Holland	1,121
LaCoste	1,119
Martindale	1,116
Hart	1,114
New Summerfield	1,111
Oyster Creek	1,111
Holiday Lakes	1,107
Hilltop Lakes CDP	1,101
Santa Anna (Coleman County)	1,099
Ransom Canyon	1,096
Kempner	1,089
Von Ormy	1,085
Asherton	1,084
Gorman	1,083
Los Indios	1,083
Markham CDP	1,082
Wortham	1,073
Cut and Shoot	1,070
Batesville CDP	1,068
Marion	1,066
St. Paul (Collin County)	1,066
Earth	1,065
Waelder	1,065
Clear Lake Shores	1,063
Gholson	1,061
Groveton	1,057
Redwater	1,057
Maud	1,056
Robert Lee	1,049
Ricardo CDP	1,048

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Emerald Bay CDP	1,047
Redland CDP	1,047
Tom Bean	1,045
Pleak	1,044
St. Jo	1,043
Brownsboro	1,039
Callender Lake CDP	1,039
Lasara CDP	1,039
Windemere CDP	1,037
Falcon Lake Estates CDP	1,036
La Vernia	1,034
Geronimo CDP	1,032
New Waverly	1,032
Runge	1,031
Deweyville CDP	1,023
Omaha	1,021
Lindsay (Cooke County)	1,018
Juarez CDP	1,017
Uhland	1,014
Godley	1,009
Red Lick	1,008
Riesel	1,007
Newark	1,005
Ames	1,003
Chico	1,002
White Deer	1,000
Bronte	999
New London	998
Arroyo Colorado Estates CDP	997
Lakeside City (Archer County)	997
Louise CDP	995
Southmayd	992
Westlake	992
Eustace	991
Pine Island	988
Hill Country Village	985
Jarrell	984
Jamaica Beach	983
Cross Plains	982
Cumings CDP	981
Berryville	975
Lakeport	974
Arp	970
Hackberry	968
Tiki Island	968
Liberty Hill	967
Daisetta	966
Sudan	958

City or CDP*	Population
Coolidge	955
Crowell	948
Leming CDP	946
Wink	940
Maypearl	934
Bremond	929
Blessing CDP	927
Clint	926
Skidmore CDP	925
Fabrica CDP	923
Rice	923
Aspermont	919
Canyon Creek CDP	916
Chilton CDP	911
Mikes CDP	910
Garrison	895
North San Pedro CDP	895
Centerville	892
Sterling City	888
Ivanhoe	887
Moulton	886
Trinidad	886
Vega	884
East Tawakoni	883
Hargill CDP	877
Villa Verde CDP	874
Rio Vista	873
Blue Berry Hill CDP	866
Clarksville City	865
Mustang Ridge	861
Westminster CDP	861
Bandera	857
Lometa	856
Coldspring	853
Pineland	850
Beckville	847
D'Hanis CDP	847
Thrall	839
Sanderson CDP	837
Rising Star	835
Sand Springs CDP	835
O'Donnell	831
Savoy	831
Miles	829
Myrtle Springs CDP	828
Throckmorton	828
Walnut Springs	827
East Alto Bonito CDP	824

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Joaquin	824
Blue Ridge	822
Nevada	822
Blooming Grove	821
Point	820
Hardin	819
Coahoma	817
McKinney Acres CDP	815
Celeste	814
Simonton	814
Agua Dulce (Nueces County)	812
Josephine	812
Pine Harbor CDP	810
Dawson	807
Garrett	806
Tioga	803
Linn CDP	801
Point Venture	800
East Mountain	797
Lake Tanglewood	796
New Deal	794
Wells	790
Horseshoe Bend CDP	789
Villa Pancho CDP	788
Reid Hope King CDP	786
Indian Springs CDP	785
Kingsbury CDP	782
Mertzon	781
McLean	778
Rankin	778
Cumby	777
Noonday	777
Elmo CDP	768
Payne Springs	767
Fairchilds	763
Radar Base CDP	762
Lott	759
Valley View	757
Warren CDP	757
Sunset Valley	749
San Felipe	747
Hilshire Village	746
Big Thicket Lake Estates CDP	742
Tuscola	742
Cresson	741
Driscoll	739
Burke	737
Point Comfort	737

City or CDP*	Population
Santa Maria CDP	733
Detroit	732
Silverton	731
Hillcrest	730
Milford	728
Bailey's Prairie	727
Banquete CDP	726
Santa Clara	725
Amherst	721
Carlsbad CDP	719
Garza-Salinas II CDP	719
Crawford	717
Kress	715
Log Cabin	714
Sunrise Beach Village	713
Zavalla	713
Chillicothe	707
Camp Wood	706
Como	702
Big Wells	697
West Alto Bonito CDP	696
Ector	695
Buchanan Lake Village CDP	692
Placedo CDP	692
Knippa CDP	689
Riviera CDP	689
Point Blank	688
Petrolia	686
McDade CDP	685
Normangee	685
Westover Hills	682
Scurry	681
Tolar	681
Happy	678
Nocona Hills CDP	675
Cape Royale CDP	670
Hull CDP	669
Bristol CDP	668
San Ygnacio CDP	667
Thunderbird Bay CDP	663
Glidden CDP	661
Strawn	653
Morning Glory CDP	651
Roxton	650
Bardwell	649
Lovelady	649
Mountain City	648
Frost	643

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Roby	643
Beasley	641
Indian Lake	640
Campbell	638
Lamar CDP	636
Rule	636
Trenton	635
Hawley	634
La Puerta CDP	632
Cedar Point CDP	630
Pecan Hill	626
Montgomery	621
La Tina Ranch CDP	618
Ingleside on the Bay	615
New Hope	614
North Pearsall CDP	614
Cushing	612
Ladonia	612
Falls City	611
Matador	607
Oak Grove	603
Loraine	602
Plum Grove	600
Lone Oak	598
Miami	597
Colmesneil	596
Post Oak Bend City	595
Murchison	594
New Chapel Hill	594
Meadow	593
Lake Colorado City CDP	588
Nome	588
Newcastle	585
Graford	584
St. Paul CDP (San Patricio County)	584
Carrizo Hill CDP	582
Deport	578
Winona	576
Groom	574
Ranchos Penitas West CDP	573
San Perlita	573
Niederwald	565
Kenefick	563
Spring Gardens CDP	563
Weston	563
Seco Mines CDP	560
Encinal	559
Golinda	559

City or CDP*	Population
Macdona CDP	559
Pettus CDP	558
Lolita CDP	555
Sierra Blanca CDP	553
Damon CDP	552
Smiley	549
Lakewood Village	545
Hartley CDP	540
Bryson	539
Ivanhoe North	538
Stagecoach	538
Jayton	534
San Pedro CDP	530
Annetta South	526
Thornton	526
South Toledo Bend CDP	524
Winfield	524
Pleasant Hill CDP	522
Pueblo Nuevo CDP	521
Volente	520
Annetta North	518
B and E CDP	518
Talco	516
Buckholts	515
Holiday Beach CDP	514
Solis CDP	512
New Berlin	511
Snook	511
Cove	510
Easton	510
Oakwood	510
Riverside	510
Lake City	509
Coyote Acres CDP	508
Hallsburg	507
Texline	507
Mesquite CDP (Starr County)	505
Stonewall CDP	505
Alba	504
Bixby CDP	504
Christoval CDP	504
Lakeshore Gardens-Hidden Acres CDP	504
Matagorda CDP	503
Rose City	502
Scotland	501
Wickett	498
Lefors	497
San Leanna	497

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Sunset CDP (Montague County)	497
Byers	496
Leary	495
Oak Ridge (Kaufman County)	495
Dean	493
Briaroaks	492
Alice Acres CDP	490
Morgan	490
Wilson	489
Pine Forest	487
Oglesby	484
Grey Forest	483
Hawk Cove	483
Avery	482
Liverpool	482
Surfside Beach	482
Balmorhea	479
Tivoli CDP	479
Gordon	478
Gustine	476
Thorntonville	476
Moore CDP	475
Appleby	474
Smyer	474
Skellytown	473
Pattison	472
Brazos Country	469
Valle Vista CDP	469
Buffalo Gap	464
El Chaparral CDP	464
Kosse	464
Morgan Farm CDP	463
Follett	459
Arroyo Gardens CDP	456
Buffalo Springs	453
Bigfoot CDP	450
Chula Vista CDP (Zavala County)	450
Weir	450
Whiteface	449
Devers	447
Mount Enterprise	447
Avinger	444
Blum	444
Star Harbor	444
Bedias	443
Paradise	441
Redfield CDP	441
Rose Hill Acres	441

City or CDP*	Population
Faysville CDP	439
Lake Meredith Estates CDP	437
Ropesville	434
Highland Haven	431
Lipan	430
Marathon CDP	430
Milano	428
Evant	426
Leakey	425
Rancho Banquete CDP	424
Turkey	421
Garceno CDP	420
Gallatin	419
Timbercreek Canyon	418
Hebron	415
Angus	414
Iglesia Antigua CDP	413
Quitaque	411
Windthorst	409
Fruitvale	408
La Paloma-Lost Creek CDP	408
Havana CDP	407
Falcon Mesa CDP	405
Bloomburg	404
Lozano CDP	404
Millsap	403
Tierra Grande CDP	403
Howardwick	402
Iola	401
Kurten	398
Perrin CDP	398
Higgins	397
Rancho Chico CDP	396
San Patricio	395
Vanderbilt CDP	395
Webberville	392
Blanket	390
Christine	390
Camargito CDP	388
Yantis	388
Chireno	386
Huxley	385
South Mountain	384
Bayview	383
Bear Creek	382
Kendleton	380
Bruni CDP	379
Reklaw	379

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Sandia CDP	379
Retreat	377
Scottsville	376
Zuehl CDP	376
Edom	375
Mirando City CDP	375
Westdale CDP	372
Dodd City	369
Mildred	368
Oak Valley	368
Dell City	365
Channing	363
Oak Island CDP	363
Bellevue	362
Grandfalls	360
K-Bar Ranch CDP	358
Union Grove	357
Abbott	356
Bluetown CDP	356
Callisburg	353
Oilton CDP	353
Orchard	352
Darrouzett	350
Roma Creek CDP	350
Barstow	349
Cashion Community	348
Hungerford CDP	347
Lueders	346
Texhoma	346
Hermleigh CDP	345
South La Paloma CDP	345
Sadler	343
Alto Bonito Heights CDP	342
Lake Bridgeport	340
Iredell	339
Morgan's Point	339
Richland Springs	338
Grays Prairie	337
Kennard	337
Leroy	337
Trent	337
Pleasant Valley	336
Los Ebanos CDP (Hidalgo County)	335
Garden City CDP	334
New Home	334
Palo Pinto CDP	333
Rosser	332
Alma	331

City or CDP*	Population
Edroy CDP	331
El Refugio CDP	331
La Paloma Addition CDP	330
Hedley	329
Sanctuary	329
Enchanted Oaks	326
Bayside	325
Palisades	325
Escobar I CDP	324
Rochester	324
Latexo	322
Mount Calm	320
La Presa CDP	319
San Carlos I CDP	316
Annona	315
Lawn	314
Chester	312
Coyote Flats CDP	312
Lakeside (San Patricio County)	312
Blackwell	311
Gary City	311
Nazareth	311
Bonney	310
Lincoln Park	308
Eureka	307
Nordheim	307
Union Valley	307
Brazos Bend	305
Poynor	305
Industry	304
Montague CDP	304
Los Alvarez CDP	303
Burton	300
Warren City	298
Tira	297
Colorado Acres CDP	296
Sandy Hollow-Escondidas CDP	296
Granjeno	293
Amargosa CDP	291
Bailey	289
Rangerville	289
Chula Vista CDP (Cameron County)	288
Los Barreras CDP	288
Tuleta CDP	288
Hilltop CDP (Frio County)	287
Dickens	286
Ross	283
Tehuacana	283

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Boys Ranch CDP	282
Cranfills Gap	281
Mi Ranchito Estate CDP	281
Nesbitt	281
Los Ebanos CDP (Starr County)	280
Coffee City	278
Imperial CDP	278
Tynan CDP	278
Tierra Verde CDP	277
El Rancho Vela CDP	274
Paint Rock	273
Carbon	272
Goodrich	271
Lindsay CDP (Reeves County)	271
Olmito and Olmito CDP	271
Moran	270
Covington	269
Malone	269
Cross Timber	268
Staples	267
Laguna Seca CDP	266
Ranchitos Las Lomas CDP	266
Richland	264
Woodson	264
Marquez	263
San Carlos II CDP	261
Tilden CDP	261
Benjamin	258
Fayetteville	258
Goldsmith	257
Doyle CDP	254
Loma Linda East CDP (Jim Wells County)	254
Ratamosa CDP	254
Wixon Valley	254
El Camino Angosto CDP	253
Westbrook	253
Carmine	250
El Cenizo CDP (Starr County)	249
North Cleveland	247
Streetman	247
Prado Verde CDP	246
Thompsons	246
Las Lomitas CDP	244
Barry	242
Santa Rosa CDP (Starr County)	241
Millican	240
Progreso Lakes	240
San Isidro CDP	240

City or CDP*	Population
Del Sol CDP	239
La Paloma Ranchettes CDP	239
Sarita CDP	238
Mingus	235
Roaring Springs	234
Oakhurst CDP	233
Study Butte CDP	233
Tanquecitos South Acres CDP	233
Gail CDP	231
Quemado CDP	230
Douglassville	229
La Esperanza CDP	229
Midway	228
Rancho Viejo CDP (Starr County)	228
Taylor Landing	228
Utopia CDP	227
Knollwood	226
Port Mansfield CDP	226
Loop CDP	225
Owl Ranch CDP	225
Anderson	222
Welch CDP	222
Ackerly	220
Caney City	217
Hays	217
Delmita CDP	216
La Ward	213
La Feria North CDP	212
Moraida CDP	212
Ranchitos East CDP	212
Forsan	210
Navarro	210
Ravenna	209
El Quiote CDP	208
Broaddus	207
Woodloch	207
Lago CDP	204
Palo Blanco CDP	204
Goree	203
Manuel Garcia CDP	203
Megargel	203
Pecan Gap	203
Wellman	203
Creedmoor	202
DISH	201
Moore Station	201
Salineño CDP	201
Goodlow	200

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Bynum	199
Lake View CDP	199
Windom	199
Penelope	198
Browndell	197
Bishop Hills	193
New Falcon CDP	191
El Indio CDP	190
Cantu Addition CDP	188
El Castillo CDP	188
Mobile City	188
Cottonwood	185
Country Acres CDP	185
Realitos CDP	184
Round Mountain	181
Fronton CDP	180
Tradewinds CDP	180
Mullin	179
Melvin	178
Leona	175
Villa del Sol CDP	175
Lopeño CDP	174
Opdyke West	174
Carl's Corner	173
Jolly	172
Weinert	172
La Minita CDP	171
La Victoria CDP	171
Adrian	166
East Lopez CDP	166
Pawnee CDP	166
Sanford	164
Coyanosa CDP	163
Rivera CDP	162
Airport Heights CDP	161
Iago CDP	161
Guthrie CDP	160
Loma Vista CDP	160
Eugenio Saenz CDP	159
Cool	157
La Escondida CDP	153
Ranchette Estates CDP	152
Miller's Cove	149
Dorchester	148
Austwell	147
Morse CDP	147
Estelline	145
Driftwood CDP	144

City or CDP*	Population
Encino CDP	143
Nina CDP	141
Oak Ridge (Cooke County)	141
Tierra Bonita CDP	141
Cuney	140
Los Altos CDP	140
Novice	139
Powell	136
Marietta	134
Valentine	134
Emhouse	133
Campo Verde CDP	132
Falconaire CDP	132
Relampago CDP	132
Villarreal CDP	131
El Socio CDP	130
Paisano Park CDP	130
Kirvin	129
Orason CDP	129
San Juan CDP (Starr County)	129
La Casita CDP	128
Miguel Barrera CDP	128
Los Arcos CDP	127
Mertens	125
Flor del Rio CDP	122
Loma Linda CDP	122
Los Angeles CDP	121
Catarina CDP	118
Flowella CDP	118
North Escobares CDP	118
Pena CDP	118
Botines CDP	117
Ramos CDP	116
Lago Vista CDP (Starr County)	115
Salineño North CDP	115
Butterfield CDP	114
Chaparrito CDP	114
Loma Linda West CDP	114
Pyote	114
Del Mar Heights CDP	113
Fronton Ranchettes CDP	113
Normanna CDP	113
Petronila	113
Ranchitos Del Norte CDP	112
Edmonson	111
Seven Oaks	111
Sammy Martinez CDP	110
Victoria Vera CDP	110

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Aquilla	109
Dodson	109
Barrera CDP	108
Springlake	108
Zapata Ranch CDP	108
Lakeview	107
Loma Grande CDP	107
Todd Mission	107
O'Brien	106
JF Villarreal CDP	104
Buena Vista CDP	102
Mobeetie	101
Neylandville	97
Old Escobares CDP	97
La Loma de Falcon CDP	95
Spofford	95
Putnam	94
Uncertain	94
Airport Road Addition CDP	93
Amaya CDP	93
Dayton Lakes	93
Domino	93
Olivia Lopez de Gutierrez CDP	93
Amada Acres CDP	92
Longoria CDP	92
Alfred CDP	91
Los Arrieros CDP	91
Yznaga CDP	91
Redford CDP	90
Round Top	90
Toyah	90
Los Centenarios CDP	87
La Rosita CDP	85
Regino Ramirez CDP	85
Lasana CDP	84
Morales-Sanchez CDP	84
Santa Monica CDP	83
Gutierrez CDP	79
Northridge CDP	78
Ramirez-Perez CDP	78
Hilltop CDP (Starr County)	77
Manuel Garcia II CDP	77
Falman CDP	76
Rocky Mound	75
Toco	75
Evergreen CDP	73
Spade CDP	73
Edgewater Estates CDP	72

City or CDP*	Population
La Carla CDP	70
South Fork Estates CDP	70
Martinez CDP	69
Sun Valley	69
San Fernando CDP	68
Las Palmas CDP	67
Los Fresnos CDP (Webb County)	67
Pablo Pena CDP	63
Concepcion CDP	62
Los Nopalitos CDP	62
Rivereno CDP	61
Zarate CDP	59
Terlingua CDP	58
Quintana	56
Fowlerton CDP	55
Casa Blanca CDP	54
Santa Cruz CDP	54
Amistad CDP	53
Falcon Heights CDP	53
Samnorwood CDP	51
Girard CDP	50
Indio CDP	50
Tanquecitos South Acres II CDP	50
Grand Acres CDP	49
La Chuparosa CDP	49
La Coma CDP	48
Chapeno CDP	47
El Brazil CDP	47
Falcon Village CDP	47
Sunset CDP (Starr County)	47
Garciasville CDP	46
Thompsonville CDP	46
Loma Linda East CDP (Starr County)	44
Santel CDP	44
Cuevitas CDP	40
Casas CDP	39
El Mesquite CDP	38
Bonanza Hills CDP	37
Guadalupe-Guerra CDP	37
Lipscomb CDP	37
Impact	35
Los Corralitos CDP	35
Ramireno CDP	35
Benjamin Perez CDP	34
Box Canyon CDP	34
Sandoval CDP	32
Netos CDP	31
Elbert CDP	30

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Elias-Fela Solis CDP	30
Hillside Acres CDP	30
Narciso Pena CDP	30
Las Pilas CDP	28
Tierra Dorada CDP	28
Brundage CDP	27
Corral City	27
Quesada CDP	25
Los Veteranos I CDP	24
Los Veteranos II CDP	24
Sunset Acres CDP	23
Jardin de San Julian CDP	22
Laredo Ranchettes CDP	22
Aguilares CDP	21
Mustang	21
H. Cuellar Estates CDP	20
Los Minerales CDP	20
Los Ybanez	19
Mentone CDP	19
Quail CDP	19
Four Points CDP	18
Los Huisaches CDP	17
Rafael Pena CDP	17
Fernando Salinas CDP	15
Tulsita CDP	14
Santa Anna CDP (Starr County)	13
Anacua CDP	12
Los Lobos CDP	9
Las Haciendas CDP	7
Guerra CDP	6
Laredo Ranchettes West CDP	0
Pueblo East CDP	0
Valle Hermoso CDP	0
Valle Verde CDP	0

TOTAL POPULATION 25,145,561

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*Unincorporated area that is a Census Designated Place.

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Appendix 2

2010 Texas Census
County Summary

According to the official returns of the 23rd Decennial Census of the United States, as released by the Bureau of the Census on February 17, 2011.

(By population)

Texas Legislative Council
February 2011

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Population in Texas Counties
2010 Census

County	Population
Harris	4,092,459
Dallas	2,368,139
Tarrant	1,809,034
Bexar	1,714,773
Travis	1,024,266
El Paso	800,647
Collin	782,341
Hidalgo	774,769
Denton	662,614
Fort Bend	585,375
Montgomery	455,746
Williamson	422,679
Cameron	406,220
Nueces	340,223
Brazoria	313,166
Bell	310,235
Galveston	291,309
Lubbock	278,831
Jefferson	252,273
Webb	250,304
McLennan	234,906
Smith	209,714
Brazos	194,851
Hays	157,107
Johnson	150,934
Ellis	149,610
Ector	137,130
Midland	136,872
Guadalupe	131,533
Taylor	131,506
Wichita	131,500
Gregg	121,730
Potter	121,073
Grayson	120,877
Randall	120,725
Parker	116,927
Tom Green	110,224
Comal	108,472
Kaufman	103,350
Bowie	92,565
Victoria	86,793
Angelina	86,771
Hunt	86,129

County	Population
Orange	81,837
Henderson	78,532
Rockwall	78,337
Liberty	75,643
Coryell	75,388
Bastrop	74,171
Walker	67,861
Harrison	65,631
San Patricio	64,804
Nacogdoches	64,524
Starr	60,968
Wise	59,127
Anderson	58,458
Hardin	54,635
Maverick	54,258
Rusk	53,330
Van Zandt	52,579
Hood	51,182
Cherokee	50,845
Lamar	49,793
Kerr	49,625
Val Verde	48,879
Navarro	47,735
Medina	46,006
Polk	45,413
Atascosa	44,911
Waller	43,205
Wilson	42,918
Burnet	42,750
Wood	41,964
Wharton	41,280
Jim Wells	40,838
Upshur	39,309
Cooke	38,437
Brown	38,106
Caldwell	38,066
Erath	37,890
Matagorda	36,702
Hale	36,273
Jasper	35,710
Hopkins	35,161
Chambers	35,096
Hill	35,089

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County	Population
Howard	35,012
Fannin	33,915
Washington	33,718
Kendall	33,410
Titus	32,334
Kleberg	32,061
Bee	31,861
Cass	30,464
Austin	28,417
Palo Pinto	28,111
Grimes	26,604
Uvalde	26,405
San Jacinto	26,384
Shelby	25,448
Gillespie	24,837
Milam	24,757
Fayette	24,554
Panola	23,796
Houston	23,732
Limestone	23,384
Aransas	23,158
Hockley	22,935
Gray	22,535
Hutchinson	22,150
Willacy	22,134
Moore	21,904
Tyler	21,766
Calhoun	21,381
Colorado	20,874
Bandera	20,485
Jones	20,202
De Witt	20,097
Freestone	19,816
Gonzales	19,807
Montague	19,719
Lampasas	19,677
Deaf Smith	19,372
Llano	19,301
Lavaca	19,263
Eastland	18,583
Young	18,550
Bosque	18,212
Falls	17,866
Gaines	17,526
Frio	17,217
Burleson	17,187
Scurry	16,921
Leon	16,801

County	Population
Robertson	16,622
Lee	16,612
Pecos	15,507
Nolan	15,216
Karnes	14,824
Andrews	14,786
Trinity	14,585
Newton	14,445
Jackson	14,075
Zapata	14,018
Lamb	13,977
Comanche	13,974
Dawson	13,833
Reeves	13,783
Madison	13,664
Callahan	13,544
Wilbarger	13,535
Morris	12,934
Red River	12,860
Terry	12,651
Camp	12,401
Duval	11,782
Zavala	11,677
Live Oak	11,531
Rains	10,914
Sabine	10,834
Clay	10,752
Ward	10,658
Franklin	10,605
Marion	10,546
Runnels	10,501
Blanco	10,497
Parmer	10,269
Ochiltree	10,223
Dimmit	9,996
Stephens	9,630
Mitchell	9,403
Brewster	9,232
Archer	9,054
Jack	9,044
Coleman	8,895
San Augustine	8,865
Hamilton	8,517
Somervell	8,490
McCulloch	8,283
Castro	8,062
Yoakum	7,879
Swisher	7,854

County	Population
Presidio	7,818
Refugio	7,383
Brooks	7,223
Goliad	7,210
Bailey	7,165
Winkler	7,110
Childress	7,041
La Salle	6,886
Dallam	6,703
Garza	6,461
Floyd	6,446
Carson	6,182
San Saba	6,131
Hartley	6,062
Crosby	6,059
Lynn	5,915
Haskell	5,899
Hansford	5,613
Wheeler	5,410
Jim Hogg	5,300
Delta	5,231
Mills	4,936
Martin	4,799
Kimble	4,607
Crane	4,375
Hardeman	4,139
Sutton	4,128
Concho	4,087
Mason	4,012
Fisher	3,974
Hemphill	3,807
Baylor	3,726
Crockett	3,719
Knox	3,719
Donley	3,677
Kinney	3,598

County	Population
Hudspeth	3,476
Schleicher	3,461
Shackelford	3,378
Reagan	3,367
Upton	3,355
Hall	3,353
Coke	3,320
Real	3,309
Lipscomb	3,302
Cochran	3,127
Collingsworth	3,057
Sherman	3,034
Dickens	2,444
Culberson	2,398
Jeff Davis	2,342
Menard	2,242
Oldham	2,052
Edwards	2,002
Armstrong	1,901
Throckmorton	1,641
Briscoe	1,637
Irion	1,599
Cottle	1,505
Stonewall	1,490
Foard	1,336
Glasscock	1,226
Motley	1,210
Sterling	1,143
Terrell	984
Roberts	929
Kent	808
McMullen	707
Borden	641
Kenedy	416
King	286
Loving	82

TOTAL POPULATION 25,145,561

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Appendix 3

2010 Texas Census City Summary

According to the official returns of the 23rd Decennial Census of the United States, as released by the Bureau of the Census on February 17, 2011.

(Alphabetical)

Texas Legislative Council
February 2011

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Population in Texas Cities and CDPs
2010 Census

City or CDP*	Population
Abbott	356
Abernathy	2,805
Abilene	117,063
Abram CDP	2,067
Ackerly	220
Addison	13,056
Adrian	166
Agua Dulce (Nueces County)	812
Agua Dulce CDP (El Paso County)	3,014
Aguilares CDP	21
Airport Heights CDP	161
Airport Road Addition CDP	93
Alamo	18,353
Alamo Heights	7,031
Alba	504
Albany	2,034
Aldine CDP	15,869
Aledo	2,716
Alfred CDP	91
Alice	19,104
Alice Acres CDP	490
Allen	84,246
Alma	331
Alpine	5,905
Alto	1,225
Alto Bonito Heights CDP	342
Alton	12,341
Alvarado	3,785
Alvin	24,236
Alvord	1,334
Amada Acres CDP	92
Amargosa CDP	291
Amarillo	190,695
Amaya CDP	93
Ames	1,003
Amherst	721
Amistad CDP	53
Anacua CDP	12
Anahuac	2,243
Anderson	222
Andrews	11,088
Angleton	18,862
Angus	414
Anna	8,249
Annetta	1,288
Annetta North	518
Annetta South	526
Annona	315
Anson	2,430
Anthony	5,011
Anton	1,126
Appleby	474
Aquilla	109
Aransas Pass	8,204
Archer City	1,834
Arcola	1,642
Argyle	3,282
Arlington	365,438
Arp	970
Arroyo Colorado Estates CDP	997
Arroyo Gardens CDP	456
Asherton	1,084
Aspermont	919
Atascocita CDP	65,844
Athens	12,710
Atlanta	5,675
Aubrey	2,595
Aurora	1,220
Austin	790,390
Austwell	147
Avery	482
Avinger	444
Azle	10,947
B and E CDP	518
Bacliff CDP	8,619
Bailey	289
Bailey's Prairie	727
Baird	1,496
Balch Springs	23,728
Balcones Heights	2,941
Ballinger	3,767
Balmorhea	479
Bandera	857
Bangs	1,603
Banquete CDP	726
Bardwell	649

*Unincorporated area that is a Census Designated Place.

A

City or CDP*	Population
Barrera CDP	108
Barrett CDP	3,199
Barry	242
Barstow	349
Bartlett	1,623
Barton Creek CDP	3,077
Bartonville	1,469
Bastrop	7,218
Batesville CDP	1,068
Bay City	17,614
Bayou Vista	1,537
Bayside	325
Baytown	71,802
Bayview	383
Beach City	2,198
Bear Creek	382
Beasley	641
Beaumont	118,296
Beckville	847
Bedford	46,979
Bedias	443
Bee Cave	3,925
Beeville	12,863
Bellaire	16,855
Bellevue	362
Bellmead	9,901
Bells	1,392
Bellville	4,097
Belton	18,216
Benavides	1,362
Benbrook	21,234
Benjamin	258
Benjamin Perez CDP	34
Berryville	975
Bertram	1,353
Beverly Hills	1,995
Bevil Oaks	1,274
Big Lake	2,936
Big Sandy	1,343
Big Spring	27,282
Big Thicket Lake Estates CDP	742
Big Wells	697
Bigfoot CDP	450
Bishop	3,134
Bishop Hills	193
Bixby CDP	504
Blackwell	311
Blanco	1,739

City or CDP*	Population
Blanket	390
Blessing CDP	927
Bloomburg	404
Blooming Grove	821
Bloomington CDP	2,459
Blossom	1,494
Blue Berry Hill CDP	866
Blue Mound	2,394
Blue Ridge	822
Bluetown CDP	356
Blum	444
Boerne	10,471
Bogata	1,153
Boling CDP	1,122
Bolivar Peninsula CDP	2,417
Bonanza Hills CDP	37
Bonham	10,127
Bonney	310
Booker	1,516
Borger	13,251
Botines CDP	117
Bovina	1,868
Bowie	5,218
Box Canyon CDP	34
Boyd	1,207
Boys Ranch CDP	282
Brackettville	1,688
Brady	5,528
Brazoria	3,019
Brazos Bend	305
Brazos Country	469
Breckenridge	5,780
Bremond	929
Brenham	15,716
Briar CDP	5,665
Briarcliff	1,438
Briaroaks	492
Bridge City	7,840
Bridgeport	5,976
Bristol CDP	668
Broaddus	207
Bronte	999
Brookshire	4,702
Brookside Village	1,523
Browndell	197
Brownfield	9,657
Brownsboro	1,039
Brownsville	175,023

*Unincorporated area that is a Census Designated Place.

A

City or CDP*	Population
Brownwood	19,288
Bruceville-Eddy	1,475
Brundage CDP	27
Bruni CDP	379
Brushy Creek CDP	21,764
Bryan	76,201
Bryson	539
Buchanan Dam CDP	1,519
Buchanan Lake Village CDP	692
Buckholts	515
Buda	7,295
Buena Vista CDP	102
Buffalo	1,856
Buffalo Gap	464
Buffalo Springs	453
Bullard	2,463
Bulverde	4,630
Buna CDP	2,142
Bunker Hill Village	3,633
Burkburnett	10,811
Burke	737
Burleson	36,690
Burnet	5,987
Burton	300
Butterfield CDP	114
Byers	496
Bynum	199
Cactus	3,179
Caddo Mills	1,338
Caldwell	4,104
Callender Lake CDP	1,039
Callisburg	353
Calvert	1,192
Camargito CDP	388
Cameron	5,552
Cameron Park CDP	6,963
Camp Swift CDP	6,383
Camp Wood	706
Campbell	638
Campo Verde CDP	132
Canadian	2,649
Caney City	217
Canton	3,581
Cantu Addition CDP	188
Canutillo CDP	6,321
Canyon	13,303
Canyon Creek CDP	916
Canyon Lake CDP	21,262
Cape Royale CDP	670
Carbon	272
Carl's Corner	173
Carlsbad CDP	719
Carmine	250
Carrizo Hill CDP	582
Carrizo Springs	5,368
Carrollton	119,097
Carthage	6,779
Casa Blanca CDP	54
Casas CDP	39
Cashion Community	348
Castle Hills	4,116
Castroville	2,680
Catarina CDP	118
Cedar Hill	45,028
Cedar Park	48,937
Cedar Point CDP	630
Celeste	814
Celina	6,028
Center	5,193
Centerville	892
Central Gardens CDP	4,347
Cesar Chavez CDP	1,929
Chandler	2,734
Channelview CDP	38,289
Channing	363
Chaparrito CDP	114
Chapeno CDP	47
Charlotte	1,715
Chester	312
Chico	1,002
Childress	6,105
Chillicothe	707
Chilton CDP	911
China	1,160
China Grove	1,179
China Spring CDP	1,281
Chireno	386
Christine	390
Christoval CDP	504
Chula Vista CDP (Cameron County)	288
Chula Vista CDP (Maverick County)	3,818
Chula Vista CDP (Zavala County)	450
Cibolo	15,349
Cienegas Terrace CDP	3,424
Cinco Ranch CDP	18,274
Circle D-KC Estates CDP	2,393

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Cisco	3,899
Citrus City CDP	2,321
Clarendon	2,026
Clarksville	3,285
Clarksville City	865
Claude	1,196
Clear Lake Shores	1,063
Cleburne	29,337
Cleveland	7,675
Clifton	3,442
Clint	926
Cloverleaf CDP	22,942
Clute	11,211
Clyde	3,713
Coahoma	817
Cockrell Hill	4,193
Coffee City	278
Coldspring	853
Coleman	4,709
College Station	93,857
Colleyville	22,807
Collinsville	1,624
Colmesneil	596
Colorado Acres CDP	296
Colorado City	4,146
Columbus	3,655
Comanche	4,335
Combes	2,895
Combine	1,942
Comfort CDP	2,363
Commerce	8,078
Como	702
Concepcion CDP	62
Conroe	56,207
Converse	18,198
Cool	157
Coolidge	955
Cooper	1,969
Coppell	38,659
Copper Canyon	1,334
Copperas Cove	32,032
Corinth	19,935
Corpus Christi	305,215
Corral City	27
Corrigan	1,595
Corsicana	23,770
Cottonwood	185
Cottonwood Shores	1,123
Cotulla	3,603
Country Acres CDP	185
Cove	510
Covington	269
Coyanosa CDP	163
Coyote Acres CDP	508
Coyote Flats CDP	312
Crandall	2,858
Crane	3,353
Cranfills Gap	281
Crawford	717
Creedmoor	202
Cresson	741
Crockett	6,950
Crosby CDP	2,299
Crosbyton	1,741
Cross Mountain CDP	3,124
Cross Plains	982
Cross Roads	1,563
Cross Timber	268
Crowell	948
Crowley	12,838
Crystal City	7,138
Cuero	6,841
Cuevitas CDP	40
Cumby	777
Cumings CDP	981
Cuney	140
Cushing	612
Cut and Shoot	1,070
Daingerfield	2,560
Daisetta	966
Dalhart	7,930
Dallas	1,197,816
Dalworthington Gardens	2,259
Damon CDP	552
Danbury	1,715
Darrouzett	350
Dawson	807
Dayton	7,242
Dayton Lakes	93
De Kalb	1,699
De Leon	2,246
Dean	493
Decatur	6,042
DeCordova	2,683
Deer Park	32,010
Del Mar Heights CDP	113

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Del Rio	35,591
Del Sol CDP	239
Dell City	365
Delmita CDP	216
Denison	22,682
Denton	113,383
Denver City	4,479
Deport	578
DeSoto	49,047
Detroit	732
Devers	447
Devine	4,350
Deweyville CDP	1,023
D'Hanis CDP	847
Diboll	4,776
Dickens	286
Dickinson	18,680
Dilley	3,894
Dimmitt	4,393
DISH	201
Dodd City	369
Dodson	109
Doffing CDP	5,091
Domino	93
Donna	15,798
Doolittle CDP	2,769
Dorchester	148
Double Oak	2,867
Douglassville	229
Doyle CDP	254
Driftwood CDP	144
Dripping Springs	1,788
Driscoll	739
Dublin	3,654
Dumas	14,691
Duncanville	38,524
Eagle Lake	3,639
Eagle Pass	26,248
Early	2,762
Earth	1,065
East Alto Bonito CDP	824
East Bernard	2,272
East Lopez CDP	166
East Mountain	797
East Tawakoni	883
Eastland	3,960
Easton	510
Ector	695
Edcouch	3,161
Eden	2,766
Edgecliff Village	2,776
Edgewater Estates CDP	72
Edgewood	1,441
Edinburg	77,100
Edmonson	111
Edna	5,499
Edom	375
Edroy CDP	331
Eidson Road CDP	8,960
El Brazil CDP	47
El Camino Angosto CDP	253
El Campo	11,602
El Castillo CDP	188
El Cenizo (Webb County)	3,273
El Cenizo CDP (Starr County)	249
El Chaparral CDP	464
El Indio CDP	190
El Lago	2,706
El Mesquite CDP	38
El Paso	649,121
El Quiote CDP	208
El Rancho Vela CDP	274
El Refugio CDP	331
El Socio CDP	130
Elbert CDP	30
Eldorado	1,951
Electra	2,791
Elgin	8,135
Elias-Fela Solis CDP	30
Elkhart	1,371
Elm Creek CDP	2,469
Elmendorf	1,488
Elmo CDP	768
Elsa	5,660
Emerald Bay CDP	1,047
Emhouse	133
Emory	1,239
Encantada-Ranchito-El Calaboz CDP	2,255
Enchanted Oaks	326
Encinal	559
Encino CDP	143
Ennis	18,513
Escobar I CDP	324
Escobares	1,188
Estelline	145
Eugenio Saenz CDP	159

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Euless	51,277
Eureka	307
Eustace	991
Evadale CDP	1,483
Evant	426
Evergreen CDP	73
Everman	6,108
Fabens CDP	8,257
Fabrica CDP	923
Fair Oaks Ranch	5,986
Fairchilds	763
Fairfield	2,951
Fairview	7,248
Falcon Heights CDP	53
Falcon Lake Estates CDP	1,036
Falcon Mesa CDP	405
Falcon Village CDP	47
Falconaire CDP	132
Falfurrias	4,981
Falls City	611
Falman CDP	76
Fannett CDP	2,252
Farmers Branch	28,616
Farmersville	3,301
Farwell	1,363
Fate	6,357
Fayetteville	258
Faysville CDP	439
Fernando Salinas CDP	15
Ferris	2,436
Fifth Street CDP	2,486
Flatonia	1,383
Flor del Rio CDP	122
Florence	1,136
Floresville	6,448
Flowella CDP	118
Flower Mound	64,669
Floydada	3,038
Follett	459
Forest Hill	12,355
Forney	14,661
Forsan	210
Fort Bliss CDP	8,591
Fort Clark Springs CDP	1,228
Fort Davis CDP	1,201
Fort Hancock CDP	1,750
Fort Hood CDP	29,589
Fort Stockton	8,283

City or CDP*	Population
Fort Worth	741,206
Four Corners CDP	12,382
Four Points CDP	18
Fowlerton CDP	55
Franklin	1,564
Frankston	1,229
Fredericksburg	10,530
Freeport	12,049
Freer	2,818
Fresno CDP	19,069
Friendswood	35,805
Friona	4,123
Frisco	116,989
Fritch	2,117
Fronton CDP	180
Fronton Ranchettes CDP	113
Frost	643
Fruitvale	408
Fulshear	1,134
Fulton	1,358
Gail CDP	231
Gainesville	16,002
Galena Park	10,887
Gallatin	419
Galveston	47,743
Ganado	2,003
Garceno CDP	420
Garciasville CDP	46
Garden City CDP	334
Garden Ridge	3,259
Gardendale CDP	1,574
Garfield CDP	1,698
Garland	226,876
Garrett	806
Garrison	895
Gary City	311
Garza-Salinas II CDP	719
Gatesville	15,751
George West	2,445
Georgetown	47,400
Geronimo CDP	1,032
Gholson	1,061
Giddings	4,881
Gilmer	4,905
Girard CDP	50
Gladewater	6,441
Glen Rose	2,444
Glenn Heights	11,278

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Glidden CDP	661
Godley	1,009
Goldsmith	257
Goldthwaite	1,878
Goliad	1,908
Golinda	559
Gonzales	7,237
Goodlow	200
Goodrich	271
Gordon	478
Goree	203
Gorman	1,083
Graford	584
Graham	8,903
Granbury	7,978
Grand Acres CDP	49
Grand Prairie	175,396
Grand Saline	3,136
Grandfalls	360
Grandview	1,561
Granger	1,419
Granite Shoals	4,910
Granjeno	293
Grape Creek CDP	3,154
Grapeland	1,489
Grapevine	46,334
Grays Prairie	337
Greatwood CDP	11,538
Green Valley Farms CDP	1,272
Greenville	25,557
Gregory	1,907
Grey Forest	483
Groesbeck	4,328
Groom	574
Groves	16,144
Groveton	1,057
Gruver	1,194
Guadalupe-Guerra CDP	37
Guerra CDP	6
Gun Barrel City	5,672
Gunter	1,498
Gustine	476
Guthrie CDP	160
Gutierrez CDP	79
H. Cuellar Estates CDP	20
Hackberry	968
Hale Center	2,252
Hallettsville	2,550
Hallsburg	507
Hallsville	3,577
Haltom City	42,409
Hamilton	3,095
Hamlin	2,124
Happy	678
Hardin	819
Hargill CDP	877
Harker Heights	26,700
Harlingen	64,849
Harper CDP	1,192
Hart	1,114
Hartley CDP	540
Haskell	3,322
Haslet	1,517
Havana CDP	407
Hawk Cove	483
Hawkins	1,278
Hawley	634
Hays	217
Hearne	4,459
Heath	6,921
Hebbronville CDP	4,558
Hebron	415
Hedley	329
Hedwig Village	2,557
Heidelberg CDP	1,725
Helotes	7,341
Hemphill	1,198
Hempstead	5,770
Henderson	13,712
Henrietta	3,141
Hereford	15,370
Hermleigh CDP	345
Hewitt	13,549
Hickory Creek	3,247
Hico	1,379
Hidalgo	11,198
Hideaway	3,083
Higgins	397
Highland Haven	431
Highland Park	8,564
Highland Village	15,056
Highlands CDP	7,522
Hill Country Village	985
Hillcrest	730
Hillsboro	8,456
Hillside Acres CDP	30

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Hilltop CDP (Frio County)	287
Hilltop CDP (Starr County)	77
Hilltop Lakes CDP	1,101
Hilshire Village	746
Hitchcock	6,961
Holiday Beach CDP	514
Holiday Lakes	1,107
Holland	1,121
Holliday	1,758
Holly Lake Ranch CDP	2,774
Hollywood Park	3,062
Homestead Meadows North CDP	5,124
Homestead Meadows South CDP	7,247
Hondo	8,803
Honey Grove	1,668
Hooks	2,769
Horizon City	16,735
Hornsby Bend CDP	6,791
Horseshoe Bay	3,418
Horseshoe Bend CDP	789
Houston	2,099,451
Howardwick	402
Howe	2,600
Hubbard	1,423
Hudson	4,731
Hudson Bend CDP	2,981
Hudson Oaks	1,662
Hughes Springs	1,760
Hull CDP	669
Humble	15,133
Hungerford CDP	347
Hunters Creek Village	4,367
Huntington	2,118
Huntsville	38,548
Hurst	37,337
Hutchins	5,338
Hutto	14,698
Huxley	385
Iago CDP	161
Idalou	2,250
Iglesia Antigua CDP	413
Impact	35
Imperial CDP	278
Indian Hills CDP	2,591
Indian Lake	640
Indian Springs CDP	785
Indio CDP	50
Industry	304
Inez CDP	2,098
Ingleside	9,387
Ingleside on the Bay	615
Ingram	1,804
Iola	401
Iowa Colony	1,170
Iowa Park	6,355
Iraan	1,229
Iredell	339
Irving	216,290
Italy	1,863
Itasca	1,644
Ivanhoe	887
Ivanhoe North	538
Jacinto City	10,553
Jacksboro	4,511
Jacksonville	14,544
Jamaica Beach	983
Jardin de San Julian CDP	22
Jarrell	984
Jasper	7,590
Jayton	534
Jefferson	2,106
Jersey Village	7,620
Jewett	1,167
JF Villarreal CDP	104
Joaquin	824
Johnson City	1,656
Jolly	172
Jollyville CDP	16,151
Jones Creek	2,020
Jonestown	1,834
Josephine	812
Joshua	5,910
Jourdanton	3,871
Juarez CDP	1,017
Junction	2,574
Justin	3,246
Karnes City	3,042
Katy	14,102
Kaufman	6,703
K-Bar Ranch CDP	358
Keene	6,106
Keller	39,627
Kemah	1,773
Kemp	1,154
Kempner	1,089
Kendleton	380

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Kenedy	3,296
Kenefick	563
Kennard	337
Kennedale	6,763
Kerens	1,573
Kermit	5,708
Kerrville	22,347
Kilgore	12,975
Killeen	127,921
Kingsbury CDP	782
Kingsland CDP	6,030
Kingsville	26,213
Kirby	8,000
Kirbyville	2,142
Kirvin	129
Knippa CDP	689
Knollwood	226
Knox City	1,130
Kosse	464
Kountze	2,123
Kress	715
Krugerville	1,662
Krum	4,157
Kurten	398
Kyle	28,016
La Blanca CDP	2,488
La Carla CDP	70
La Casita CDP	128
La Chuparosa CDP	49
La Coma CDP	48
La Escondida CDP	153
La Esperanza CDP	229
La Feria	7,302
La Feria North CDP	212
La Grange	4,641
La Grulla	1,622
La Homa CDP	11,985
La Joya	3,985
La Loma de Falcon CDP	95
La Marque	14,509
La Minita CDP	171
La Paloma Addition CDP	330
La Paloma CDP	2,903
La Paloma Ranchettes CDP	239
La Paloma-Lost Creek CDP	408
La Porte	33,800
La Presa CDP	319
La Pryor CDP	1,643

City or CDP*	Population
La Puerta CDP	632
La Rosita CDP	85
La Tina Ranch CDP	618
La Vernia	1,034
La Victoria CDP	171
La Villa	1,957
La Ward	213
Lackland AFB CDP	9,918
LaCoste	1,119
Lacy-Lakeview	6,489
Ladonia	612
Lago CDP	204
Lago Vista (Travis County)	6,041
Lago Vista CDP (Starr County)	115
Laguna Heights CDP	3,488
Laguna Park CDP	1,276
Laguna Seca CDP	266
Laguna Vista	3,117
Lake Bridgeport	340
Lake Brownwood CDP	1,532
Lake Bryan CDP	1,728
Lake Cherokee CDP	3,071
Lake City	509
Lake Colorado City CDP	588
Lake Dallas	7,105
Lake Dunlap CDP	1,934
Lake Jackson	26,849
Lake Kiowa CDP	1,906
Lake Medina Shores CDP	1,235
Lake Meredith Estates CDP	437
Lake Tanglewood	796
Lake View CDP	199
Lake Worth	4,584
Lakehills CDP	5,150
Lakeport	974
Lakeshore Gardens-Hidden Acres CDP	504
Lakeside (San Patricio County)	312
Lakeside (Tarrant County)	1,307
Lakeside City (Archer County)	997
Lakeview	107
Lakeway	11,391
Lakewood Village	545
Lamar CDP	636
Lamesa	9,422
Lampasas	6,681
Lancaster	36,361
Lantana CDP	6,874
Laredo	236,091

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Laredo Ranchettes CDP	22
Laredo Ranchettes West CDP	0
Las Haciendas CDP	7
Las Lomas CDP	3,147
Las Lomitas CDP	244
Las Palmas CDP	67
Las Palmas II CDP	1,605
Las Pilas CDP	28
Las Quintas Fronterizas CDP	3,290
Lasana CDP	84
Lasara CDP	1,039
Latexo	322
Laughlin AFB CDP	1,569
Laureles CDP	3,692
Lavon	2,219
Lawn	314
League City	83,560
Leakey	425
Leander	26,521
Leary	495
Lefors	497
Leming CDP	946
Leon Valley	10,151
Leona	175
Leonard	1,990
Leroy	337
Levelland	13,542
Lewisville	95,290
Lexington	1,177
Liberty	8,397
Liberty City CDP	2,351
Liberty Hill	967
Lincoln Park	308
Lindale	4,818
Linden	1,988
Lindsay (Cooke County)	1,018
Lindsay CDP (Reeves County)	271
Linn CDP	801
Lipan	430
Lipscomb CDP	37
Little Elm	25,898
Little River-Academy	1,961
Littlefield	6,372
Live Oak	13,131
Liverpool	482
Livingston	5,335
Llano	3,232
Llano Grande CDP	3,008

City or CDP*	Population
Lockhart	12,698
Lockney	1,842
Log Cabin	714
Lolita CDP	555
Loma Grande CDP	107
Loma Linda CDP	122
Loma Linda East CDP (Jim Wells County)	254
Loma Linda East CDP (Starr County)	44
Loma Linda West CDP	114
Loma Vista CDP	160
Lometa	856
Lone Oak	598
Lone Star	1,581
Longoria CDP	92
Longview	80,455
Loop CDP	225
Lopeño CDP	174
Lopezville CDP	4,333
Loraine	602
Lorena	1,691
Lorenzo	1,147
Los Altos CDP	140
Los Alvarez CDP	303
Los Angeles CDP	121
Los Arcos CDP	127
Los Arrieros CDP	91
Los Barreras CDP	288
Los Centenarios CDP	87
Los Corralitos CDP	35
Los Ebanos CDP (Hidalgo County)	335
Los Ebanos CDP (Starr County)	280
Los Fresnos (Cameron County)	5,542
Los Fresnos CDP (Webb County)	67
Los Huisaches CDP	17
Los Indios	1,083
Los Lobos CDP	9
Los Minerales CDP	20
Los Nopalitos CDP	62
Los Veteranos I CDP	24
Los Veteranos II CDP	24
Los Ybanez	19
Lost Creek CDP	4,509
Lott	759
Louise CDP	995
Lovelady	649
Lowry Crossing	1,711
Lozano CDP	404
Lubbock	229,573

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Lucas	5,166
Lueders	346
Lufkin	35,067
Luling	5,411
Lumberton	11,943
Lyford	2,611
Lytle	2,492
Mabank	3,035
Macdona CDP	559
Madisonville	4,396
Magnolia	1,393
Malakoff	2,324
Malone	269
Manchaca CDP	1,133
Manor	5,037
Mansfield	56,368
Manuel Garcia CDP	203
Manuel Garcia II CDP	77
Manvel	5,179
Marathon CDP	430
Marble Falls	6,077
Marfa	1,981
Marietta	134
Marion	1,066
Markham CDP	1,082
Marlin	5,967
Marquez	263
Marshall	23,523
Mart	2,209
Martindale	1,116
Martinez CDP	69
Mason	2,114
Matador	607
Matagorda CDP	503
Mathis	4,942
Maud	1,056
Mauriceville CDP	3,252
Maypearl	934
McAllen	129,877
McCamey	1,887
McDade CDP	685
McGregor	4,987
McKinney	131,117
McKinney Acres CDP	815
McLean	778
McLendon-Chisholm	1,373
McQueeney CDP	2,545
Meadow	593

City or CDP*	Population
Meadowlakes	1,777
Meadows Place	4,660
Medina CDP	3,935
Megargel	203
Melissa	4,695
Melvin	178
Memphis	2,290
Menard	1,471
Mentone CDP	19
Mercedes	15,570
Meridian	1,493
Merkel	2,590
Mertens	125
Mertzon	781
Mesquite (Dallas County)	139,824
Mesquite CDP (Starr County)	505
Mexia	7,459
Mi Ranchito Estate CDP	281
Miami	597
Midland	111,147
Midlothian	18,037
Midway	228
Midway North CDP	4,752
Midway South CDP	2,239
Miguel Barrera CDP	128
Mikes CDP	910
Mila Doce CDP	6,222
Milam CDP	1,480
Milano	428
Mildred	368
Miles	829
Milford	728
Miller's Cove	149
Millican	240
Millsap	403
Mineola	4,515
Mineral Wells	16,788
Mingus	235
Mirando City CDP	375
Mission	77,058
Mission Bend CDP	36,501
Missouri City	67,358
Mobeetie	101
Mobile City	188
Monahans	6,953
Mont Belvieu	3,835
Montague CDP	304
Monte Alto CDP	1,924

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Montgomery	621
Moody	1,371
Moore CDP	475
Moore Station	201
Moraida CDP	212
Morales-Sanchez CDP	84
Moran	270
Morgan	490
Morgan Farm CDP	463
Morgan's Point	339
Morgan's Point Resort	4,170
Morning Glory CDP	651
Morse CDP	147
Morton	2,006
Moulton	886
Mount Calm	320
Mount Enterprise	447
Mount Pleasant	15,564
Mount Vernon	2,662
Mountain City	648
Muenster	1,544
Muleshoe	5,158
Mullin	179
Munday	1,300
Muniz CDP	1,370
Murchison	594
Murillo CDP	7,344
Murphy	17,708
Mustang	21
Mustang Ridge	861
Myrtle Springs CDP	828
Nacogdoches	32,996
Naples	1,378
Narciso Pena CDP	30
Nash	2,960
Nassau Bay	4,002
Natalia	1,431
Navarro	210
Navasota	7,049
Nazareth	311
Nederland	17,547
Needville	2,823
Nesbitt	281
Netos CDP	31
Nevada	822
New Berlin	511
New Boston	4,550
New Braunfels	57,740
New Chapel Hill	594
New Deal	794
New Fairview	1,258
New Falcon CDP	191
New Home	334
New Hope	614
New London	998
New Summerfield	1,111
New Territory CDP	15,186
New Waverly	1,032
Newark	1,005
Newcastle	585
Newton	2,478
Neylandville	97
Niederwald	565
Nina CDP	141
Nixon	2,385
Nocona	3,033
Nocona Hills CDP	675
Nolanville	4,259
Nome	588
Noonday	777
Nordheim	307
Normangee	685
Normanna CDP	113
North Alamo CDP	3,235
North Cleveland	247
North Escobares CDP	118
North Pearsall CDP	614
North Richland Hills	63,343
North San Pedro CDP	895
Northlake	1,724
Northridge CDP	78
Novice	139
Oak Grove	603
Oak Island CDP	363
Oak Leaf	1,298
Oak Point	2,786
Oak Ridge (Cooke County)	141
Oak Ridge (Kaufman County)	495
Oak Ridge North	3,049
Oak Trail Shores CDP	2,755
Oak Valley	368
Oakhurst CDP	233
Oakwood	510
O'Brien	106
Odem	2,389
Odessa	99,940

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
O'Donnell	831
Oglesby	484
Oilton CDP	353
Old Escobares CDP	97
Old River-Winfree	1,245
Olivarez CDP	3,827
Olivia Lopez de Gutierrez CDP	93
Olmito and Olmito CDP	271
Olmito CDP	1,210
Olmos Park	2,237
Olney	3,285
Olton	2,215
Omaha	1,021
Onalaska	1,764
Opdyke West	174
Orange	18,595
Orange Grove	1,318
Orason CDP	129
Orchard	352
Ore City	1,144
Overton	2,554
Ovilla	3,492
Owl Ranch CDP	225
Oyster Creek	1,111
Ozona CDP	3,225
Pablo Pena CDP	63
Paducah	1,186
Paint Rock	273
Paisano Park CDP	130
Palacios	4,718
Palestine	18,712
Palisades	325
Palm Valley	1,304
Palmer	2,000
Palmhurst	2,607
Palmview	5,460
Palmview South CDP	5,575
Palo Blanco CDP	204
Palo Pinto CDP	333
Paloma Creek CDP	2,501
Paloma Creek South CDP	2,753
Pampa	17,994
Panhandle	2,452
Panorama Village	2,170
Pantego	2,394
Paradise	441
Paris	25,171
Parker	3,811
Pasadena	149,043
Pattison	472
Patton Village	1,557
Pawnee CDP	166
Payne Springs	767
Pearland	91,252
Pearsall	9,146
Pecan Acres CDP	4,099
Pecan Gap	203
Pecan Grove CDP	15,963
Pecan Hill	626
Pecan Plantation CDP	5,294
Pecos	8,780
Pelican Bay	1,547
Pena CDP	118
Penelope	198
Penitas	4,403
Perezville CDP	5,376
Perrin CDP	398
Perryton	8,802
Petersburg	1,202
Petrolia	686
Petronila	113
Pettus CDP	558
Pflugerville	46,936
Pharr	70,400
Pilot Point	3,856
Pine Forest	487
Pine Harbor CDP	810
Pine Island	988
Pinehurst (Orange County)	2,097
Pinehurst CDP (Montgomery County)	4,624
Pineland	850
Pinewood Estates CDP	1,678
Piney Point Village	3,125
Pittsburg	4,497
Placedo CDP	692
Plains	1,481
Plainview	22,194
Plano	259,841
Pleak	1,044
Pleasant Hill CDP	522
Pleasant Valley	336
Pleasanton	8,934
Plum Grove	600
Point	820
Point Blank	688
Point Comfort	737

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Point Venture	800
Ponder	1,395
Port Aransas	3,480
Port Arthur	53,818
Port Isabel	5,006
Port Lavaca	12,248
Port Mansfield CDP	226
Port Neches	13,040
Port O'Connor CDP	1,253
Porter Heights CDP	1,653
Portland	15,099
Post	5,376
Post Oak Bend City	595
Poteet	3,260
Poth	1,908
Potosi CDP	2,991
Pottsboro	2,160
Powderly CDP	1,178
Powell	136
Poynor	305
Prado Verde CDP	246
Prairie View	5,576
Premont	2,653
Presidio	4,426
Preston CDP	2,096
Primera	4,070
Princeton	6,807
Progreso	5,507
Progreso Lakes	240
Prosper	9,423
Providence CDP	4,786
Pueblo East CDP	0
Pueblo Nuevo CDP	521
Putnam	94
Pyote	114
Quail CDP	19
Quail Creek CDP	1,628
Quanah	2,641
Queen City	1,476
Quemado CDP	230
Quesada CDP	25
Quinlan	1,394
Quintana	56
Quitaque	411
Quitman	1,809
Radar Base CDP	762
Rafael Pena CDP	17
Ralls	1,944

City or CDP*	Population
Ramireno CDP	35
Ramirez-Perez CDP	78
Ramos CDP	116
Ranchette Estates CDP	152
Ranchitos Del Norte CDP	112
Ranchitos East CDP	212
Ranchitos Las Lomas CDP	266
Rancho Alegre CDP	1,704
Rancho Banquete CDP	424
Rancho Chico CDP	396
Rancho Viejo (Cameron County)	2,437
Rancho Viejo CDP (Starr County)	228
Ranchos Penitas West CDP	573
Randolph AFB CDP	1,241
Ranger	2,468
Rangerville	289
Rankin	778
Ransom Canyon	1,096
Ratamosa CDP	254
Ravenna	209
Raymondville	11,284
Realitos CDP	184
Red Lick	1,008
Red Oak	10,769
Redfield CDP	441
Redford CDP	90
Redland CDP	1,047
Redwater	1,057
Redwood CDP	4,338
Refugio	2,890
Regino Ramirez CDP	85
Reid Hope King CDP	786
Reklaw	379
Relampago CDP	132
Rendon CDP	12,552
Reno (Lamar County)	3,166
Reno (Parker County)	2,494
Retreat	377
Rhome	1,522
Ricardo CDP	1,048
Rice	923
Richardson	99,223
Richland	264
Richland Hills	7,801
Richland Springs	338
Richmond	11,679
Richwood	3,510
Riesel	1,007

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Rio Bravo	4,794
Rio Grande City	13,834
Rio Hondo	2,356
Rio Vista	873
Rising Star	835
River Oaks	7,427
Rivera CDP	162
Rivereno CDP	61
Riverside	510
Riviera CDP	689
Roanoke	5,962
Roaring Springs	234
Robert Lee	1,049
Robinson	10,509
Robstown	11,487
Roby	643
Rochester	324
Rockdale	5,595
Rockport	8,766
Rocksprings	1,182
Rockwall	37,490
Rocky Mound	75
Rogers	1,218
Rollingwood	1,412
Roma	9,765
Roma Creek CDP	350
Roman Forest	1,538
Ropesville	434
Roscoe	1,322
Rose City	502
Rose Hill Acres	441
Rosebud	1,412
Rosenberg	30,618
Rosharon CDP	1,152
Rosita CDP	2,704
Ross	283
Rosser	332
Rotan	1,508
Round Mountain	181
Round Rock	99,887
Round Top	90
Rowlett	56,199
Roxton	650
Royse City	9,349
Rule	636
Runaway Bay	1,286
Runge	1,031
Rusk	5,551

City or CDP*	Population
Sabinal	1,695
Sachse	20,329
Sadler	343
Saginaw	19,806
Salado	2,126
Salineño CDP	201
Salineño North CDP	115
Sam Rayburn CDP	1,181
Sammy Martinez CDP	110
Samnorwood CDP	51
San Angelo	93,200
San Antonio	1,327,407
San Augustine	2,108
San Benito	24,250
San Carlos CDP	3,130
San Carlos I CDP	316
San Carlos II CDP	261
San Diego	4,488
San Elizario CDP	13,603
San Felipe	747
San Fernando CDP	68
San Isidro CDP	240
San Juan (Hidalgo County)	33,856
San Juan CDP (Starr County)	129
San Leanna	497
San Leon CDP	4,970
San Marcos	44,894
San Patricio	395
San Pedro CDP	530
San Perlita	573
San Saba	3,099
San Ygnacio CDP	667
Sanctuary	329
Sand Springs CDP	835
Sanderson CDP	837
Sandia CDP	379
Sandoval CDP	32
Sandy Hollow-Escondidas CDP	296
Sanford	164
Sanger	6,916
Sansom Park	4,686
Santa Anna (Coleman County)	1,099
Santa Anna CDP (Starr County)	13
Santa Clara	725
Santa Cruz CDP	54
Santa Fe	12,222
Santa Maria CDP	733
Santa Monica CDP	83

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Santa Rosa (Cameron County)	2,873
Santa Rosa CDP (Starr County)	241
Santel CDP	44
Sarita CDP	238
Savannah CDP	3,318
Savoy	831
Scenic Oaks CDP	4,957
Schertz	31,465
Schulenburg	2,852
Scissors CDP	3,186
Scotland	501
Scottsville	376
Scurry	681
Seabrook	11,952
Seadrift	1,364
Seagoville	14,835
Seagraves	2,417
Sealy	6,019
Sebastian CDP	1,917
Seco Mines CDP	560
Seguin	25,175
Selma	5,540
Seminole	6,430
Serenada CDP	1,641
Seth Ward CDP	2,025
Seven Oaks	111
Seven Points	1,455
Seymour	2,740
Shady Hollow CDP	5,004
Shady Shores	2,612
Shadybrook CDP	1,967
Shallowater	2,484
Shamrock	1,910
Shavano Park	3,035
Sheldon CDP	1,990
Shenandoah	2,134
Shepherd	2,319
Sherman	38,521
Sherwood Shores CDP	1,190
Shiner	2,069
Shoreacres	1,493
Sienna Plantation CDP	13,721
Sierra Blanca CDP	553
Siesta Acres CDP	1,885
Siesta Shores CDP	1,382
Silsbee	6,611
Silverton	731
Simonton	814
Sinton	5,665
Skellytown	473
Skidmore CDP	925
Slaton	6,121
Smiley	549
Smithville	3,817
Smyer	474
Snook	511
Snyder	11,202
Socorro	32,013
Solis CDP	512
Somerset	1,631
Somerville	1,376
Sonora	3,027
Sour Lake	1,813
South Alamo CDP	3,361
South Fork Estates CDP	70
South Houston	16,983
South La Paloma CDP	345
South Mountain	384
South Padre Island	2,816
South Point CDP	1,376
South Toledo Bend CDP	524
Southlake	26,575
Southmayd	992
Southside Place	1,715
Spade CDP	73
Sparks CDP	4,529
Spearman	3,368
Splendora	1,615
Spofford	95
Spring CDP	54,298
Spring Gardens CDP	563
Spring Valley Village	3,715
Springlake	108
Springtown	2,658
Spur	1,318
St. Hedwig	2,094
St. Jo	1,043
St. Paul (Collin County)	1,066
St. Paul CDP (San Patricio County)	584
Stafford	17,693
Stagecoach	538
Stamford	3,124
Stanton	2,492
Staples	267
Star Harbor	444
Stephenville	17,123

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Sterling City	888
Stinnett	1,881
Stockdale	1,442
Stonewall CDP	505
Stowell CDP	1,756
Stratford	2,017
Strawn	653
Streetman	247
Study Butte CDP	233
Sudan	958
Sugar Land	78,817
Sullivan City	4,002
Sulphur Springs	15,449
Sun Valley	69
Sundown	1,397
Sunnyvale	5,130
Sunray	1,926
Sunrise Beach Village	713
Sunset Acres CDP	23
Sunset CDP (Montague County)	497
Sunset CDP (Starr County)	47
Sunset Valley	749
Surfside Beach	482
Sweeny	3,684
Sweetwater	10,906
Taft	3,048
Taft Southwest CDP	1,460
Tahoka	2,673
Talco	516
Talty	1,535
Tanquecitos South Acres CDP	233
Tanquecitos South Acres II CDP	50
Tatum	1,385
Taylor	15,191
Taylor Lake Village	3,544
Taylor Landing	228
Teague	3,560
Tehuacana	283
Temple	66,102
Tenaha	1,160
Terlingua CDP	58
Terrell	15,816
Terrell Hills	4,878
Texarkana	36,411
Texas City	45,099
Texhoma	346
Texline	507
The Colony	36,328
The Hills	2,472
The Woodlands CDP	93,847
Thompsons	246
Thompsonville CDP	46
Thorndale	1,336
Thornton	526
Thorntonville	476
Thrall	839
Three Rivers	1,848
Throckmorton	828
Thunderbird Bay CDP	663
Tierra Bonita CDP	141
Tierra Dorada CDP	28
Tierra Grande CDP	403
Tierra Verde CDP	277
Tiki Island	968
Tilden CDP	261
Timbercreek Canyon	418
Timberwood Park CDP	13,447
Timpson	1,155
Tioga	803
Tira	297
Tivoli CDP	479
Toco	75
Todd Mission	107
Tolar	681
Tom Bean	1,045
Tomball	10,753
Tool	2,240
Tornillo CDP	1,568
Toyah	90
Tradewinds CDP	180
Travis Ranch CDP	2,556
Trent	337
Trenton	635
Trinidad	886
Trinity	2,697
Trophy Club	8,024
Troup	1,869
Troy	1,645
Tuleta CDP	288
Tulia	4,967
Tulsita CDP	14
Turkey	421
Tuscola	742
Tye	1,242
Tyler	96,900
Tynan CDP	278

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Uhland	1,014
Uncertain	94
Union Grove	357
Union Valley	307
Universal City	18,530
University Park	23,068
Utopia CDP	227
Uvalde	15,751
Uvalde Estates CDP	2,171
Val Verde Park CDP	2,384
Valentine	134
Valle Hermoso CDP	0
Valle Verde CDP	0
Valle Vista CDP	469
Valley Mills	1,203
Valley View	757
Van	2,632
Van Alstyne	3,046
Van Horn	2,063
Van Vleck CDP	1,844
Vanderbilt CDP	395
Vega	884
Venus	2,960
Vernon	11,002
Victoria	62,592
Victoria Vera CDP	110
Vidor	10,579
Villa del Sol CDP	175
Villa Pancho CDP	788
Villa Verde CDP	874
Villarreal CDP	131
Vinton	1,971
Volente	520
Von Ormy	1,085
Waco	124,805
Waelder	1,065
Wake Village	5,492
Waller	2,326
Wallis	1,252
Walnut Springs	827
Warren CDP	757
Warren City	298
Waskom	2,160
Watauga	23,497
Waxahachie	29,621
Weatherford	25,250
Webberville	392
Webster	10,400
Weimar	2,151
Weinert	172
Weir	450
Welch CDP	222
Wellington	2,189
Wellman	203
Wells	790
Wells Branch CDP	12,120
Weslaco	35,670
West	2,807
West Alto Bonito CDP	696
West Columbia	3,905
West Lake Hills	3,063
West Livingston CDP	8,071
West Odessa CDP	22,707
West Orange	3,443
West Sharyland CDP	2,309
West Tawakoni	1,576
West University Place	14,787
Westbrook	253
Westdale CDP	372
Western Lake CDP	1,525
Westlake	992
Westminster CDP	861
Weston	563
Weston Lakes	2,482
Westover Hills	682
Westway CDP	4,188
Westwood Shores CDP	1,162
Westworth Village	2,472
Wharton	8,832
Wheeler	1,592
White Deer	1,000
White Oak	6,469
White Settlement	16,116
Whiteface	449
Whitehouse	7,660
Whitesboro	3,793
Whitewright	1,604
Whitney	2,087
Wichita Falls	104,553
Wickett	498
Wild Peach Village CDP	2,452
Wildwood CDP	1,235
Willis	5,662
Willow Park	3,982
Wills Point	3,524
Wilmer	3,682

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
Wilson	489
Wimberley	2,626
Windcrest	5,364
Windemere CDP	1,037
Windom	199
Windthorst	409
Winfield	524
Wink	940
Winnie CDP	3,254
Winnsboro	3,434
Winona	576
Winters	2,562
Wixon Valley	254
Wolfe City	1,412
Wolfforth	3,670
Woodbranch	1,282
Woodcreek	1,457
Woodloch	207
Woodsboro	1,512
Woodson	264
Woodville	2,586
Woodway	8,452
Wortham	1,073
Wyldwood CDP	2,505
Wylie	41,427
Yantis	388
Yoakum	5,815
Yorktown	2,092
Yznaga CDP	91
Zapata CDP	5,089
Zapata Ranch CDP	108
Zarate CDP	59
Zavalla	713
Zuehl CDP	376

TOTAL POPULATION 25,145,561

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*Unincorporated area that is a Census Designated Place.

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Appendix 4

2010 Texas Census
County Summary

According to the official returns of the 23rd Decennial Census of the United States, as released by the Bureau of the Census on February 17, 2011.

(Alphabetical)

Map of Texas Counties

Texas Legislative Council
February 2011

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Population in Texas Counties
2010 Census

County	Population
Anderson	58,458
Andrews	14,786
Angelina	86,771
Aransas	23,158
Archer	9,054
Armstrong	1,901
Atascosa	44,911
Austin	28,417
Bailey	7,165
Bandera	20,485
Bastrop	74,171
Baylor	3,726
Bee	31,861
Bell	310,235
Bexar	1,714,773
Blanco	10,497
Borden	641
Bosque	18,212
Bowie	92,565
Brazoria	313,166
Brazos	194,851
Brewster	9,232
Briscoe	1,637
Brooks	7,223
Brown	38,106
Burleson	17,187
Burnet	42,750
Caldwell	38,066
Calhoun	21,381
Callahan	13,544
Cameron	406,220
Camp	12,401
Carson	6,182
Cass	30,464
Castro	8,062
Chambers	35,096
Cherokee	50,845
Childress	7,041
Clay	10,752
Cochran	3,127
Coke	3,320
Coleman	8,895
Collin	782,341
Collingsworth	3,057
Colorado	20,874
Comal	108,472
Comanche	13,974
Concho	4,087
Cooke	38,437
Coryell	75,388
Cottle	1,505
Crane	4,375
Crockett	3,719
Crosby	6,059
Culberson	2,398
Dallam	6,703
Dallas	2,368,139
Dawson	13,833
Deaf Smith	19,372
Delta	5,231
Denton	662,614
De Witt	20,097
Dickens	2,444
Dimmit	9,996
Donley	3,677
Duval	11,782
Eastland	18,583
Ector	137,130
Edwards	2,002
Ellis	149,610
El Paso	800,647
Erath	37,890
Falls	17,866
Fannin	33,915
Fayette	24,554
Fisher	3,974
Floyd	6,446
Foard	1,336
Fort Bend	585,375
Franklin	10,605
Freestone	19,816
Frio	17,217
Gaines	17,526
Galveston	291,309
Garza	6,461
Gillespie	24,837

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County	Population
Glasscock	1,226
Goliad	7,210
Gonzales	19,807
Gray	22,535
Grayson	120,877
Gregg	121,730
Grimes	26,604
Guadalupe	131,533
Hale	36,273
Hall	3,353
Hamilton	8,517
Hansford	5,613
Hardeman	4,139
Hardin	54,635
Harris	4,092,459
Harrison	65,631
Hartley	6,062
Haskell	5,899
Hays	157,107
Hemphill	3,807
Henderson	78,532
Hidalgo	774,769
Hill	35,089
Hockley	22,935
Hood	51,182
Hopkins	35,161
Houston	23,732
Howard	35,012
Hudspeth	3,476
Hunt	86,129
Hutchinson	22,150
Irion	1,599
Jack	9,044
Jackson	14,075
Jasper	35,710
Jeff Davis	2,342
Jefferson	252,273
Jim Hogg	5,300
Jim Wells	40,838
Johnson	150,934
Jones	20,202
Karnes	14,824
Kaufman	103,350
Kendall	33,410
Kenedy	416
Kent	808
Kerr	49,625
Kimble	4,607

County	Population
King	286
Kinney	3,598
Kleberg	32,061
Knox	3,719
La Salle	6,886
Lamar	49,793
Lamb	13,977
Lampasas	19,677
Lavaca	19,263
Lee	16,612
Leon	16,801
Liberty	75,643
Limestone	23,384
Lipscomb	3,302
Live Oak	11,531
Llano	19,301
Loving	82
Lubbock	278,831
Lynn	5,915
Madison	13,664
Marion	10,546
Martin	4,799
Mason	4,012
Matagorda	36,702
Maverick	54,258
McCulloch	8,283
McLennan	234,906
McMullen	707
Medina	46,006
Menard	2,242
Midland	136,872
Milam	24,757
Mills	4,936
Mitchell	9,403
Montague	19,719
Montgomery	455,746
Moore	21,904
Morris	12,934
Motley	1,210
Nacogdoches	64,524
Navarro	47,735
Newton	14,445
Nolan	15,216
Nueces	340,223
Ochiltree	10,223
Oldham	2,052
Orange	81,837
Palo Pinto	28,111

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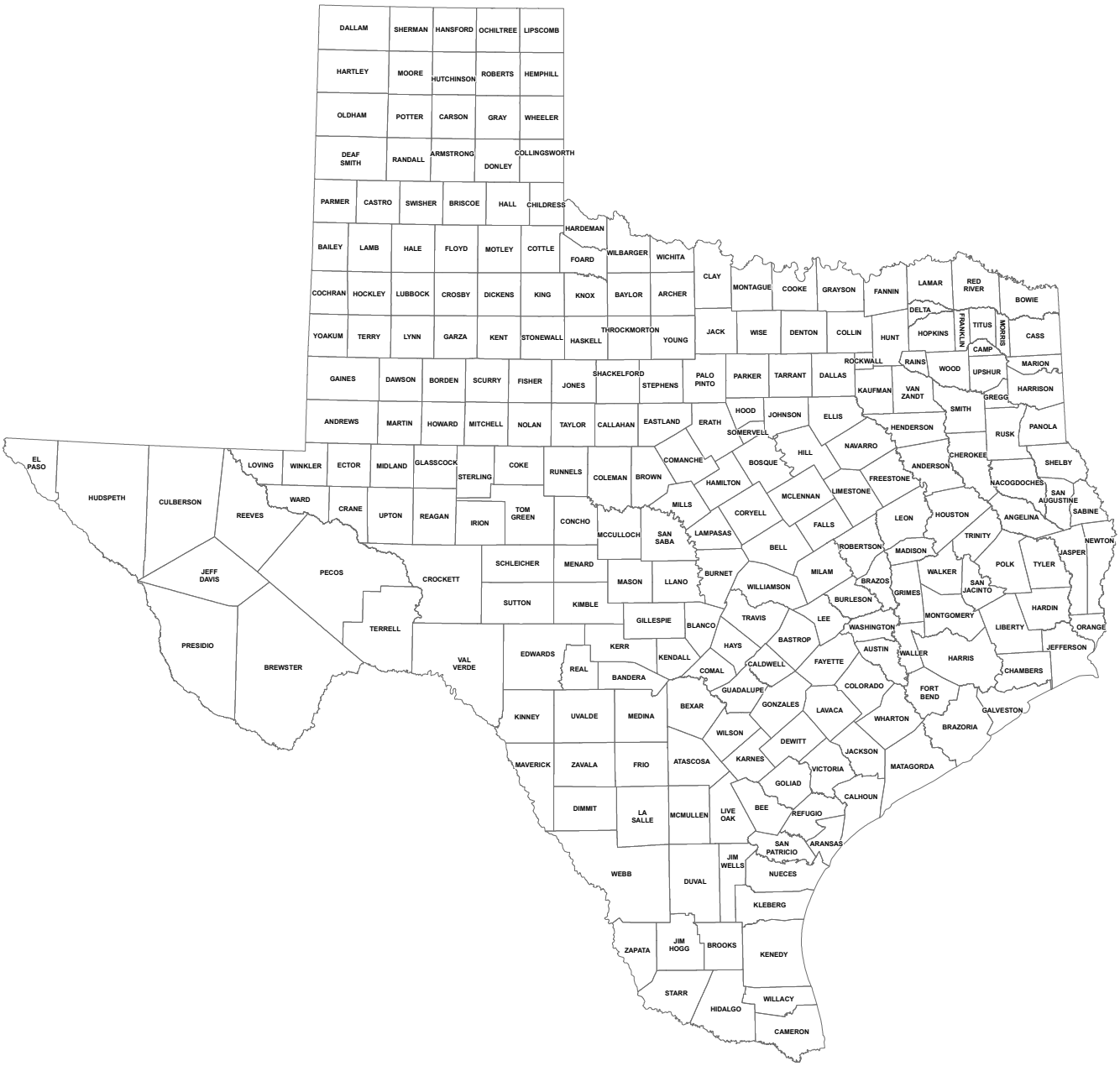
County	Population
Panola	23,796
Parker	116,927
Parmer	10,269
Pecos	15,507
Polk	45,413
Potter	121,073
Presidio	7,818
Rains	10,914
Randall	120,725
Reagan	3,367
Real	3,309
Red River	12,860
Reeves	13,783
Refugio	7,383
Roberts	929
Robertson	16,622
Rockwall	78,337
Runnels	10,501
Rusk	53,330
Sabine	10,834
San Augustine	8,865
San Jacinto	26,384
San Patricio	64,804
San Saba	6,131
Schleicher	3,461
Scurry	16,921
Shackelford	3,378
Shelby	25,448
Sherman	3,034
Smith	209,714
Somervell	8,490
Starr	60,968
Stephens	9,630
Sterling	1,143
Stonewall	1,490
Sutton	4,128
Swisher	7,854
Tarrant	1,809,034
Taylor	131,506
Terrell	984
Terry	12,651
Throckmorton	1,641
Titus	32,334
Tom Green	110,224
Travis	1,024,266
Trinity	14,585
Tyler	21,766
Upshur	39,309
Upton	3,355
Uvalde	26,405
Val Verde	48,879
Van Zandt	52,579
Victoria	86,793
Walker	67,861
Waller	43,205
Ward	10,658
Washington	33,718
Webb	250,304
Wharton	41,280
Wheeler	5,410
Wichita	131,500
Wilbarger	13,535
Willacy	22,134
Williamson	422,679
Wilson	42,918
Winkler	7,110
Wise	59,127
Wood	41,964
Yoakum	7,879
Young	18,550
Zapata	14,018
Zavala	11,677

TOTAL POPULATION 25,145,561

TEXAS COUNTIES



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18R0759 02/28/2018

2010 Census

Texas Legislative Council

Appendix 5

CODE CONSTRUCTION ACT

CHAPTER 311, GOVERNMENT CODE

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Code Construction Act.

Sec. 311.002. APPLICATION. This chapter applies to:

(1) each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program;

(2) each amendment, repeal, revision, and reenactment of a code or code provision by the 60th or a subsequent legislature;

(3) each repeal of a statute by a code; and

(4) each rule adopted under a code.

Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in this chapter are not exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of codes.

Sec. 311.004. CITATION OF CODES. A code may be cited by its name preceded by the specific part concerned. Examples of citations are:

(1) Title 1, Business & Commerce Code;

(2) Chapter 5, Business & Commerce Code;

(3) Section 9.304, Business & Commerce Code;

(4) Section 15.06(a), Business & Commerce Code; and

(5) Section 17.18(b)(1)(B)(ii), Business & Commerce Code.

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(1) "Oath" includes affirmation.

(2) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(3) "Population" means the population shown by the most recent federal decennial census.

(4) "Property" means real and personal property.

(5) "Rule" includes regulation.

(6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

(7) "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

(8) "Swear" includes affirm.

(9) "United States" includes a department, bureau, or other agency of the United States of America.

(10) "Week" means seven consecutive days.

(11) "Written" includes any representation of words, letters, symbols, or figures.

(12) "Year" means 12 consecutive months.

(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Sec. 311.006. INTERNAL REFERENCES. In a code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of the code in which the reference appears.

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the present tense include the future tense.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of one gender include the other genders.

Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Sec. 311.014. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

(1) "May" creates discretionary authority or grants permission or a power.

(2) "Shall" imposes a duty.

(3) "Must" creates or recognizes a condition precedent.

(4) "Is entitled to" creates or recognizes a right.

(5) "May not" imposes a prohibition and is synonymous with "shall not."

(6) "Is not entitled to" negates a right.

(7) "Is not required to" negates a duty or condition precedent.

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

(1) compliance with the constitutions of this state and the United States is intended;

(2) the entire statute is intended to be effective;

(3) a just and reasonable result is intended;

(4) a result feasible of execution is intended; and

(5) public interest is favored over any private interest.

Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

(1) object sought to be attained;

(2) circumstances under which the statute was enacted;

(3) legislative history;

(4) common law or former statutory provisions, including laws on the same or similar subjects;

(5) consequences of a particular construction;

(6) administrative construction of the statute; and

(7) title (caption), preamble, and emergency provision.

Sec. 311.024. HEADINGS. The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

(1) the date on which the last presiding officer signed the bill;

(2) the date on which the governor signed the bill; or

(3) the date on which the bill became law by operation of law.

Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

Sec. 311.029. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

(1) the prior operation of the statute or any prior action taken under it;

(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls.

Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

(b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute.

(c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

Sec. 311.035. CONSTRUCTION OF STATUTE OR RULE INVOLVING CRIMINAL OFFENSE OR PENALTY. (a) In this section, "actor" and "element of offense" have the meanings assigned by Section 1.07, Penal Code.

(b) Except as provided by Subsection (c), a statute or rule that creates or defines a criminal offense or penalty shall be construed in favor of the actor if any part of the statute or rule is ambiguous on its face or as applied to the case, including:

(1) an element of offense; or

(2) the penalty to be imposed.

(c) Subsection (b) does not apply to a criminal offense or penalty under the Penal Code or under the Texas Controlled Substances Act.

(d) The ambiguity of a part of a statute or rule to which this section applies is a matter of law to be resolved by the judge.

Appendix 6

CONSTRUCTION OF LAWS

CHAPTER 312, GOVERNMENT CODE

Sec. 312.001. APPLICATION. This subchapter applies to the construction of all civil statutes.

Sec. 312.002. MEANING OF WORDS. (a) Except as provided by Subsection (b), words shall be given their ordinary meaning.

(b) If a word is connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art.

Sec. 312.003. TENSE, NUMBER, AND GENDER. (a) Words in the present or past tense include the future tense.

(b) The singular includes the plural and the plural includes the singular unless expressly provided otherwise.

(c) The masculine gender includes the feminine and neuter genders.

Sec. 312.004. GRANTS OF AUTHORITY. A joint authority given to any number of officers or other persons may be executed by a majority of them unless expressly provided otherwise.

Sec. 312.005. LEGISLATIVE INTENT. In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

Sec. 312.006. LIBERAL CONSTRUCTION. (a) The Revised Statutes are the law of this state and shall be liberally construed to achieve their purpose and to promote justice.

(b) The common law rule requiring strict construction of statutes in derogation of the common law does not apply to the Revised Statutes.

Sec. 312.007. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed.

Sec. 312.008. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation.

Sec. 312.011. DEFINITIONS. The following definitions apply unless a different meaning is apparent from the context of the statute in which the word appears:

(1) "Affidavit" means a statement in writing of a fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified to by the officer under his seal of office.

(2) "Comptroller" means the state comptroller of public accounts.

(3) "Effects" includes all personal property and all interest in that property.

(4) "Governing body," if used with reference to a municipality, means the legislative body of a city, town, or village, without regard to the name or title given to any particular body.

(5) "Justice," when applied to a magistrate, means justice of the peace.

(6) "Land commissioner" means the Commissioner of the General Land Office.

(7) "Month" means a calendar month.

(8) "Oath" includes affirmation.

(9) "Official oath" means the oath required by Article XVI, Section 1, of the Texas Constitution.

(10) "Person" includes a corporation.

(11) "Preceding," when referring to a title, chapter, or article, means that which came immediately before.

(12) "Preceding federal census" or "most recent federal census" means the United States decennial census immediately preceding the action in question.

(13) "Property" includes real property, personal property, life insurance policies, and the effects of life insurance policies.

(14) "Signature" includes the mark of a person unable to write, and "subscribe" includes the making of such a mark.

(15) "Succeeding" means immediately following.

(16) "Swear" or "sworn" includes affirm or affirmed.

(17) "Written" or "in writing" includes any representation of words, letters, or figures, whether by writing, printing, or other means.

(18) "Year" means a calendar year.

(19) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

(20) "Population" means the population shown by the most recent federal decennial census.

Sec. 312.012. GRAMMAR AND PUNCTUATION. (a) A grammatical error does not vitiate a law. If the sentence or clause is meaningless because of the grammatical error, words and clauses may be transposed to give the law meaning.

(b) Punctuation of a law does not control or affect legislative intent in enacting the law.

Sec. 312.013. SEVERABILITY OF STATUTES. (a) Unless expressly provided otherwise, if any provision of a statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

(b) This section does not affect the power or duty of a court to ascertain and give effect to legislative intent concerning severability of a statute.

Sec. 312.014. IRRECONCILABLE AMENDMENTS. (a) If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) If amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments to the same statute enacted at the same session of the legislature are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

(1) the date on which the last presiding officer signed the bill;

(2) the date on which the governor signed the bill; or

(3) the date on which the bill became law by operation of law.

Sec. 312.015. QUORUM. A majority of a board or commission established under law is a quorum unless otherwise specifically provided.

Sec. 312.016. STANDARD TIME. (a) The standard time in this state is the time at the 90th meridian longitude west from Greenwich, commonly known as "central standard time."

(b) The standard time in a region of this state that used mountain standard time before June 12, 1947, is the time at the 105th meridian longitude west from Greenwich, commonly known as "mountain standard time."

(c) Unless otherwise expressly provided, a reference in a statute, order, or rule to the time in which an act shall be performed means the appropriate standard time as provided by this section.

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Appendix 7

TEXAS LEGISLATIVE COUNCIL

P.O. Box 12128, Capitol Station
Austin, Texas 78711-2128
Telephone: 512/463-1155

DAN PATRICK
Lieutenant Governor
Joint Chair

JEFF ARCHER
Executive Director

DENNIS BONNEN
Speaker of the House
Joint Chair

M E M O R A N D U M

TO: Members of the 86th Legislature

FROM: Jeffrey J. Thorne
Deputy Director, Legal Division

Christopher Clapham
Legislative Counsel

Trey Burke
Legislative Counsel

DATE: January 15, 2019

SUBJECT: Local and Special Bills, Notice Requirements for Local and Special Bills, and Bracket Bills

INTRODUCTION

The primary purpose of this memorandum is to discuss the requirements imposed by the Texas Constitution, by Texas statutes, and by rules of both houses of the state legislature for publishing notice of intent to apply for passage of a bill to enact a local or special law. Although "local" and "special" are often used interchangeably when referring to bills or laws, there is a distinction between the terms. A "local bill" proposes a "local law" that applies to a limited area, and a "special bill" proposes a "special law" that applies to a single person or class. In practice, local bills are far more common than special bills and the notice requirements are virtually the same. For that reason, this memorandum generally treats both types of bills as local bills.

This memorandum also discusses the legal and parliamentary standards governing consideration of a "bracket bill." A bracket bill is a bill that proposes a law made applicable only to a particular class of political subdivisions or geographic areas through use of a population figure or another classification device. Although often thought of as a local bill, a properly crafted bracket bill proposes a general law. However, if a bracket bill's classification scheme does not reasonably relate to the purpose of the bill, the bill may be considered a prohibited local bill.

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This memorandum does not constitute final parliamentary authority on local or special bills, bracket bills, or related notice requirements. Although this memorandum conforms to the treatment in previous legislative sessions of bills and notice requirements, the presiding officer of each house of the legislature has the exclusive prerogative to interpret and enforce the rules of the officer's respective house.

The appendixes to this memorandum contain constitutional, statutory, and legislative rules provisions governing notice requirements and a sample publisher's affidavit commonly used as evidence that notice has been published. For a reader concerned about a particular bill, the quick reference guide (Appendix K) provides a general overview of local bill notice publication requirements and the notice publication requirements for certain types of authorized local bills.

SUMMARY

The Texas Constitution expressly prohibits local and special bills for most purposes. The constitution does not prohibit a bill proposing a law that addresses a particular place or otherwise appears to be a local bill if adopting the bill would affect people throughout the state or if the bill treats substantially a subject that is a matter of interest across the state.

Some local bills are constitutionally permitted. For those, the constitution generally requires notice of the bill to be published. In some cases an exception to the general constitutional notice requirement applies. If the constitution requires publication of notice for a local bill and the notice is not published as required, the local bill is subject to a point of order, even if the bill is not a type of bill for which the rules of either house of the legislature require published notice. Therefore, to determine whether notice of intent to apply for passage of a bill must be published, one must consider both the requirements contained in the state constitution and those provided by the rules of each house of the legislature.

Both houses by rule require publication of notice for six specific types of local bills. In either house, if a bill is a local bill for purposes of the rules of that house, the bill is subject to a point of order if notice is not published in accordance with the rules. However, by application of the enrolled bill rule, a bill for which the constitution or rules require notice is probably not subject to a successful court challenge after passage merely because notice was not given as required.

Note that under the rules of the house of representatives: (1) a local bill that has not had notice published in accordance with the rules is not eligible for the local, consent, and resolutions calendar; and (2) the 60-day filing deadline that applies to other bills and joint resolutions does not apply to local bills as defined by the rules or to other bills concerning certain types of specified special-purpose districts.

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A classification scheme used in a bracket bill does not violate the constitutional prohibition on local bills if the classification scheme applies uniformly, is broad enough to include a substantial

class or geographic area, and is based on characteristics that legitimately distinguish the class or area from other classes or areas in a way related to the purpose of the proposed law. Bracketing schemes are commonly and legitimately used to limit a bill's application. In some instances, however, a bracketing scheme may be seen as a subterfuge to circumvent the local law prohibition. Note that a rule of the house of representatives prohibits consideration of a bill the application of which is limited to one or more political subdivisions according to a population bracket or other artificial device instead of by identifying the political subdivisions by name. Two principal considerations make up a shorthand guide to the validity of a classification scheme for a bracket bill:

> *(1) Are the classification criteria such that membership in the class may expand or contract over time?*
>
> *(2) Are the classification criteria reasonably related to the purpose of the bill?*

If the answer to either question is "no," the classification is suspect.

LOCAL BILLS

Local Laws and Notice Requirements; Texas Constitution and Senate and House Rules

(A) Local Bills Permitted by Constitution

Section 56, Article III, Texas Constitution, prohibits most local laws. (See Appendix A for the text of that provision.) Section 56(a) provides a list of subjects for which a local or special law is prohibited "except as otherwise provided in this Constitution." Section 56(b) further provides:

> "In addition to those laws described by Subsection (a) of this section in all other cases where a general law can be made applicable, no local or special law shall be enacted . . . ."

Reading Sections 56(a) and (b) together, the constitution prohibits a local or special law concerning any one of the specified subjects or concerning a matter to which a general law can be made applicable. Courts have treated the matter of whether a general law can be made applicable as a question solely for the legislature. *Beyman v. Black*, 47 Tex. 558 (1877) (construing language in Texas Constitution of 1869, as amended in 1873); *Smith v. Grayson Co.*, 44 S.W. 921 (Tex. Civ. App. 1897, writ ref'd) (citing similar holdings in other states); *Logan v. State*, 111 S.W. 1028 (Tex. Crim. App. 1908); and *Harris County v. Crooker*, 224 S.W. 792 (Tex. Civ. App.--Texarkana 1920), *aff'd*, 248 S.W. 652 (Tex. 1923).

The primary types of local or special bills authorized by the Texas Constitution are bills:

(1) creating or affecting a conservation and reclamation district, a category that includes various kinds of water-related districts and similar special-purpose districts (Section 59, Article XVI);

(2) creating or affecting a hospital district (Sections 4 through 11, Article IX);

(3) relating to the preservation of game and fish (Section 56(b)(1), Article III);

(4) dealing with the courts system, including district courts, county courts, statutory county courts, and municipal courts (Sections 1, 7, 8, and 21, Article V);

(5) creating or affecting a road utility district or various water-related districts and similar special-purpose districts (Section 52, Article III);

(6) granting aid or a release from the payment of taxes in cases of public calamity (Section 51, Article III; Section 10, Article VIII);

(7) creating or relating to the operation of airport authorities (Section 12, Article IX);

(8) providing for the consolidation of governmental offices and functions of political subdivisions comprising or located in a county (Section 64, Article III);

(9) relating to fence laws (Section 56(b)(2), Article III);

(10) relating to stock laws (Section 23, Article XVI); or

(11) providing for local road maintenance (Section 9(e), Article VIII).

(B) Local Bills as Defined by Senate and House Rules

The rules of the senate and house define as local bills six categories of bills that are very similar to local bills included within the first five categories of constitutionally permissible local or special bills listed above. See Rules 9.01(b) and (c), Senate Rules; Rule 8, Sections 10(c) and (d), House Rules. Rule 9.01(b), Senate Rules, and Rule 8, Section 10(c), House Rules, are each divided into six subdivisions. For the reader's convenience in comparing the constitutional requirements and the requirements of the senate and house rules discussed in the next section of

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this memorandum, each subdivision is considered a "category." (See Appendixes F and G for the text of those rules.) The similarities and differences should be considered.

Rule 9.01(b), Senate Rules, and Rule 8, Section 10(c), House Rules, provide that a bill is a local bill if it:

(1) is a bill for which publication of notice is required under Section 59, Article XVI, Texas Constitution (i.e., a bill creating a conservation and reclamation district, including various kinds of water-related districts and similar special-purpose districts, or a bill amending a law governing a district to add land to the district, alter the district's taxing authority, alter the district's bonding authority, or alter the qualifications or terms of members of the district's governing body);

(2) is a bill for which publication of notice is required under Section 9, Article IX, Texas Constitution (i.e., a local bill creating a hospital district);

(3) relates to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) creates or affects a county court, statutory court, or court of one or more specified counties or municipalities;

(5) creates or affects a county juvenile board or boards of one or more specified counties; or

(6) creates or affects a road utility district under Section 52, Article III, Texas Constitution.

(1) Category (1): Certain Conservation and Reclamation District Bills

Rule 9.01(b)(1), Senate Rules, and Rule 8, Section 10(c)(1), House Rules, provide that a bill is a local bill if the bill is "a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.)." Therefore, a bill of that category is considered to be a local bill under the rules only if the bill is one for which notice is required by Section 59(d), Article XVI. That constitutional provision requires notice of intent to introduce a bill creating a conservation and reclamation district and also requires notice of intent to introduce a bill that amends a law creating or governing a particular district if the bill: (1) adds land to the district; (2) alters the district's taxing authority; (3) alters the district's authority to issue bonds; or (4) alters the qualifications or terms of office of the district's governing body. A bill regarding a particular district authorized by Section 59, Article XVI, that would neither create the district nor affect the district in any of those four ways is not constitutionally required to have notice of its introduction published and is not required by the rules of either house to have notice of intention

to apply for its passage published. Note that Section 59(d), Article XVI, requires notice to be published at least 30 but not more than 90 days before the bill is introduced, which is different from the general 30-day notice requirement of Section 57, Article III, Texas Constitution. (See Appendixes B and E for the texts of those provisions.)

(2) Category (2): Certain Hospital District Bills

Rule 9.01(b)(2), Senate Rules, and Rule 8, Section 10(c)(2), House Rules, track the constitutional notice requirements of Section 9, Article IX, Texas Constitution. (See Appendix D for the text of that provision.) Section 9, Article IX, requires 30 days' public notice of a local bill (in that section, termed a "special law") creating a hospital district. The notice requirements of the senate and house rules apply only to local bills creating a hospital district under Section 9, Article IX. The senate and house rules relating to notice required for local bills do not address a local bill creating a hospital district under any other section of Article IX, and do not address other bills affecting a hospital district created under other law, even if those bills otherwise appear to be local bills.

(3) Categories (3), (4), and (5): Bills Concerning Hunting, Fishing, or Wildlife Conservation; Certain Courts; or County Juvenile Boards

Special attention is warranted for categories (3), (4), and (5) (Rules 9.01(b)(3), (4), and (5), Senate Rules, and Rule 8, Sections 10(c)(3), (4), and (5), House Rules). Bills of those kinds appear to be local bills, and, as noted above, the constitution expressly authorizes local or special bills for categories (3) and (4). However, courts have determined that many bills described by those categories are general bills because they relate to matters of general state interest, despite appearing to be local bills. Following that reasoning, local hunting, fishing, and wildlife conservation bills (category (3)), various local courts bills (category (4)), and bills relating to juvenile boards (category (5)) are treated as general bills. Regarding category (4), case law considers bills relating to district courts to be items of general state interest. The extent to which bills relating to county courts, statutory courts, municipal courts, and other local courts would also be considered general bills under the constitution is not settled. Note that the bills discussed in this paragraph are treated as general bills for purposes of the constitution, but not necessarily for purposes of the senate and house rules. The senate and house rules must be examined separately, and as further explained below, the senate and house rules provide that:

(1) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality (category (3)) is a local bill;

(2) for bills relating to various local courts in category (4), a bill is a local bill if the bill creates or affects a county court, a statutory court, or a court or courts of one or more specified counties or municipalities; and

(3) a bill creating or affecting a juvenile board or boards of one or more specified counties (category (5)) is a local bill.

(4) Category (6): Bills Concerning Road Utility Districts and Other Districts Authorized by Section 52, Article III, Texas Constitution

Rule 9.01(b)(6), Senate Rules, and Rule 8, Section 10(c)(6), House Rules, apply only to a bill creating or affecting a road utility district under Section 52, Article III, Texas Constitution, even though that provision authorizes local laws for other kinds of districts as well. For example, many local laws creating or governing districts with authority over water resources (see Sections 52(b)(1) and (2) and (d), Article III) have been enacted.

(C) Publication of Notice Under Constitution

(1) 30-Day Notice Generally Required (Section 57, Article III, Texas Constitution)

Section 57, Article III, Texas Constitution, provides the general rule for publishing notice of a local or special bill. (See Appendix B for the text of that provision.) That section requires notice of intent to apply for passage of a local bill to be published in the affected area at least 30 days before introduction of the bill.

As discussed above, courts have determined that bills dealing with the preservation of game and fish, certain bills dealing with the courts system, and bills concerning juvenile boards are general bills for purposes of the publication of notice under the state constitution regardless of their local appearance and regardless of whether the constitution authorizes local bills for those subjects. Because those bills are considered general bills, the bills are not subject to the Section 57, Article III, requirements for publication of notice. However, the senate and house rules' notice requirements apply independently.

Since some courts have found that certain laws that appear to be constitutionally authorized local laws are instead general laws not subject to the notice requirements of Section 57, Article III, some commentators have interpreted those decisions to mean that Section 57 notice is not required for local bills specifically authorized by the state constitution. No court case has made a specific holding to that effect. While courts and commentators have confused the meaning and application of Section 57, the only logical meaning that can be given to the provision is that Section 57 requires publication of notice for any local bill permitted by the state constitution, unless another provision of the constitution creates an exception to the notice requirement or provides a different notice requirement. It would be illogical to interpret Section 57 as requiring the publication of notice of a bill that Section 56 of that article prohibits. To interpret the section in that way would violate the principle of statutory construction that every provision of a law (including a constitution) be given meaning if possible.

Notably, one case, *Cravens v. State*, 122 S.W. 29 (Tex. Crim. App. 1909), indicates that notice is necessary for a local law specifically authorized by the constitution. There, a law applicable only to Galveston was upheld under a now-repealed constitutional provision authorizing city charter amendments by local law. The law was challenged partly on the basis that notice was not given. The court *presumed* that notice had been given because there was no proof to the contrary. That the court considered the notice issue and created the presumption must have been based on an assumption that notice was required. Otherwise, there would have been no need to create the presumption.

(2) Local Road Maintenance Bills Exempted

Note that Section 9(e), Article VIII, Texas Constitution, expressly exempts local bills relating to local road maintenance from all publication of notice requirements. (See Appendix C for the text of that provision.)

(3) 30-Day Notice Required for Certain Hospital District Bills

In addition to the general Section 57, Article III, requirement for publication of notice, Section 9, Article IX, Texas Constitution, requires "thirty (30) days' public notice" of a local bill *creating* a hospital district. (See Appendix D for the text of that provision.) That provision does not require notice of bills *affecting* a hospital district.

(4) 30-90 Days' Notice Required for Certain Conservation and Reclamation District Bills

Also in addition to the general Section 57, Article III, requirement, Section 59, Article XVI, Texas Constitution, which authorizes local laws for various kinds of conservation and reclamation districts, requires that notice be published of a bill that either *creates* a district under that section or *amends* a law relating to a district created under that section for any of four purposes: (1) adding land to the district; (2) altering the district's taxing authority; (3) altering the district's authority to issue bonds; or (4) altering the qualifications or terms of office of the district's governing body. (See Appendix E for the text of that provision.) That provision does not require notice of a bill that amends a special district's local law for another purpose.

Note that Section 59(d), Article XVI, requires that a copy of the notice and the proposed local bill creating or amending the law that created a conservation and reclamation district be delivered to the governor and that Section 59(e) of that article requires a copy of a proposed bill to create such a district be delivered, at the same time notice is published, to the governing bodies of affected counties and municipalities. No reported case has considered whether the copy of the bill provided must be identical to the introduced version of the bill. Also, parliamentary precedent holds that, in the absence of a statutory or parliamentary procedure for proof that a copy was delivered, the presiding officer has no basis on which to sustain a point of order that the required

copy was not delivered. (See, e.g., S.J. of Tex., 74th Leg., R.S. 2458-2462 (1995); H.J. of Tex., 74th Leg., R.S. 2447-2448 (1995).)

(D) Proof of Notice as Required by Constitution

(1) Evidence of Notice as Required by Constitution

Section 57, Article III, Texas Constitution, requires only that evidence of the publication of notice be "exhibited" in the legislature before the local bill is "passed." The senate and house rules contain requirements for the attachment of the notice to a bill, and those rules should be consulted also.

(2) Publication of Notice Under Rules

The senate and house rules require the publication of notice of intent to apply for passage of a local bill. Rule 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules. (See Appendixes F and G for the text of the rules.) The publication requirements in the senate and house rules are in addition to the requirements imposed by the state constitution. To determine whether notice is necessary, both the rules and the constitution must be considered.

(3) Attachment of Notice to Bill as Required by Rules

The senate and house rules require that evidence of the publication of notice be attached to a local bill. See Rules 7.07(c) and 9.01(a), Senate Rules, and Rule 8, Section 10(a), House Rules. (See Appendixes F and G for the text of the rules.)

Rule 9.01(c), Senate Rules, and Rule 8, Section 10(d), House Rules, provide an exception to the notice requirement if the bill being considered: (1) is of a certain category specified by the local law definition (described above as categories (3), (4), and (5)); and (2) "affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance." The categories of bills exempted include bills relating to hunting, fishing, and wildlife conservation, bills relating to certain courts, and bills relating to juvenile boards. (See the discussion above concerning whether bills of those categories are local bills or general bills for the purposes of the constitutionally imposed requirements.)

The initial determination of whether notice is required and is attached as required may be made at the time the bill is considered for referral to committee by the presiding officer. (See Rule 7.07(c), Senate Rules, providing that it is not in order to introduce a local bill unless the notice of publication is attached.) However, the issue is more likely to be first raised at a later stage. Under Rule 9.01(a), Senate Rules, neither the senate nor a senate committee may consider a bill that requires notice but for which notice has not been published and attached to the bill. Under Rule 8,

Section 10(a), House Rules, the house may not consider a local bill unless the required notice has been published and attached to the bill.

Neither the secretary of the senate nor the chief clerk of the house is prohibited by rule from accepting for filing a bill that requires notice but does not have the notice attached.

Senate Rule 9.01(a) requires the notice "at the time of introduction," which suggests that the attachment of notice between filing with the secretary of the senate and first reading is permitted. (See Rule 7.05, Senate Rules, which provides that senate bills are considered *introduced* when first read in the presence of the senate, and Rule 7.06, Senate Rules.)

Rule 8, Section 10(a), House Rules, clearly allows the notice to be attached after the bill is filed. That house rule provides that if the notice is not attached to the bill when the bill is filed with the chief clerk or when the bill is received from the senate, copies of the notice, after it has been timely published, shall be filed with the chief clerk and distributed to the committee members before the bill is first laid out in a committee meeting. Under those circumstances, the notice must be attached to the bill on first printing, that is, at the time of the committee report on the bill.

Chapter 313, Government Code, which governs the content and publication procedures for the notice (see discussion below), requires that "[w]hen a local or special law is introduced in the legislature, the law must be accompanied by competent proof that notice was given."

Content of Notice; Procedure for Publication

(A) Constitutional Requirements

The state constitution provides few details about the content or procedure for the publication of notice of intent to apply for passage of a local bill. Section 57, Article III, Texas Constitution, provides only that the notice must: (1) be published in the affected locality; (2) state the substance of the local bill; (3) be published at least 30 days before introduction of the bill; and (4) be published "in the manner to be provided by law." Section 9, Article IX, provides only that 30 days' public notice to the affected district is required for a local bill subject to that section. Section 59, Article XVI, provides that the notice for a local bill subject to that section must: (1) contain the general substance of the local bill; (2) be published at least 30 and not more than 90 days before introduction of the bill; and (3) be published in a newspaper or newspapers of general circulation in the county or counties in which all or any part of the affected district is or will be located.

(B) Senate and House Rules Requirements

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The rules of the senate and house require only that the publication of notice be made "as provided by law." (See Rules 7.07(c) and 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules.)

(C) Statutory Requirements for Publication or Posting Notice

The primary source of details about the content and publication or posting procedures for the notice are found in Chapter 313, Government Code. (See Appendix H for the text of that chapter.)

Under Chapter 313, for a local bill:

(1) the notice must be published once in a newspaper published in the county that includes the affected area and not later than the 30th day before the bill is introduced in the legislature;

(2) the notice is sufficient if the notice contains a statement of the general purpose and substance of the proposed law (publication of the caption of the bill should be sufficient [see Appendix I]);

(3) if more than one county is covered by the proposed law, notice must be given in each of the counties affected;

(4) if no newspaper is published in a county covered by the proposed law, a notice accurately defining the affected locality must be posted on the courthouse door and in five other places in the affected county for at least 30 days before the bill is introduced;

(5) proof of publication is made by obtaining an affidavit of publication from the newspaper publisher (see the form included in Appendix J) together with a copy of the published notice;

(6) if notice is accomplished by posting, proof of posting may be shown by the return of the sheriff or constable or by an affidavit of a credible person made on a copy of the posted notice; and

(7) a copy of the notice, plus a copy of the affidavit or return, must be attached to each copy of the bill when it is introduced (photocopies of these documents are sufficient).

Section 313.003 establishes notice requirements for a bill proposing "a law that will primarily affect persons and will not directly affect a particular locality more than it will affect another." The person applying for passage of the special law is required to publish notice in a

newspaper published in the county in which the person resides in the same manner as required for a bill proposing a local law or, if the person is not a resident of Texas, the person may publish the notice in a newspaper published in Austin.

Section 313.006 adds additional requirements for notice of a local bill proposing to create or enlarge the territory of a special district that would have a power provided by Chapter 375, Local Government Code, if the person who intends to apply for the passage of the bill is other than a member of the legislature. That person is required to provide, at least 30 days before the bill is introduced, notice of intent to apply for the passage of the bill to each person who owns real property that, as a result of the bill, would be located in and subject to an assessment by the district. In addition, not later than the 30th day after the date on which the bill is introduced, that person is required to provide notice that the bill has been introduced, as well as the applicable bill number, to the same persons.

Enforcement

A point of order may be raised during the legislative process in connection with the requirements to publish notice of intent to apply for passage of a local bill and to attach a copy of the notice to the bill. A local bill for which the state constitution requires publication of notice is subject to a point of order if the constitutional requirements are not followed, even if the bill is of a type not listed in the rules. In both houses, a bill of either house that is local for purposes of the senate and house rules is also subject to a point of order if the requirements of the rules are not followed.

However, a bill for which the constitution or rules require the publication of notice is probably not subject to successful court challenge if the notice requirements are not followed. In *Moore v. Edna Hospital Dist.*, 449 S.W.2d 508 (Tex. Civ. App.--Corpus Christi 1969, writ ref'd n.r.e.), the court held that passage of an act that requires notice is conclusive of the fact that notice was given, applying the enrolled bill rule to prevent a judicial determination that the proper procedures were not followed. Under the principle followed in that case, a bill may not be invalidated because it was passed without required notice. Also, in *Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Utility Dist.*, 198 S.W.3d 300, 313-315 (Tex. App.--Texarkana 2006, pet. denied), the court ruled that, in a trial in which a claim is raised that notice was not properly published, the enrolled bill rule requires that evidence on the issue be excluded. The holdings in these cases suggest that it is during the legislative process that compliance with the notice requirements contained in the constitution and in the senate or house rules is of the utmost importance.

Other Rules Applying to Local Bills: Eligibility for Calendar; Order of Business

Rule 9.02, Senate Rules, provides that the constitutional order of business does not apply to local bills.

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Under Rule 6, Section 23(a), House Rules, a bill that is local for purposes of Rule 8, Section 10(c), House Rules, is ineligible for the house local, consent, and resolutions calendar if notice has not been published.

Local bills are not subject to the 60-day filing deadline applicable to other bills and joint resolutions. (See Rules 7.07(b) and 7.08, Senate Rules, and Rule 8, Section 8, House Rules.) The house rules provide for a greater exemption from the 60-day filing deadline by exempting also any bill that "relates to" any specified special-purpose district, regardless of whether the constitution or the house rules require publication of notice for the bill. (See Rule 8, Section 8(b), House Rules.)

BRACKET BILLS

The type of bill commonly called a "bracket bill" is a bill that proposes a law applicable only to a particular class of political subdivisions or geographic areas through use of population figures or another classification device. A properly crafted bracket bill is not a local bill but is a bill proposing general law. As such, publication of notice of intent to introduce a bracket bill is not required or recommended. As discussed below, the courts have established the manner by which to test the validity of a law proposed by a bracket bill to determine whether the law is a valid general law or an unconstitutional local law.

Validity of Bracket Law

For a "bracket law" to survive a challenge that the law is an unconstitutional local law under Section 56, Article III, Texas Constitution, the law must be drafted carefully. The courts impose a three-part test to determine whether a classification scheme used in a law creates an invalid local law or creates a valid general law. The classification scheme used for a valid general law must: (1) "apply uniformly to all who may come within the classification designated" by the law; (2) "be broad enough to include a substantial class"; and (3) "be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished" by the law. *Miller v. El Paso County*, 150 S.W.2d 1000, 1001-1002 (Tex. 1941).

(A) "Uniform Application" Requirement

The courts have given little discussion to the first part of the test, the "uniform application" requirement. The purpose of that requirement appears to be to ensure that political subdivisions and other geographic areas that come within the bracket later are given the same treatment as the subdivisions and areas that are within the bracket at the time of the law's enactment. *Morris v. City of San Antonio*, 572 S.W.2d 831, 833-834 (Tex. Civ. App.--Austin 1978, no writ); *Miller*, 150 S.W.2d at 1001.

(B) "Substantial Class" Requirement

The second part of the test, the "substantial class" requirement, also is treated by the courts only briefly. The meaning of that requirement is not entirely clear from the case law, but appears to be closely connected with the third part of the test. The purpose of the requirement appears to be to ensure that a bracket creates a "real class," that is, a legitimate group of entities with similar characteristics that distinguish that group from others. *Miller*, 150 S.W.2d at 1002. It is clear that the controlling factor in determining whether a substantial class exists is *not* simply the number of political subdivisions or other geographic areas that fall within the defining criteria of the bracket at the time the law that specifies the criteria is enacted. The courts have upheld classifications as substantial even though, at the time of enactment, the brackets contained only one or two members. *City of Irving v. Dallas/Fort Worth International Airport Board*, 894 S.W.2d 456 (Tex. App.--Fort Worth 1995, writ denied); *Ex parte Spring*, 586 S.W.2d 482 (Tex. Crim. App. 1978); *Smith v. Davis*, 426 S.W.2d 827 (Tex. 1968). A relevant consideration is whether the class may expand or contract as the characteristics of class members and potential class members change over time.

(C) "Reasonable Basis" Requirement—Two Approaches

The third part of the test, the requirement that a classification "be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished" by the law, is the most important part of the test because it receives the closest scrutiny by the courts and is the most common basis for invalidating a bracketing scheme. The requirement is sometimes described as the "primary and ultimate test" of whether a law is a local law or general law, and it is sometimes stated more simply as a requirement that the classification have a "reasonable basis." *Rodriguez v. Gonzales*, 227 S.W.2d 791, 793 (Tex. 1950). The requirement that a bracket have a reasonable basis is an attempt by the courts to ensure that a statutory classification is not a "pretended class" or an "artificial distinction" or "subterfuge" used by the legislature in a "covert attempt" to evade the constitutional prohibition on local laws. *Clark v. Finley*, 54 S.W. 343, 345 (Tex. 1899); *City of Fort Worth v. Bobbitt*, 36 S.W.2d 470, 472 (Tex. 1931); *Public Utility Commission of Texas v. Southwest Water Services, Inc.*, 636 S.W.2d 262, 264 (Tex. App.--Austin 1982, writ ref'd n.r.e.). That is, a bracket "must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law." *Miller*, 150 S.W.2d at 1002.

Two approaches have emerged for determining whether a bracketing scheme meets the reasonable basis requirement. The first examines the relationship between the purpose or subject of the law and the criteria used to establish the bracket. The second examines whether the purpose of the law is of statewide, or only local, importance.

(1) Bracket Criteria Must Relate to Purpose of Law

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Under the first method of analysis, the purposes and subject of the law under review are identified and then the criteria used to create the law's bracket are examined. The criteria must

have a *real* relationship to the purposes sought to be accomplished by the law, something "germane to the purpose of" the legislation (*Id.* at 1002-1003), and must be related to the subject of the law in such a way to show that the intent of the legislature was to legislate on a subject generally and not to single out one entity or area (*Bexar County v. Tynan*, 97 S.W.2d 467, 470 (Tex. 1936)).

(a) Bracket Is Suspect If Only One Entity or Area Covered

It is clear from the case law that some suspicions are raised about a classification if only one entity is included in the bracket at the time of enactment. *Miller*, 150 S.W.2d 1000; *Tynan*, 97 S.W.2d 467; *Smith*, 426 S.W.2d 827. This suspicion follows naturally from the focus on the intent behind the law.

(b) Single Population Criterion

Statutes that use as a bracket only a single population criterion and that apply to all localities above that figure have fared much better in the courts. See, for example, *Ex parte Spring*, 586 S.W.2d 482 (upholding legislation affecting municipal courts in cities with a population of more than 1.2 million); *Robinson v. Hill*, 507 S.W.2d 521 (Tex. 1974) (upholding special bail bond regulations in counties with a population of 150,000 or more); *Smith*, 426 S.W.2d 827 at 830-832 (upholding special ad valorem tax rules for hospital districts in counties with a population of 650,000 or more and operating a teaching hospital).

(c) "Open Brackets" and "Closed Brackets"

In discussing bracket bills and their brackets, the terms "open bracket" and "closed bracket" are often applied. An open bracket allows for members to fall into the bracket or fall out of the bracket as the members' circumstances change. A closed bracket has members that apparently always will be members and does not allow for new members.

In most cases, a bracketing scheme that is based on existing circumstances alone results in a closed bracket that would be considered invalid. For example, a bill using population criteria that are tied to a specific census is likely to violate Section 56, Article III, Texas Constitution. *Bobbitt*, 36 S.W.2d at 471-472 (Tex. 1931) (bracket so drawn to only one city "just as clearly" as if the city had been named). Note that Rule 8, Section 10(b), House Rules, addresses the same concern (prohibiting consideration of "a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of" naming the subdivisions).

In some circumstances, a closed class may be justified by a reasonable basis for that class. For example, a closed class composed of coastal counties in which an island suitable for park purposes is located was found to be reasonable in light of the statewide interest in and demand for parks in coastal areas as opposed to other geographic regions. *County of Cameron v. Wilson*, 326

S.W.2d 162 (Tex. 1959). See also *Public Utility Commission of Texas*, 636 S.W.2d at 264-267 (applying, in effect, the reasonable basis test to a class that by its terms is closed to future members).

(2) Statewide Importance as Reasonable Basis

The second method of analysis for determining whether a bill's bracketing scheme has a reasonable basis requires an examination of the statewide effects of the proposed law. A bill treating only a particular locality does not violate the local law prohibition if people throughout the state would be affected by the proposed law or if the bill treats substantially a subject that is a matter of interest to people throughout the state. *Dallas/Fort Worth International Airport Board*, 894 S.W.2d at 466-467; *Smith*, 426 S.W.2d at 832; *Wilson*, 326 S.W.2d at 165-166; *Lower Colorado River Authority v. McCraw*, 83 S.W.2d 629, 636 (Tex. 1935). This method of analysis attempts to determine whether the bill "deals with a matter of general rather than purely local interest." *Wilson*, 326 S.W.2d at 165. Normally, a bill's proposed law would not be considered to have a sufficient statewide impact unless the law would affect "a substantial class of persons over a broad region of the state." *Maple Run at Austin Mun. Utility Dist. v. Monaghan*, 931 S.W.2d 941, 947 (Tex. 1996); *City of Austin v. City of Cedar Park*, 953 S.W.2d 424, 435 (Tex. App.--Austin 1997, no writ). An incidental effect on a matter of statewide importance is insufficient. *Maple Run*, 931 S.W.2d at 948. Furthermore, even if the proposed law would affect a matter of statewide importance, a reasonable connection must exist between the bracketing scheme used and the statewide interest. *Id*.

Simplified Approach to Testing Validity

As a practical matter, two principal considerations will provide a reasonably accurate guide to determining whether a bracket bill's proposed law will meet the constitutional tests:

(1) Are the classification criteria such that membership in the class may expand or contract over time?

If the answer is "no," the bracketing scheme is suspect. The greater the number of criteria in the classification scheme, the narrower the class becomes and the more difficult it is for a change in circumstances to bring an excluded entity or area into the class. Therefore, the greater the number of classification criteria, the more constitutionally suspect the bracketing scheme. If the answer is "yes," the bracket itself may be valid, but the second question must also be considered.

(2) Are the classification criteria reasonably related to the purpose of the bill?

If the answer is "no," the bill employing the scheme is likely invalid. If the answer is "yes," the bill is likely valid. The more difficult it is to identify a connection between the purpose of the

bill and the classification criteria used to describe the class, the easier it is to conclude that the criteria are only for the purpose of narrowing the class.

APPENDIX A. LOCAL AND SPECIAL LAWS PROHIBITED

Section 56, Article III, Texas Constitution

Sec. 56. LOCAL AND SPECIAL LAWS. (a) The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

(1) the creation, extension or impairing of liens;

(2) regulating the affairs of counties, cities, towns, wards or school districts;

(3) changing the names of persons or places;

(4) changing the venue in civil or criminal cases;

(5) authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;

(6) relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;

(7) vacating roads, town plats, streets or alleys;

(8) relating to cemeteries, grave-yards or public grounds not of the State;

(9) authorizing the adoption or legitimation of children;

(10) locating or changing county seats;

(11) incorporating cities, towns or villages, or changing their charters;

(12) for the opening and conducting of elections, or fixing or changing the places of voting;

(13) granting divorces;

(14) creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

(15) changing the law of descent or succession;

(16) regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

(17) regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

(18) regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

(19) fixing the rate of interest;

(20) affecting the estates of minors, or persons under disability;

(21) remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

(22) exempting property from taxation;

(23) regulating labor, trade, mining and manufacturing;

(24) declaring any named person of age;

(25) extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

(26) giving effect to informal or invalid wills or deeds;

(27) summoning or empanelling grand or petit juries;

(28) for limitation of civil or criminal actions;

(29) for incorporating railroads or other works of internal improvements; or

(30) relieving or discharging any person or set of persons from the performance of any public duty or service imposed by general law.

(b) In addition to those laws described by Subsection (a) of this section in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing:

(1) special laws for the preservation of the game and fish of this State in certain localities; and

(2) fence laws applicable to any subdivision of this State or counties as may be needed to meet the wants of the people.

APPENDIX B. GENERAL NOTICE REQUIREMENT FOR LOCAL OR SPECIAL BILLS

Section 57, Article III, Texas Constitution

Sec. 57. NOTICE OF INTENTION TO APPLY FOR LOCAL OR SPECIAL LAWS. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed.

APPENDIX C. LOCAL LAWS FOR ROADS AND HIGHWAYS

Section 9(e), Article VIII, Texas Constitution

(e) The Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws.

APPENDIX D. NOTICE REQUIRED FOR SPECIAL LAWS CREATING HOSPITAL DISTRICTS

Section 9, Article IX, Texas Constitution

Sec. 9. . . .

Provided, however, that no [hospital] district shall be created by special law except after thirty (30) days' public notice to the district affected . . . .

APPENDIX E. NOTICE REQUIRED FOR LOCAL LAWS CONCERNING CONSERVATION AND RECLAMATION DISTRICTS

Sections 59(d) and (e), Article XVI, Texas Constitution

(d) No law creating a conservation and reclamation district shall be passed unless notice of the intention to introduce such a bill setting forth the general substance of the contemplated law shall have been published at least thirty (30) days and not more than ninety (90) days prior to the introduction thereof in a newspaper or newspapers having general circulation in the county or counties in which said district or any part thereof is or will be located and by delivering a copy of such notice and such bill to the Governor who shall submit such notice and bill to the Texas Water Commission, or its successor, which shall file its recommendation as to such bill with the Governor, Lieutenant Governor and Speaker of the House of Representatives within thirty (30) days from date notice was received by the Texas Water Commission. Such notice and copy of bill shall also be given of the introduction of any bill amending a law creating or governing a particular conservation and reclamation district if such bill (1) adds additional land to the district, (2) alters the taxing authority of the district, (3) alters the authority of the district with respect to the issuance of bonds, or (4) alters the qualifications or terms of office of the members of the governing body of the district.

(e) No law creating a conservation and reclamation district shall be passed unless, at the time notice of the intention to introduce a bill is published as provided in Subsection (d) of this section, a copy of the proposed bill is delivered to the commissioners court of each county in which said district or any part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located. Each such commissioners court and governing body may file its written consent or opposition to the creation of the proposed district with the governor, lieutenant governor, and speaker of the house of representatives. Each special law creating a conservation and reclamation district shall comply with the provisions of the general laws then in effect relating to consent by political subdivisions to the creation of conservation and reclamation districts and to the inclusion of land within the district.

APPENDIX F. SENATE RULES

Rule 7.07(c), Senate Rules

(c) It shall not be in order to introduce a local bill as defined by Rule 9.01 unless notice of publication, as provided by law, is attached.

Rule 7.08, Senate Rules

Rule 7.08. CONSIDERATION OF EMERGENCY MATTERS. At any time during the session, resolutions, emergency appropriations, emergency matters specifically submitted by the Governor in special messages to the Legislature, and local bills (as defined in Rule 9.01) may be filed with the Secretary of the Senate, introduced and referred to the proper committee, and disposed of under the rules of the Senate.

Rule 9.01, Senate Rules

Rule 9.01. DEFINITION OF LOCAL BILL. (a) Neither the Senate nor a committee of the Senate may consider a local bill unless notice of intention to apply for the passage of the bill was published as provided by law and evidence of the publication was attached to the bill at the time of introduction.

(b) Except as provided by Subsection (c) of this rule, "local bill" for purposes of this article means:

(1) a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.);

(2) a bill for which publication of notice is required under Article IX, Section 9, of the Texas Constitution (hospital districts);

(3) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) a bill creating or affecting a county court or statutory court or courts of one or more specified counties or municipalities;

(5) a bill creating or affecting the juvenile board or boards of a specified county or counties; or

(6) a bill creating or affecting a road utility district under the authority of Article III, Section 52, of the Texas Constitution.

(c) A bill is not considered to be a local bill under Subsection (b)(3), (4), or (5) of this rule if it affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance.

Rule 9.02, Senate Rules

Rule 9.02. INTRODUCTION AND CONSIDERATION OF LOCAL BILLS. The constitutional procedure with reference to the introduction, reference to a committee, and the consideration of bills set forth in Article III, Section 5, of the Texas Constitution, shall not apply to local bills herein defined, and the same may be introduced, referred, reported, and acted upon at any time under the general rules and order of business of the Senate.

APPENDIX G. HOUSE RULES

Rule 6, Section 23, House Rules

Sec. 23. QUALIFICATIONS FOR PLACEMENT ON THE LOCAL, CONSENT, AND RESOLUTIONS CALENDAR. (a) No bill defined as a local bill by Rule 8, Section 10(c), shall be placed on the local, consent, and resolutions calendar unless:

(1) evidence of publication of notice in compliance with the Texas Constitution and these rules is filed with the Committee on Local and Consent Calendars; and

(2) it has been recommended unanimously by the present and voting members of the committee from which it was reported that the bill be sent to the Committee on Local and Consent Calendars for placement on the local, consent, and resolutions calendar.

(b) No other bill or resolution shall be placed on the local, consent, and resolutions calendar unless it has been recommended unanimously by the present and voting members of the committee from which it was reported that the bill be sent to the Committee on Local and Consent Calendars for placement on the local, consent, and resolutions calendar.

(c) No bill or resolution shall be placed on the local, consent, and resolutions calendar that:

(1) directly or indirectly prevents from being available for purposes of funding state government generally any money that under existing law would otherwise be available for that purpose, including a bill that transfers or diverts money in the state treasury from the general revenue fund to another fund; or

(2) authorizes or requires the expenditure or diversion of state funds for any purpose, as determined by a fiscal note attached to the bill.

Rule 8, Section 8, House Rules

Sec. 8. DEADLINE FOR INTRODUCTION. (a) Bills and joint resolutions introduced during the first 60 calendar days of the regular session may be considered by the committees and in the house and disposed of at any time during the session, in accordance with the rules of the house. After the first 60 calendar days of a regular session, any bill or joint resolution, except local bills, emergency appropriations, and all emergency matters submitted by the governor in special messages to the legislature, shall require an affirmative vote of four-fifths of those members present and voting to be introduced.

(b) In addition to a bill defined as a "local bill" under Section 10(c) of this rule, a bill is considered local for purposes of this section if it relates to a specified district created under Article XVI, Section 59, of the Texas Constitution (water districts, etc.), a specified hospital district, or another specified special purpose district, even if neither these rules nor the Texas Constitution require publication of notice for that bill.

Rule 8, Section 9(b), House Rules

(b) A bill relating to conservation and reclamation districts and governed by the provisions

of Article XVI, Section 59, of the Texas Constitution must be filed with copies of the notice to introduce the bill attached if the bill is intended to:

(1) create a particular conservation and reclamation district; or

(2) amend the act of a particular conservation and reclamation district to:

(A) add additional land to the district;

(B) alter the taxing authority of the district;

(C) alter the authority of the district with respect to issuing bonds; or

(D) alter the qualifications or terms of office of the members of the governing body of the district.

Rule 8, Section 10, House Rules

Sec. 10. LOCAL BILLS. (a) The house may not consider a local bill unless notice of intention to apply for the passage of the bill was published as provided by law and evidence of the publication is attached to the bill. If not attached to the bill on filing with the chief clerk or receipt of the bill from the senate, copies of the evidence of timely publication shall be filed with the chief clerk and must be distributed to the members of the committee not later than the first time the bill is laid out in a committee meeting. The evidence shall be attached to the bill on first printing and shall remain with the measure throughout the entire legislative process, including submission to the governor.

(b) Neither the house nor a committee of the house may consider a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name. However, this subsection does not prevent consideration of a bill that classifies political subdivisions according to a minimum or maximum population or other criterion that bears a reasonable relation to the purpose of the proposed legislation or a bill that updates laws based on population classifications to conform to a federal decennial census.

(c) Except as provided by Subsection (d) of this section, "local bill" for purposes of this section means:

(1) a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.);

(2) a bill for which publication of notice is required under Article IX, Section 9, of the Texas Constitution (hospital districts);

(3) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) a bill creating or affecting a county court or statutory court or courts of one or more specified counties or municipalities;

(5) a bill creating or affecting the juvenile board or boards of a specified county or counties; or

(6) a bill creating or affecting a road utility district under the authority of Article III, Section 52, of the Texas Constitution.

(d) A bill is not considered to be a local bill under Subsection (c)(3), (4), or (5) if it affects

a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance.

APPENDIX H. GENERAL LAW

GOVERNMENT CODE

CHAPTER 313. NOTICE FOR LOCAL AND SPECIAL LAWS

Sec. 313.001. NOTICE. A person who intends to apply for the passage of a local or special law must give notice of that intention as prescribed by this chapter.

Sec. 313.002. PUBLICATION OR POSTING OF NOTICE FOR LAWS AFFECTING LOCALITIES. (a) A person who intends to apply for the passage of a local or special law must publish notice of that intention in a newspaper published in the county embracing the locality the law will affect.

(b) The notice must be published once not later than the 30th day before the date on which the intended law is introduced in the legislature.

(c) The notice is sufficient if it contains a statement of the general purpose and substance of the intended law. Publication of the particular form of the intended law or the terms used in the intended law is not required.

(d) If the intended law will affect more than one county, the person applying for passage of the law must publish notice in each county the law will affect.

(e) If a newspaper is not published in the county, the person applying for passage of the law must post the notice at the courthouse door and at five other public places in the immediate locality in the county the law will affect.

(f) The posted notice must accurately define the locality the law will affect.

(g) The notice must be posted for at least 30 days.

Sec. 313.003. PUBLICATION OF NOTICE FOR LAWS PRIMARILY AFFECTING PERSONS. (a) If a resident of this state intends to apply for passage of a law that will primarily affect persons and will not directly affect a particular locality more than it will affect another, the person applying for passage must publish notice in a newspaper published in the county in which the person resides in the same manner as if the law will affect the locality.

(b) If the applicant is not a resident of this state, publication of notice in a newspaper published in Austin is sufficient.

Sec. 313.004. PROOF OF PUBLICATION OR POSTING. (a) If publication of notice in a newspaper is required by law, proof of publication shall be made by the affidavit of the publisher accompanied by a printed copy of the notice as published.

(b) Proof of posting may be made by the return of the sheriff or constable or by the affidavit of a credible person made on a copy of the posted notice showing the fact of the posting.

Sec. 313.005. INTRODUCTION OF LAW. When a local or special law is introduced in the legislature, the law must be accompanied by competent proof that notice was given.

Sec. 313.006. NOTICE FOR LAWS ESTABLISHING OR ADDING TERRITORY TO MUNICIPAL MANAGEMENT DISTRICTS. (a) In addition to the other requirements of this chapter, a person, other than a member of the legislature, who intends to apply for the passage of a law establishing or adding territory to a special district that incorporates a power from Chapter 375, Local Government Code, must provide notice as provided by this section.

(b) The person shall notify by mail each person who owns real property proposed to be included in a new district or to be added to an existing district, according to the most recent certified tax appraisal roll for the county in which the real property is owned. The notice, properly addressed with postage paid, must be deposited with the United States Postal Service not later than the 30th day before the date on which the intended law is introduced in the legislature.

(c) The notice is sufficient if it contains a statement of the general purpose and substance of the intended law. Notice of the particular form of the intended law or the terms used in the intended law is not required.

(d) The person is not required to mail notice under Subsection (b) or (e) to a person who owns real property in the proposed district or in the area proposed to be added to a district if the property cannot be subject to an assessment by the district.

(e) After the introduction of a law in the legislature establishing or adding territory to a special district that incorporates a power from Chapter 375, Local Government Code, the person shall mail to each person who owns real property proposed to be included in a new district or to be added to an existing district a notice that the legislation has been introduced, including the applicable bill number. The notice, properly addressed with postage paid, must be deposited with the United States Postal Service not later than the 30th day after the date on which the intended law is introduced in the legislature. If the person has not mailed the notice required under this subsection on the 31st day after the date on which the intended law is introduced in the legislature, the person may cure the deficiency by immediately mailing the notice, but the person shall in no event mail the notice later than the date on which the intended law is reported out of committee in the chamber other than the chamber in which the intended law was introduced. If similar bills are filed in both chambers of the legislature, a person is only required to provide a single notice under this subsection not later than the 30th day after the date the first of the bills is filed.

(f) A landowner may waive any notice required under this section at any time.

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APPENDIX I. NOTICE OF INTENT TO INTRODUCE

NOTICE

This is to give notice of intent to introduce in the 86th Legislature, Regular Session, a bill to be entitled an Act (insert here the caption of the bill, e.g., "relating to creation of the Tidewater Hospital District.").

APPENDIX J. PUBLISHER'S AFFIDAVIT OF PUBLICATION

PUBLISHER'S AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

Before me, a Notary Public in and for _____ County, this day personally appeared (insert name and title of person who signs the affidavit, such as "Richard Roe, Classifieds Manager, Metropolis News"), who, being duly sworn, states that the following advertisement was published in (insert name of the newspaper) on (insert date of publication):

(Here affix a copy of the advertisement. If the advertisement is too large to be affixed in the space allowed, substitute "attached" for "following" in the introduction and affix a copy of the advertisement on a page to be attached.)

(signature of affiant)

Sworn to and subscribed before me this _____ day of _____, ___.

(signature of notary)

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APPENDIX K. QUICK REFERENCE FOR LOCAL NOTICE FOR CONSTITUTIONALLY AUTHORIZED LOCAL BILLS

This appendix is intended to serve as a quick reference guide to notice publication requirements for authorized local bills of various types. In some instances, it is difficult to determine both whether a particular bill is a "local bill" and what notice publication requirements are applicable to a particular local bill. For that reason, this appendix is meant only to provide a general overview of local bill notice publication requirements.

The appendix is organized to address the notice publication requirements for certain types of authorized local bills as follows:

I. Notice for Local Bills; the Constitution and Rules Generally
II. Districts Authorized by Section 59, Article XVI
III. Districts Authorized by Section 52, Article III
IV. Hospital Districts Authorized by Article IX
V. Preservation of Game or Fish
VI. Courts System
VII. Granting Aid for Public Calamity
VIII. Airport Authorities
IX. Consolidation of Government Offices and Functions of Political Subdivisions in a County
X. Fence Laws
XI. Stock Laws
XII. Local Road Maintenance
XIII. Juvenile Boards

I. Notice for Local Bills; the Constitution and Rules Generally

Section 57, Article III, Texas Constitution, provides that a local or special law may not be passed unless notice of the intention to apply for the law is published at least 30 days before the bill is introduced. Section 57 requires the notice to state the substance of the contemplated law. The notice must be published "in the manner provided by law" in the locality where the matter or thing to be affected is situated. Chapter 313, Government Code, the rules of both houses of the legislature, and the relevant constitutional and statutory provisions provide the relevant notice requirements and must be considered together to determine what notice requirements are applicable to a particular bill.

Rule 9.01(a), Senate Rules, provides that neither the senate nor a senate committee may consider a local bill unless notice is published as provided by law and evidence of the publication is attached to the bill at the time of introduction. For purposes of the rule, "local bill" is defined by Rules 9.01(b) and (c).

Rule 8, Section 10(a), House Rules, provides that the house may not consider a local bill unless notice is published as provided by law. The rule requires evidence of the publication of notice to be either: (1) attached to the bill when it is filed with the chief clerk or when it is received from the senate; or (2) filed with the chief clerk and distributed to the members of the committee not later than the first time the bill is laid out in a committee meeting. The rule also requires evidence of the publication of notice to be attached to the bill on the first printing and to remain with the bill throughout the legislative process, including when the bill is submitted to the governor. For purposes of the rule, "local bill" is defined by Rule 8, Sections 10(c) and (d).

II. Districts Authorized by Section 59, Article XVI

Section 59, Article XVI, Texas Constitution, authorizes local bills creating or affecting conservation and reclamation districts. Local bills of this type are common. Many of these districts are called "water districts" and are governed by one or more chapters of the Water Code. Others are called "municipal management districts" and are governed by Chapter 375, Local Government Code. Other types of districts known by other terms may be created or affected by local laws authorized under Section 59, Article XVI. Note also that some "water districts" are districts created or authorized under Section 52, Article III, instead of Section 59, Article XVI. For a discussion of Section 52, Article III, districts, see below.

Local notice is required for a bill that would:

- create a district as authorized by Section 59, Article XVI; or
- affect an existing district created under Section 59, Article XVI, by:
    - adding land to the district;
    - altering the taxing authority of the district;
    - altering the district's authority to issue bonds; or
    - altering the qualifications or terms of office of the district's governing body.

Local notice is not required for a bill that would affect in any other way an existing district created under Section 59, Article XVI.

The notice publication requirements governing conservation and reclamation districts under Section 59, Article XVI, are different from the general notice publication requirements under Section 57, Article III. Sections 59(d) and (e), Article XVI, require that:

- The notice of intention to introduce a bill must set forth the general substance of the contemplated law.
- The notice must be published *at least 30 days and not more than 90 days* before the bill is introduced.
- Publication of the notice must be in a newspaper or newspapers having general circulation in the county or counties in which any part of the district is or will be located.
- The notice must be delivered to the governor.

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- For a bill creating a district, a copy of the proposed bill must be delivered to the commissioners court of each county in which any part of the district is or will be located and to the governing body of each municipality in whose jurisdiction any part of the district is or will be located.

Rule 9.01(b)(1), Senate Rules, and Rule 8, Section 10(c)(1), House Rules, provide that a bill is a local bill for the purposes of publication of local notice if the bill is a bill for which publication of notice is required by Section 59, Article XVI. The notice publication requirements provided by Section 59, Article XVI, the rules of both houses of the legislature, and statutes must be considered together to determine what notice publication requirements are applicable to a bill authorized under Section 59, Article XVI.

III. Districts Authorized by Section 52, Article III

Section 52, Article III, Texas Constitution, authorizes local bills related to water resources or roads. Most local bills authorized by that section concern a "road utility district" or a "water district" of some kind.

The general requirements of Section 57, Article III, the rules of both houses of the legislature, and statutes apply to publication of notice for Section 52, Article III, local bills.

The senate and house rules provide that a bill is a local bill if the bill creates or affects a "road utility district." The rules do not mention bills affecting other kinds of districts authorized under Section 52, Article III, or other local laws authorized by that section. See Rule 9.01(b)(6), Senate Rules, and Rule 8, Section 10(c)(6), House Rules.

Note also that some "water districts" are districts created or authorized under Section 59, Article XVI, instead of Section 52, Article III. (See above at II.)

IV. Hospital Districts Authorized by Article IX

Legislation regarding hospital districts is authorized by Sections 4, 5, 8, 9, 9A, 9B, and 11, Article IX, Texas Constitution. Sections 9 and 9B of that article expressly authorize the legislature to treat hospital districts by "special law" (in this context the term is synonymous with "local law"). Section 9A implicitly authorizes a local law regarding the provision of health care to residents of a hospital district. Section 11 implicitly authorizes local laws to create hospital districts in certain named counties.

Except as noted below, the general requirements of Section 57, Article III, the rules of both houses of the legislature, and statutes apply to publication of notice for hospital district local bills.

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Section 9, Article IX, provides that a district may not be created by a local bill except after 30 days' public notice to the district affected; this provision must be read together with the notice publication requirements of Section 57, Article III, the rules of both houses of the legislature, and statutes.

The senate and house rules provide that a bill is a local bill if publication of notice is required for the bill under Section 9, Article IX. Section 9 addresses publication of notice only for a bill that creates a hospital district under that section; the rules do not mention other bills affecting hospital districts authorized under Section 9 or other local laws authorized by that section. See Rule 9.01(b)(2), Senate Rules, and Rule 8, Section 10(c)(2), House Rules. Arguably, Section 9, Article IX, relieves the Section 57, Article III, requirement to publish notice not only for a local bill that affects an existing district created under Section 9, but also for a local bill that affects an existing hospital district created under other law.

V. Preservation of Game or Fish

Section 56(b)(1), Article III, Texas Constitution, authorizes "special laws" (in this context the term is synonymous with "local laws") for the "preservation of game and fish of this State in certain localities."

Although courts have determined that bills dealing with the preservation of game and fish are general bills, for purposes of the senate and house rules, a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality is expressly considered to be a local bill for which publication of notice is required. See Rule 9.01(b)(3), Senate Rules, and Rule 8, Section 10(c)(3), House Rules.

VI. Courts System

Sections 1, 7, 8, and 21, Article V, Texas Constitution, authorize local laws on matters regarding the courts system, including district courts, county courts, statutory courts, and municipal courts and county and district attorneys.

Courts have determined that certain bills relating to *district courts* are items of general state interest and for that reason are considered to be general bills, regardless of their local appearance and regardless of whether the constitution authorizes local bills for those subjects. As general bills, bills relating to district courts are not subject to the Section 57, Article III, requirements for publication of notice.

Note that those courts system bills are treated as general bills for purposes of the constitution only and not for purposes of the senate and house rules. The senate and house rules provide that a bill is a local bill if the bill creates or affects a county court or statutory court or

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courts of one or more specified counties or municipalities, and that publication of notice is required for those local bills. See Rule 9.01(b)(4), Senate Rules, and Rule 8, Section 10(c)(4), House Rules.

VII. Granting Aid for Public Calamity

Section 51, Article III, and Section 10, Article VIII, Texas Constitution, authorize special or local laws in response to cases of public calamity.

The senate and house rules do not expressly address bills that respond to a public calamity. Note that Rule 9.01(c), Senate Rules, and Rule 8, Section 10(d), House Rules, provide that a bill that affects a sufficient number of localities is considered a bill of general application or a matter of statewide importance, and for that reason is not considered a local bill.

VIII. Airport Authorities

Section 12, Article IX, Texas Constitution, authorizes the legislature to enact local laws regarding airport authorities.

The senate and house rules do not expressly address local bills authorized by Section 12, Article IX, but Section 57, Article III, and statutory notice publication requirements apply.

IX. Consolidation of Government Offices and Functions of Political Subdivisions in a County

Section 64, Article III, Texas Constitution, authorizes the legislature "by special statute" (in this context the term is synonymous with "by local law") to "provide for consolidation of governmental offices and functions of government of any one or more political subdivisions comprising or located within any county." The provision can be read as an exception to the Section 56(a), Article III, general prohibition against local or special laws.

The senate and house rules do not expressly address local bills authorized by Section 64, Article III, but Section 57, Article III, and statutory notice publication requirements apply.

X. Fence Laws

Section 56(b)(2), Article III, Texas Constitution, authorizes the legislature to pass local "fence laws applicable to any subdivision of this State or counties."

The senate and house rules do not expressly address local bills authorized by Section 56(b)(2), Article III, but Section 57, Article III, and statutory notice publication requirements apply.

XI. Stock Laws

Section 23, Article XVI, Texas Constitution, authorizes the legislature to pass local and special laws to regulate livestock and protect stock raisers.

The senate and house rules do not expressly address local bills authorized by Section 23, Article XVI, but Section 57, Article III, and statutory notice publication requirements apply.

XII. Local Road Maintenance

Section 9(e), Article VIII, Texas Constitution, authorizes the legislature to "pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws."

Further, since the senate and house rules do not expressly address a bill regarding road and highway maintenance, publication of notice is not required for such a bill.

XIII. Juvenile Boards

Courts have treated bills to create juvenile boards in specific localities as general bills for which the constitution does not require publication of notice because they relate to matters of general state interest, despite their appearance as local bills.

Nevertheless, Rule 9.01(b)(5), Senate Rules, and Rule 8, Section 10(c)(5), House Rules, define as "local bill" a bill "creating or affecting the juvenile board or boards of a specified county or counties." For that reason, the senate and house rules require publication of notice for most bills regarding specific juvenile boards. Note also Rule 9.01(c), Senate Rules, and Rule 8, Section 10(d), House Rules, which provide that a bill is not a local bill if it "affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance."

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Appendix 8
DRAFTING PUBLIC SECURITIES PROVISIONS

A. INTRODUCTION

B. TYPES OF PUBLIC SECURITIES
   1. Bonds
      a. General obligation bonds
      b. Revenue bonds
   2. Other Public Securities

C. CONSTITUTIONAL PROVISIONS
   1. General Obligation Bonds
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D. GENERAL LAW PROVISIONS
   1. Public Security Procedures Act
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   6. Bonds as Authorized Investments
   7. Provisions of Other General Laws Applying to Special Districts

E. PLACEMENT OF PUBLIC SECURITIES PROVISIONS

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A. INTRODUCTION

The legislature frequently addresses areas of the law that involve the issuance of public securities by the state or a political subdivision of the state. Typically, public securities are authorized for capital improvements such as roads, schools, and water projects, but some public securities are issued to provide for a fund for some other purpose, such as the making of student loans.

Drafting a statute authorizing public securities is not particularly difficult, but the drafter should be familiar with a number of generally applicable constitutional provisions and statutes. In the past, statutes authorizing public securities frequently contained provisions that duplicated or were superseded by general law. In 1999, the legislature adopted Title 9, Government Code,[1] which codified the general laws relating to public securities. The title also contains numerous provisions authorizing the issuance of public securities for specific purposes. In codifying those provisions, legislative council staff eliminated many provisions that duplicated or were superseded by general law.

Many statutes outside Title 9, Government Code, authorize public securities.[2] Most of these statutes predate Title 9 and contain provisions duplicating general law; use of such a statute as a model for new legislation is not recommended. In revising the statutes that became the Special District Local Laws Code, legislative council staff again eliminated many unnecessary public securities provisions. Public securities provisions in that code may be suitable models for similar statutes.

B. TYPES OF PUBLIC SECURITIES

"Public security" is a broad term used in Title 9, Government Code, to describe various types of obligations issued by governmental entities, including bonds, notes, warrants, and certificates.[3]

1. Bonds

Although there is no standard definition of "bond," the word is typically used to refer to obligations that have relatively long terms, frequently 20 or 40 years. Bonds are often characterized as "general obligation bonds" or "revenue bonds."

a. General obligation bonds

General obligation bonds are backed by the taxing power of the governmental entity issuing the bonds. State general obligation bonds are a first draw on money coming into the treasury and are paid from the various types of taxes, including sales and use taxes, franchise taxes, and occupation taxes, that go into the general revenue fund.[4] General obligation bonds issued by political subdivisions are typically paid from ad valorem taxes, with the issuer contracting to levy ad valorem taxes at whatever rate is necessary to pay the bonds.[5] (State ad valorem taxes are constitutionally prohibited.[6])

b. Revenue bonds

[1] See Chapter 227 (H.B. 3157), Acts of the 76th Legislature, Regular Session, 1999.

[2] Public securities provisions may be found in other titles of the Government Code and in the Agriculture Code, Education Code, Health and Safety Code, Local Government Code, Natural Resources Code, Parks and Wildlife Code, Special District Local Laws Code, Transportation Code, Utilities Code, and Water Code.

[3] See, e.g., Sections 1201.002, 1202.001, 1203.001, and 1205.001, Government Code.

[4] For an example of state general obligation bonds, see Section 49-h, Article III, Texas Constitution, and Chapter 1401, Government Code.

[5] For an example of political subdivision general obligation bonds, see Section 52, Article III, Texas Constitution, and Chapter 1471, Government Code.

[6] Section 1-e, Article VIII, Texas Constitution.

Revenue bonds are backed by a specific stream of non-tax revenue,[7] such as highway tolls or rent from a facility.[8] In some cases, the revenue stream is fictitious. For example, under Chapter 1232, Government Code, to pay for state office buildings, the Texas Public Finance Authority may issue revenue bonds that are paid from lease revenue the authority receives from a state agency or the Texas Facilities Commission on behalf of a state agency.[9] The ultimate source of the money to pay the bonds is the general revenue fund. The statute specifically provides that obligations issued by the authority are not debts of the state or a pledge of the state's credit.[10]

2. Other Public Securities

Among the many types of public securities are "notes,"[11] "warrants" or "time warrants,"[12] "certificates of obligation,"[13] and "certificates of indebtedness."[14] There are no general definitions of these types of public securities. Different statutes may define the terms slightly differently.

C. CONSTITUTIONAL PROVISIONS

The Texas Constitution contains both general provisions relating to the issuance of bonds by the state and political subdivisions and specific provisions that authorize the issuance of bonds for particular purposes.[15] Only the general provisions are discussed below.

1. General Obligation Bonds

a. State

Section 49(a), Article III, Texas Constitution, prohibits the creation of a debt by or on behalf of the state, except to "supply casual deficiencies of revenue, not to exceed in the aggregate at any one time two hundred thousand dollars," to "repel invasion, suppress insurrection, or defend the State in war," or as otherwise provided by the constitution. To avoid violating the constitutional restriction on debt, state general obligation bonds have historically been authorized by passage and voter approval of a constitutional amendment. A 1999 amendment to the constitution removed or consolidated many of the existing state general obligation bond provisions.[16]

As an alternative to a constitutional amendment authorizing debt, Sections 49(b)–(g), Article III, provide for an election on the issuance of state debt. Because Section 49(b) requires a joint resolution approved by two-thirds of the members of each house and an election held in the same manner as an election on a constitutional amendment, the only practical difference is that a debt proposition, if adopted by the voters, does not become

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[7] Although in common usage "revenue" includes tax revenue, in the practice of public securities laws, "revenue" does not include tax revenue.

[8] For examples of revenue bonds, see Chapter 1504, Government Code.

[9] See Sections 1232.102 and 1232.116, Government Code.

[10] Section 1232.117, Government Code. In *Tex. Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924 (Tex. 1985), relying in part on the statutory predecessor to Section 1232.117, the supreme court held that this method of financing state buildings does not violate Section 49, Article III, Texas Constitution, which generally prohibits the state from incurring debt (see Part C.1.a of this appendix).

[11] For an example of notes, see Chapter 1431, Government Code.

[12] For an example of time warrants, see Subchapter C, Chapter 262, Local Government Code.

[13] For an example of certificates of obligation, see Subchapter C, Chapter 271, Local Government Code.

[14] For an example of certificates of indebtedness, see Subchapter D, Chapter 1501, Government Code.

[15] Examples of provisions of the Texas Constitution authorizing specific bonds include Section 50b-5, Article III (issuance of general obligation bonds by the Texas Higher Education Coordinating Board to finance student loans), and Section 50c, Article III (issuance of general obligation bonds by the commissioner of agriculture to finance farm and ranch loans).

[16] See H.J.R. 62, 76th Legislature, Regular Session, 1999.

a part of the constitution.[17]

b. Political subdivisions

Sections 5 and 7, Article XI, Texas Constitution, provide that a municipality or county may not incur a "debt" unless the municipality or county provides for an annual ad valorem tax sufficient to pay the interest on the debt and to establish a sinking fund of at least two percent.

Section 52(b), Article III, provides specific authority for a county, a political subdivision of a county, two or more adjacent counties, a municipality or other political subdivision of the state, or a "defined district" to issue general obligation bonds for the following purposes:

(1) improving rivers, creeks, and streams to prevent overflows and permit navigation, or to provide irrigation thereof, or in aid of those purposes;

(2) constructing and maintaining pools, lakes, reservoirs, dams, canals, and waterways for irrigation, drainage, or navigation, or in aid of those purposes; or

(3) constructing, maintaining, and operating paved roads and turnpikes, or in aid of that purpose.

Bonds issued under Section 52(b) require "a vote of two-thirds majority of the voting qualified voters of such district or territory to be affected thereby." The bonds may not exceed one-fourth of the assessed valuation of the district's or territory's real property, and "the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution."[18]

Section 52(c), Article III, provides specific authority for a county to issue general obligation bonds "in an amount not to exceed one-fourth of the assessed valuation of the real property in the county" to construct, maintain, and operate paved roads and turnpikes, or in aid of those purposes, on "a vote of a majority of the voting qualified voters of the county."

Both Sections 52(b) and (c) authorize a political subdivision issuing bonds to levy taxes to provide for a sinking fund for the redemption of the bonds.

Section 52(d), Article III, specifically authorizes a "defined district created under this section that is authorized to issue bonds or otherwise lend its credit for the purposes stated in [Sections 52(b)(1) and (2) to] issue bonds or otherwise lend its credit for fire-fighting purposes as provided by law and this constitution."

Although there is no specific constitutional provision or case law establishing a general rule that a political subdivision must have specific constitutional authority to levy ad valorem taxes[19] or issue general obligation bonds, political subdivisions have typically been authorized to take those actions only with express constitutional authority.[20]

However, in 2005, the legislature by statute authorized the creation of "multi-jurisdictional library districts" with the authority to impose ad valorem taxes.[21] The attorney general, after reviewing case law and previous attorney general opinions, stated, "it is more likely than not that a court would find that a multi-jurisdictional library district . . . lacks authority to assess and collect ad valorem taxes on property within the district, absent express constitutional

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[17] As of July 2020, the legislature had not adopted a joint resolution on a debt proposition.

[18] Section 52(b), Article III, Texas Constitution.

[19] See *Shepherd v. San Jacinto Junior Coll*. Dist., 363 S.W.2d 742 (Tex. 1962); *City of Humble v. Metro. Transit Auth*., 636 S.W.2d 484 (Tex. App.—Austin 1982, writ ref'd n.r.e.). The court in *Shepherd* considered but did not address the issue of whether the legislature may authorize a political subdivision to levy ad valorem taxes absent a constitutional provision, finding that the junior college district taxes at issue were authorized by Section 3, Article VII, Texas Constitution. 363 S.W.2d at 743.

[20] See Section 48-e, Article III (emergency services districts); Section 48-f, Article III (jail districts); Section 52, Article III (various political subdivisions); Section 3(e), Article VII (school districts, including independent school districts and junior college districts); Sections 1-a and 9, Article VIII (counties and municipalities); Sections 4–9, 9B, and 11, Article IX (hospital districts); Section 12, Article IX (airport authorities); Sections 4, 5, and 7, Article XI (municipalities); Section 59, Article XVI (conservation and reclamation districts).

[21] See Chapter 336, Local Government Code.

authorization."[22] In light of the attorney general's opinion, it is advisable to amend the constitution if the intent is to grant a political subdivision the authority to impose ad valorem taxes.

The constitutional provisions authorizing ad valorem taxes frequently require voter approval of the tax rate, authorize the issuance of bonds, and prescribe the vote necessary for approval of bonds. Note that Section 3a, Article VI, provides that in an election by a political subdivision to "[issue] bonds or otherwise [lend its] credit," only "qualified voters of the . . . political sub-division . . . where such election is held shall be qualified to vote."

c. Property ownership

Numerous statutes have provided that to be eligible to vote in an election to authorize general obligation bonds a person must be a property owner and taxpayer. These provisions are generally invalid; in Hill v. Stone, 421 U.S. 289 (1975), the United States Supreme Court determined that property ownership as a qualification for voting is an unconstitutional denial of equal protection. The same 1999 constitutional amendment referenced in footnote 16 eliminated references in the Texas Constitution to property ownership as a qualification for voting.

2. Revenue Bonds

The Supreme Court of Texas has held that revenue bonds are not "debts" for purposes of the constitutional ban under Section 49(a), Article III,[23] or the restrictions under Sections 5 and 7, Article XI.[24] One practical effect of this distinction is that revenue bonds may be issued constitutionally without an election, though some statutes authorizing revenue bonds require or permit an election.[25]

3. Interest Rate

As amended in 1982,[26] Section 65(a), Article III, Texas Constitution, provides that:

> Wherever the Constitution authorizes an agency, instrumentality, or subdivision of the State to issue bonds and specifies the maximum rate of interest which may be paid on such bonds issued pursuant to such constitutional authority, such bonds may bear interest at rates not to exceed a weighted average annual interest rate of 12% unless otherwise provided by Subsection (b) of this section [which prescribes a maximum net effective interest rate of 10% per year for certain bonds issued by the Veterans' Land Board]. All Constitutional provisions specifically setting rates in conflict with this provision are hereby repealed.

Section 65 clearly supersedes any provision setting interest rates that was in effect when the 1982 amendment was adopted. Presumably, a later amendment that prescribes a different rate would take precedence over Section 65. Also, Section 65 does not, by its own terms, apply if a constitutional provision does not prescribe a maximum interest rate.[27] Public securities authorized by the constitution as to which the constitution does not prescribe a maximum interest rate are subject to Chapter 1204, Government Code (discussed in Part

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[22] See Tex. Att'y Gen. Op. No. GA-0626 (2008).
[23] *Tex. Nat'l Guard Armory Bd. v. McCraw*, 126 S.W.2d 627 (Tex. 1939); *Tex. Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924 (Tex. 1985).
[24] *Lower Colo. River Auth. v. McCraw*, 83 S.W.2d 629 (Tex. 1935).
[25] See Section 1505.061, Government Code (election required to issue revenue bonds for certain bridge projects if voters petition for election); Section 1506.005, Government Code (election not required to issue revenue bonds for certain parking facilities, but governing body of municipality may call election).
[26] See S.J.R. 6, 67th Legislature, 2nd Called Session, 1982.
[27] See Braden et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, p. 299.

D.4 of this appendix).

D. GENERAL LAW PROVISIONS

As noted in the introduction, in drafting Title 9, Government Code, legislative council staff eliminated many provisions of source law that duplicated or were superseded by general law. The drafter of a new statute authorizing public securities should attempt to avoid unnecessarily duplicating general law. The following paragraphs provide a basic outline of the most important provisions in the general public securities laws; a drafter should be fairly familiar with the general laws mentioned.

The general provisions usually have very broad definitions of "issuer" and "public security,"[28] which makes those provisions applicable by their own terms to most public securities. Thus, it is generally unnecessary to state that a particular general provision applies.

1. Public Security Procedures Act

The Public Security Procedures Act (Chapter 1201, Government Code) applies to almost any public security issued by a governmental entity or a nonprofit corporation acting on behalf of a governmental entity. Chapter 1201 provides an issuer with a great deal of discretion in prescribing the terms of a public security and permits the issuance of a public security in a variety of forms.[29]

Chapter 1201 also prescribes limits on the maturity date and imposes additional procedural restrictions on the issuance of "capital appreciation bonds" by a political subdivision.[30] A drafter should be familiar with these restrictions so as to avoid duplicating the restrictions in the law being drafted or, if the intent is that a restriction not apply, the drafter can include an exception in the new provision.

Chapter 1201 also provides that a public security is a negotiable instrument, an investment security to which Chapter 8, Business & Commerce Code, applies, and an authorized investment for an insurance company, a fiduciary or trustee, or a sinking fund of a political subdivision or public agency of this state.[31]

2. Examination by Attorney General and Registration by Comptroller

Chapter 1202, Government Code, also applies to most public securities, including those issued by a nonprofit corporation acting on behalf of a governmental entity. Chapter 1202 requires an issuer to submit to the attorney general for review a public security the issuer proposes to issue and the record of the issuer's proceedings relating to the security.[32] If the attorney general finds that the public security has been authorized in conformity with law, the attorney general approves the public security and delivers to the comptroller a copy of the approval and the record of the issuer's proceedings.[33] On receipt of the approval and record of proceedings, the comptroller registers the public security.[34] On issuance, an approved and registered public security and any contract the proceeds of which are pledged

[28] See, e.g., Section 1201.002, Government Code.
[29] See Sections 1201.021–1201.024, Government Code.
[30] See Section 1201.0245, Government Code.
[31] Section 1201.041, Government Code.
[32] Section 1202.003(a), Government Code.
[33] Section 1202.003(b), Government Code.
[34] Section 1202.005, Government Code.

to payment of the security are valid and incontestable.[35] A number of types of securities are exempt from approval and registration under Chapter 1202.[36]

3. Registrar for Public Security

Chapter 1203, Government Code, prescribes conditions applicable to the issuance of fully registrable public securities. A "fully registrable" public security is defined as one as to which the principal and interest are payable to the registered owner of the security, the principal is payable on presentation of the security, and the interest is payable to the registered owner at the most recent address of that owner as shown by the registrar's books.[37] Chapter 1203 permits several different persons to act as registrar, depending on who issues the public security.[38]

4. Interest Rate

Chapter 1204, Government Code, provides that a public security issued by a governmental entity or a nonprofit corporation acting on behalf of a governmental entity may not bear interest at a rate greater than a net effective interest rate of 15 percent.[39] This limitation does not apply to a public security for which the constitution prescribes the maximum interest rate.[40]

5. Refunding Bonds

Chapter 1207, Government Code, authorizes the issuance of refunding bonds by any governmental entity that has the power to issue bonds. The refunding bonds may be issued to be sold, with the proceeds from the sale being used to retire the existing bonds (a procedure known as "advance refunding"),[41] or to be exchanged for the existing bonds (a procedure known as "exchange refunding").[42] There is often no need for the drafter of a new provision authorizing public securities to authorize the issuance of refunding bonds, but it may be necessary if the issuer is to be able to pledge any revenue to the refunding bonds.[43]

6. Bonds as Authorized Investments

As noted in Part D.1 of this appendix, the Public Security Procedures Act (Chapter 1201, Government Code) provides that a public security is an authorized investment for an insurance company, a fiduciary or trustee, or a sinking fund of a political subdivision or public agency of this state.[44] Similarly, the Public Funds Investment Act (Chapter 2256, Government Code) provides that most obligations issued by the state or a political subdivision are authorized investments for many governmental entities.[45] Numerous other statutes and rules provide that public securities, or specified types of public securities, are

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[35] Section 1202.006, Government Code.
[36] Section 1202.007, Government Code.
[37] Section 1203.001(1), Government Code. Registered public securities are now issued in place of securities with attached interest coupons, on which interest is paid on surrender of the coupon. However, public securities with coupons are still permitted. See Section 1201.021(3), Government Code.
[38] Section 1203.021, Government Code.
[39] Section 1204.006, Government Code.
[40] See Revisor's Note (2) to Section 1204.002, Government Code.
[41] See Subchapters B and C, Chapter 1207, Government Code.
[42] See Subchapter D, Chapter 1207, Government Code.
[43] See Sections 1207.005 and 1207.0621, Government Code.
[44] Section 1201.041, Government Code.
[45] Section 2256.009, Government Code.

authorized investments for certain entities.[46] Thus, it is usually unnecessary to list entities that may invest in a particular public security.

7. Provisions of Other General Laws Applying to Special Districts

In addition to being subject to the provisions of Title 9, Government Code, special districts created by local law may be subject to similar provisions of other general laws. For example, water districts are generally subject to the provisions of the Water Code related to public securities.[47] A complete discussion of those provisions is outside the scope of this appendix, but a drafter of a special district local law should be aware of any applicable provisions.

E. PLACEMENT OF PUBLIC SECURITIES PROVISIONS

As noted in the introduction, many public securities provisions are in Title 9, Government Code, while others are in other titles or codes. In general, a statute that has the issuance of public securities as its primary purpose should be placed in Title 9, Government Code. A statute that has a broader primary purpose, for which the issuance of public securities is a method of accomplishing that purpose, should be placed in an appropriate code or chapter of the Revised Statutes.[48]

[46] See, e.g., Section 34.101(d)(1), Finance Code (banks); Sections 63.002, 64.001, and 64.002, Finance Code, and 7 T.A.C. Section 65.21 (savings and loan associations); Section 93.001(c)(10), Finance Code, and 7 T.A.C. Section 77.71 (savings banks); Section 184.101, Finance Code (trust companies).

[47] See, for example, Section 49.183, Water Code (sale of bonds by certain water districts); Section 54.502(b), Water Code (maximum maturity of municipal utility district bonds).

[48] See, e.g., Chapters 254 and 303, Local Government Code; Chapter 54, Transportation Code.

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Appendix 9

TEXAS LEGISLATIVE COUNCIL

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Speaker of the House
Joint Chair

M E M O R A N D U M

FROM: Mark Brown
Legal Division Director

DATE: November 4, 2004

SUBJECT: Incorporation of Certain Statutes by Reference

INTRODUCTION

A legislative drafter sometimes will use a drafting technique known as incorporation by reference. By this technique, the drafter includes in a statute a reference to a second statute for the purpose of incorporating the terms or effects of the second statute into the first. The first statute is called the referencing statute, and the second statute is the referenced statute. Examples of incorporation by reference are:

> The penalty may be waived in situations in which penalties would be waived under Section 111.103, Tax Code.
>
> Except as provided by Section 551.126, Government Code, the board shall hold regular quarterly meetings in the city of Austin.
>
> Sec. 1.202. DEFINITION. In this subchapter, "fish farming" has the meaning assigned by Section 134.001, Agriculture Code.

This memorandum explains a change in the drafting policy of the Texas Legislative Council legal division regarding incorporation by reference. As part of that explanation, this memorandum discusses whether, when incorporating into a Texas statute a reference to a statute that was not enacted by the Texas Legislature, such as a federal statute, it is necessary to expressly incorporate the subsequent amendments of the referenced statute by adding to the referenced statute's citation the phrase "as amended" or "and its subsequent amendments."

BACKGROUND

The common law rules of statutory construction did not automatically incorporate subsequent amendments to referenced statutes. Instead, the common law rule differentiated between "specific" and "general" statutory references and limited the scope of incorporation for those statutes that were

"specifically" referenced to their content at the time of incorporation.[1] Thus, under the common law rule, a drafter who referenced a specific statute and who wished to include subsequent amendments to that statute would have needed to expressly incorporate the subsequent amendments to the referenced statute by including a phrase such as "as amended" or "and its subsequent amendments" with the statutory reference.[2]

In 1967, as part of the Code Construction Act, the Texas Legislature enacted a rule of statutory construction that reversed the common law rule and promoted a self-updating statutory operation for Texas codes, so that statutes would be considered to speak as of the time they are read. The new rule stated that "[u]nless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute."[3] Although the current version of that law, now found at Section 311.027, Government Code, is limited in application,[4] Section 312.008, Government Code, a similar statute enacted in 1993,[5] applies to "the construction of *all* civil statutes."[6]

Following the enactment of Section 312.008, the legislative council legal division changed its drafting policies in situations not governed by Section 311.027. In those situations, the legal division discontinued routine addition of "as amended" or "and its subsequent amendments" if the referenced statute was a Texas statute. Legislative council drafters continued to add one of the phrases, however, when the drafters wished to incorporate subsequent amendments to referenced federal statutes and the statutes of other jurisdictions. For example:

> A plan manager shall take all actions required to ensure that the plan qualifies as a qualified state tuition program under Section 529, Internal Revenue Code of 1986, as amended.

It is likely that this distinction between references to Texas statutes and references to the statutes of other jurisdictions prevailed because council drafters were unsure whether the rule of Sections 311.027 and 312.008 would apply to references to statutes of other jurisdictions. Regardless of the reasoning behind it, the distinction was included in the *Texas Legislative Council Drafting Manual*, under the heading "Adoption of definition by reference." The manual treated Sections 311.027 and 312.008 as applying only to references to "a *Texas* statute, rule, or regulation"[7] and provided that:

> Cross-references to federal statutes and statutes of other jurisdictions should include "as amended" or a similar reference to clearly convey the drafter's intent to adopt subsequent amendments of the referenced statute.[8]

After several years of proceeding under this policy, attorneys on the legal staff have revisited the issue to reconsider the application of Sections 311.027 and 312.008, Government Code, to statutes of other jurisdictions and determine whether it is necessary or appropriate to add "as

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[1] The common law rule that incorporation by reference to specific law incorporates only the provisions referred to "at the time of adoption without subsequent amendments" is explained in Singer, *Sutherland Statutory Construction* Section 51.08, at 270 (6th ed. 2000).
[2] Reed Dickerson, *Legislative Drafting*, at 98 (reprint 1977) (1954).
[3] Sec. 1, Ch. 455, Acts 60th Leg., R.S., 1967.
[4] According to Section 311.002, Government Code, Chapter 311 applies only to those codes enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program.
[5] Sec. 3, Ch. 131, Acts 73rd Leg., R.S., 1993.
[6] Sec. 312.001, Government Code (emphasis added).
[7] Sec. 3.07(i), *Texas Legislative Council Drafting Manual* (September 1998) (emphasis added).
[8] *Id*.

amended" or "and its subsequent amendments" when referencing statutes other than those enacted by the Texas Legislature.

DISCUSSION

Referenced Statute Includes Subsequent Amendments

The express wording of Sections 311.027 and 312.008, Government Code, does not clarify whether those sections apply to the subsequent amendments of referenced provisions that were not enacted by the Texas Legislature. The sections simply state:

> Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.
>
> Sec. 312.008. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation.

The sections do not include a definition of the phrase "statute or rule" (the relevant phrase in Section 311.027) or "statute, rule, or regulation" (the relevant phrase in Section 312.008), and there are no other applicable statutes that define either of those phrases or any of their individual terms.

Left without a clear definition, one should first consider the rules of statutory construction prescribed by Sections 311.011 and 312.002, Government Code. Section 311.011 provides that words "shall be . . . construed according to . . . common usage." Section 312.002 states that "words shall be given their ordinary meaning." Courts have explained that, if a statute lacks clarity, courts must make "a true and fair interpretation of the written law . . . not forced or strained, but simply such as the words of the law in their plain sense fairly sanction and will clearly sustain."[9] With regard to the question of legislative intent, courts have similarly stated that one should first analyze any legislative intent that may be derived from the statute itself if a term is not defined in statute, because a court "must determine the meaning the legislature intended from the language it used"[10] and "proceed under the notion that what the legislature meant is best understood by the words it used."[11]

In Sections 311.027 and 312.008, Government Code, it seems that the relevant phrases "statute or rule" and "statute, rule, or regulation," given their ordinary meanings, would include a referenced "statute," "rule," or "regulation" that was not enacted by the Texas Legislature. Without some type of limiting modifier, the most common meaning of the term "statute," "rule," or "regulation" would include any type of statute, rule, or regulation regardless of whether that provision was enacted by the Texas Legislature. Legislative intent regarding this issue appears unclear in Sections 311.027 and 312.008. While there is nothing in the sections to expressly indicate that legislators intended the relevant phrases to apply to provisions not enacted by the Texas Legislature, there is also

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[9] *Railroad Commission of Texas v. Miller*, 434 S.W.2d 670, 672 (Tex. 1968), citing *Texas Highway Commission v. El Paso Bldg. & Const. Trades Council*, 234 S.W.2d 857, 863 (Tex. 1950).
[10] *Beef Cattle Co. v. N.K. Parrish, Inc*., 553 S.W.2d 220, 222 (Tex. Civ. App.--Amarillo 1977, no writ).
[11] *City of Amarillo v. Fenwick*, 19 S.W.3d 499, 501 (Tex. App.--Amarillo 2000, no pet.).

nothing in the statutes to discourage that interpretation. Proceeding under the notion that what the legislature meant is best understood by the words it used, it appears that the legislature intended to include all types of statutes, rules, and regulations because the legislature did not use a limiting phrase such as "Texas" or "of this state" when referring to statutes, rules, and regulations. **For these reasons, it is now the reconsidered legal opinion of the Texas Legislative Council legal staff that Sections 311.027 and 312.008, Government Code, apply to any type of referenced statute, rule, or regulation, including referenced federal statutes and statutes enacted by other jurisdictions.** Accordingly, as a general rule, when a drafter incorporates by reference a statute, rule, or regulation not enacted by the Texas Legislature, such as a federal statute or a statute enacted by another state legislature, the drafter should not use language such as "as amended" or "and its subsequent amendments" to incorporate the subsequent amendments to the referenced statute, rule, or regulation. The subsequent amendments are considered to be incorporated merely by a citation to the referenced statute, rule, or regulation.

As a side note, a drafter should be aware that the issue of whether a referenced statute speaks as of the time the referencing statute is read or as of the time the referencing statute was enacted will in certain circumstances raise constitutional questions about whether an improper delegation of legislative powers has occurred. As discussed in *Ex parte Elliott*,[12] even in the face of an explicit reference to a federal statute "as amended," the limits on the authority of the legislature to delegate its authority may sometimes prevent subsequent amendments from being included in a statutory reference to a statute, rule, or regulation that was not enacted by the Texas Legislature, such as a federal statute. Drafters should be mindful of the issues involving improper delegation and proceed with caution when referencing provisions not enacted by the Texas Legislature. A later memorandum will discuss drafting techniques that take into account those issues.

Referenced Statute Does Not Include Subsequent Amendments

If a drafter wishes to incorporate into a statute the terms or effects of a second statute as those terms and effects exist on a particular date, the better practice is to restate in the first statute the relevant content of the second statute as that statute exists on the chosen date, rather than to reference the second statute.

An exception to this rule of drafting exists if the content of the second statute is lengthy. In that case, the drafter should not restate the content of the second statute but should instead reference the second statute and add with that reference the phrase "as it exists on (insert the particular date)." The date that should be used is a date occurring before the date of enactment of the new statutory reference.

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[12] Ex parte Elliott, 973 S.W.2d 737 (Tex. App.--Austin 1998, pet. ref'd).

Appendix 10
LEGISLATIVE DRAFTING BIBLIOGRAPHY

Professional drafters and others with more than a passing interest in legislative drafting may wish to consult some of the following works on legal drafting. Call numbers are provided for works available in the State Law Library (SL) or Legislative Reference Library (LR).

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Crawford, Earl T. *The Construction of Statutes*. Karachi, Pakistan: Pakistan Publishing House, 1975. Reprint of the 1940 edition. General discussion of certain foundational subjects of statutory law, including the nature and source of statutes and the legislative process. Contains a detailed treatment of the principles of statutory interpretation and construction. (SL) KF 425 C7 1975

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