Texas Legislative Council Drafting Manual

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[Revised to update Appendix 7]

Texas Legislative Council Drafting Manual

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Texas Legislative Council
Lieutenant Governor Dan Patrick, Joint Chair
Speaker Dade Phelan, Joint Chair
Jeff Archer, Executive Director

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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:

- expanded discussion of the effective dates of constitutional amendments and guidance on what factors should be considered when determining a suitable effective date for a constitutional amendment (Sec. 4.08)
- more guidance on drafting ballot language and captions for constitutional amendments, including how caption language may differ from ballot language (Sec. 4.10(c))
- expanded discussion of germaneness issues when drafting floor or committee amendments or committee substitutes (Sec. 6.02)
- more detail on drafting amendments in house style vs. senate style, including new examples of amendments for the senate and new guidance on drafting third reading amendments (Sec. 6.03(e))
- new guidance on drafting floor amendments to strike the enacting clause (Sec. 6.04)
- new guidance on drafting motions to instruct conference committee conferees (Sec. 6.08)
- new examples of person first respectful language (Sec. 7.39)
- new citation guidance for citing to the official version of the Texas Constitution (Sec. 7.62)
- clarified guidance on using short titles in citations (Sec. 7.68)
- new information on the designation of the Texas Constitution maintained on the legislative council's website as the official version of the Texas Constitution, in compliance with the Uniform Electronic Legal Material Act (UELMA) (Sec. 8.14)
- new Texas city and county population information, as gathered from the 2020 Census (Appendixes 1-4)
- 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 Chris Johnson, legal editor. Production of the manual is under the general supervision of Angela Alexander, legal division special counsel. Comments and suggestions for improvement are solicited and may be directed to Ms. Alexander.

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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 inserted 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 87th 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 87th 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

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[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 88th 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 87th 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:

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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 a copy of the most recent enactment of the section or article (e.g., the enrolled bill or the act as published in the session laws, 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."

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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:

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   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.
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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] Ultimately, it is advisable to expressly authorize the attorney general or a local prosecuting attorney, or both, to sue for the penalty.[2]

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.

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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).

[2] "[J]udicial opinions suggest that a county attorney has no independent authority to initiate a suit on behalf of the state." Tex. Att'y Gen. Op. No. GA-0507 (2007); see also *State ex. rel. Durden v. Shahan*, Nos. 04-19-00714-CV, 04-19-00715-CV, 04-19-00716-CV, 2021 Tex. App. LEXIS 3662, at *11 (Tex. App.—San Antonio May 12, 2021, pet. filed). District attorneys are similarly situated. *Holmes v. Eckels*, 731 S.W.2d 101, 102 (Tex. App.—Houston [1st Dist.] 1987, writ ref'd n.r.e.). So is the attorney general. *City of Galveston v. State*, 217 S.W.3d 466, 470 (Tex. 2007) ("Nor does any statute specifically authorize such suits by the Attorney General, who exercises only those powers authorized by the Constitution or statute.").

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.

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.

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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.

(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."[1]

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,

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

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.

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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 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.

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]
- 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

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

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:

> SECTION 5. Section 1, Chapter 910 (H.B. 1208), Acts of the 74th Legislature, Regular Session, 1995 (Article 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 87th Legislature added two statutes designated as Section 31.126, Election Code. The Section 31.126 that relates to prohibited contributions is cited as "Section 31.126, Election Code, as added by Chapter 1000 (H.B. 2283), Acts of the 87th Legislature, Regular Session, 2021."

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:

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   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:
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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:[1]

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

[1] The use of "through" is fine in recitals when citing a consecutive series of sections, subsections, subdivisions, etc., but a dash may interfere with the automated statute compiler used after session to update the statutes.

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]

(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.[6] 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.[7]

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.[8] A complete sentence is obviously a threshold requirement.[9] 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.[10] 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

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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 Cnty. 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).

[6] 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.

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

[8] 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.

[9] 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:".

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

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. 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." If a definition is later needed between subdivisions with hyphenated number-letter designations, the drafter should continue alternating between numbers and letters to determine what designation to use. For example, when adding a definition between "(5-a) Raspberry" and "(5-b) Tangerine," the drafter should add "(5-a-1) Strawberry."
- 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 87th 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.

[1] House Rule 12, Section 1(b), 87th Legislature.
[2] House Rule 12, Section 1(c), 87th Legislature.
[3] Senate Rule 7.10, 87th Legislature.

How to Underline and Bracket Material[1]

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 applying for a license. A commission inspector may enter the premises of an applicant at any time for the inspection.

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.

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[1] See also the footnote to Section 3.14(h) of this manual regarding multiple amendments of a single provision in one bill.

(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.
```

[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. 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.

SECTION 5. Sections 251.255, 251.256, and 251.257, Business Organizations Code, are repealed.[1]

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:[2] 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] Each section in a series of consecutive sections being repealed must be set out in a repealer; the use of "through" or a dash between the first and last numbers in a repealer is not advised.

[2] 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.

(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.

(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

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

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 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, 2023) 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, 2024. A policy delivered, issued for delivery, or renewed before January 1, 2024, 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:

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[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.

(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 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, 2024, 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

[1] See *Wall v. State*, 18 Tex. 682 (1857); *Greer v. State*, 22 Tex. 588 (1858); *Sheppard v. State*, 1 Tex. Ct. App. 522 (1877); *United States v. Tynen*, 78 U.S. (11 Wall.) 88 (1870); cf. *United States v. Chambers*, 291 U.S. 217 (1934).

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 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]

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

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,[1] 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:

> 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.[2]

(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

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[1] 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); cf. *Rooney v. North Dakota*, 196 U.S. 319 (1905).

[2] 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.

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 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 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.[2]

(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.[3]

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 . . . ."[4]

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.[5]

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

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

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

[3] The name "grandfather clause" is derived from post–Civil War constitutional provisions in certain southern states. Those provisions impose 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.

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

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

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."[1]

- State time limits, if any, under which applicants may file for grandfather exemptions and include this deadline information in the clause itself.[2]
- 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?[3]
- 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?[4]

(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.
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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.
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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,

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[1] *Bloom*, *supra*.
[2] See Tex. Att'y Gen. Op. Nos. V-595 (1948), V-1486 (1952).
[3] *Bloom, supra*.
[4] See the annotations at 4 ALR2d 688.

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]

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

```
   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, 2023] [(stated date), 2023] [on the
91st day after the last day of the legislative session].
```

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 28, 2023—the 91st day after the scheduled adjournment sine die of the 88th 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;[3]

(2) for a vetoed bill, the date the veto is overridden;[4] or

---

[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).

[3] *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.").

[4] 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) 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.[1]

(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, 2023, 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 effect on that date, this Act takes effect [September 1, 2023] [(stated date), 2023] [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.[2] 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, 2023.

(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

---

[1] 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).

[2] See *Norton v. Kleberg Cnty.*, 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).

(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, 2023] [(stated date), 2023] [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, 2023, but only if House Bill 1676, 88th Legislature, Regular Session, 2023, 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, 88th Legislature, Regular Session, 2023, 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, 2024, but only if the constitutional amendment proposed by S.J.R. 9, 88th Legislature, Regular Session, 2023, 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 88th Legislature, Regular Session, 2023, 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

[1] See Section 4.08 of this manual concerning the effective date of amendments to the state constitution.

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:

SECTION 3. Section 171.002, Tax Code, as amended by this Act, takes effect January 1, 2024.

- 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, 2023] [(stated date), 2023] [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, 2024.

OR

SECTION 18. This Act takes effect September 1, 2023, 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, 2023.

- 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, 2024.

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

(1) this Act takes effect June 1, 2023, 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, 2023] [(stated date), 2023] [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, 2024.

(b) Section 231.014, Family Code, as added by this Act, takes effect September 1, 2023.

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, 2024, 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.

[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.

(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 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, 2024, except that Section 204.151, Occupations Code, as added by this Act, takes effect January 1, 2025. [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.

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

CHAPTER 4
JOINT RESOLUTIONS TO AMEND TEXAS CONSTITUTION

SEC. 4.01. INTRODUCTION. Section 1, Article XVII, Texas Constitution, provides that the legislature may propose amendments to the state constitution "by a vote of two-thirds of all the members elected to each House." 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 the legislative document traditionally used for that purpose in Texas. House Rule 9, Section 1, requires the use of a joint resolution to propose a constitutional amendment in the house.[1] Senate rules, while not expressly imposing such a requirement, clearly assume that a joint resolution will be used to propose a constitutional amendment in the senate.[2]

Joint resolutions proposing constitutional amendments differ from bills in form. The parts of a joint resolution and the sections of this chapter where those parts 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)
- effective date (Sec. 4.08)
- unnecessary provisions (Sec. 4.09)
- submission clause (Sec. 4.10)

This chapter concludes with a discussion in Section 4.11 of the permissible scope of a single proposed amendment.

SEC. 4.02. HEADING. The heading of a joint resolution is similar to the heading of a bill, except that the blank for the resolution number is labeled "_____.J.R." See Section 3.02 of this manual for an explanation of the use of blanks in the final draft of a bill. The heading of a final draft of a joint resolution as delivered to the author appears as follows:

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By: _____                    _____.J.R. No. _____
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[1] House Rule 9, Section 1, 87th Legislature, provides that a proposed constitutional amendment "shall take the form of a joint resolution."
[2] See Senate Rules 10.01–10.03, 87th Legislature, and the accompanying commentary in the *Texas Legislative Manual*.

SEC. 4.03. TITLE OR CAPTION. A proposed constitutional amendment is not subject to the constitutional title (or caption) rule applicable to bills.[1] Nevertheless, as a matter of practice in the house and senate, 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 title must contain a description of the subject of the amendment and 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. Unlike a bill, a joint resolution is not subject to the constitutional requirement of an enacting clause.[3] As a matter of practice, however, a resolving clause is used for a joint resolution in the same manner as an enacting clause is used for a bill.[4] The following language is used for the resolving clause:

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

SEC. 4.05. AMENDATORY SECTIONS. The substance of the proposed constitutional amendment is contained in one or more sections drafted in the same format used to draft amendatory sections of a bill. Each section specifies the particular provision of the constitution to be amended and states that it is amended "to read as follows," with the changes in the amended text indicated by underlining and bracketing as is done in a bill.[5]

Although the constitutional rule against "blind amendment" is probably inapplicable to proposed constitutional amendments,[6] 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:

---

[1] See Section 3.03 of this manual, discussing title and caption rules applicable to bills. See also Section 35, Article III, Texas Constitution, which, 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 87th 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).

[2] See Section 4.11 of this manual concerning the permissible scope of a single proposed amendment.

[3] See Section 29, Article III, Texas Constitution, which applies only to bills.

[4] See Section 3.04 of this manual for a discussion of the use of an enacting clause in a bill.

[5] See Section 3.10(h) of this manual.

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

> 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.

As is shown in this example, sections of the constitution are not drafted with official headings. However, unofficial headings are usually supplied in published versions of the constitution.[1]

SEC. 4.06. REPEALERS. A repealer in a joint resolution is drafted in the same format used to draft a repealer in a bill.[2] For example:

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

SEC. 4.07. TEMPORARY PROVISIONS. (a) Overview. A temporary provision may be included in a joint resolution for a variety of reasons. For example, a temporary provision is commonly used as a saving provision or a transition provision. A temporary saving provision "saves" from the application of a new or amended constitutional provision certain conduct or legal relationships that occurred before or existed on the effective date of the constitutional amendment. A temporary transition provision provides for the orderly implementation of the constitutional amendment.

(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 difference is the placement of temporary provisions within the existing body of laws. A temporary provision in a joint resolution is drafted as a direct amendment to the constitution. In contrast, a provision of only temporary significance in a bill ordinarily is not drafted as a direct amendment to an existing statute. Instead, it is drafted as a freestanding, nonamendatory section of the bill and is usually 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 the saving or transition provision acts on the law for a limited time, the provision is not placed in a part of the bill that would require it to be printed after it has become obsolete.

The conventional wisdom is that *all* terms relating to the operation of a constitutional amendment, once 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 characterized on the ballot proposition as an "amendment," as opposed to voting on the whole "resolution."

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

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[1] The Texas Constitution maintained by the legislative council at https://statutes.capitol.texas.gov was designated by the Texas Legislature in Chapter 159 (H.B. 402), Acts of the 86th Legislature, Regular Session, 2019 (Subchapter E, Chapter 2051, Government Code), as the official text of the constitution. See Section 8.14 of this manual.

[2] See Section 3.11 of this manual.

(c) Expiration date. A temporary provision inserted into the constitution should contain an expiration date. Because the constitution is relatively difficult to amend, a provision that is not of lasting significance should not be allowed to clutter the document after it prescribes the necessary details related to the operation of the constitutional amendment.

(d) Example. See the following example of a section proposing a temporary constitutional provision:

> 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 87th Legislature, Regular Session, 2021, 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 member of the armed services of the United States who is killed or fatally injured in the line of duty.
>
> (b) The amendment to Section 1-b(m), Article VIII, of this constitution takes effect January 1, 2022, and applies only to a tax year beginning on or after that date.
>
> (c) This temporary provision expires January 1, 2023.

SEC. 4.08. EFFECTIVE DATE OF CONSTITUTIONAL AMENDMENT. Section 1, Article XVII, Texas Constitution, does not state when an adopted constitutional amendment becomes part of the constitution. The issue of what date an adopted amendment to the constitution becomes effective was before Texas courts as early as 1892.[1] The consistent interpretation made by Texas courts has been that an amendment takes effect as part of the constitution on the date of the official canvass of election returns showing adoption.[2] Under current law, that date is:

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

(2) for an election held on the date of the general election for state and county officers, not earlier than the 18th or later than the 33rd day after election day.[3]

In some cases this effective date is appropriate, as when a constitutional amendment merely authorizes the legislature by general law to take an action. However, a different effective date may be necessary in other cases. For example, a constitutional amendment involving the collection of taxes may need to take effect at the beginning of a new tax year to avoid affecting taxes for the year in which the election on the constitutional amendment is held. In cases that call for an effective date later than the date of the canvass provided by the Election Code, the drafter should specify the appropriate effective date in the text of the amendment.

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[1] *Tex. Water & Gas Co. v. City of Cleburne*, 21 S.W. 393 (Tex. App. 1892, no writ).
[2] *Torres v. State*, 278 S.W.2d 853 (Tex. Crim. App. 1955).
[3] Section 67.012, Election Code.

Of course, the amendment may be drafted to include language such as "beginning with the 2023 tax year" or "beginning with the report due for December 2024." The cleaner approach, however, is to insert a separate section or subsection that provides a specific effective date for the amendment. With this approach, the drafter should add the separate section or subsection in the form of a temporary provision as discussed in Section 4.07 of this manual.

SEC. 4.09. UNNECESSARY PROVISIONS. (a) "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 effect to the amendment without the need for other legislation to implement those details. 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 provide those necessary details.

(b) Validation of anticipatory legislation. In the past, language was sometimes added to a constitutional amendment stating 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.

Such a provision is not necessary. The legislature may condition any legislation on the adoption of a constitutional amendment, and the bill is not void because of its anticipatory nature.[1]

SEC. 4.10. 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 the client's prerogative to decide the date of the election at which the constitutional amendment is to be submitted to the voters. If the client does not prefer a particular date, the general practice of the legislative council drafting attorneys 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.[2] 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

[1] See *Galveston, B. & C. N. G. R. Co. v. Gross*, 47 Tex. 428 (1877); see also Section 3.14(g) of this manual for a discussion of effective dates for statutes contingent on the adoption of constitutional amendments.

[2] See Section 41.001, Election Code.

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 other statewide election is ordinarily scheduled for that date.[1]

Occasionally, for a constitutional 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 delay submission of 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 a constitutional 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,[2] 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. In response to legal challenges to a proposed constitutional amendment on the ground that the ballot proposition is inaccurate or misleading, 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.[3] The Texas Supreme Court has further held that the ballot language must "substantially submit" the measure by describing the "character and purpose" of the amendment.[4]

A drafter should give considerable attention to the wording of a ballot proposition when drafting a joint resolution. If the joint resolution is approved by the legislature, the ballot proposition as it is written in the joint resolution is what will appear on the ballot. The drafter should strive to draft a ballot proposition that is accurate, concise, and written in plain English, so that the effect of the joint resolution may be easily understood by the typical voter. The ballot proposition does not need to contain a lengthy or exhaustive explanation of the effect of the amendment, and the degree of precision that may be needed in the amendment itself is often inappropriate on the ballot. Legal or technical jargon should be avoided in favor of clear, simple language. 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."

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[1] See Section 7.86 of this manual, which lists the November election dates through 2034.

[2] 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.

[3] See, e.g., *Hill v. Evans*, 414 S.W.2d 684 (Tex. App.—Austin 1967, writ ref'd n.r.e.) and *Dacus v. Parker*, 466 S.W.3d 820 (Tex. 2015).

[4] *Dacus*, 466 S.W.3d at 828.

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

Because they serve similar purposes, the caption and ballot proposition for a proposed constitutional amendment are often drafted using identical language. However, in some cases, it may be advisable to include more specific language in the ballot proposition to give the voters a more complete summary of the proposal. For example, the caption to H.J.R. 77, 87th Legislature, Regular Session, 2021, read, "[P]roposing a constitutional amendment to increase the maximum amount of the local option residence homestead exemption from ad valorem taxation by a political subdivision." However, to provide the voters with a clearer sense of what the proposal would do, the ballot proposition included an additional detail in the form of the actual proposed increase in the maximum amount of the exemption and read as follows:

"The constitutional amendment to increase the maximum amount of the local option residence homestead exemption from ad valorem taxation by a political subdivision from 20 percent to 100 percent."

SEC. 4.11. 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.)

[1] *Whiteside v. Brown*, 214 S.W.2d 844 at 850 (Tex. App.—Austin 1948, writ dism'd).

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.[1]

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.[2] The 1975 proposal was an attempt to salvage the work of the 1974 constitutional convention, authorized by a 1972 constitutional amendment.[3] 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 vote 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 to Section 1, Article XVII, that changed the wording of the first sentence of that section to expressly authorize the proposal of amendments "revising" the constitution.[4] This amendment was later adopted by the voters.

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 the approval by the court of civil appeals of 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.

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[1] See Braden et al., *The Texas Constitution: An Annotated and Comparative Analysis*, pp. 824–826.
[2] See H.J.R. 7, 64th Legislature, Regular Session, 1975.
[3] See H.J.R. 61, 62nd Legislature, Regular Session, 1971.
[4] See H.J.R. 68, 62nd Legislature, Regular Session, 1971.

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 relating 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 88th 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 87th 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

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

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 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 18, 2023, and ending on Tuesday, January 24, 2023.

Inviting the chief justice of the Supreme Court of Texas to address a joint session of the legislature on March 6, 2023.

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, CONFERENCE COMMITTEE REPORTS, AND MOTIONS

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 a legislative document under consideration. 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 offered in 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 in exactly the same manner as any other simple amendment. It is considered to be a substitute because of how it is offered rather than how it is drafted.

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 and certain motions 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. (a) Germaneness rule. 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 87th 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]

(b) Determining whether an amendment or substitute is germane. The subject or original purpose of a bill is determined by the body of the bill, notwithstanding the common misconception 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*. Whether a proposed amendment or substitute is germane to the existing law 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 should not attempt to give definitive advice about the germaneness of a particular amendment a member asks to have drafted. However, the drafter should know at least enough about the subject to advise a member when a possible germaneness problem exists and to advise the member to consult the appropriate parliamentarian or presiding officer. 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 unwise to attempt to give categorical opinions on specific germaneness questions.

(c) Procedural consequences of an adverse germaneness ruling. 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 asserting that an amendment is not germane is sustained, the amendment is dead. For a simple floor or committee amendment, the underlying bill is not affected and the adverse ruling on the amendment will not kill the bill. However, an adverse germaneness ruling on a committee substitute is a different matter because the substitute, once reported, replaces the original bill. If a committee substitute is killed on the floor of either chamber by a point of order that is

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[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] The following general statement on germaneness can be found on page 1733 of the house journal for the 58th Legislature, Regular Session, 1963:

> In general, the only purpose of an objection to germaneness is that the proposed amendment is a motion upon a subject different from that under consideration. Its purpose is to prevent hastily and ill-considered legislation, to prevent matters from being presented for the consideration of the body which might not reasonably be anticipated.
>
> It is well settled that an amendment to an existing law and relating to the terms of the law rather than to the bill are not germane. Where an amendment does not vitally affect the entire present law, amendments to that same law have been held not necessarily germane.
>
> In other words the rule of germaneness applies to the relation between the proposed amendment and the pending bill; and not to the relation between such amendment and existing law of which the pending bill is amendatory.

raised on the issue of germaneness, the original bill does not automatically become eligible for consideration. Instead, the measure must be returned to the committee from which it was reported in the senate or to the calendars committee in the house, as applicable, to address the germaneness issue, a process that at least temporarily stops its forward progress.[1] In either house, the sustaining of a germaneness point of order 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, Texas Constitution, are shielded from judicial review by the enrolled bill rule.[2] 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.[3]

SEC. 6.03. COMMITTEE AND FLOOR AMENDMENTS. (a) Amendment by reference. The constitutional rule prohibiting amendment by reference[4] 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 amendable unit.

(b) Amendment heading. 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 Senate Rule 7.11(b) and House Rule 4, Section 41.
[2] 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.
[3] See Section 8.02 of this manual for a discussion of the one-subject rule.
[4] Section 36, Article III, Texas Constitution; see also Section 3.10(d) of this manual.

(c) Amendment recital. After the heading, there is a recital stating 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 will 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 either house[1]	The version considered on second reading, as amended[2]

Any amendment, other than a third reading floor amendment or an amendment to the amendment, should be introduced by the recital "Amend ___.B. _____ (version of document) as follows:", with the specific instructions following directly in the text of the amendment and, if more than one change is to be made, listed in order of appearance. A third reading floor amendment should generally be introduced by the recital "Amend ___.B. _____ on third reading as follows:", followed by specific instructions in the text of the amendment in the same manner as any other amendment.

An amendment offered but not yet adopted may be amended by offering an amendment to the amendment. An amendment to the amendment should be introduced by the recital "Amend Amendment No. _____ by (Member's Name) to ___.B. _____ as follows:", followed by specific instructions to change the text of the target amendment.

(d) Amendment text. To draft the text of 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 of the bill or resolution must be changed. Unless the amendment is very simple, it is advisable to actually mark up the text of the bill or resolution with whatever changes are required and use that 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.

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[1] This type of amendment is rare in the senate because the senate often performs a third reading of the bill immediately after the second reading of the bill.

[2] If an amendment was adopted on second reading, it is often necessary to refer to the amendment in identifying the text to be amended on third reading. See the discussions of third reading amendments in Subsections (e)(1) and (3) of this section.

[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 the effect) of the measure is to be changed. See, for example, page 1055 of the house journal for the 86th Legislature, Regular Session, 2019.

(1) Standard vocabulary. 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 (when it is not possible to insert the text between two existing points), 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"

(2) Use of page and line numbers; exception. Most legislative documents have both page and line numbers to facilitate reference to specific text, and the drafter should use them to the extent they are available. Otherwise, the drafter must use some other point of reference to indicate the location of the text of the bill or resolution that would be changed by the amendment.

For example, the drafter could circumvent the problem created by a lack of page and line numbers by using additional words to describe the location of the text of the bill or resolution being changed (e.g., "the third sentence of SECTION 4") or by using a style of amendment that will provide additional clarity as to the location of that text (see the discussion of the style of amendment used for drafting third reading amendments in Subsections (e)(1) and (3) of this section, in which the drafter compensates for a lack of page and line numbers by identifying both the applicable section number of a bill and the applicable section of added or amended law that is targeted by the amendment).

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 numbers identical to the sections of law that will be altered by the amendment. Even with a ***nonamendatory*** bill or resolution, it may not otherwise be clear what a given reference to a "section" in the amendment is intended to mean. If the potential for ambiguity or confusion exists, the reference to a section must be qualified. For example, the drafter may refer to "SECTION 5 *of the bill*" or, if the instruction will consist of both a section of a bill and a section of law that is proposed for amendment, the item may be phrased as follows: "In SECTION 5 *of the bill*, in *amended* Section 11.004, Health and Safety Code, (take the relevant action)."

(3) Underlining and bracketing. The underlining and bracketing rules of the house of representatives and senate[1] 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.[2] 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.

(4) Placement of punctuation in quoted material. Contrary to ordinary rules of punctuation, the sentence-ending period in the examples in Subsections (e)(2) and (4) of this section is placed *outside* any 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.

(5) Renumbering sections. Drafters are sometimes confused by the effect of an instruction to renumber sections. 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 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.

(6) Balancing clarity and precision with ease of understanding. 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 sentence 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;

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[1] House Rule 12, Section 1(b), and Senate Rule 7.10(b); see also Section 3.10(h) of this manual.
[2] See examples of underlining and bracketing in Subsections (e)(2) and (4) of this section.

(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 the drafting conventions that the council has developed to provide order and consistency to the process.

(e) Overview of house style vs. senate style. A drafter should generally use house style when drafting amendments to be used in the house, and senate style when drafting amendments to be used in the senate, regardless of whether the underlying bill is a house bill or a senate bill. Below are general instructions for drafting in both house style and senate style. Of course, exceptions to this approach exist, particularly in the area of third reading amendments drafted for house or senate bills that are before the house of representatives (see below). Also, be sure to remember the emphasis the legislative council places on the ease of understanding all of the directions contained in an amendment: if the use of a certain style makes the resulting pattern of the amendment unreasonable and convoluted, the drafter should deviate from the proposed pattern in that particular situation.

(1) House style. In drafting **second reading amendments** for the house of representatives, a drafter should first complete the description of the location of the text to be amended within the bill or resolution before the drafter describes the action to be taken with respect to that text. As seen in the example below, the instructions begin by identifying the page and line number of the change. The instructions continue with a description of the specific location of the change within the line of text to be amended, the type of action required, and finally the substantive change. This pattern allows for a quick understanding of the amendment.

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".

In drafting **third reading amendments** for the house of representatives, a drafter is unable to rely on page and line numbers for the amendment instructions. Instead, the drafter must rely on the section numbers of the bill and, if the language to be changed is amendatory, a description of the section of law that is being added or amended. This will ensure that the correct section of the bill is referenced and that there is no confusion as to

what type of section is at issue in the instructions (i.e., section of bill or section of law). The result mirrors the senate style that is used to draft third reading amendments in the senate, as shown in Example 8 in Subdivision (2) of this subsection. In addition, if the third reading floor amendment is drafted to amend a section of a bill that was added or amended on second reading, the amendment must specify that the drafter is amending the bill as it was amended by the particular amendment, as shown in Example 9 in Subdivision (2) of this subsection.

(2) Examples of amendments drafted in house style; exceptions. 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 examples of senate amendments.

EXAMPLE 1. Committee amendment to delete an entire sentence:

COMMITTEE AMENDMENT NO._____ BY: _____

Amend H.J.R. 18 (introduced version) on page 4, line 17, by striking "The legislature by general law may provide for legislative review or approval of rules adopted by agencies in the executive department.".

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 [~~within fifteen days of~~]".

(2) On page 4, line 16, following the period, 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 (page 2, lines 15-27).

(2) On page 4, lines 13-14, strike "The district is created to serve a public use and benefit.".

(3) Renumber the SECTIONS of the bill appropriately.

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 [~~$25~~]".

EXAMPLE 5. Floor amendment to a floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend Amendment No. _____ by Jones[1] to C.S.H.B. 99, on page 3, line 27, by striking "3.4 million" and substituting "2.2 million".

EXAMPLE 6. 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)[2] by adding the following appropriately numbered item to the amendment and renumbering the items of the amendment accordingly:

(_) On page 11, between lines 1 and 2, insert the following appropriately lettered subsection and reletter the subsections of added Section 2351.153, Occupations Code, and cross-references to those subsections accordingly:

( ) 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 7. Floor amendment to a floor substitute to strike one section of the substitute:

FLOOR AMENDMENT NO._____ BY: _____

Amend the proposed floor substitute[3] to H.B. 234 on page 1 by striking lines 1 through 12 and renumbering the sections and cross-references to those sections appropriately.

[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, if a bill is being amended multiple times, it may be preferable to additionally identify the pending floor amendment by number. Generally, more specificity is better when it comes to identifying pending floor amendments or target floor amendments. A drafter can always use parentheses to include additional details that will help facilitate the identification of an amendment, such as the scanned bar code number or legislative council drafting number of that amendment.

[2] 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 more precisely identify the prefiled target amendment by including a reference to the prefiled amendments packet page that sets out the target amendment.

[3] It is unambiguous for a pending floor substitute to be so identified, since only one substitute may be pending at any one time. However, if the proposed floor substitute has a legislative council drafting number, it is appropriate to add that number in parenthesis to identify the substitute.

EXAMPLE 8. Third reading floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

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

(1) Strike the SECTION of the bill amending Section 26.04(a), Tax Code.

(2) In the SECTION of the bill amending Section 26.04(c), Tax Code, strike Subdivision (2) 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

(3) Renumber the SECTIONS of the bill accordingly.

EXAMPLE 9. Third reading floor amendment to amend a section of a bill that has been added or amended on second reading:

FLOOR AMENDMENT NO._____ BY: _____

Amend S.B. 3 on third reading, in the SECTION of the bill amending Section 56.0092(a)(3), Education Code, as amended by Amendment No. 1 by Smith on second reading, by striking "September 1, 2015" and substituting "January 1, 2016".

(3) Senate style. In drafting **second reading amendments** for the senate, the officers of the senate prefer that committee and floor amendments begin the instructions with a reference to the appropriate section of the bill. As seen in the example below, the instructions continue with a reference to the section of added or amended law being changed, the page and line number of the change in parentheses, the type of action required, and finally the substantive change. This pattern provides precise instructions for the senate officer responsible for enrolling and engrossing.

WRITE

In SECTION 14 of the bill, in added Section 709.001(b)(3), Transportation Code (page 6, line 17), strike "0.16" and substitute "0.15".

DO NOT WRITE

In SECTION 14 of the bill, on page 6, line 17, strike "0.16" and substitute "0.15".

OR

On page 6, line 17, strike "0.16" and substitute "0.15".

In drafting **third reading amendments** for the senate, a drafter is unable to rely on page and line numbers for the amendment instructions in the same manner as is true for third reading amendments for the house. As a result, the drafter should omit the page and line number references from the typical second reading instructions, as shown in Example 8 in Subdivision (4) of this subsection.[1]

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

EXAMPLE 1. Committee amendment to delete an entire sentence:

COMMITTEE AMENDMENT NO._____ BY: _____

Amend S.J.R. 38 (introduced version) in SECTION 1 of the resolution, in amended Section 1(j), Article VIII, Texas Constitution (page 1, lines 14-20), by striking "Subject to the limitations imposed by this subsection, the Legislature by general law may provide for one percentage to be used when calculating the limitation on the maximum appraised value of a residence homestead with a lesser appraised value and another percentage to be used when calculating that limitation on a residence homestead with a greater appraised value.".

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 (senate committee report) as follows:

(1) In SECTION 4 of the bill, in amended Section 522.0425, Transportation Code (page 3, line 12), strike "within fifteen days of" and substitute "not later than the 20th day after [~~within fifteen days of~~]".

(2) In SECTION 5 of the bill, in amended Section 522.053(a), Transportation Code (page 4, line 16), following the period, insert "The application must be in writing.".

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

FLOOR AMENDMENT NO._____ BY: _____

Amend C.S.H.B. 20 (senate committee report) as follows:

[1] Third reading amendments are rare in the senate because the senate frequently performs third reading of a bill immediately after second reading of that bill.

(1) Strike SECTION 5 of the bill, adding Sections 201.9932 and 201.9991, Transportation Code (page 3, lines 6-11).

(2) In SECTION 6 of the bill, strike added Section 223.242(g), Transportation Code (page 3, lines 37-38).

(3) Renumber the SECTIONS of the bill accordingly.

EXAMPLE 4. Floor amendment to a committee amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend Committee Amendment No. 4 to H.B. 399 (senate committee printing), in Item (2) of the amendment amending Section 522.029(j), Transportation Code (page 14, line 7), by striking "$25" and substituting "$50 [~~$25~~]".

EXAMPLE 5. Floor amendment to a floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend Amendment No. ____ by _____ to S.B. 30 (87R999) in Item (11) of the amendment, in added Section 1251.052(a)(2), Government Code (page 4, line 3), by striking "3.4 million" and substituting "2.2 million".

EXAMPLE 6. Floor amendment to add a new item to a floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend Amendment No. ____ by _____ to S.B. 30 (87R999) by adding the following appropriately numbered item to the amendment and renumbering the items of the amendment accordingly:

(__) Add the following appropriately numbered SECTION to the bill and renumber the SECTIONS of the bill accordingly:

SECTION __. The change in law made by this Act applies only to a proposed state agency rule for which notice is filed with the secretary of state under Section 2001.023, Government Code, on or after the effective date of this Act.

EXAMPLE 7. Floor amendment to a floor substitute:

FLOOR AMENDMENT NO._____ BY: _____

Amend the proposed floor substitute to C.S.S.B. 8 as follows:

(1) In SECTION 1 of the bill, in added Section 12.42(c)(3), Penal Code (page 3, line 5), between "Section 22.011" and "or 22.021", insert ", 22.02,".

(2) In SECTION 3 of the bill, in added Section 12.50(a), Penal

Code (page 5, line 29), strike "Section 12.42(c)(2) or (4)" and substitute "Section 12.42(c)(2), (3), or (4)".

EXAMPLE 8. Third reading floor amendment:

FLOOR AMENDMENT NO._____ BY: _____

Amend S.B. 1934 on third reading by striking the SECTION of the bill amending Section 521.101(f), Transportation Code, and renumbering the SECTIONS of the bill accordingly.

SEC. 6.04. FLOOR AMENDMENTS STRIKING ENACTING CLAUSE. Floor amendments striking the enacting clause of a bill (or striking the resolving clause of a resolution) have the effect of defeating the bill or resolution if adopted.[1]

The house and senate rules contain special procedures for consideration of floor amendments striking the enacting clause. For example, the house rules provide that this type of amendment is considered before any other floor amendment[2] and opens the entire bill (not just the amendment) to debate.[3] The senate rules, on the other hand, provide that this type of amendment is considered after any other floor amendment.[4]

Given the special procedures for consideration of floor amendments striking the enacting clause, it is important that presiding officers and parliamentarians be able to readily identify this type of amendment during floor debate. Therefore, these amendments should plainly reference striking "the enacting clause," rather than just the page and line number on which the enacting clause appears.

WRITE

Amend C.S.H.B. 500 by striking the enacting clause.

OR

Amend C.S.H.B. 500 (house committee report) by striking the enacting clause (page 1, line 4).

DO NOT WRITE

Amend C.S.H.B. 500 (house committee report) by striking page 1, line 4.

SEC. 6.05. COMMITTEE AND FLOOR SUBSTITUTES. (a) Substitutes generally. A committee or floor substitute is simply an alternative version of a bill, a resolution, or a committee or floor amendment.

(b) Committee substitute. 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:

[1] E.g., House Rule 7, Section 3.
[2] House Rule 11, Section 7(1).
[3] House Rule 5, Section 27, explanatory note 2.
[4] Senate Rule 6.01, editorial note.

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."

(c) Floor substitute. A floor substitute is a floor amendment that has the effect of replacing the entire body of text of a bill or joint resolution on the floor.

If appropriate, a drafter should advise about any applicable layout rule.[1]

Because it is customary in the senate, and mandatory in the house of representatives, to defer consideration of a caption amendment until all amendments to the body of a bill have been considered,[2] 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.[3]

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.

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[1] See House Rule 11, Section 6(e).
[2] This requirement appears in House Rule 11, Section 9(a).
[3] See House Rule 2, Section 1(a)(10).

Amendments to floor and committee amendments take the forms described in Section 6.03(e) of this manual, but an amendment to an amendment to an amendment must be in the form of a floor substitute:[1]

FLOOR AMENDMENT NO._____ BY:_____

Substitute the following for the Davis amendment to the Jones amendment to C.S.H.B. 4:

SEC. 6.06. CONFERENCE COMMITTEE REPORTS. (a) Conference committee report heading. A conference committee report, like a committee substitute, consists of an entire version of the affected bill or 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.[2] For example:

CONFERENCE COMMITTEE REPORT

BILL TEXT

H.B. No. 25

A BILL TO BE ENTITLED

AN ACT

relating to....

(b) Content of conference committee report. 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[3] 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. Generally, taking any of these actions would exceed the limitations on the conference committee's jurisdiction.[4] However, 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.[5] While it is not a drafter's role or 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.

---

[1] See House Rule 11, Section 1.
[2] The rationale for deletion of the author's name is that the conference committee is the author of a conference committee report.
[3] Senate Rule 12.03 and House Rule 13, Section 9.
[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] See Senate Rule 12.05 and House Rule 13, Section 9(c).

(c) Adoption or rejection of conference committee report. A conference committee report is presented to each house for adoption or rejection on a "take-it-or-leave-it" basis. ***A conference committee report is not amendable.***

SEC. 6.07. 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. Side-by-side analyses are drafted by the research division of the legislative council.

(b) Rules requirements. The rules of the house and the senate[1] 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) 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."

[1] House Rule 13, Section 11, and Senate Rule 12.10.

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 the limitations on the conference committee's jurisdiction 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, 2024, 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.

SEC. 6.08. MOTIONS. Although most motions made by a member of the legislature during floor proceedings of the house or senate are made orally, legislative council staff is occasionally asked to draft certain motions in writing, the most common of which is a motion to instruct conference committee conferees.[1] A motion to instruct conferees is an instruction to the applicable house's conference committee members related to the content of the conference committee report.

House Rule 13, Section 8, provides that instructions to a conference committee must be made after the conference is ordered and before the conferees are appointed by the speaker. The senate rules do not specifically address when it is appropriate to make a motion to instruct; however, it is also done before appointment. See, e.g., S.J. of Tex., 85th Leg., R.S. 3225 (2017).

The instructions often request that the conference committee retain some particular aspect of the bill as it left that chamber. For example:

MOTION TO INSTRUCT CONFEREES ON S.B. 101
REGARDING THE REGULATION OF MASSAGE THERAPY

The house conferees to the conference committee on S.B. No. 101 are instructed to retain the house version of added Section 455.156(c), Occupations Code, regarding the use of distance learning to satisfy certain massage therapy licensing requirements.

MOTION TO INSTRUCT CONFEREES ON H.B. 1 REGARDING
GENERAL REVENUE FUNDING FOR CRIME LABORATORY SERVICES

The house conferees to the conference committee on H.B. No. 1 are instructed to include in the conference committee report a provision that provides for the same amount of appropriated general revenue for Strategy D.1.1, Crime Laboratory Services, under the appropriations to the Department of Public Safety, as provided by the house version of the bill.

[1] The parliamentarians of the house and senate are the best resources for a member to consult when determining the appropriate format for a particular motion.

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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
- nationality, race, and ethnicity
- 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; 88th Legislature, Regular Session; 88th Regular Session; 88th Legislative Session; the legislature; the state legislature

Texas Senate; Senate of the State of Texas; Senate of the 88th Texas Legislature; the senate; state senate

Texas House of Representatives; House of Representatives of the State of Texas; House of Representatives of the 88th Texas Legislature; the house; the house of representatives

United States Congress; Congress of the United States; 71st Congress; 118th 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 88th 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

Nationality, Race, and Ethnicity

Capitalize proper names of races, tribes, peoples, and nationalities:

Black 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 “Mexican American.”)

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 2023
June 30, 2023 (not June 30th, 2023)
June 30 to July 15, 2023
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:

87th 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, 2023,
July 2023
```

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
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

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[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 the statutory predecessor to 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.

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.

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* 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, 2024,[4]	after December 31, 2023,
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, 2023, 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, 2023.

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
hearing impaired
auditory impairment
speech impaired
```

PREFERRED TERMS AND PHRASES:

```
persons with disabilities
persons with developmental disabilities
persons with mental illness
persons with intellectual disabilities
deaf
hard of hearing
```

(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

[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.

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.

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

The council recommends the following format when citing to the official version of the Texas Constitution:[3]

Section [section number], Article [article number in Roman numerals], Texas Constitution (Tex. Official)

A citation to the official version of the first section of the third article of the Texas Constitution would therefore appear as follows:

Section 1, Article III, Texas Constitution (Tex. Official)

[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] See Section 8.14 of this manual regarding the official text of the constitution maintained by the legislative council.

A recommended citation appears in the header of each council-authenticated constitutional provision in the PDF version available at https://statutes.capitol.texas.gov.

SEC. 7.63. REVISED STATUTES. To cite a title of the 1925 revision of the civil statutes:

Title 109, 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:[1]

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 3.02(a),[2] Chapter 452 (S.B. 738), Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n-1, Vernon's Texas Civil Statutes),

A session law for a session for which special laws and general laws were published in separate volumes:[3] 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:[4] 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:[4] 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.

[1] 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.

[2] In some instances, it is preferable to write "Subsection (a), Section 3.02." See Section 7.67 of this manual.

[3] See the list of legislative sessions in Section 7.85 of this manual, footnote 1.

[4] 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.

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, 87th Legislature, Regular Session, 2021

When citing a **joint resolution**, include the resolution number, the legislature, and the year:

H.J.R. 99, 87th Legislature, Regular Session, 2021

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

To cite a particular general appropriations act:

Chapter 1053 (S.B. 1), Acts of the 87th Legislature, Regular Session, 2021 (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-32[1], Chapter 1053 (S.B. 1), Acts of the 87th Legislature, Regular Session, 2021 (the General Appropriations Act),

To cite a particular rider in a general appropriations act:

Rider 27, page III-55,[1] Chapter 1053 (S.B. 1), Acts of the 87th Legislature, Regular Session, 2021 (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]

[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.

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`[1]

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`[2]

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, but there are a few exceptions to this rule. Two of the exceptions are the Code Construction Act and the Texas Sunset Act. Internal statutory references to those acts should appear as follows:

`Chapter 311, Government Code (Code Construction Act),`

`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

[1] 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.

[2] For names of each indented organizational unit, see Section 7.83(a) of this manual.

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)

OR

Tex. Att'y Gen. ORD1988-508

OR

Tex. Att'y Gen. ORD-508 (1988)

Subsequent pinpoint citation: Open Records Decision No. 508 at 3

OR

ORD1988-508 at 3

OR

ORD-508 at 3

Multi-reference citation: Open Records Decision Nos. 508 (1988); 394, 366 (1983)

[1] After 1978 the year is embedded in the letter number and is repeated in parentheses.

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)

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)),

[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.

Sections 203(b) and (k), National Housing Act (12 U.S.C. Section 1709)[1]

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.

TEXAS COURTS[2]

(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)[3, 4]

[1] 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.

[2] Refer to *Texas Rules of Form* for petition and writ history designation forms, including forms for citing pending petitions for review.

[3] 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.

[4] 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.

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[1]

No further action: *Burgess v. Jaramillo*, 914 S.W.2d 246 (Tex. App.—Fort Worth 1996, no writ)

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)[2]

With subsequent history: *Brinegar v. Porterfield*, 705 S.W.2d 236 (Tex. App.—Texarkana), *aff'd*, 719 S.W.2d 558 (Tex. 1986)[3]

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)

---

[1] 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."

[2] 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."

[3] 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.

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[1]

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)

With subsequent history: *Johnson v. State*, 755 S.W.2d 92 (Tex. Crim. App. 1988) (en banc), *aff'd*, 491 U.S. 397 (1989)[2]

(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: *Torres 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)

[1] The courts were not designated by cities before 1912, so no city name will appear in these cites.
[2] A parenthetical reference to the weight of the authority, such as "en banc" in this example, may be included.

(b) U.S. Courts of Appeals

Without subsequent history: *Resolution Trust Corp. v. Daddona*, 9 F.3d 312 (3d Cir. 1993)[1]

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] 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

underlining is before [~~bracketing~~]

cross-references and agency names are correct

(b) Check subsections and subdivisions for:

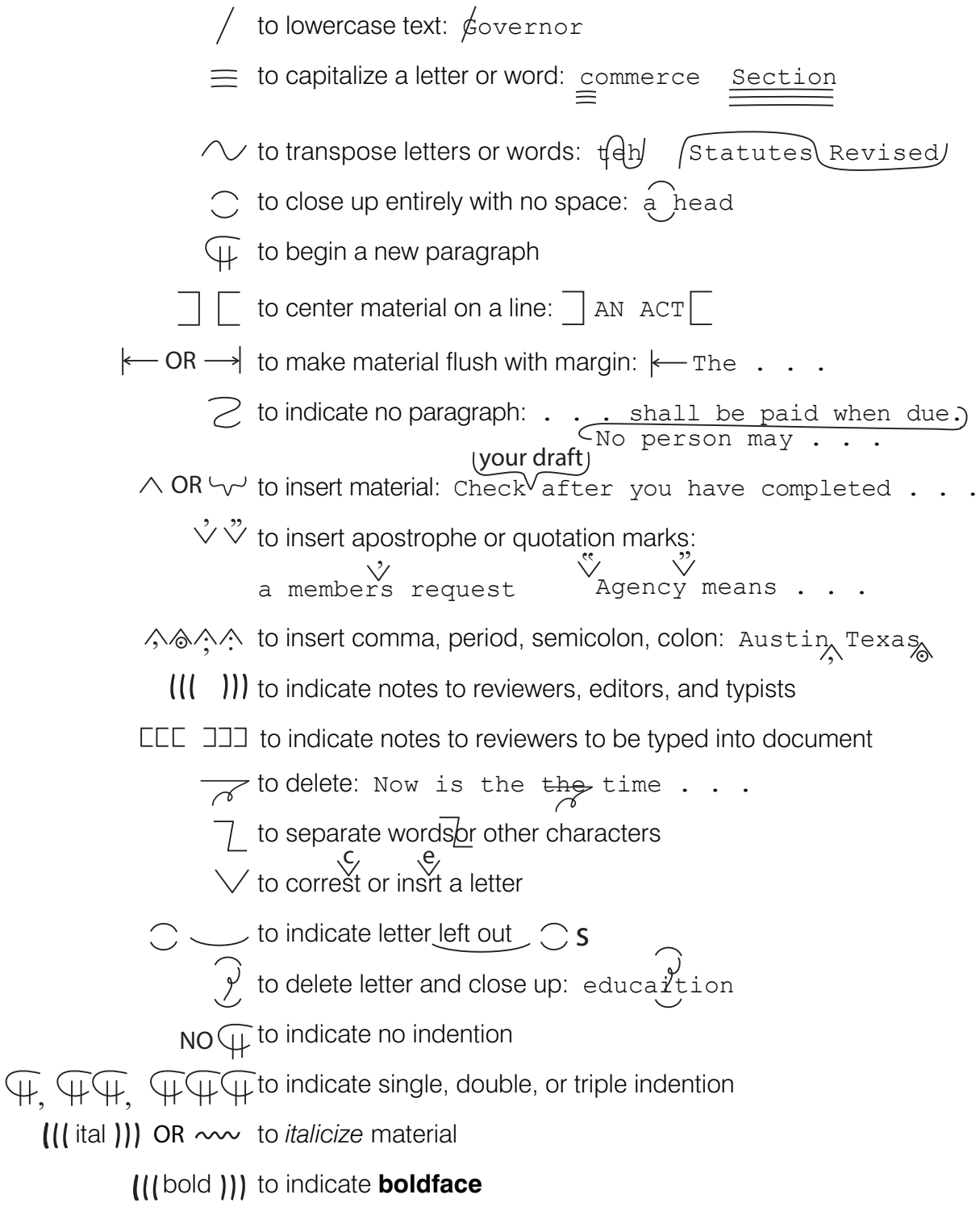
consecutive lettering and numbering; if there's an (a), there must be a (b)

"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



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 Dade Phelan
  Speaker of the Texas House of Representatives
  (((address)))

  Dear Speaker Phelan:

[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 28(h), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) A retirement system established under 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

[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.

79th Regular	2005	82nd Regular	2011	85th Regular	2017
1st Called	2005	1st Called	2011	1st Called	2017
2nd Called	2005				
3rd Called	2006	83rd Regular	2013	86th Regular	2019
		1st Called	2013		
80th Regular	2007	2nd Called	2013	87th Regular	2021
		3rd Called	2013	1st Called	2021
81st Regular	2009			2nd Called	2021
1st Called	2009	84th Regular	2015	3rd Called	2021

SEC. 7.86. NOVEMBER ELECTION DATES, 2021–2034. The first Tuesday after the first Monday in November is shown below for years through 2034:

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
November 3, 2026	November 8, 2033
November 2, 2027	November 7, 2034

See Section 4.10 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

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

[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 Tex. Ct. App. 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 Cnty. 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, 2025, three to terms expiring February 1, 2027, and three to terms expiring February 1, 2029.

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, 2025, two to terms expiring February 1, 2027, and three to terms expiring February 1, 2029.

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, 2025, and one to a term expiring February 1, 2027.

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 Cnty.*, 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:

```
Until all appointees have taken office, a quorum of the
(board) (commission) is a majority of the number of
members who are qualified.
```

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, 2023.

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

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.

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]

8

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[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; see *Trio Indep. Sch. Dist. v. Sabinal Indep. Sch. Dist.*, 192 S.W.2d 899, 900 (Tex. App.—Waco 1946, no writ); see also *Waugh v. City of Dallas*, 814 S.W.2d 492, 495 (Tex. App.—Dallas 1991, writ denied); *Kinkaid Sch., Inc. v. McCarthy*, 833 S.W.2d 226, 231 (Tex. App.—Houston [1st Dist.] 1992, no writ).

[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).

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 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:

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(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.
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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

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[1] *Miller v. El Paso Cnty.*, 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.

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.[1]

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

[1] 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-0342 (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.

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 as 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 as 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, the legislative council staff compiles that proposed law 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, 2021) (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]

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[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 codified provisions took effect 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 codified provisions took effect 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:

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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.
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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, 2021.

(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. 2021).

[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 on occasion exercised its power under this subsection.[1] The only limitation on this statutory delegation is in Section 22.004(b), Government Code, which provides that the

[1] See the Texas Supreme Court Order of February 25, 1998 (Misc. Docket No. 98-9043), amending the Texas Rules of Evidence, in which the supreme court repealed Section 611.006(a)(6), Health and Safety Code, "insofar as it conflicts with" a rule, and the Texas Supreme Court Order of November 9, 1998 (Misc. Docket No. 98-9196), amending the Texas Rules of Civil Procedure, in which the supreme court repealed Section 17.57, Business & Commerce Code, "to the extent that it conflicts with" a rule.

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.].
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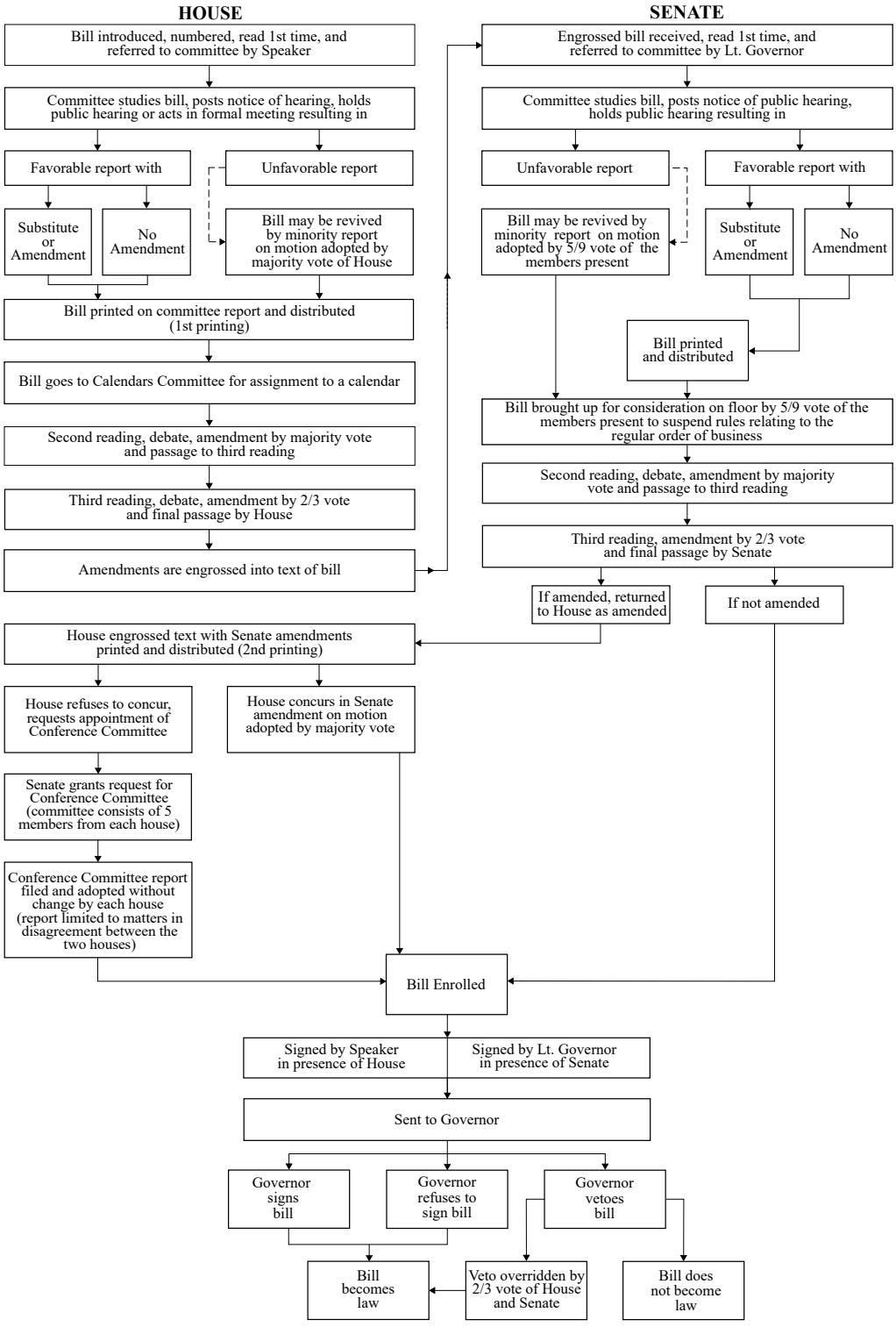
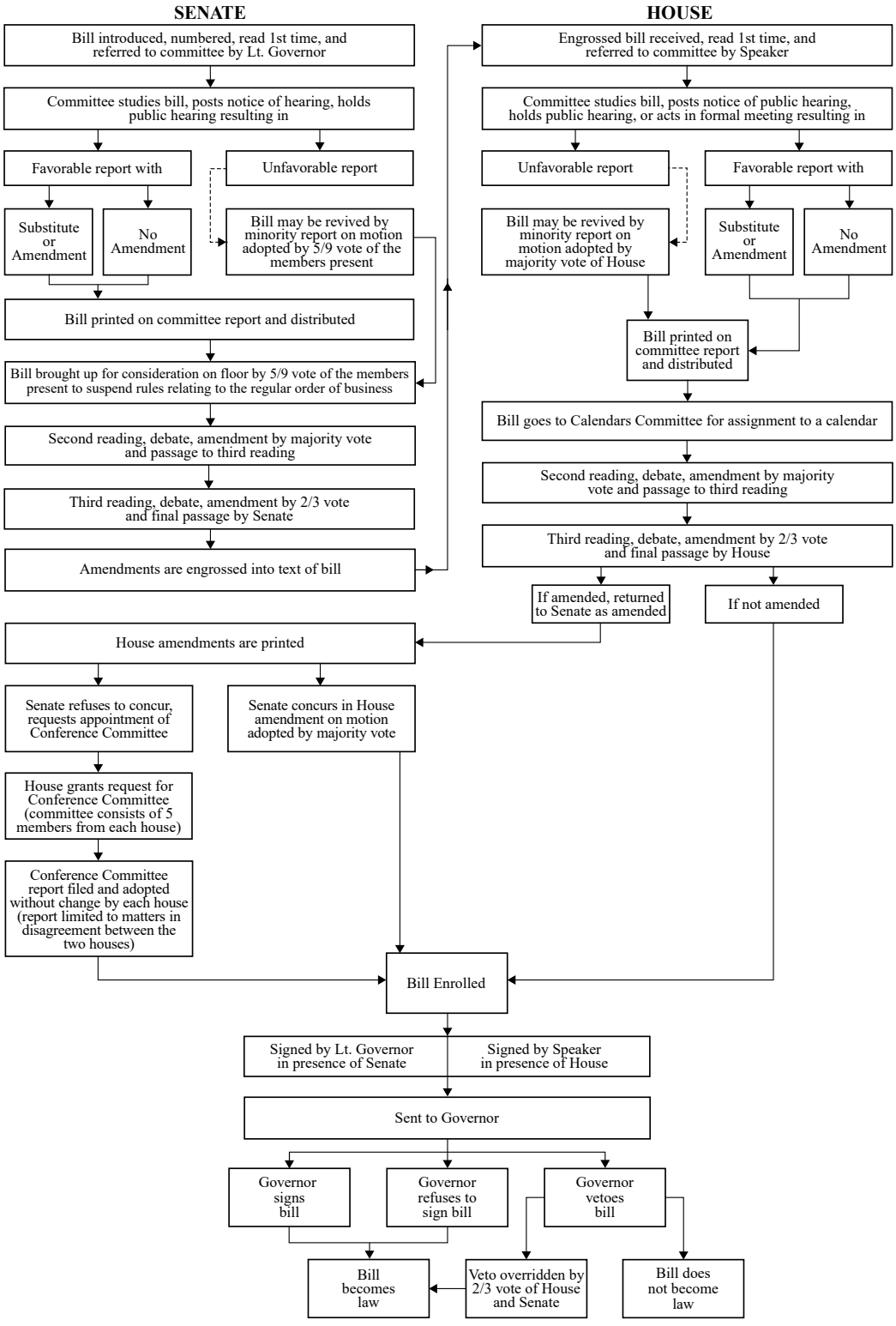
Examples of the use of this language can be found in Sections 52.005(b) and 64.091(k), Civil Practice and Remedies Code.[1] When drafting what is arguably a law relating to civil procedure, the drafter should realize that inclusion of the suggested language is essentially a matter of policy for the requestor 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 87th 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 87th Legislature, from the time the bill is introduced in the senate to final passage and transmittal to the governor.



SEC. 8.14. ELECTRONIC LEGAL MATERIALS. The Texas Constitution maintained by the legislative council at https://statutes.capitol.texas.gov was designated by the Texas Legislature in Chapter 159 (H.B. 402), Acts of the 86th Legislature, Regular Session, 2019 (Subchapter E, Chapter 2051, Government Code), as the official text of the constitution. The constitutional provisions found on the site comply with the Uniform Electronic Legal Material Act (UELMA). For more information about UELMA, see the council's implementation report, which can be found on the council's website at http://www.tlc.texas.gov/publications, or visit the Uniform Law Commission's website at http://uniformlaws.org/home.

Subchapter E, Chapter 2051, Government Code, designates the secretary of state as the official publisher for the general or special laws passed in a regular or special session of the Texas Legislature and state agency rules adopted in accordance with Chapter 2001, Government Code.

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Appendixes

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Appendix 1

2020 Texas Census
City Summary

According to the official returns of the 24th Decennial Census of the United States, as released by the Bureau of the Census on August 12, 2021.

(By population)

Texas Legislative Council
August 2021

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Population in Texas Cities and CDPs
2020 Census

City or CDP*	Population
Houston	2,304,580
San Antonio	1,434,625
Dallas	1,304,379
Austin	961,855
Fort Worth	918,915
El Paso	678,815
Arlington	394,266
Corpus Christi	317,863
Plano	285,494
Lubbock	257,141
Irving	256,684
Laredo	255,205
Garland	246,018
Frisco	200,509
Amarillo	200,393
Grand Prairie	196,100
McKinney	195,308
Brownsville	186,738
Killeen	153,095
Pasadena	151,950
Mesquite	150,108
McAllen	142,210
Denton	139,869
Waco	138,486
Carrollton	133,434
Midland	132,524
Pearland	125,828
Abilene	125,182
College Station	120,511
Richardson	119,469
Round Rock	119,468
Beaumont	115,282
The Woodlands (CDP)	114,436
Odessa	114,428
League City	114,392
Lewisville	111,822
Sugar Land	111,026
Tyler	105,995
Allen	104,627
Wichita Falls	102,316
Edinburg	100,243
San Angelo	99,893
New Braunfels	90,403

City or CDP*	Population
Conroe	89,956
Atascocita (CDP)	88,174
Mission	85,778
Bryan	83,980
Baytown	83,701
Temple	82,073
Longview	81,638
Pharr	79,715
Cedar Park	77,595
Flower Mound	75,956
Missouri City	74,259
Mansfield	72,602
Harlingen	71,829
North Richland Hills	69,917
San Marcos	67,553
Georgetown	67,176
Victoria	65,534
Pflugerville	65,191
Spring (CDP)	62,559
Rowlett	62,535
Euless	61,032
Leander	59,202
Wylie	57,526
DeSoto	56,145
Port Arthur	56,039
Galveston	53,695
Texas City	51,898
Grapevine	50,631
Bedford	49,928
Cedar Hill	49,148
Burleson	47,641
Rockwall	47,251
Little Elm	46,453
Haltom City	46,073
Huntsville	45,941
Keller	45,776
Kyle	45,697
Channelview (CDP)	45,688
The Colony	44,534
Sherman	43,645
Coppell	42,983
Schertz	42,002
Lancaster	41,275

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Friendswood	41,213
Waxahachie	41,140
Duncanville	40,706
Hurst	40,413
Weslaco	40,160
Rosenberg	38,282
Mission Bend (CDP)	36,914
Copperas Cove	36,670
Texarkana	36,193
Farmers Branch	35,991
San Juan	35,294
Timberwood Park (CDP)	35,217
Midlothian	35,125
La Porte	35,124
Del Rio	34,673
Deer Park	34,495
Socorro	34,306
Lufkin	34,143
West Odessa (CDP)	33,340
Harker Heights	33,097
Cibolo	32,276
Nacogdoches	32,147
Cleburne	31,352
Southlake	31,265
Canyon Lake (CDP)	31,124
Weatherford	30,854
Prosper	30,174
Seguin	29,433
Fort Hood (CDP)	28,295
Lake Jackson	28,177
Greenville	28,164
Eagle Pass	28,130
Balch Springs	27,685
Hutto	27,577
Converse	27,466
Sachse	27,103
Alvin	27,098
Big Spring	26,144
Colleyville	26,057
Kingsville	25,402
University Park	25,278
Corsicana	25,109
San Benito	24,861
Benbrook	24,520
Fresno (CDP)	24,486
Denison	24,479
Paris	24,476
Kerrville	24,278

City or CDP*	Population
Cloverleaf (CDP)	24,100
Saginaw	23,890
Watauga	23,650
Forney	23,455
Marshall	23,392
Belton	23,054
Pecan Grove (CDP)	22,782
Corinth	22,634
Brushy Creek (CDP)	22,519
Horizon City	22,489
Katy	21,894
Murphy	21,013
Stephenville	20,897
Dickinson	20,847
Portland	20,383
Sienna (CDP)	20,204
Plainview	20,187
Ennis	20,159
Universal City	19,720
Alamo	19,493
Angleton	19,429
Orange	19,324
Lakeway	19,189
Brownwood	18,862
Nederland	18,856
Palestine	18,544
Seagoville	18,446
White Settlement	18,269
Alton	18,198
Crowley	18,070
Bay City	18,061
La Marque	18,030
Fate	17,958
Alice	17,891
Boerne	17,850
Stafford	17,666
Terrell	17,465
Gainesville	17,394
Brenham	17,369
Groves	17,335
Bellaire	17,202
Princeton	17,027
Cinco Ranch (CDP)	16,899
Anna	16,896
Pampa	16,867
Fulshear	16,856
Donna	16,797
Humble	16,795

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Celina	16,739
Steiner Ranch (CDP)	16,713
Addison	16,661
Taylor	16,267
Mercedes	16,258
South Houston	16,153
Gatesville	16,135
Mount Pleasant	16,047
Hewitt	16,026
Aldine (CDP)	15,999
Sulphur Springs	15,941
Highland Village	15,899
Palmview	15,830
Glenn Heights	15,819
Live Oak	15,781
Rio Grande City	15,317
Uvalde	15,217
Buda	15,108
Hereford	14,972
West University Place	14,955
Canyon	14,836
Mineral Wells	14,820
Dumas	14,501
Lockhart	14,379
Red Oak	14,222
Wells Branch (CDP)	14,000
Jacksonville	13,997
Hidalgo	13,964
Forest Hill	13,955
Melissa	13,901
Port Neches	13,692
Trophy Club	13,688
Beeville	13,669
Manor	13,652
Seabrook	13,618
Lumberton	13,554
Rendon (CDP)	13,533
Royse City	13,508
Andrews	13,487
Kilgore	13,376
Azle	13,369
Henderson	13,271
Pecos	12,916
Athens	12,857
Santa Fe	12,735
Levelland	12,652
Borger	12,551
Webster	12,499

City or CDP*	Population
Robinson	12,443
El Campo	12,350
Tomball	12,341
Hornsby Bend (CDP)	12,168
Four Corners (CDP)	12,103
Richmond	11,627
Roma	11,561
Port Lavaca	11,557
Leon Valley	11,542
Snyder	11,438
La Homa (CDP)	11,267
Fort Bliss (CDP)	11,260
Granbury	10,958
Selma	10,952
Burkburnett	10,939
Fredericksburg	10,875
Lantana (CDP)	10,785
Galena Park	10,740
Freeport	10,696
Pleasanton	10,648
Sweetwater	10,622
Clute	10,604
Bellmead	10,494
Scenic Oaks (CDP)	10,458
Bonham	10,408
Fairview	10,372
Raymondville	10,236
Robstown	10,143
San Elizario	10,116
Vernon	10,078
Rockport	10,070
Manvel	9,992
Fair Oaks Ranch	9,833
Vidor	9,789
Elgin	9,784
Heath	9,769
Bastrop	9,688
Bacliff (CDP)	9,677
Roanoke	9,665
Jacinto City	9,613
Bridge City	9,546
Paloma Creek South (CDP)	9,539
Ingleside	9,519
Lackland AFB (CDP)	9,467
Eidson Road (CDP)	9,461
Woodway	9,383
Murillo (CDP)	9,158
Bee Cave	9,144

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Commerce	9,090
Helotes	9,030
Brownfield	8,936
Lago Vista	8,896
Highland Park	8,864
Sanger	8,839
Dayton	8,777
Graham	8,732
Lamesa	8,674
Wharton	8,627
Richland Hills	8,621
Highlands (CDP)	8,612
Kennedale	8,517
Heartland (CDP)	8,509
Perryton	8,492
Fort Stockton	8,466
Dalhart	8,447
Hondo	8,289
Liberty	8,279
Whitehouse	8,257
Hillsboro	8,221
Prairie View	8,184
West Livingston (CDP)	8,156
Iowa Colony	8,154
Kirby	8,142
Cuero	8,128
Los Fresnos	8,114
Camp Swift (CDP)	7,943
Aransas Pass	7,941
Jersey Village	7,921
Sunnyvale	7,893
Joshua	7,891
Monahans	7,836
Lake Dallas	7,708
Providence Village	7,691
Sonterra (CDP)	7,679
Mont Belvieu	7,654
River Oaks	7,646
Navasota	7,643
Lucas	7,612
Fabens (CDP)	7,498
Cleveland	7,471
Alamo Heights	7,357
Pearsall	7,325
Travis Ranch (CDP)	7,324
Hitchcock	7,301
Lampasas	7,291
Floresville	7,203

City or CDP*	Population
Gonzales	7,165
Homestead Meadows South (CDP)	7,142
Marble Falls	7,037
Briar (CDP)	7,035
Kingsland (CDP)	7,028
Lacy-Lakeview	6,988
Seminole	6,988
Silsbee	6,935
Mexia	6,893
Jasper	6,884
Sealy	6,839
La Feria	6,817
Kaufman	6,797
Carthage	6,569
Decatur	6,538
Iowa Park	6,535
Savannah (CDP)	6,529
Salida del Sol Estates (CDP)	6,496
Penitas	6,460
Burnet	6,436
Willis	6,431
Keene	6,387
Crystal City	6,354
Crockett	6,332
Kermit	6,267
Pecan Plantation (CDP)	6,236
White Oak	6,225
Canutillo (CDP)	6,212
Gun Barrel City	6,190
Belterra (CDP)	6,170
Mila Doce (CDP)	6,162
Everman	6,154
San Leon (CDP)	6,135
Gladewater	6,134
Cameron Park (CDP)	6,099
Lindale	6,059
Alpine	6,035
Edna	5,987
Wake Village	5,945
Littlefield	5,943
Bridgeport	5,923
Nolanville	5,917
Yoakum	5,908
Windcrest	5,865
Slaton	5,858
Childress	5,737
Bulverde	5,692
Elsa	5,668

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Livingston	5,640
Doffing (CDP)	5,618
Hutchins	5,607
Luling	5,599
Wolfforth	5,521
Sinton	5,504
Krum	5,483
Marlin	5,462
Parker	5,462
Sansom Park	5,454
Bowie	5,448
Atlanta	5,433
Hempstead	5,430
Zapata (CDP)	5,383
Nassau Bay	5,347
Rockdale	5,323
McGregor	5,321
Cameron	5,306
Lakehills (CDP)	5,295
Rusk	5,285
Primera	5,257
Barrett (CDP)	5,223
Center	5,221
Homestead Meadows North (CDP)	5,210
Northlake	5,201
Pinehurst (CDP)	5,195
Breckenridge	5,187
Muleshoe	5,160
Granite Shoals	5,129
Brady	5,118
Chula Vista (CDP) (Maverick)	5,100
Sandy Oaks	5,075
Brookshire	5,066
Terrell Hills	5,045
Port Isabel	5,028
Aubrey	5,006
Wilmer	4,974
Giddings	4,969
Willow Park	4,936
Carrizo Springs	4,892
Aledo	4,858
Hudson	4,849
Gilmer	4,843
Mineola	4,823
Shady Hollow (CDP)	4,822
Pecan Acres (CDP)	4,808
Progreso	4,807
Post	4,790

City or CDP*	Population
Richwood	4,781
Meadows Place	4,767
Sparks (CDP)	4,760
Alvarado	4,739
Hickory Creek	4,718
Lake Worth	4,711
Dripping Springs	4,650
Morgan's Point Resort	4,636
New Boston	4,612
Falfurrias	4,609
Hearne	4,544
Tulia	4,473
Denver City	4,470
Lavon	4,469
Diboll	4,457
La Joya	4,457
Rio Bravo	4,450
Madisonville	4,420
Justin	4,409
Argyle	4,403
Palacios	4,395
La Grange	4,391
Hunters Creek Village	4,385
Pilot Point	4,381
Central Gardens (CDP)	4,373
Van Alstyne	4,369
Venus	4,361
Oak Point	4,357
Pittsburg	4,335
Mathis	4,333
Devine	4,324
Ovilla	4,304
Hallsville	4,277
Horseshoe Bay	4,257
Olivarez (CDP)	4,248
Midway North (CDP)	4,232
Canton	4,229
Spring Valley Village	4,229
Comanche	4,211
Bellville	4,206
Garden Ridge	4,186
Jacksboro	4,184
Dimmitt	4,171
Friona	4,171
Laureles (CDP)	4,111
Hebbronville (CDP)	4,101
Jourdanton	4,094
Whitesboro	4,074

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Doolittle (CDP)	4,061
Mabank	4,050
Hudson Bend (CDP)	4,005
Redwood (CDP)	4,003
Caldwell	3,993
Colorado City	3,991
Castle Hills	3,978
Medina (CDP)	3,953
Potosi (CDP)	3,947
Cross Mountain (CDP)	3,944
Smithville	3,922
Coleman	3,912
Sullivan City	3,908
The Homesteads (CDP)	3,890
Cisco	3,883
Crandall	3,860
Weston Lakes	3,853
Bunker Hill Village	3,822
Cockrell Hill	3,815
Nash	3,814
Clyde	3,811
Westway (CDP)	3,811
Edgecliff Village	3,788
Scissors (CDP)	3,758
San Diego	3,748
Wills Point	3,747
North Alamo (CDP)	3,722
Cotulla	3,718
Taylor Lake Village	3,704
Columbus	3,699
Wyldwood (CDP)	3,694
Anthony	3,671
Liberty Hill	3,646
West Columbia	3,644
Groesbeck	3,631
Sweeny	3,626
Ballinger	3,619
Farmersville	3,612
Eastland	3,609
Grape Creek (CDP)	3,594
Howe	3,571
McLendon-Chisholm	3,562
Shavano Park	3,524
Laguna Vista	3,520
Rosita (CDP)	3,501
Shenandoah	3,499
Crane	3,478
Kenedy	3,473

City or CDP*	Population
Clifton	3,465
West Orange	3,459
Winnsboro	3,455
Reno (Lamar)	3,454
West Lake Hills	3,444
Eagle Lake	3,442
Crosby (CDP)	3,417
South Alamo (CDP)	3,414
Teague	3,384
Dublin	3,359
Barton Creek (CDP)	3,356
Llano	3,325
Bullard	3,318
Citrus City (CDP)	3,291
Chandler	3,275
Dilley	3,274
Presidio	3,264
Beach City	3,221
Agua Dulce (CDP)	3,218
La Paloma (CDP)	3,218
Hideaway	3,201
Paloma Creek (CDP)	3,177
Bishop	3,174
Spearman	3,171
Winnie (CDP)	3,162
Cedar Creek (CDP)	3,154
Santa Rita Ranch (CDP)	3,152
Hollywood Park	3,130
Piney Point Village	3,128
San Saba	3,117
Henrietta	3,111
Karnes City	3,111
Grand Saline	3,107
El Lago	3,090
Haskell	3,089
Needville	3,089
Early	3,087
San Carlos (CDP)	3,087
Springtown	3,064
Cactus	3,057
Oak Ridge North	3,057
Double Oak	3,054
Las Lomas (CDP)	3,054
Annetta	3,041
Cienegas Terrace (CDP)	3,025
Onalaska	3,020
DeCordova	3,007
Olney	3,007

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
Nocona	3,002
Combes	2,999
Mauriceville (CDP)	2,983
Lake Cherokee (CDP)	2,980
Oak Trail Shores (CDP)	2,979
Hackberry	2,973
Big Lake	2,965
Shallowater	2,964
Castroville	2,954
Llano Grande (CDP)	2,952
Holly Lake Ranch (CDP)	2,951
Lytle	2,914
Stamford	2,907
Port Aransas	2,904
Hamilton	2,895
Elm Creek (CDP)	2,884
Reno (Parker)	2,878
Brazoria	2,866
Abernathy	2,865
Clarksville	2,857
Fairfield	2,850
Wimberley	2,839
Rancho Viejo	2,838
La Villa	2,804
Taft	2,801
Poteet	2,795
Ferris	2,788
Bolivar Peninsula (CDP)	2,769
Shady Shores	2,764
Balcones Heights	2,746
Edcouch	2,732
Hallettsville	2,731
Liberty City (CDP)	2,721
Refugio	2,712
Indian Hills (CDP)	2,694
Perezville (CDP)	2,685
Vinton	2,684
Waller	2,682
Floydada	2,675
Van	2,664
Ozona (CDP)	2,663
Glen Rose	2,659
Stanton	2,657
Inez (CDP)	2,641
Schulenburg	2,633
The Hills	2,613
Palmhurst	2,601
Circle D-KC Estates (CDP)	2,588

City or CDP*	Population
Escobares	2,588
Westworth Village	2,585
Seymour	2,575
Pantego	2,568
El Cenizo	2,540
West	2,531
Daingerfield	2,522
Hooks	2,518
Panorama Village	2,515
Sonora	2,502
Talty	2,500
Mount Vernon	2,491
Pottsboro	2,488
Merkel	2,471
Freer	2,461
Premont	2,455
Junction	2,451
Santa Rosa	2,450
Ponder	2,442
Woodville	2,403
Shadybrook (CDP)	2,400
McQueeney (CDP)	2,397
Salado	2,394
Blue Mound	2,393
Palmer	2,393
Panhandle	2,378
Tahoka	2,375
Troy	2,375
Hedwig Village	2,370
Lopezville (CDP)	2,367
Jonestown	2,365
Fannett (CDP)	2,363
Sheldon (CDP)	2,361
Magnolia	2,359
Winters	2,345
Trinity	2,343
Nixon	2,341
Canadian	2,339
Val Verde Park (CDP)	2,332
Wild Peach Village (CDP)	2,329
Las Quintas Fronterizas (CDP)	2,326
Midway South (CDP)	2,307
Ranger	2,300
Anson	2,294
Dalworthington Gardens	2,293
Electra	2,292
Fifth Street (CDP)	2,284
Quanah	2,279

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Overton	2,275
Manchaca (CDP)	2,266
De Leon	2,258
Odem	2,255
Lake Kiowa (CDP)	2,254
Lyford	2,249
Combine	2,245
Bushland (CDP)	2,234
Pinehurst	2,232
St. Hedwig	2,227
East Bernard	2,218
Comfort (CDP)	2,211
Cumings (CDP)	2,207
Idalou	2,193
Olmos Park	2,180
Malakoff	2,179
Tool	2,175
Hudson Oaks	2,174
George West	2,171
Seagraves	2,153
Buna (CDP)	2,137
Shiner	2,127
Mason	2,121
Josephine	2,119
Shepherd	2,105
Preston (CDP)	2,101
Serenada (CDP)	2,098
Bloomington (CDP)	2,082
Willow Grove (CDP)	2,082
La Blanca (CDP)	2,078
Weimar	2,076
South Padre Island	2,066
Briarcliff	2,062
Hale Center	2,062
Gunter	2,060
Lake Bryan (CDP)	2,060
Pelican Bay	2,049
Memphis	2,048
Kirbyville	2,036
Arcola	2,034
Huntington	2,025
Rio Hondo	2,021
Gardendale (CDP)	2,020
Palmview South (CDP)	2,008
Troup	2,006
West Sharyland (CDP)	2,004
Little River-Academy	1,992
Whitney	1,992

City or CDP*	Population
Olton	1,989
Leonard	1,987
Encantada-Ranchito-El Calaboz (CDP)	1,981
Kountze	1,981
Lake Dunlap (CDP)	1,981
Anahuac	1,980
Ganado	1,975
Jones Creek	1,975
Little Cypress (CDP)	1,968
Haslet	1,952
Montgomery	1,948
Quitman	1,942
Van Horn	1,941
Stratford	1,939
Monte Alto (CDP)	1,930
Italy	1,926
Van Vleck (CDP)	1,923
San Augustine	1,920
Cooper	1,911
Waskom	1,910
Meadowlakes	1,907
Porter Heights (CDP)	1,903
Wellington	1,896
West Tawakoni	1,895
Grandview	1,879
Uvalde Estates (CDP)	1,879
Beverly Hills	1,878
Clarendon	1,877
Jefferson	1,875
Collinsville	1,866
Siesta Acres (CDP)	1,866
Elmendorf	1,862
Fritch	1,859
Albany	1,854
Southside Place	1,835
Hamlin	1,831
McCamey	1,831
Garfield (CDP)	1,825
Linden	1,825
Poth	1,819
Rockwell Place (CDP)	1,811
Yorktown	1,810
Kemah	1,807
Quail Creek (CDP)	1,800
Shamrock	1,789
Marfa	1,788
Bear Creek Ranch (CDP)	1,787
Ingram	1,787

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Lorena	1,785
Roman Forest	1,781
Sour Lake	1,773
Woodcreek	1,770
Buffalo	1,767
Krugerville	1,766
Bayou Vista	1,763
Western Lake (CDP)	1,762
Somerset	1,756
Jarrell	1,753
Mart	1,748
Deerwood (CDP)	1,745
Cross Roads	1,744
Stowell (CDP)	1,743
Gregory	1,740
Goldthwaite	1,738
Copper Canyon	1,731
Bartonville	1,725
Whitewright	1,725
Honey Grove	1,715
Sunray	1,707
Bovina	1,699
Morton	1,690
Lowry Crossing	1,689
Sebastian (CDP)	1,684
Splendora	1,683
Blanco	1,682
Laughlin AFB (CDP)	1,673
Danbury	1,671
Southwest Sandhill (CDP)	1,666
Ralls	1,665
Ben Bolt (CDP)	1,662
Stinnett	1,650
Lakeside (Tarrant)	1,649
Patton Village	1,647
Pinewood Estates (CDP)	1,641
Carter (CDP)	1,637
Bartlett	1,633
Newton	1,633
Rhome	1,630
Johnson City	1,627
Westlake	1,623
Goliad	1,620
Bertram	1,616
Franklin	1,614
César Chávez (CDP)	1,608
Seth Ward (CDP)	1,603
Archer City	1,601

City or CDP*	Population
Muniz (CDP)	1,593
Uhland	1,588
Hughes Springs	1,575
Eldorado	1,574
Shoreacres	1,566
Itasca	1,562
Oak Leaf	1,552
Brookside Village	1,548
Runaway Bay	1,546
Bangs	1,540
Muenster	1,536
Edgewood	1,530
De Kalb	1,527
Charlotte	1,524
Holliday	1,524
Fulton	1,523
Bells	1,521
Buchanan Dam (CDP)	1,508
Heidelberg (CDP)	1,507
Kerens	1,505
Lockney	1,498
Caddo Mills	1,495
Crosbyton	1,492
Wheeler	1,487
Baird	1,479
Corrigan	1,477
Three Rivers	1,474
Rosanky (CDP)	1,473
Rollingwood	1,467
Grapeland	1,465
Lake Brownwood (CDP)	1,462
Godley	1,450
Seis Lagos (CDP)	1,450
Siesta Shores (CDP)	1,450
Booker	1,437
China Spring (CDP)	1,436
Tornillo (CDP)	1,432
Farwell	1,425
Boyd	1,416
Rancho Alegre (CDP)	1,415
Quinlan	1,414
Bruceville-Eddy	1,413
Palm Valley	1,413
Stockdale	1,413
Cottonwood Shores	1,403
Blossom	1,402
Lone Star	1,400
Wolfe City	1,399

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Queen City	1,397
Meridian	1,396
Hubbard	1,394
Aurora	1,390
Naples	1,387
New Fairview	1,386
Hilltop Lakes (CDP)	1,385
Moody	1,376
Laguna Park (CDP)	1,372
Seven Points	1,370
Sabinal	1,364
Rosharon (CDP)	1,362
La Paloma-Lost Creek (CDP)	1,359
Milam (CDP)	1,355
Plains	1,355
Alvord	1,351
Cresson	1,349
Menard	1,348
Tatum	1,342
Brackettville	1,341
Hico	1,335
Harper (CDP)	1,332
Rotan	1,332
Woodbranch	1,330
Forest Heights (CDP)	1,329
Ivanhoe	1,327
Woodsboro	1,319
Old River-Winfree	1,315
Nevada	1,314
Somerville	1,312
Flatonia	1,308
Rosebud	1,296
Taft Southwest (CDP)	1,296
La Pryor (CDP)	1,294
Wallis	1,292
Elkhart	1,287
Sundown	1,283
Randolph AFB (CDP)	1,280
Lost Creek (CDP)	1,276
Hawkins	1,274
Sam Rayburn (CDP)	1,273
Roscoe	1,271
Center Point (CDP)	1,263
Thorndale	1,263
Powderly (CDP)	1,261
China	1,260
Point Venture	1,260
Clear Lake Shores	1,258

City or CDP*	Population
Martindale	1,253
Emory	1,251
Gholson	1,250
Canyon Creek (CDP)	1,249
Evadale (CDP)	1,246
Munday	1,246
Plum Grove	1,245
Westwood Shores (CDP)	1,239
Big Sandy	1,231
Valley Mills	1,229
La Grulla	1,222
Lexington	1,217
Fort Clark Springs (CDP)	1,215
Brownsboro	1,212
Sargent (CDP)	1,212
Rice	1,203
Natalia	1,202
Ransom Canyon	1,189
Claude	1,186
Benavides	1,183
Granger	1,183
Blue Ridge	1,180
Tye	1,176
Von Ormy	1,174
Oyster Creek	1,173
Florence	1,171
Orange Grove	1,165
Sherwood Shores (CDP)	1,165
Emerald Bay (CDP)	1,146
Kempner	1,146
Tioga	1,142
China Grove	1,141
Eustace	1,137
Gruver	1,130
Kemp	1,129
Frankston	1,126
Sterling City	1,121
Wildwood (CDP)	1,121
Rogers	1,113
Lake Medina Shores (CDP)	1,110
Abram (CDP)	1,108
Ore City	1,108
Tiki Island	1,106
Eden	1,100
Geronimo (CDP)	1,097
Newark	1,096
Callender Lake (CDP)	1,090
Bevil Oaks	1,089

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Redland (CDP)	1,088
Cut and Shoot	1,087
Lakeside City	1,082
Palmer (CDP)	1,082
Jamaica Beach	1,078
LaCoste	1,077
La Vernia	1,077
Pine Island	1,077
Holland	1,075
Ricardo (CDP)	1,075
Bogata	1,074
Knox City	1,065
Beauxart Gardens (CDP)	1,064
Paducah	1,063
Riesel	1,062
Iraan	1,055
Fort Hancock (CDP)	1,052
Lindsay	1,045
Westminster (CDP)	1,035
Marion	1,034
Hemphill	1,029
Alto	1,027
Robert Lee	1,027
Fort Davis (CDP)	1,024
Olmito (CDP)	1,021
Petersburg	1,014
Santa Anna	1,014
South Point (CDP)	1,014
Los Indios	1,008
Rio Vista	1,008
Seadrift	995
St. Paul	992
Holiday Lakes	991
Tenaha	989
Timpson	989
Wortham	980
Southmayd	978
Maud	977
Gorman	976
Lakeport	976
Pleak	971
Lorenzo	964
Calvert	962
Falcon Lake Estates (CDP)	962
Hamshire (CDP)	962
Laguna Heights (CDP)	962
New London	958
Myrtle Springs (CDP)	954

City or CDP*	Population
Port O'Connor (CDP)	954
Horseshoe Bend (CDP)	949
Chico	946
Red Lick	946
Coahoma	945
Mustang Ridge	944
Hill Country Village	942
Mikes (CDP)	942
Tolar	941
Sudan	940
Maypearl	939
Ames	937
Omaha	936
Bronte	933
Waelder	933
Boling (CDP)	930
Tom Bean	930
Clint	923
Daisetta	923
Groveton	918
White Deer	918
Wink	915
New Waverly	914
Beaver Creek (CDP)	910
Lasara (CDP)	909
Markham (CDP)	908
Anton	907
Centerville	905
East Alto Bonito (CDP)	905
Earth	901
Cross Plains	899
East Mountain	899
Arp	892
Indian Springs (CDP)	892
Runge	892
Las Palmas II (CDP)	891
Louise (CDP)	889
Pineland	888
Crawford	887
St. Jo	881
Vega	879
Sand Springs (CDP)	878
Miles	875
Rocksprings	874
Hart	869
Fairchilds	864
Skidmore (CDP)	863
Spur	863

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Trinidad	860
Bremond	858
Blooming Grove	857
Blessing (CDP)	856
Moulton	854
Redwater	853
Wells	853
McKinney Acres (CDP)	852
Cedar Point (CDP)	851
Tuscola	850
Pendleton (CDP)	845
Blue Berry Hill (CDP)	844
New Summerfield	843
Leming (CDP)	841
Indian Lake	839
Arroyo Colorado Estates (CDP)	833
Bandera	829
Garrett	829
Berryville	824
East Tawakoni	824
Coldspring	819
Hilshire Village	816
Thrall	816
Dawson	815
Celeste	809
Elmo (CDP)	803
Hebron	803
Hargill (CDP)	800
Walnut Springs	795
Jewett	793
Aspermont	789
Garrison	789
Batesville (CDP)	787
D'Hanis (CDP)	785
Pine Harbor (CDP)	785
Clarksville City	780
Rankin	780
Coolidge	778
Santa Clara	778
Chilton (CDP)	776
Bailey's Prairie	775
Fabrica (CDP)	772
Oak Ridge (Kaufman)	771
Crowell	769
Hardin	768
Road Runner	766
Knollwood	764
Thunderbird Bay (CDP)	764

City or CDP*	Population
Rising Star	756
Grangerland (CDP)	754
Lometa	753
Mertzon	747
Banquete (CDP)	745
Point	745
Trenton	743
Glidden (CDP)	741
Payne Springs	741
North Pearsall (CDP)	739
Sunrise Beach Village	739
Ector	737
Valley View	737
North San Pedro (CDP)	735
Pecan Hill	735
Joaquin	734
Linn (CDP)	733
Rice Tracts (CDP)	733
New Deal	730
Como	728
Dennis (CDP)	727
Throckmorton	727
Lamar (CDP)	724
Asherton	722
Beckville	722
Milford	722
Solis (CDP)	722
Buchanan Lake Village (CDP)	720
McDade (CDP)	720
Bristol (CDP)	714
Savoy	712
Villa Verde (CDP)	711
Hillcrest	705
Detroit	704
O'Donnell	704
Weir	699
Burke	691
San Felipe	691
Scurry	688
La Tina Ranch (CDP)	687
Lake Tanglewood	686
Agua Dulce	685
Post Oak Bend City	683
Sunset Valley	683
Driscoll	680
Cumby	679
Amherst	678
Log Cabin	678

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
Warren (CDP)	677
Graford	669
Niederwald	668
Reid Hope King (CDP)	667
McLean	665
Sanderson (CDP)	664
New Hope	661
Cape Royale (CDP)	657
New Berlin	656
Green Valley Farms (CDP)	655
Garza-Salinas II (CDP)	651
Santa Maria (CDP)	651
Simonton	647
Lott	644
Lone Oak	643
Point Blank	643
Juarez (CDP)	642
Westover Hills	641
Surfside Beach	640
La Puerta (CDP)	638
Lakeshore Gardens-Hidden Acres (CDP)	637
Nocona Hills (CDP)	637
Lake Colorado City (CDP)	636
Lakewood Village	635
Silverton	629
Bardwell	625
Placedo (CDP)	625
Winona	623
Carlsbad (CDP)	622
Mountain City	622
Annetta South	621
Frost	620
New Chapel Hill	620
Golinda	618
Oak Grove	617
Kenefick	615
West Alto Bonito (CDP)	615
Ingleside on the Bay	614
Noonday	612
Moore (CDP)	610
Pleasant Hill (CDP)	610
Riviera (CDP)	609
Beasley	608
St. Paul (CDP)	608
Knippa (CDP)	606
Point Comfort	603
Zavalla	603
Happy	602

City or CDP*	Population
Meadow	601
Sunrise Shores (CDP)	598
Ladonia	597
Kress	596
Roby	591
Stagecoach	580
Morgan Farm (CDP)	573
Seco Mines (CDP)	572
Deweyville (CDP)	571
Coyote Acres (CDP)	570
Lovelady	570
Matador	569
Rule	561
Thorntonville	561
Volente	561
Cushing	557
Annetta North	554
Appleby	552
Groom	552
Carrizo Hill (CDP)	550
Deport	550
Chillicothe	549
Roxton	548
Pattison	547
Hawley	545
Valle Vista (CDP)	545
Buffalo Gap	543
Sunset (CDP) (Montague)	543
Campbell	542
Colmesneil	542
Encinal	540
Strawn	540
Miami	539
San Perlita	538
Holiday Beach (CDP)	526
Newcastle	526
Cove	525
Falcon Mesa (CDP)	523
Hull (CDP)	522
Morning Glory (CDP)	522
Riverside	522
San Leanna	522
Sheridan (CDP)	520
Lolita (CDP)	519
Camp Wood	517
Murchison	516
Big Thicket Lake Estates (CDP)	514
Brazos Country	514

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Falls City	514
Petrolia	514
Jayton	511
Garwood (CDP)	510
Briaroaks	507
Cade Lakes (CDP)	507
Snook	506
Lipan	505
Mount Enterprise	505
Loraine	504
San Ygnacio (CDP)	504
Easton	499
Pine Forest	499
Spring Gardens (CDP)	497
Normangee	495
Talco	494
Grey Forest	492
Bluetown (CDP)	491
B and E (CDP)	489
Dean	488
Pinebrook (CDP)	485
Big Wells	483
Christoval (CDP)	482
Star Harbor	482
Bigfoot (CDP)	480
Mesquite (CDP)	479
Fruitvale	476
Bayview	475
Liverpool	475
Paradise	475
Smiley	475
Alba	473
Gordon	470
Nome	469
Buffalo Springs	468
El Chaparral (CDP)	467
Villa Pancho (CDP)	467
Ranchos Penitas West (CDP)	466
Alice Acres (CDP)	465
Macdona (CDP)	464
Plantersville	464
Rancho Banquete (CDP)	459
Creedmoor	458
Kosse	458
Ben Wheeler (CDP)	456
Evant	455
Byers	454
Morgan	454

City or CDP*	Population
Hawk Cove	452
Lindsay (CDP)	452
Stonewall (CDP)	451
Pettus (CDP)	449
Texline	448
Lake City	447
Praesel (CDP)	446
Angus	444
San Pedro (CDP)	442
Oglesby	441
Smyer	441
Union Grove	441
Garceno (CDP)	440
DISH	437
Damon (CDP)	436
South Toledo Bend (CDP)	434
Wilson	434
Leary	433
Pueblo Nuevo (CDP)	432
Bryson	430
Ropesville	430
Timbercreek Canyon	430
Edroy (CDP)	422
Wickett	422
Winfield	422
Avery	421
Thornton	421
Arroyo Gardens (CDP)	420
Lefors	420
Hallsburg	419
Tivoli (CDP)	419
Highland Haven	418
Iglesia Antigua (CDP)	415
Scotland	413
South Mountain	411
Marathon (CDP)	410
Red Rock (CDP)	410
Retreat	410
Mi Ranchito Estate (CDP)	409
Vanderbilt (CDP)	409
Balmorhea	408
El Refugio (CDP)	407
Oak Valley	406
Yantis	405
Mildred	399
Zuehl (CDP)	399
Bear Creek	397
Garner (CDP)	397

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Kurten	395
Skellytown	394
Webberville	394
Gustine	392
Redfield (CDP)	392
Hungerford (CDP)	390
Milano	390
Oakwood	389
Rancho Chico (CDP)	387
San Patricio	384
Blum	383
Hermleigh (CDP)	383
Hartley (CDP)	382
Stockton Bend	380
K-Bar Ranch (CDP)	375
Whiteface	375
Alma	373
Follett	373
Avinger	371
Oak Island (CDP)	371
Chireno	370
Howardwick	370
Millsap	370
Union Valley	370
Blanket	369
Dodd City	369
Plum (CDP)	366
Buckholts	365
Cross Timber	362
Bedias	361
Devers	361
Havana (CDP)	361
Huxley	361
Pleasant Valley	357
Higgins	356
Hilltop (CDP) (Frio)	356
Midfield (CDP)	356
Leroy	354
Abbott	352
Bixby (CDP)	352
Enchanted Oaks	347
Santo (CDP)	347
South La Paloma (CDP)	347
Perrin (CDP)	346
Coyote Flats	345
Kendleton	343
Quitaque	342
Sandy Hollow-Escondidas (CDP)	342

City or CDP*	Population
Windthorst	342
Grandfalls	340
Edom	339
Lake Bridgeport	339
Lake Meredith Estates (CDP)	338
Lakeside (San Patricio)	338
Christine	337
Sanctuary	337
Nordheim	336
Sadler	336
Gary City	335
Garden City (CDP)	334
Scottsville	334
Del Sol (CDP)	333
Reklaw	332
La Paloma Ranchettes (CDP)	329
New Home	326
Rose City	326
Sandia (CDP)	326
Grays Prairie	325
Rose Hill Acres	325
Westdale (CDP)	325
Camargito (CDP)	324
Bloomburg	321
Callisburg	321
Gallatin	321
Port Mansfield (CDP)	319
Tira	319
Warren City	319
Turkey	317
Leakey	315
Sierra Blanca (CDP)	315
La Paloma Addition (CDP)	314
Eureka	313
Matagorda (CDP)	313
Orchard	313
Iola	311
Lawn	311
McLeod (CDP)	311
Nazareth	310
Darrouzett	309
Chula Vista (CDP) (Zavala)	307
Amargosa (CDP)	305
Iredell	305
Loma Linda East (CDP) (Jim Wells)	305
Rowena (CDP)	305
Tierra Grande (CDP)	303
Wadsworth (CDP)	302

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Rosser	301
Yancey (CDP)	300
Tierra Verde (CDP)	298
Burton	297
Alto Bonito Heights (CDP)	296
Trent	295
Imperial (CDP)	294
Bellevue	289
Coupland	289
Poynor	287
Cashion Community	286
New Ulm (CDP)	285
Granjeno	283
Weston	283
Mount Calm	282
Carbon	281
Channing	281
Los Ebanos (CDP) (Starr)	281
Los Barreras (CDP)	278
Paige (CDP)	278
Taylor Landing	278
Cranfills Gap	277
May (CDP)	277
Olmito and Olmito (CDP)	276
Palo Pinto (CDP)	276
Bayside	275
Gause (CDP)	275
Hedley	275
El Cenizo (CDP)	273
Morgan's Point	273
Nesbitt	273
Kennard	272
Chester	270
Oilton (CDP)	270
Huckabay (CDP)	268
Industry	268
Palisades	268
Neches (CDP)	266
Barstow	265
Santa Rosa (CDP)	265
Ackerly	264
Covington	261
Montague (CDP)	261
Blackwell	258
Lueders	258
Texhoma	258
Chula Vista (CDP) (Cameron)	257
Progreso Lakes	257

City or CDP*	Population
Rangerville	255
Richland	255
Alamo Beach (CDP)	254
El Rancho Vela (CDP)	254
Tynan (CDP)	254
Bruni (CDP)	251
Coffee City	249
Gail (CDP)	249
Goodrich	248
Rochester	248
Streetman	248
Los Alvarez (CDP)	247
Fayetteville	246
Dell City	245
Ross	245
Carmine	244
Richland Springs	244
Oak Ridge (Cooke)	242
La Presa (CDP)	241
Los Ebanos (CDP) (Hidalgo)	239
Palo Blanco (CDP)	238
Malone	237
Paint Rock	237
Goldsmith	236
Lyons (CDP)	236
Las Lomitas (CDP)	235
Welch (CDP)	234
Rancho Viejo (CDP)	233
Laguna Seca (CDP)	232
Latexo	232
Navarro	232
Nada (CDP)	231
Tuleta (CDP)	231
Wellman	230
Moraida (CDP)	229
Tanquecitos South Acres (CDP)	229
Rock Island (CDP)	228
Tehuacana	228
Wixon Valley	228
Hays	227
El Quiote (CDP)	226
Moran	226
Tow (CDP)	226
Forsan	225
La Feria North (CDP)	225
North Cleveland	225
Utopia (CDP)	225
Mingus	223

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Mirando City (CDP)	222
Bailey	220
Barry	220
Opdyke West	220
San Carlos II (CDP)	220
Dickens	219
El Castillo (CDP)	219
Woodson	219
La Esperanza (CDP)	217
Magnolia Beach (CDP)	217
Roaring Springs	217
Loop (CDP)	216
Ranchitos del Norte (CDP)	214
Bishop Hills	211
Cool	211
Douglassville	211
Prado Verde (CDP)	209
Dime Box (CDP)	207
Sandy Point	207
South Frydek	207
Spring Branch	206
Sarita (CDP)	205
Manuel Garcia (CDP)	204
San Juan (CDP)	203
Myra (CDP)	202
Carl's Corner	201
Shiro (CDP)	201
Westbrook	201
Wildorado (CDP)	201
Study Butte (CDP)	200
Lake View (CDP)	197
Ratamosa (CDP)	197
Benjamin	196
Anderson	193
Staples	193
Cantu Addition (CDP)	191
Tilden (CDP)	190
Owl Ranch (CDP)	189
Ranchitos East (CDP)	189
Windom	189
Caney City	187
Emhouse	187
San Carlos I (CDP)	187
San Isidro (CDP)	187
Delmita (CDP)	186
El Camino Angosto (CDP)	186
Woodloch	186
Annona	184

City or CDP*	Population
Broaddus	184
Richards (CDP)	184
La Escondida (CDP)	183
El Indio (CDP)	182
Eugenio Saenz (CDP)	182
Cottonwood	181
Marquez	181
Bonney	180
Penelope	180
Tierra Bonita (CDP)	179
Zephyr (CDP)	179
Goodlow	178
Pecan Gap	178
La Victoria (CDP)	176
La Ward	176
Salineño (CDP)	176
Los Altos (CDP)	175
Ravenna	175
Fronton Ranchettes (CDP)	174
Lozano (CDP)	174
Megargel	174
Mound (CDP)	174
Sheffield (CDP)	174
Boys Ranch (CDP)	173
Lockett (CDP)	173
Midway	173
Fronton (CDP)	172
Jolly	172
Weinert	172
Bynum	171
Rochelle (CDP)	169
Ranchitos Las Lomas (CDP)	167
Lingleville (CDP)	166
Kopperl (CDP)	164
Country Acres (CDP)	163
North Escobares (CDP)	162
Quemado (CDP)	162
Lago (CDP)	161
Browndell	160
Moore Station	160
Tradewinds (CDP)	160
Goree	158
Flat (CDP)	157
Morse (CDP)	157
Thompsons	156
Coyanosa (CDP)	155
Bivins (CDP)	153
Villa del Sol (CDP)	153

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Airport Heights (CDP)	151
Bluff Dale (CDP)	151
Guthrie (CDP)	151
Leona	151
Priddy (CDP)	150
Botines (CDP)	149
Loma Linda (CDP)	149
Iago (CDP)	148
Oakhurst (CDP)	148
Ringgold (CDP)	146
Springlake	145
Mertens	144
Ramos (CDP)	144
Loving (CDP)	143
Chaparrito (CDP)	142
Mobile City	142
Pawnee (CDP)	140
Petty (CDP)	140
Clay (CDP)	139
La Casita (CDP)	139
E. Lopez (CDP)	136
South Fork Estates (CDP)	136
Loma Grande (CDP)	135
Lago Vista (CDP)	133
Kingsbury	132
Miguel Barrera (CDP)	132
Sanford	132
Mullin	130
La Minita (CDP)	129
Relampago (CDP)	129
Adrian	128
East Columbia (CDP)	128
Colorado Acres (CDP)	127
Allison (CDP)	125
Nina (CDP)	124
Melvin	123
Sammy Martinez (CDP)	123
Umbarger (CDP)	123
Barrera (CDP)	122
Novice	122
Estelline	121
Realitos (CDP)	121
Todd Mission	121
Harwood	120
Hilltop (CDP) (Starr)	120
Regino Ramirez (CDP)	120
Whitharral (CDP)	119
Austwell	118
Ben Arnold (CDP)	117
Flowella (CDP)	117
Loma Vista (CDP)	117
New Falcon (CDP)	117
Salineño North (CDP)	117
Cuney	116
La Coma Heights (CDP)	116
Washburn (CDP)	116
Marietta	115
Brazos (CDP)	112
Villarreal (CDP)	112
Campo Verde (CDP)	111
Encino (CDP)	109
Amaya (CDP)	108
Los Angeles (CDP)	108
Yznaga (CDP)	108
Driftwood (CDP)	106
Ranchette Estates (CDP)	106
El Socio (CDP)	104
Lasana (CDP)	104
Carlton (CDP)	102
Aquilla	101
Briggs (CDP)	101
Flor del Rio (CDP)	101
Kirvin	101
Round Mountain	101
Butterfield (CDP)	100
Shelbyville (CDP)	100
Powell	99
Loma Linda West (CDP)	98
Normanna (CDP)	98
Airport Road Addition (CDP)	96
Paisano Park (CDP)	96
Farnsworth (CDP)	95
Valera (CDP)	94
Buena Vista (CDP)	93
Dodson	93
Proctor (CDP)	93
Radar Base (CDP)	93
Valle Hermoso (CDP)	93
Victoria Vera (CDP)	93
Falconaire (CDP)	92
Barksdale (CDP)	91
Brookston (CDP)	91
O'Brien	91
Toco	91
Tunis (CDP)	90
Petronila	89

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Oklaunion (CDP)	88
Orason (CDP)	88
Harrold (CDP)	87
Mobeetie	87
Round Top	87
Zapata Ranch (CDP)	87
Edmonson	86
Santa Monica (CDP)	86
Uncertain	85
Los Arcos (CDP)	83
Wingate (CDP)	83
Alfred (CDP)	82
J.F. Villareal (CDP)	82
La Rosita (CDP)	82
Burlington (CDP)	81
Longoria (CDP)	81
Evergreen (CDP)	80
Pablo Pena (CDP)	80
Amada Acres (CDP)	79
McCaulley (CDP)	79
Zarate (CDP)	79
Del Mar Heights (CDP)	78
Fluvanna (CDP)	78
Rocky Mound	78
Terlingua (CDP)	78
La Chuparosa (CDP)	74
Santa Cruz (CDP)	74
Fowlerton (CDP)	73
Pena (CDP)	73
Valentine	73
La Loma de Falcon (CDP)	72
Pyote	72
Domino	71
Edgewater Estates (CDP)	71
Los Fresnos (CDP)	71
Miller's Cove	71
Spade (CDP)	71
Catarina (CDP)	70
Lopeño (CDP)	70
Sun Valley	70
Dorchester	69
Gutierrez (CDP)	69
Seven Oaks	68
Loma Linda East (CDP) (Starr)	67
Neylandville	67
Lipscomb (CDP)	66
Ramirez-Perez (CDP)	66
Casa Blanca (CDP)	65

City or CDP*	Population
Indio (CDP)	65
Deanville (CDP)	63
Putnam	63
Manuel Garcia II (CDP)	62
Rivereno (CDP)	62
Bonanza Hills (CDP)	61
Toyah	61
Falman (CDP)	60
Glazier (CDP)	60
Guadalupe Guerra (CDP)	60
Lakeview	60
Tanquecitos South Acres II (CDP)	60
Las Palmas (CDP)	59
Bledsoe (CDP)	56
La Carla (CDP)	55
Normandy (CDP)	54
El Brazil (CDP)	53
Girard (CDP)	53
Sylvester (CDP)	52
Lelia Lake (CDP)	51
El Mesquite (CDP)	50
Waka (CDP)	50
Los Centenarios (CDP)	49
Los Nopalitos (CDP)	49
Olivia Lopez de Gutierrez (CDP)	49
San Fernando (CDP)	49
Mosheim (CDP)	48
Lamkin (CDP)	46
Morales-Sanchez (CDP)	46
Dayton Lakes	45
Garciasville (CDP)	43
Los Arrieros (CDP)	43
Redford (CDP)	43
Chapeno (CDP)	42
Concepcion (CDP)	42
Martinez (CDP)	42
Spofford	41
Sandoval (CDP)	37
Los Corralitos (CDP)	36
Summerfield (CDP)	34
Sunset (CDP) (Starr)	34
Cuevitas (CDP)	33
Draper	33
Narciso Pena (CDP)	32
Tulsita (CDP)	31
Los Minerales (CDP)	30
Benjamin Perez (CDP)	29
Box Canyon (CDP)	29

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Casas (CDP)	29
Elbert (CDP)	29
Tierra Dorada (CDP)	29
Los Ybanez	28
Quintana	26
Thompsonville (CDP)	26
Fernando Salinas (CDP)	25
La Moca Ranch (CDP)	25
Amistad (CDP)	24
Anacua (CDP)	24
Samnorwood (CDP)	24
Santel (CDP)	24
Alanreed (CDP)	23
Jardin de San Julian (CDP)	23
Impact	22
Mentone (CDP)	22
Harding Gill Tract (CDP)	21
Laredo Ranchettes (CDP)	21
Falcon Heights (CDP)	18
Netos (CDP)	18
Elias-Fela Solis (CDP)	17
Quail (CDP)	17
Rafael Pena (CDP)	16

City or CDP*	Population
Los Huisaches (CDP)	15
Brundage (CDP)	12
Santa Anna (CDP)	12
Acala (CDP)	11
H. Cuellar Estates (CDP)	11
Los Veteranos II (CDP)	11
Four Points (CDP)	10
La Coma (CDP)	7
Las Pilas (CDP)	7
Los Lobos (CDP)	7
Quesada (CDP)	7
Aguilares (CDP)	6
Ramireno (CDP)	6
Laredo Ranchettes West (CDP)	5
Sunset Acres (CDP)	4
Falcon Village (CDP)	3
Guerra (CDP)	3
Hillside Acres (CDP)	3
Las Haciendas (CDP)	2
Pueblo East (CDP)	1
Los Veteranos I (CDP)	0
Mustang	0
Valle Verde (CDP)	0

TOTAL POPULATION 29,145,505

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*Unincorporated area that is a Census Designated Place.

Appendix 2

2020 Texas Census
County Summary

According to the official returns of the 24th Decennial Census of the United States, as released by the Bureau of the Census on August 12, 2021.

(By population)

Texas Legislative Council
August 2021

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Population in Texas Counties
2020 Census

County	Population
Harris	4,731,145
Dallas	2,613,539
Tarrant	2,110,640
Bexar	2,009,324
Travis	1,290,188
Collin	1,064,465
Denton	906,422
Hidalgo	870,781
El Paso	865,657
Fort Bend	822,779
Montgomery	620,443
Williamson	609,017
Cameron	421,017
Brazoria	372,031
Bell	370,647
Nueces	353,178
Galveston	350,682
Lubbock	310,639
Webb	267,114
McLennan	260,579
Jefferson	256,526
Hays	241,067
Brazos	233,849
Smith	233,479
Ellis	192,455
Johnson	179,927
Guadalupe	172,706
Midland	169,983
Ector	165,171
Comal	161,501
Parker	148,222
Kaufman	145,310
Taylor	143,208
Randall	140,753
Grayson	135,543
Wichita	129,350
Gregg	124,239
Tom Green	120,003
Potter	118,525
Rockwall	107,819
Hunt	99,956
Bastrop	97,216
Bowie	92,893

County	Population
Liberty	91,628
Victoria	91,319
Angelina	86,395
Orange	84,808
Coryell	83,093
Henderson	82,150
Walker	76,400
Harrison	68,839
San Patricio	68,755
Wise	68,632
Starr	65,920
Nacogdoches	64,653
Hood	61,598
Van Zandt	59,541
Anderson	57,922
Maverick	57,887
Waller	56,794
Hardin	56,231
Navarro	52,624
Kerr	52,598
Rusk	52,214
Medina	50,748
Cherokee	50,412
Polk	50,123
Lamar	50,088
Wilson	49,753
Burnet	49,130
Atascosa	48,981
Val Verde	47,586
Chambers	46,571
Caldwell	45,883
Wood	44,843
Kendall	44,279
Erath	42,545
Cooke	41,668
Wharton	41,570
Upshur	40,892
Jim Wells	38,891
Brown	38,095
Hopkins	36,787
Matagorda	36,255
Hill	35,874
Washington	35,805

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Fannin	35,662
Howard	34,860
Jasper	32,980
Hale	32,522
Titus	31,247
Bee	31,047
Kleberg	31,040
Austin	30,167
Grimes	29,268
Cass	28,454
Palo Pinto	28,409
San Jacinto	27,402
Gillespie	26,725
Milam	24,754
Uvalde	24,564
Fayette	24,435
Shelby	24,022
Aransas	23,830
Panola	22,491
Limestone	22,146
Houston	22,066
Lampasas	21,627
Gaines	21,598
Hockley	21,537
Moore	21,358
Llano	21,243
Gray	21,227
Bandera	20,851
Hutchinson	20,617
Colorado	20,557
Lavaca	20,337
Willacy	20,164
Calhoun	20,106
Montague	19,965
DeWitt	19,824
Tyler	19,798
Jones	19,663
Gonzales	19,653
Freestone	19,435
Andrews	18,610
Deaf Smith	18,583
Frio	18,385
Bosque	18,235
Young	17,867
Eastland	17,725
Burleson	17,642
Lee	17,478
Falls	16,968
Scurry	16,932
Robertson	16,757
Leon	15,719
Pecos	15,193
Jackson	14,988
Reeves	14,748
Nolan	14,738
Karnes	14,710
Zapata	13,889
Callahan	13,708
Trinity	13,602
Comanche	13,594
Madison	13,455
Lamb	13,045
Wilbarger	12,887
Camp	12,464
Dawson	12,456
Newton	12,217
Rains	12,164
Morris	11,973
Terry	11,831
Ward	11,644
Red River	11,587
Blanco	11,374
Live Oak	11,335
Franklin	10,359
Clay	10,218
Ochiltree	10,015
Runnels	9,900
Sabine	9,894
Parmer	9,869
Duval	9,831
Marion	9,725
Zavala	9,670
Brewster	9,546
Somervell	9,205
Stephens	9,101
Mitchell	8,990
Dimmit	8,615
Archer	8,560
Jack	8,472
Hamilton	8,222
San Augustine	7,918
Winkler	7,791
Yoakum	7,694
Coleman	7,684
McCulloch	7,630
Castro	7,371

Dallam	7,115
Brooks	7,076
Goliad	7,012
Swisher	6,971
Bailey	6,904
Refugio	6,741
Childress	6,664
La Salle	6,664
Presidio	6,131
Garza	5,816
Carson	5,807
San Saba	5,730
Lynn	5,596
Haskell	5,416
Floyd	5,402
Hartley	5,382
Hansford	5,285
Martin	5,237
Delta	5,230
Crosby	5,133
Wheeler	4,990
Jim Hogg	4,838
Crane	4,675
Mills	4,456
Kimble	4,286
Mason	3,953
Fisher	3,672
Hardeman	3,549
Baylor	3,465
Reagan	3,385
Hemphill	3,382
Sutton	3,372
Knox	3,353
Upton	3,308
Concho	3,303
Coke	3,285
Donley	3,258
Hudspeth	3,202
Kinney	3,129
Shackelford	3,105
Crockett	3,098
Lipscomb	3,059
Hall	2,825
Sherman	2,782
Real	2,758
Collingsworth	2,652
Cochran	2,547
Schleicher	2,451
Culberson	2,188
Jeff Davis	1,996
Menard	1,962
Armstrong	1,848
Dickens	1,770
Oldham	1,758
Irion	1,513
Throckmorton	1,440
Briscoe	1,435
Edwards	1,422
Cottle	1,380
Sterling	1,372
Stonewall	1,245
Glasscock	1,116
Foard	1,095
Motley	1,063
Roberts	827
Terrell	760
Kent	753
Borden	631
McMullen	600
Kenedy	350
King	265
Loving	64

TOTAL POPULATION 29,145,505

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Appendix 3

2020 Texas Census City Summary

According to the official returns of the 24th Decennial Census of the United States, as released by the Bureau of the Census on August 12, 2021.

(Alphabetical)

Texas Legislative Council
August 2021

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Population in Texas Cities and CDPs
2020 Census

City or CDP*	Population
Abbott	352
Abernathy	2,865
Abilene	125,182
Abram (CDP)	1,108
Acala (CDP)	11
Ackerly	264
Addison	16,661
Adrian	128
Agua Dulce	685
Agua Dulce (CDP)	3,218
Aguilares (CDP)	6
Airport Heights (CDP)	151
Airport Road Addition (CDP)	96
Alamo	19,493
Alamo Beach (CDP)	254
Alamo Heights	7,357
Alanreed (CDP)	23
Alba	473
Albany	1,854
Aldine (CDP)	15,999
Aledo	4,858
Alfred (CDP)	82
Alice	17,891
Alice Acres (CDP)	465
Allen	104,627
Allison (CDP)	125
Alma	373
Alpine	6,035
Alto	1,027
Alto Bonito Heights (CDP)	296
Alton	18,198
Alvarado	4,739
Alvin	27,098
Alvord	1,351
Amada Acres (CDP)	79
Amargosa (CDP)	305
Amarillo	200,393
Amaya (CDP)	108
Ames	937
Amherst	678
Amistad (CDP)	24
Anacua (CDP)	24
Anahuac	1,980

City or CDP*	Population
Anderson	193
Andrews	13,487
Angleton	19,429
Angus	444
Anna	16,896
Annetta	3,041
Annetta North	554
Annetta South	621
Annona	184
Anson	2,294
Anthony	3,671
Anton	907
Appleby	552
Aquilla	101
Aransas Pass	7,941
Archer City	1,601
Arcola	2,034
Argyle	4,403
Arlington	394,266
Arp	892
Arroyo Colorado Estates (CDP)	833
Arroyo Gardens (CDP)	420
Asherton	722
Aspermont	789
Atascocita (CDP)	88,174
Athens	12,857
Atlanta	5,433
Aubrey	5,006
Aurora	1,390
Austin	961,855
Austwell	118
Avery	421
Avinger	371
Azle	13,369
B and E (CDP)	489
Bacliff (CDP)	9,677
Bailey	220
Bailey's Prairie	775
Baird	1,479
Balch Springs	27,685
Balcones Heights	2,746
Ballinger	3,619
Balmorhea	408

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Bandera	829
Bangs	1,540
Banquete (CDP)	745
Bardwell	625
Barksdale (CDP)	91
Barrera (CDP)	122
Barrett (CDP)	5,223
Barry	220
Barstow	265
Bartlett	1,633
Barton Creek (CDP)	3,356
Bartonville	1,725
Bastrop	9,688
Batesville (CDP)	787
Bay City	18,061
Bayou Vista	1,763
Bayside	275
Baytown	83,701
Bayview	475
Beach City	3,221
Bear Creek	397
Bear Creek Ranch (CDP)	1,787
Beasley	608
Beaumont	115,282
Beauxart Gardens (CDP)	1,064
Beaver Creek (CDP)	910
Beckville	722
Bedford	49,928
Bedias	361
Bee Cave	9,144
Beeville	13,669
Bellaire	17,202
Bellevue	289
Bellmead	10,494
Bells	1,521
Bellville	4,206
Belterra (CDP)	6,170
Belton	23,054
Ben Arnold (CDP)	117
Ben Bolt (CDP)	1,662
Ben Wheeler (CDP)	456
Benavides	1,183
Benbrook	24,520
Benjamin	196
Benjamin Perez (CDP)	29
Berryville	824
Bertram	1,616
Beverly Hills	1,878

City or CDP*	Population
Bevil Oaks	1,089
Big Lake	2,965
Big Sandy	1,231
Big Spring	26,144
Big Thicket Lake Estates (CDP)	514
Big Wells	483
Bigfoot (CDP)	480
Bishop	3,174
Bishop Hills	211
Bivins (CDP)	153
Bixby (CDP)	352
Blackwell	258
Blanco	1,682
Blanket	369
Bledsoe (CDP)	56
Blessing (CDP)	856
Bloomburg	321
Blooming Grove	857
Bloomington (CDP)	2,082
Blossom	1,402
Blue Berry Hill (CDP)	844
Blue Mound	2,393
Blue Ridge	1,180
Bluetown (CDP)	491
Bluff Dale (CDP)	151
Blum	383
Boerne	17,850
Bogata	1,074
Boling (CDP)	930
Bolivar Peninsula (CDP)	2,769
Bonanza Hills (CDP)	61
Bonham	10,408
Bonney	180
Booker	1,437
Borger	12,551
Botines (CDP)	149
Bovina	1,699
Bowie	5,448
Box Canyon (CDP)	29
Boyd	1,416
Boys Ranch (CDP)	173
Brackettville	1,341
Brady	5,118
Brazoria	2,866
Brazos (CDP)	112
Brazos Country	514
Breckenridge	5,187
Bremond	858

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Brenham	17,369
Briar (CDP)	7,035
Briarcliff	2,062
Briaroaks	507
Bridge City	9,546
Bridgeport	5,923
Briggs (CDP)	101
Bristol (CDP)	714
Broaddus	184
Bronte	933
Brookshire	5,066
Brookside Village	1,548
Brookston (CDP)	91
Browndell	160
Brownfield	8,936
Brownsboro	1,212
Brownsville	186,738
Brownwood	18,862
Bruceville-Eddy	1,413
Brundage (CDP)	12
Bruni (CDP)	251
Brushy Creek (CDP)	22,519
Bryan	83,980
Bryson	430
Buchanan Dam (CDP)	1,508
Buchanan Lake Village (CDP)	720
Buckholts	365
Buda	15,108
Buena Vista (CDP)	93
Buffalo	1,767
Buffalo Gap	543
Buffalo Springs	468
Bullard	3,318
Bulverde	5,692
Buna (CDP)	2,137
Bunker Hill Village	3,822
Burkburnett	10,939
Burke	691
Burleson	47,641
Burlington (CDP)	81
Burnet	6,436
Burton	297
Bushland (CDP)	2,234
Butterfield (CDP)	100
Byers	454
Bynum	171
Cactus	3,057
Caddo Mills	1,495

City or CDP*	Population
Cade Lakes (CDP)	507
Caldwell	3,993
Callender Lake (CDP)	1,090
Callisburg	321
Calvert	962
Camargito (CDP)	324
Cameron	5,306
Cameron Park (CDP)	6,099
Camp Swift (CDP)	7,943
Camp Wood	517
Campbell	542
Campo Verde (CDP)	111
Canadian	2,339
Caney City	187
Canton	4,229
Cantu Addition (CDP)	191
Canutillo (CDP)	6,212
Canyon	14,836
Canyon Creek (CDP)	1,249
Canyon Lake (CDP)	31,124
Cape Royale (CDP)	657
Carbon	281
Carl's Corner	201
Carlsbad (CDP)	622
Carlton (CDP)	102
Carmine	244
Carrizo Hill (CDP)	550
Carrizo Springs	4,892
Carrollton	133,434
Carter (CDP)	1,637
Carthage	6,569
Casa Blanca (CDP)	65
Casas (CDP)	29
Cashion Community	286
Castle Hills	3,978
Castroville	2,954
Catarina (CDP)	70
Cedar Creek (CDP)	3,154
Cedar Hill	49,148
Cedar Park	77,595
Cedar Point (CDP)	851
Celeste	809
Celina	16,739
Center	5,221
Center Point (CDP)	1,263
Centerville	905
Central Gardens (CDP)	4,373
César Chávez (CDP)	1,608

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Chandler	3,275
Channelview (CDP)	45,688
Channing	281
Chaparrito (CDP)	142
Chapeno (CDP)	42
Charlotte	1,524
Chester	270
Chico	946
Childress	5,737
Chillicothe	549
Chilton (CDP)	776
China	1,260
China Grove	1,141
China Spring (CDP)	1,436
Chireno	370
Christine	337
Christoval (CDP)	482
Chula Vista (CDP) (Cameron)	257
Chula Vista (CDP) (Maverick)	5,100
Chula Vista (CDP) (Zavala)	307
Cibolo	32,276
Cienegas Terrace (CDP)	3,025
Cinco Ranch (CDP)	16,899
Circle D-KC Estates (CDP)	2,588
Cisco	3,883
Citrus City (CDP)	3,291
Clarendon	1,877
Clarksville	2,857
Clarksville City	780
Claude	1,186
Clay (CDP)	139
Clear Lake Shores	1,258
Cleburne	31,352
Cleveland	7,471
Clifton	3,465
Clint	923
Cloverleaf (CDP)	24,100
Clute	10,604
Clyde	3,811
Coahoma	945
Cockrell Hill	3,815
Coffee City	249
Coldspring	819
Coleman	3,912
College Station	120,511
Colleyville	26,057
Collinsville	1,866
Colmesneil	542

City or CDP*	Population
Colorado Acres (CDP)	127
Colorado City	3,991
Columbus	3,699
Comanche	4,211
Combes	2,999
Combine	2,245
Comfort (CDP)	2,211
Commerce	9,090
Como	728
Concepcion (CDP)	42
Conroe	89,956
Converse	27,466
Cool	211
Coolidge	778
Cooper	1,911
Coppell	42,983
Copper Canyon	1,731
Copperas Cove	36,670
Corinth	22,634
Corpus Christi	317,863
Corrigan	1,477
Corsicana	25,109
Cottonwood	181
Cottonwood Shores	1,403
Cotulla	3,718
Country Acres (CDP)	163
Coupland	289
Cove	525
Covington	261
Coyanosa (CDP)	155
Coyote Acres (CDP)	570
Coyote Flats	345
Crandall	3,860
Crane	3,478
Cranfills Gap	277
Crawford	887
Creedmoor	458
Cresson	1,349
Crockett	6,332
Crosby (CDP)	3,417
Crosbyton	1,492
Cross Mountain (CDP)	3,944
Cross Plains	899
Cross Roads	1,744
Cross Timber	362
Crowell	769
Crowley	18,070
Crystal City	6,354

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Cuero	8,128
Cuevitas (CDP)	33
Cumby	679
Cumings (CDP)	2,207
Cuney	116
Cushing	557
Cut and Shoot	1,087
Daingerfield	2,522
Daisetta	923
Dalhart	8,447
Dallas	1,304,379
Dalworthington Gardens	2,293
Damon (CDP)	436
Danbury	1,671
Darrouzett	309
Dawson	815
Dayton	8,777
Dayton Lakes	45
De Kalb	1,527
De Leon	2,258
Dean	488
Deanville (CDP)	63
Decatur	6,538
DeCordova	3,007
Deer Park	34,495
Deerwood (CDP)	1,745
Del Mar Heights (CDP)	78
Del Rio	34,673
Del Sol (CDP)	333
Dell City	245
Delmita (CDP)	186
Denison	24,479
Dennis (CDP)	727
Denton	139,869
Denver City	4,470
Deport	550
DeSoto	56,145
Detroit	704
Devers	361
Devine	4,324
Deweyville (CDP)	571
D'Hanis (CDP)	785
Diboll	4,457
Dickens	219
Dickinson	20,847
Dilley	3,274
Dime Box (CDP)	207
Dimmitt	4,171

City or CDP*	Population
DISH	437
Dodd City	369
Dodson	93
Doffing (CDP)	5,618
Domino	71
Donna	16,797
Doolittle (CDP)	4,061
Dorchester	69
Double Oak	3,054
Douglassville	211
Draper	33
Driftwood (CDP)	106
Dripping Springs	4,650
Driscoll	680
Dublin	3,359
Dumas	14,501
Duncanville	40,706
E. Lopez (CDP)	136
Eagle Lake	3,442
Eagle Pass	28,130
Early	3,087
Earth	901
East Alto Bonito (CDP)	905
East Bernard	2,218
East Columbia (CDP)	128
East Mountain	899
East Tawakoni	824
Eastland	3,609
Easton	499
Ector	737
Edcouch	2,732
Eden	1,100
Edgecliff Village	3,788
Edgewater Estates (CDP)	71
Edgewood	1,530
Edinburg	100,243
Edmonson	86
Edna	5,987
Edom	339
Edroy (CDP)	422
Eidson Road (CDP)	9,461
El Brazil (CDP)	53
El Camino Angosto (CDP)	186
El Campo	12,350
El Castillo (CDP)	219
El Cenizo	2,540
El Cenizo (CDP)	273
El Chaparral (CDP)	467

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City or CDP*	Population
El Indio (CDP)	182
El Lago	3,090
El Mesquite (CDP)	50
El Paso	678,815
El Quiote (CDP)	226
El Rancho Vela (CDP)	254
El Refugio (CDP)	407
El Socio (CDP)	104
Elbert (CDP)	29
Eldorado	1,574
Electra	2,292
Elgin	9,784
Elias-Fela Solis (CDP)	17
Elkhart	1,287
Elm Creek (CDP)	2,884
Elmendorf	1,862
Elmo (CDP)	803
Elsa	5,668
Emerald Bay (CDP)	1,146
Emhouse	187
Emory	1,251
Encantada-Ranchito-El Calaboz (CDP)	1,981
Enchanted Oaks	347
Encinal	540
Encino (CDP)	109
Ennis	20,159
Escobares	2,588
Estelline	121
Eugenio Saenz (CDP)	182
Euless	61,032
Eureka	313
Eustace	1,137
Evadale (CDP)	1,246
Evant	455
Evergreen (CDP)	80
Everman	6,154
Fabens (CDP)	7,498
Fabrica (CDP)	772
Fair Oaks Ranch	9,833
Fairchilds	864
Fairfield	2,850
Fairview	10,372
Falcon Heights (CDP)	18
Falcon Lake Estates (CDP)	962
Falcon Mesa (CDP)	523
Falcon Village (CDP)	3
Falconaire (CDP)	92
Falfurrias	4,609

City or CDP*	Population
Falls City	514
Falman (CDP)	60
Fannett (CDP)	2,363
Farmers Branch	35,991
Farmersville	3,612
Farnsworth (CDP)	95
Farwell	1,425
Fate	17,958
Fayetteville	246
Fernando Salinas (CDP)	25
Ferris	2,788
Fifth Street (CDP)	2,284
Flat (CDP)	157
Flatonia	1,308
Flor del Rio (CDP)	101
Florence	1,171
Floresville	7,203
Flowella (CDP)	117
Flower Mound	75,956
Floydada	2,675
Fluvanna (CDP)	78
Follett	373
Forest Heights (CDP)	1,329
Forest Hill	13,955
Forney	23,455
Forsan	225
Fort Bliss (CDP)	11,260
Fort Clark Springs (CDP)	1,215
Fort Davis (CDP)	1,024
Fort Hancock (CDP)	1,052
Fort Hood (CDP)	28,295
Fort Stockton	8,466
Fort Worth	918,915
Four Corners (CDP)	12,103
Four Points (CDP)	10
Fowlerton (CDP)	73
Franklin	1,614
Frankston	1,126
Fredericksburg	10,875
Freeport	10,696
Freer	2,461
Fresno (CDP)	24,486
Friendswood	41,213
Friona	4,171
Frisco	200,509
Fritch	1,859
Fronton (CDP)	172
Fronton Ranchettes (CDP)	174

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
Frost	620
Fruitvale	476
Fulshear	16,856
Fulton	1,523
Gail (CDP)	249
Gainesville	17,394
Galena Park	10,740
Gallatin	321
Galveston	53,695
Ganado	1,975
Garceno (CDP)	440
Garciasville (CDP)	43
Garden City (CDP)	334
Garden Ridge	4,186
Gardendale (CDP)	2,020
Garfield (CDP)	1,825
Garland	246,018
Garner (CDP)	397
Garrett	829
Garrison	789
Garwood (CDP)	510
Gary City	335
Garza-Salinas II (CDP)	651
Gatesville	16,135
Gause (CDP)	275
George West	2,171
Georgetown	67,176
Geronimo (CDP)	1,097
Gholson	1,250
Giddings	4,969
Gilmer	4,843
Girard (CDP)	53
Gladewater	6,134
Glazier (CDP)	60
Glen Rose	2,659
Glenn Heights	15,819
Glidden (CDP)	741
Godley	1,450
Goldsmith	236
Goldthwaite	1,738
Goliad	1,620
Golinda	618
Gonzales	7,165
Goodlow	178
Goodrich	248
Gordon	470
Goree	158
Gorman	976
Graford	669
Graham	8,732
Granbury	10,958
Grand Prairie	196,100
Grand Saline	3,107
Grandfalls	340
Grandview	1,879
Granger	1,183
Grangerland (CDP)	754
Granite Shoals	5,129
Granjeno	283
Grape Creek (CDP)	3,594
Grapeland	1,465
Grapevine	50,631
Grays Prairie	325
Green Valley Farms (CDP)	655
Greenville	28,164
Gregory	1,740
Grey Forest	492
Groesbeck	3,631
Groom	552
Groves	17,335
Groveton	918
Gruver	1,130
Guadalupe Guerra (CDP)	60
Guerra (CDP)	3
Gun Barrel City	6,190
Gunter	2,060
Gustine	392
Guthrie (CDP)	151
Gutierrez (CDP)	69
H. Cuellar Estates (CDP)	11
Hackberry	2,973
Hale Center	2,062
Hallettsville	2,731
Hallsburg	419
Hallsville	4,277
Haltom City	46,073
Hamilton	2,895
Hamlin	1,831
Hamshire (CDP)	962
Happy	602
Hardin	768
Harding Gill Tract (CDP)	21
Hargill (CDP)	800
Harker Heights	33,097
Harlingen	71,829
Harper (CDP)	1,332

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City or CDP*	Population
Harrold (CDP)	87
Hart	869
Hartley (CDP)	382
Harwood	120
Haskell	3,089
Haslet	1,952
Havana (CDP)	361
Hawk Cove	452
Hawkins	1,274
Hawley	545
Hays	227
Hearne	4,544
Heartland (CDP)	8,509
Heath	9,769
Hebbronville (CDP)	4,101
Hebron	803
Hedley	275
Hedwig Village	2,370
Heidelberg (CDP)	1,507
Helotes	9,030
Hemphill	1,029
Hempstead	5,430
Henderson	13,271
Henrietta	3,111
Hereford	14,972
Hermleigh (CDP)	383
Hewitt	16,026
Hickory Creek	4,718
Hico	1,335
Hidalgo	13,964
Hideaway	3,201
Higgins	356
Highland Haven	418
Highland Park	8,864
Highland Village	15,899
Highlands (CDP)	8,612
Hill Country Village	942
Hillcrest	705
Hillsboro	8,221
Hillside Acres (CDP)	3
Hilltop (CDP) (Frio)	356
Hilltop (CDP) (Starr)	120
Hilltop Lakes (CDP)	1,385
Hilshire Village	816
Hitchcock	7,301
Holiday Beach (CDP)	526
Holiday Lakes	991
Holland	1,075
Holliday	1,524
Holly Lake Ranch (CDP)	2,951
Hollywood Park	3,130
Homestead Meadows North (CDP)	5,210
Homestead Meadows South (CDP)	7,142
Hondo	8,289
Honey Grove	1,715
Hooks	2,518
Horizon City	22,489
Hornsby Bend (CDP)	12,168
Horseshoe Bay	4,257
Horseshoe Bend (CDP)	949
Houston	2,304,580
Howardwick	370
Howe	3,571
Hubbard	1,394
Huckabay (CDP)	268
Hudson	4,849
Hudson Bend (CDP)	4,005
Hudson Oaks	2,174
Hughes Springs	1,575
Hull (CDP)	522
Humble	16,795
Hungerford (CDP)	390
Hunters Creek Village	4,385
Huntington	2,025
Huntsville	45,941
Hurst	40,413
Hutchins	5,607
Hutto	27,577
Huxley	361
Iago (CDP)	148
Idalou	2,193
Iglesia Antigua (CDP)	415
Impact	22
Imperial (CDP)	294
Indian Hills (CDP)	2,694
Indian Lake	839
Indian Springs (CDP)	892
Indio (CDP)	65
Industry	268
Inez (CDP)	2,641
Ingleside	9,519
Ingleside on the Bay	614
Ingram	1,787
Iola	311
Iowa Colony	8,154
Iowa Park	6,535

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City or CDP*	Population
Iraan	1,055
Iredell	305
Irving	256,684
Italy	1,926
Itasca	1,562
Ivanhoe	1,327
J.F. Villareal (CDP)	82
Jacinto City	9,613
Jacksboro	4,184
Jacksonville	13,997
Jamaica Beach	1,078
Jardin de San Julian (CDP)	23
Jarrell	1,753
Jasper	6,884
Jayton	511
Jefferson	1,875
Jersey Village	7,921
Jewett	793
Joaquin	734
Johnson City	1,627
Jolly	172
Jones Creek	1,975
Jonestown	2,365
Josephine	2,119
Joshua	7,891
Jourdanton	4,094
Juarez (CDP)	642
Junction	2,451
Justin	4,409
Karnes City	3,111
Katy	21,894
Kaufman	6,797
K-Bar Ranch (CDP)	375
Keene	6,387
Keller	45,776
Kemah	1,807
Kemp	1,129
Kempner	1,146
Kendleton	343
Kenedy	3,473
Kenefick	615
Kennard	272
Kennedale	8,517
Kerens	1,505
Kermit	6,267
Kerrville	24,278
Kilgore	13,376
Killeen	153,095

City or CDP*	Population
Kingsbury	132
Kingsland (CDP)	7,028
Kingsville	25,402
Kirby	8,142
Kirbyville	2,036
Kirvin	101
Knippa (CDP)	606
Knollwood	764
Knox City	1,065
Kopperl (CDP)	164
Kosse	458
Kountze	1,981
Kress	596
Krugerville	1,766
Krum	5,483
Kurten	395
Kyle	45,697
La Blanca (CDP)	2,078
La Carla (CDP)	55
La Casita (CDP)	139
La Chuparosa (CDP)	74
La Coma (CDP)	7
La Coma Heights (CDP)	116
La Escondida (CDP)	183
La Esperanza (CDP)	217
La Feria	6,817
La Feria North (CDP)	225
La Grange	4,391
La Grulla	1,222
La Homa (CDP)	11,267
La Joya	4,457
La Loma de Falcon (CDP)	72
La Marque	18,030
La Minita (CDP)	129
La Moca Ranch (CDP)	25
La Paloma (CDP)	3,218
La Paloma Addition (CDP)	314
La Paloma Ranchettes (CDP)	329
La Paloma-Lost Creek (CDP)	1,359
La Porte	35,124
La Presa (CDP)	241
La Pryor (CDP)	1,294
La Puerta (CDP)	638
La Rosita (CDP)	82
La Tina Ranch (CDP)	687
La Vernia	1,077
La Victoria (CDP)	176
La Villa	2,804

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City or CDP*	Population
La Ward	176
Lackland AFB (CDP)	9,467
LaCoste	1,077
Lacy-Lakeview	6,988
Ladonia	597
Lago (CDP)	161
Lago Vista	8,896
Lago Vista (CDP)	133
Laguna Heights (CDP)	962
Laguna Park (CDP)	1,372
Laguna Seca (CDP)	232
Laguna Vista	3,520
Lake Bridgeport	339
Lake Brownwood (CDP)	1,462
Lake Bryan (CDP)	2,060
Lake Cherokee (CDP)	2,980
Lake City	447
Lake Colorado City (CDP)	636
Lake Dallas	7,708
Lake Dunlap (CDP)	1,981
Lake Jackson	28,177
Lake Kiowa (CDP)	2,254
Lake Medina Shores (CDP)	1,110
Lake Meredith Estates (CDP)	338
Lake Tanglewood	686
Lake View (CDP)	197
Lake Worth	4,711
Lakehills (CDP)	5,295
Lakeport	976
Lakeshore Gardens-Hidden Acres (CDP)	637
Lakeside (San Patricio)	338
Lakeside (Tarrant)	1,649
Lakeside City	1,082
Lakeview	60
Lakeway	19,189
Lakewood Village	635
Lamar (CDP)	724
Lamesa	8,674
Lamkin (CDP)	46
Lampasas	7,291
Lancaster	41,275
Lantana (CDP)	10,785
Laredo	255,205
Laredo Ranchettes (CDP)	21
Laredo Ranchettes West (CDP)	5
Las Haciendas (CDP)	2
Las Lomas (CDP)	3,054
Las Lomitas (CDP)	235
Las Palmas (CDP)	59
Las Palmas II (CDP)	891
Las Pilas (CDP)	7
Las Quintas Fronterizas (CDP)	2,326
Lasana (CDP)	104
Lasara (CDP)	909
Latexo	232
Laughlin AFB (CDP)	1,673
Laureles (CDP)	4,111
Lavon	4,469
Lawn	311
League City	114,392
Leakey	315
Leander	59,202
Leary	433
Lefors	420
Lelia Lake (CDP)	51
Leming (CDP)	841
Leon Valley	11,542
Leona	151
Leonard	1,987
Leroy	354
Levelland	12,652
Lewisville	111,822
Lexington	1,217
Liberty	8,279
Liberty City (CDP)	2,721
Liberty Hill	3,646
Lindale	6,059
Linden	1,825
Lindsay	1,045
Lindsay (CDP)	452
Lingleville (CDP)	166
Linn (CDP)	733
Lipan	505
Lipscomb (CDP)	66
Little Cypress (CDP)	1,968
Little Elm	46,453
Little River-Academy	1,992
Littlefield	5,943
Live Oak	15,781
Liverpool	475
Livingston	5,640
Llano	3,325
Llano Grande (CDP)	2,952
Lockett (CDP)	173
Lockhart	14,379
Lockney	1,498

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Log Cabin	678
Lolita (CDP)	519
Loma Grande (CDP)	135
Loma Linda (CDP)	149
Loma Linda East (CDP) (Jim Wells)	305
Loma Linda East (CDP) (Starr)	67
Loma Linda West (CDP)	98
Loma Vista (CDP)	117
Lometa	753
Lone Oak	643
Lone Star	1,400
Longoria (CDP)	81
Longview	81,638
Loop (CDP)	216
Lopeño (CDP)	70
Lopezville (CDP)	2,367
Loraine	504
Lorena	1,785
Lorenzo	964
Los Altos (CDP)	175
Los Alvarez (CDP)	247
Los Angeles (CDP)	108
Los Arcos (CDP)	83
Los Arrieros (CDP)	43
Los Barreras (CDP)	278
Los Centenarios (CDP)	49
Los Corralitos (CDP)	36
Los Ebanos (CDP) (Hidalgo)	239
Los Ebanos (CDP) (Starr)	281
Los Fresnos	8,114
Los Fresnos (CDP)	71
Los Huisaches (CDP)	15
Los Indios	1,008
Los Lobos (CDP)	7
Los Minerales (CDP)	30
Los Nopalitos (CDP)	49
Los Veteranos I (CDP)	0
Los Veteranos II (CDP)	11
Los Ybanez	28
Lost Creek (CDP)	1,276
Lott	644
Louise (CDP)	889
Lovelady	570
Loving (CDP)	143
Lowry Crossing	1,689
Lozano (CDP)	174
Lubbock	257,141
Lucas	7,612
Lueders	258
Lufkin	34,143
Luling	5,599
Lumberton	13,554
Lyford	2,249
Lyons (CDP)	236
Lytle	2,914
Mabank	4,050
Macdona (CDP)	464
Madisonville	4,420
Magnolia	2,359
Magnolia Beach (CDP)	217
Malakoff	2,179
Malone	237
Manchaca (CDP)	2,266
Manor	13,652
Mansfield	72,602
Manuel Garcia (CDP)	204
Manuel Garcia II (CDP)	62
Manvel	9,992
Marathon (CDP)	410
Marble Falls	7,037
Marfa	1,788
Marietta	115
Marion	1,034
Markham (CDP)	908
Marlin	5,462
Marquez	181
Marshall	23,392
Mart	1,748
Martindale	1,253
Martinez (CDP)	42
Mason	2,121
Matador	569
Matagorda (CDP)	313
Mathis	4,333
Maud	977
Mauriceville (CDP)	2,983
May (CDP)	277
Maypearl	939
McAllen	142,210
McCamey	1,831
McCaulley (CDP)	79
McDade (CDP)	720
McGregor	5,321
McKinney	195,308
McKinney Acres (CDP)	852
McLean	665

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
McLendon-Chisholm	3,562
McLeod (CDP)	311
McQueeney (CDP)	2,397
Meadow	601
Meadowlakes	1,907
Meadows Place	4,767
Medina (CDP)	3,953
Megargel	174
Melissa	13,901
Melvin	123
Memphis	2,048
Menard	1,348
Mentone (CDP)	22
Mercedes	16,258
Meridian	1,396
Merkel	2,471
Mertens	144
Mertzon	747
Mesquite	150,108
Mesquite (CDP)	479
Mexia	6,893
Mi Ranchito Estate (CDP)	409
Miami	539
Midfield (CDP)	356
Midland	132,524
Midlothian	35,125
Midway	173
Midway North (CDP)	4,232
Midway South (CDP)	2,307
Miguel Barrera (CDP)	132
Mikes (CDP)	942
Mila Doce (CDP)	6,162
Milam (CDP)	1,355
Milano	390
Mildred	399
Miles	875
Milford	722
Miller's Cove	71
Millsap	370
Mineola	4,823
Mineral Wells	14,820
Mingus	223
Mirando City (CDP)	222
Mission	85,778
Mission Bend (CDP)	36,914
Missouri City	74,259
Mobeetie	87
Mobile City	142

City or CDP*	Population
Monahans	7,836
Mont Belvieu	7,654
Montague (CDP)	261
Monte Alto (CDP)	1,930
Montgomery	1,948
Moody	1,376
Moore (CDP)	610
Moore Station	160
Moraida (CDP)	229
Morales-Sanchez (CDP)	46
Moran	226
Morgan	454
Morgan Farm (CDP)	573
Morgan's Point	273
Morgan's Point Resort	4,636
Morning Glory (CDP)	522
Morse (CDP)	157
Morton	1,690
Mosheim (CDP)	48
Moulton	854
Mound (CDP)	174
Mount Calm	282
Mount Enterprise	505
Mount Pleasant	16,047
Mount Vernon	2,491
Mountain City	622
Muenster	1,536
Muleshoe	5,160
Mullin	130
Munday	1,246
Muniz (CDP)	1,593
Murchison	516
Murillo (CDP)	9,158
Murphy	21,013
Mustang	0
Mustang Ridge	944
Myra (CDP)	202
Myrtle Springs (CDP)	954
Nacogdoches	32,147
Nada (CDP)	231
Naples	1,387
Narciso Pena (CDP)	32
Nash	3,814
Nassau Bay	5,347
Natalia	1,202
Navarro	232
Navasota	7,643
Nazareth	310

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Neches (CDP)	266
Nederland	18,856
Needville	3,089
Nesbitt	273
Netos (CDP)	18
Nevada	1,314
New Berlin	656
New Boston	4,612
New Braunfels	90,403
New Chapel Hill	620
New Deal	730
New Fairview	1,386
New Falcon (CDP)	117
New Home	326
New Hope	661
New London	958
New Summerfield	843
New Ulm (CDP)	285
New Waverly	914
Newark	1,096
Newcastle	526
Newton	1,633
Neylandville	67
Niederwald	668
Nina (CDP)	124
Nixon	2,341
Nocona	3,002
Nocona Hills (CDP)	637
Nolanville	5,917
Nome	469
Noonday	612
Nordheim	336
Normandy (CDP)	54
Normangee	495
Normanna (CDP)	98
North Alamo (CDP)	3,722
North Cleveland	225
North Escobares (CDP)	162
North Pearsall (CDP)	739
North Richland Hills	69,917
North San Pedro (CDP)	735
Northlake	5,201
Novice	122
Oak Grove	617
Oak Island (CDP)	371
Oak Leaf	1,552
Oak Point	4,357
Oak Ridge (Cooke)	242
Oak Ridge (Kaufman)	771
Oak Ridge North	3,057
Oak Trail Shores (CDP)	2,979
Oak Valley	406
Oakhurst (CDP)	148
Oakwood	389
O'Brien	91
Odem	2,255
Odessa	114,428
O'Donnell	704
Oglesby	441
Oilton (CDP)	270
Oklaunion (CDP)	88
Old River-Winfree	1,315
Olivarez (CDP)	4,248
Olivia Lopez de Gutierrez (CDP)	49
Olmito (CDP)	1,021
Olmito and Olmito (CDP)	276
Olmos Park	2,180
Olney	3,007
Olton	1,989
Omaha	936
Onalaska	3,020
Opdyke West	220
Orange	19,324
Orange Grove	1,165
Orason (CDP)	88
Orchard	313
Ore City	1,108
Overton	2,275
Ovilla	4,304
Owl Ranch (CDP)	189
Oyster Creek	1,173
Ozona (CDP)	2,663
Pablo Pena (CDP)	80
Paducah	1,063
Paige (CDP)	278
Paint Rock	237
Paisano Park (CDP)	96
Palacios	4,395
Palestine	18,544
Palisades	268
Palm Valley	1,413
Palmer	2,393
Palmer (CDP)	1,082
Palmhurst	2,601
Palmview	15,830
Palmview South (CDP)	2,008

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Palo Blanco (CDP)	238
Palo Pinto (CDP)	276
Paloma Creek (CDP)	3,177
Paloma Creek South (CDP)	9,539
Pampa	16,867
Panhandle	2,378
Panorama Village	2,515
Pantego	2,568
Paradise	475
Paris	24,476
Parker	5,462
Pasadena	151,950
Pattison	547
Patton Village	1,647
Pawnee (CDP)	140
Payne Springs	741
Pearland	125,828
Pearsall	7,325
Pecan Acres (CDP)	4,808
Pecan Gap	178
Pecan Grove (CDP)	22,782
Pecan Hill	735
Pecan Plantation (CDP)	6,236
Pecos	12,916
Pelican Bay	2,049
Pena (CDP)	73
Pendleton (CDP)	845
Penelope	180
Penitas	6,460
Perezville (CDP)	2,685
Perrin (CDP)	346
Perryton	8,492
Petersburg	1,014
Petrolia	514
Petronila	89
Pettus (CDP)	449
Petty (CDP)	140
Pflugerville	65,191
Pharr	79,715
Pilot Point	4,381
Pine Forest	499
Pine Harbor (CDP)	785
Pine Island	1,077
Pinebrook (CDP)	485
Pinehurst	2,232
Pinehurst (CDP)	5,195
Pineland	888
Pinewood Estates (CDP)	1,641
Piney Point Village	3,128
Pittsburg	4,335
Placedo (CDP)	625
Plains	1,355
Plainview	20,187
Plano	285,494
Plantersville	464
Pleak	971
Pleasant Hill (CDP)	610
Pleasant Valley	357
Pleasanton	10,648
Plum (CDP)	366
Plum Grove	1,245
Point	745
Point Blank	643
Point Comfort	603
Point Venture	1,260
Ponder	2,442
Port Aransas	2,904
Port Arthur	56,039
Port Isabel	5,028
Port Lavaca	11,557
Port Mansfield (CDP)	319
Port Neches	13,692
Port O'Connor (CDP)	954
Porter Heights (CDP)	1,903
Portland	20,383
Post	4,790
Post Oak Bend City	683
Poteet	2,795
Poth	1,819
Potosi (CDP)	3,947
Pottsboro	2,488
Powderly (CDP)	1,261
Powell	99
Poynor	287
Prado Verde (CDP)	209
Praesel (CDP)	446
Prairie View	8,184
Premont	2,455
Presidio	3,264
Preston (CDP)	2,101
Priddy (CDP)	150
Primera	5,257
Princeton	17,027
Proctor (CDP)	93
Progreso	4,807
Progreso Lakes	257

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Prosper	30,174
Providence Village	7,691
Pueblo East (CDP)	1
Pueblo Nuevo (CDP)	432
Putnam	63
Pyote	72
Quail (CDP)	17
Quail Creek (CDP)	1,800
Quanah	2,279
Queen City	1,397
Quemado (CDP)	162
Quesada (CDP)	7
Quinlan	1,414
Quintana	26
Quitaque	342
Quitman	1,942
Radar Base (CDP)	93
Rafael Pena (CDP)	16
Ralls	1,665
Ramireno (CDP)	6
Ramirez-Perez (CDP)	66
Ramos (CDP)	144
Ranchette Estates (CDP)	106
Ranchitos del Norte (CDP)	214
Ranchitos East (CDP)	189
Ranchitos Las Lomas (CDP)	167
Rancho Alegre (CDP)	1,415
Rancho Banquete (CDP)	459
Rancho Chico (CDP)	387
Rancho Viejo	2,838
Rancho Viejo (CDP)	233
Ranchos Penitas West (CDP)	466
Randolph AFB (CDP)	1,280
Ranger	2,300
Rangerville	255
Rankin	780
Ransom Canyon	1,189
Ratamosa (CDP)	197
Ravenna	175
Raymondville	10,236
Realitos (CDP)	121
Red Lick	946
Red Oak	14,222
Red Rock (CDP)	410
Redfield (CDP)	392
Redford (CDP)	43
Redland (CDP)	1,088
Redwater	853
Redwood (CDP)	4,003
Refugio	2,712
Regino Ramirez (CDP)	120
Reid Hope King (CDP)	667
Reklaw	332
Relampago (CDP)	129
Rendon (CDP)	13,533
Reno (Lamar)	3,454
Reno (Parker)	2,878
Retreat	410
Rhome	1,630
Ricardo (CDP)	1,075
Rice	1,203
Rice Tracts (CDP)	733
Richards (CDP)	184
Richardson	119,469
Richland	255
Richland Hills	8,621
Richland Springs	244
Richmond	11,627
Richwood	4,781
Riesel	1,062
Ringgold (CDP)	146
Rio Bravo	4,450
Rio Grande City	15,317
Rio Hondo	2,021
Rio Vista	1,008
Rising Star	756
River Oaks	7,646
Rivereno (CDP)	62
Riverside	522
Riviera (CDP)	609
Road Runner	766
Roanoke	9,665
Roaring Springs	217
Robert Lee	1,027
Robinson	12,443
Robstown	10,143
Roby	591
Rochelle (CDP)	169
Rochester	248
Rock Island (CDP)	228
Rockdale	5,323
Rockport	10,070
Rocksprings	874
Rockwall	47,251
Rockwell Place (CDP)	1,811
Rocky Mound	78

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Rogers	1,113
Rollingwood	1,467
Roma	11,561
Roman Forest	1,781
Ropesville	430
Rosanky (CDP)	1,473
Roscoe	1,271
Rose City	326
Rose Hill Acres	325
Rosebud	1,296
Rosenberg	38,282
Rosharon (CDP)	1,362
Rosita (CDP)	3,501
Ross	245
Rosser	301
Rotan	1,332
Round Mountain	101
Round Rock	119,468
Round Top	87
Rowena (CDP)	305
Rowlett	62,535
Roxton	548
Royse City	13,508
Rule	561
Runaway Bay	1,546
Runge	892
Rusk	5,285
Sabinal	1,364
Sachse	27,103
Sadler	336
Saginaw	23,890
Salado	2,394
Salida del Sol Estates (CDP)	6,496
Salineño (CDP)	176
Salineño North (CDP)	117
Sam Rayburn (CDP)	1,273
Sammy Martinez (CDP)	123
Samnorwood (CDP)	24
San Angelo	99,893
San Antonio	1,434,625
San Augustine	1,920
San Benito	24,861
San Carlos (CDP)	3,087
San Carlos I (CDP)	187
San Carlos II (CDP)	220
San Diego	3,748
San Elizario	10,116
San Felipe	691
San Fernando (CDP)	49
San Isidro (CDP)	187
San Juan	35,294
San Juan (CDP)	203
San Leanna	522
San Leon (CDP)	6,135
San Marcos	67,553
San Patricio	384
San Pedro (CDP)	442
San Perlita	538
San Saba	3,117
San Ygnacio (CDP)	504
Sanctuary	337
Sand Springs (CDP)	878
Sanderson (CDP)	664
Sandia (CDP)	326
Sandoval (CDP)	37
Sandy Hollow-Escondidas (CDP)	342
Sandy Oaks	5,075
Sandy Point	207
Sanford	132
Sanger	8,839
Sansom Park	5,454
Santa Anna	1,014
Santa Anna (CDP)	12
Santa Clara	778
Santa Cruz (CDP)	74
Santa Fe	12,735
Santa Maria (CDP)	651
Santa Monica (CDP)	86
Santa Rita Ranch (CDP)	3,152
Santa Rosa	2,450
Santa Rosa (CDP)	265
Santel (CDP)	24
Santo (CDP)	347
Sargent (CDP)	1,212
Sarita (CDP)	205
Savannah (CDP)	6,529
Savoy	712
Scenic Oaks (CDP)	10,458
Schertz	42,002
Schulenburg	2,633
Scissors (CDP)	3,758
Scotland	413
Scottsville	334
Scurry	688
Seabrook	13,618
Seadrift	995

*Unincorporated area that is a Census Designated Place.

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City or CDP*	Population
Seagoville	18,446
Seagraves	2,153
Sealy	6,839
Sebastian (CDP)	1,684
Seco Mines (CDP)	572
Seguin	29,433
Seis Lagos (CDP)	1,450
Selma	10,952
Seminole	6,988
Serenada (CDP)	2,098
Seth Ward (CDP)	1,603
Seven Oaks	68
Seven Points	1,370
Seymour	2,575
Shady Hollow (CDP)	4,822
Shady Shores	2,764
Shadybrook (CDP)	2,400
Shallowater	2,964
Shamrock	1,789
Shavano Park	3,524
Sheffield (CDP)	174
Shelbyville (CDP)	100
Sheldon (CDP)	2,361
Shenandoah	3,499
Shepherd	2,105
Sheridan (CDP)	520
Sherman	43,645
Sherwood Shores (CDP)	1,165
Shiner	2,127
Shiro (CDP)	201
Shoreacres	1,566
Sienna (CDP)	20,204
Sierra Blanca (CDP)	315
Siesta Acres (CDP)	1,866
Siesta Shores (CDP)	1,450
Silsbee	6,935
Silverton	629
Simonton	647
Sinton	5,504
Skellytown	394
Skidmore (CDP)	863
Slaton	5,858
Smiley	475
Smithville	3,922
Smyer	441
Snook	506
Snyder	11,438
Socorro	34,306

City or CDP*	Population
Solis (CDP)	722
Somerset	1,756
Somerville	1,312
Sonora	2,502
Sonterra (CDP)	7,679
Sour Lake	1,773
South Alamo (CDP)	3,414
South Fork Estates (CDP)	136
South Frydek	207
South Houston	16,153
South La Paloma (CDP)	347
South Mountain	411
South Padre Island	2,066
South Point (CDP)	1,014
South Toledo Bend (CDP)	434
Southlake	31,265
Southmayd	978
Southside Place	1,835
Southwest Sandhill (CDP)	1,666
Spade (CDP)	71
Sparks (CDP)	4,760
Spearman	3,171
Splendora	1,683
Spofford	41
Spring (CDP)	62,559
Spring Branch	206
Spring Gardens (CDP)	497
Spring Valley Village	4,229
Springlake	145
Springtown	3,064
Spur	863
St. Hedwig	2,227
St. Jo	881
St. Paul	992
St. Paul (CDP)	608
Stafford	17,666
Stagecoach	580
Stamford	2,907
Stanton	2,657
Staples	193
Star Harbor	482
Steiner Ranch (CDP)	16,713
Stephenville	20,897
Sterling City	1,121
Stinnett	1,650
Stockdale	1,413
Stockton Bend	380
Stonewall (CDP)	451

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Stowell (CDP)	1,743
Stratford	1,939
Strawn	540
Streetman	248
Study Butte (CDP)	200
Sudan	940
Sugar Land	111,026
Sullivan City	3,908
Sulphur Springs	15,941
Summerfield (CDP)	34
Sun Valley	70
Sundown	1,283
Sunnyvale	7,893
Sunray	1,707
Sunrise Beach Village	739
Sunrise Shores (CDP)	598
Sunset (CDP) (Montague)	543
Sunset (CDP) (Starr)	34
Sunset Acres (CDP)	4
Sunset Valley	683
Surfside Beach	640
Sweeny	3,626
Sweetwater	10,622
Sylvester (CDP)	52
Taft	2,801
Taft Southwest (CDP)	1,296
Tahoka	2,375
Talco	494
Talty	2,500
Tanquecitos South Acres (CDP)	229
Tanquecitos South Acres II (CDP)	60
Tatum	1,342
Taylor	16,267
Taylor Lake Village	3,704
Taylor Landing	278
Teague	3,384
Tehuacana	228
Temple	82,073
Tenaha	989
Terlingua (CDP)	78
Terrell	17,465
Terrell Hills	5,045
Texarkana	36,193
Texas City	51,898
Texhoma	258
Texline	448
The Colony	44,534
The Hills	2,613
The Homesteads (CDP)	3,890
The Woodlands (CDP)	114,436
Thompsons	156
Thompsonville (CDP)	26
Thorndale	1,263
Thornton	421
Thorntonville	561
Thrall	816
Three Rivers	1,474
Throckmorton	727
Thunderbird Bay (CDP)	764
Tierra Bonita (CDP)	179
Tierra Dorada (CDP)	29
Tierra Grande (CDP)	303
Tierra Verde (CDP)	298
Tiki Island	1,106
Tilden (CDP)	190
Timbercreek Canyon	430
Timberwood Park (CDP)	35,217
Timpson	989
Tioga	1,142
Tira	319
Tivoli (CDP)	419
Toco	91
Todd Mission	121
Tolar	941
Tom Bean	930
Tomball	12,341
Tool	2,175
Tornillo (CDP)	1,432
Tow (CDP)	226
Toyah	61
Tradewinds (CDP)	160
Travis Ranch (CDP)	7,324
Trent	295
Trenton	743
Trinidad	860
Trinity	2,343
Trophy Club	13,688
Troup	2,006
Troy	2,375
Tuleta (CDP)	231
Tulia	4,473
Tulsita (CDP)	31
Tunis (CDP)	90
Turkey	317
Tuscola	850
Tye	1,176

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Tyler	105,995
Tynan (CDP)	254
Uhland	1,588
Umbarger (CDP)	123
Uncertain	85
Union Grove	441
Union Valley	370
Universal City	19,720
University Park	25,278
Utopia (CDP)	225
Uvalde	15,217
Uvalde Estates (CDP)	1,879
Val Verde Park (CDP)	2,332
Valentine	73
Valera (CDP)	94
Valle Hermoso (CDP)	93
Valle Verde (CDP)	0
Valle Vista (CDP)	545
Valley Mills	1,229
Valley View	737
Van	2,664
Van Alstyne	4,369
Van Horn	1,941
Van Vleck (CDP)	1,923
Vanderbilt (CDP)	409
Vega	879
Venus	4,361
Vernon	10,078
Victoria	65,534
Victoria Vera (CDP)	93
Vidor	9,789
Villa del Sol (CDP)	153
Villa Pancho (CDP)	467
Villa Verde (CDP)	711
Villarreal (CDP)	112
Vinton	2,684
Volente	561
Von Ormy	1,174
Waco	138,486
Wadsworth (CDP)	302
Waelder	933
Waka (CDP)	50
Wake Village	5,945
Waller	2,682
Wallis	1,292
Walnut Springs	795
Warren (CDP)	677
Warren City	319
Washburn (CDP)	116
Waskom	1,910
Watauga	23,650
Waxahachie	41,140
Weatherford	30,854
Webberville	394
Webster	12,499
Weimar	2,076
Weinert	172
Weir	699
Welch (CDP)	234
Wellington	1,896
Wellman	230
Wells	853
Wells Branch (CDP)	14,000
Weslaco	40,160
West	2,531
West Alto Bonito (CDP)	615
West Columbia	3,644
West Lake Hills	3,444
West Livingston (CDP)	8,156
West Odessa (CDP)	33,340
West Orange	3,459
West Sharyland (CDP)	2,004
West Tawakoni	1,895
West University Place	14,955
Westbrook	201
Westdale (CDP)	325
Western Lake (CDP)	1,762
Westlake	1,623
Westminster (CDP)	1,035
Weston	283
Weston Lakes	3,853
Westover Hills	641
Westway (CDP)	3,811
Westwood Shores (CDP)	1,239
Westworth Village	2,585
Wharton	8,627
Wheeler	1,487
White Deer	918
White Oak	6,225
White Settlement	18,269
Whiteface	375
Whitehouse	8,257
Whitesboro	4,074
Whitewright	1,725
Whitharral (CDP)	119
Whitney	1,992

*Unincorporated area that is a Census Designated Place.

City or CDP*	Population
Wichita Falls	102,316
Wickett	422
Wild Peach Village (CDP)	2,329
Wildorado (CDP)	201
Wildwood (CDP)	1,121
Willis	6,431
Willow Grove (CDP)	2,082
Willow Park	4,936
Wills Point	3,747
Wilmer	4,974
Wilson	434
Wimberley	2,839
Windcrest	5,865
Windom	189
Windthorst	342
Winfield	422
Wingate (CDP)	83
Wink	915
Winnie (CDP)	3,162
Winnsboro	3,455
Winona	623
Winters	2,345
Wixon Valley	228
Wolfe City	1,399
Wolfforth	5,521
Woodbranch	1,330
Woodcreek	1,770
Woodloch	186
Woodsboro	1,319
Woodson	219
Woodville	2,403
Woodway	9,383
Wortham	980
Wyldwood (CDP)	3,694
Wylie	57,526
Yancey (CDP)	300
Yantis	405
Yoakum	5,908
Yorktown	1,810
Yznaga (CDP)	108
Zapata (CDP)	5,383
Zapata Ranch (CDP)	87
Zarate (CDP)	79
Zavalla	603
Zephyr (CDP)	179
Zuehl (CDP)	399

TOTAL POPULATION 29,145,505

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*Unincorporated area that is a Census Designated Place.

Appendix 4

2020 Texas Census County Summary

According to the official returns of the 24th Decennial Census of the United States, as released by the Bureau of the Census on August 12, 2021.

(Alphabetical)

Map of Texas Counties

Texas Legislative Council
August 2021

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Population in Texas Counties
2020 Census

County	Population
Anderson	57,922
Andrews	18,610
Angelina	86,395
Aransas	23,830
Archer	8,560
Armstrong	1,848
Atascosa	48,981
Austin	30,167
Bailey	6,904
Bandera	20,851
Bastrop	97,216
Baylor	3,465
Bee	31,047
Bell	370,647
Bexar	2,009,324
Blanco	11,374
Borden	631
Bosque	18,235
Bowie	92,893
Brazoria	372,031
Brazos	233,849
Brewster	9,546
Briscoe	1,435
Brooks	7,076
Brown	38,095
Burleson	17,642
Burnet	49,130
Caldwell	45,883
Calhoun	20,106
Callahan	13,708
Cameron	421,017
Camp	12,464
Carson	5,807
Cass	28,454
Castro	7,371
Chambers	46,571
Cherokee	50,412
Childress	6,664
Clay	10,218
Cochran	2,547
Coke	3,285
Coleman	7,684
Collin	1,064,465

County	Population
Collingsworth	2,652
Colorado	20,557
Comal	161,501
Comanche	13,594
Concho	3,303
Cooke	41,668
Coryell	83,093
Cottle	1,380
Crane	4,675
Crockett	3,098
Crosby	5,133
Culberson	2,188
Dallam	7,115
Dallas	2,613,539
Dawson	12,456
Deaf Smith	18,583
Delta	5,230
Denton	906,422
DeWitt	19,824
Dickens	1,770
Dimmit	8,615
Donley	3,258
Duval	9,831
Eastland	17,725
Ector	165,171
Edwards	1,422
El Paso	865,657
Ellis	192,455
Erath	42,545
Falls	16,968
Fannin	35,662
Fayette	24,435
Fisher	3,672
Floyd	5,402
Foard	1,095
Fort Bend	822,779
Franklin	10,359
Freestone	19,435
Frio	18,385
Gaines	21,598
Galveston	350,682
Garza	5,816
Gillespie	26,725

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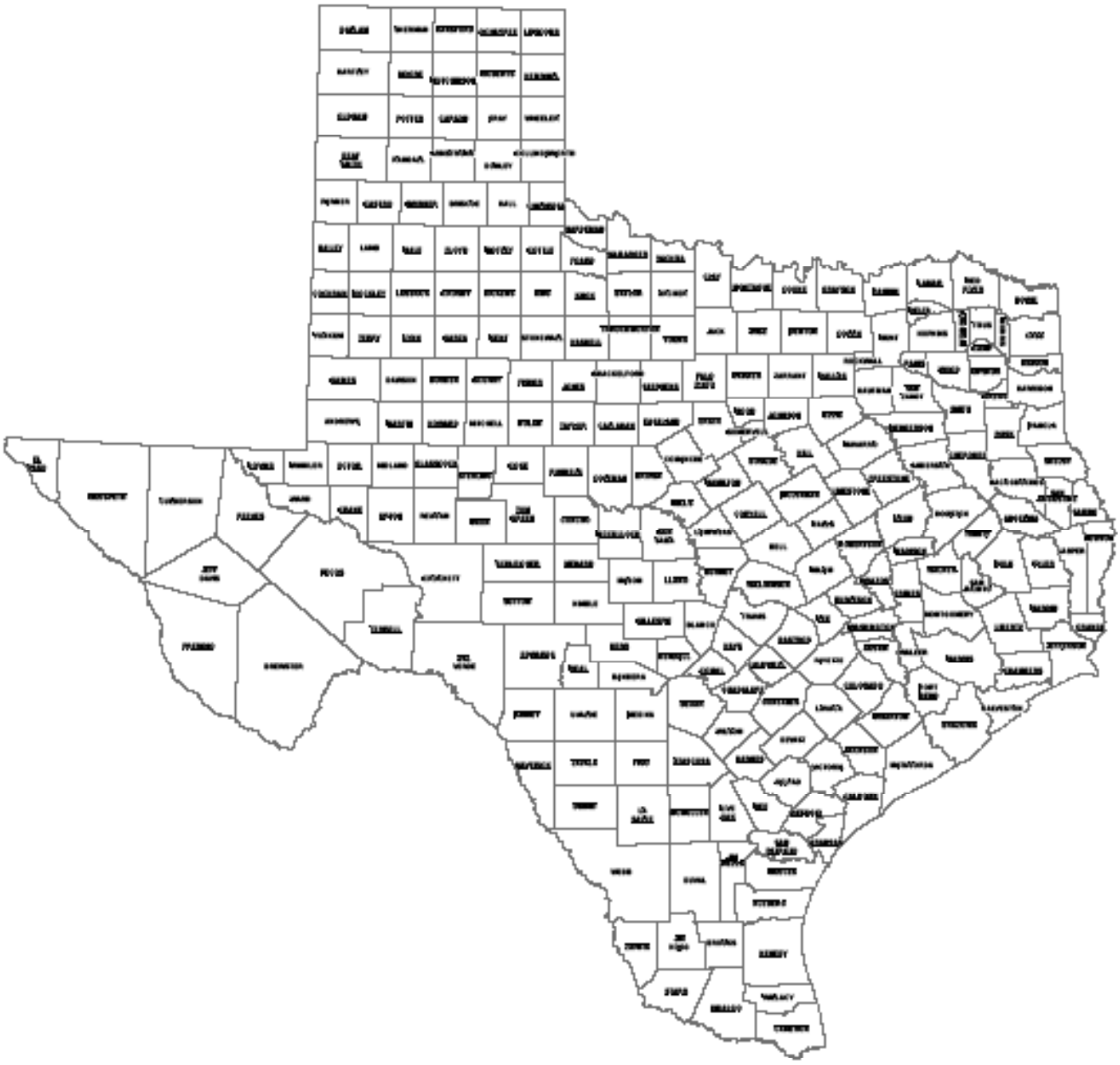
Glasscock	1,116
Goliad	7,012
Gonzales	19,653
Gray	21,227
Grayson	135,543
Gregg	124,239
Grimes	29,268
Guadalupe	172,706
Hale	32,522
Hall	2,825
Hamilton	8,222
Hansford	5,285
Hardeman	3,549
Hardin	56,231
Harris	4,731,145
Harrison	68,839
Hartley	5,382
Haskell	5,416
Hays	241,067
Hemphill	3,382
Henderson	82,150
Hidalgo	870,781
Hill	35,874
Hockley	21,537
Hood	61,598
Hopkins	36,787
Houston	22,066
Howard	34,860
Hudspeth	3,202
Hunt	99,956
Hutchinson	20,617
Irion	1,513
Jack	8,472
Jackson	14,988
Jasper	32,980
Jeff Davis	1,996
Jefferson	256,526
Jim Hogg	4,838
Jim Wells	38,891
Johnson	179,927
Jones	19,663
Karnes	14,710
Kaufman	145,310
Kendall	44,279
Kenedy	350
Kent	753
Kerr	52,598
Kimble	4,286
King	265
Kinney	3,129
Kleberg	31,040
Knox	3,353
La Salle	6,664
Lamar	50,088
Lamb	13,045
Lampasas	21,627
Lavaca	20,337
Lee	17,478
Leon	15,719
Liberty	91,628
Limestone	22,146
Lipscomb	3,059
Live Oak	11,335
Llano	21,243
Loving	64
Lubbock	310,639
Lynn	5,596
Madison	13,455
Marion	9,725
Martin	5,237
Mason	3,953
Matagorda	36,255
Maverick	57,887
McCulloch	7,630
McLennan	260,579
McMullen	600
Medina	50,748
Menard	1,962
Midland	169,983
Milam	24,754
Mills	4,456
Mitchell	8,990
Montague	19,965
Montgomery	620,443
Moore	21,358
Morris	11,973
Motley	1,063
Nacogdoches	64,653
Navarro	52,624
Newton	12,217
Nolan	14,738
Nueces	353,178
Ochiltree	10,015
Oldham	1,758
Orange	84,808
Palo Pinto	28,409

Panola	22,491
Parker	148,222
Parmer	9,869
Pecos	15,193
Polk	50,123
Potter	118,525
Presidio	6,131
Rains	12,164
Randall	140,753
Reagan	3,385
Real	2,758
Red River	11,587
Reeves	14,748
Refugio	6,741
Roberts	827
Robertson	16,757
Rockwall	107,819
Runnels	9,900
Rusk	52,214
Sabine	9,894
San Augustine	7,918
San Jacinto	27,402
San Patricio	68,755
San Saba	5,730
Schleicher	2,451
Scurry	16,932
Shackelford	3,105
Shelby	24,022
Sherman	2,782
Smith	233,479
Somervell	9,205
Starr	65,920
Stephens	9,101
Sterling	1,372
Stonewall	1,245
Sutton	3,372
Swisher	6,971
Tarrant	2,110,640
Taylor	143,208
Terrell	760
Terry	11,831
Throckmorton	1,440
Titus	31,247
Tom Green	120,003
Travis	1,290,188
Trinity	13,602
Tyler	19,798
Upshur	40,892
Upton	3,308
Uvalde	24,564
Val Verde	47,586
Van Zandt	59,541
Victoria	91,319
Walker	76,400
Waller	56,794
Ward	11,644
Washington	35,805
Webb	267,114
Wharton	41,570
Wheeler	4,990
Wichita	129,350
Wilbarger	12,887
Willacy	20,164
Williamson	609,017
Wilson	49,753
Winkler	7,791
Wise	68,632
Wood	44,843
Yoakum	7,694
Young	17,867
Zapata	13,889
Zavala	9,670

TOTAL POPULATION 29,145,505

TEXAS COUNTIES



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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.

Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(b) A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.

(c) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

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

DADE PHELAN
Speaker of the House
Joint Chair

M E M O R A N D U M

TO: Members of the 88th Legislature

FROM: Michael Polich
Legislative Counsel

DATE: January 16, 2023

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.

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.

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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.

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 in 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 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.

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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).)

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(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

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.)

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(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 (the caption of the bill should be sufficient for that statement; see Appendix I) and the name of the person paying for the publication;

(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, the posting must accurately define the locality the law will affect and 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. The notice must include the name of the person paying for the publication. 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.

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.

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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 to determine whether a law proposed by a bracket bill would be 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

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)).

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(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.

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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 LAW. 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 . . . .

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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

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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 and the name of the person paying for the publication. 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.

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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 and the name of the person paying for the publication. 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.

APPENDIX I. NOTICE OF INTENT TO INTRODUCE

NOTICE

This is to give notice of intent to introduce in the 88th 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."). The costs for the publication of this notice were paid by (insert here the name of the person paying for the publication).

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 paid for by (insert name of the person paying the costs for the publication) 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 Governments 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 to be 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).

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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.

- 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 the 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

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.

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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 a "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

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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

[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.

bonds.[1] (State ad valorem taxes are constitutionally prohibited.[2])

b. Revenue bonds

Revenue bonds are backed by a specific stream of non-tax revenue,[3] such as highway tolls or rent from a facility.[4] 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.[5] 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.[6]

2. Other Public Securities

Among the many types of public securities are "notes,"[7] "warrants" or "time warrants,"[8] "certificates of obligation,"[9] and "certificates of indebtedness."[10] 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.[11] 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.[12]

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[1] For an example of political subdivision general obligation bonds, see Section 52, Article III, Texas Constitution, and Chapter 1471, Government Code.

[2] Section 1-e, Article VIII, Texas Constitution.

[3] Although in common usage "revenue" includes tax revenue, in the practice of public securities laws, "revenue" does not include tax revenue.

[4] For examples of revenue bonds, see Chapter 1504, Government Code.

[5] See Sections 1232.102 and 1232.116, Government Code.

[6] 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).

[7] For an example of notes, see Chapter 1431, Government Code.

[8] For an example of time warrants, see Subchapter C, Chapter 262, Local Government Code.

[9] For an example of certificates of obligation, see Subchapter C, Chapter 271, Local Government Code.

[10] For an example of certificates of indebtedness, see Subchapter D, Chapter 1501, Government Code.

[11] 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).

[12] See H.J.R. 62, 76th Legislature, Regular Session, 1999.

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 a part of the constitution.[1]

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."[2]

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[3] or issue general obligation bonds, political subdivisions have typically been authorized

[1] As of June 2022, the legislature had not adopted a joint resolution on a debt proposition.

[2] Section 52(b), Article III, Texas Constitution.

[3] 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.

to take those actions only with express constitutional authority.[1]

However, in 2005, the legislature by statute authorized the creation of "multi-jurisdictional library districts" with the authority to impose ad valorem taxes.[2] 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 authorization."[3] 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,[4] or the restrictions under Sections 5 and 7, Article XI.[5] 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.[6]

3. Interest Rate

As amended in 1982,[7] 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

[1] 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).

[2] See Chapter 336, Local Government Code.

[3] See Tex. Att'y Gen. Op. No. GA-0626 (2008).

[4] *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).

[5] *Lower Colo. River Auth. v. McCraw*, 83 S.W.2d 629 (Tex. 1935).

[6] 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).

[7] See S.J.R. 6, 67th Legislature, 2nd Called Session, 1982.

> 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.[1] 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 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,"[2] 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.[3]

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.[4] 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.[5]

[1] See Braden et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, p. 299.
[2] See, e.g., Section 1201.002, Government Code.
[3] See Sections 1201.021–1201.024, Government Code.
[4] See Section 1201.0245, Government Code.
[5] Section 1201.041, Government Code.

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.[1] 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.[2] On receipt of the approval and record of proceedings, the comptroller registers the public security.[3] On issuance, an approved and registered public security and any contract the proceeds of which are pledged to payment of the security are valid and incontestable.[4] A number of types of securities are exempt from approval and registration under Chapter 1202.[5]

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.[6] Chapter 1203 permits several different persons to act as registrar, depending on who issues the public security.[7]

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.[8] This limitation does not apply to a public security for which the constitution prescribes the maximum interest rate.[9]

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"),[10] or to be exchanged for the existing bonds (a procedure known as "exchange refunding").[11] 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.[12]

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[1] Section 1202.003(a), Government Code.
[2] Section 1202.003(b), Government Code.
[3] Section 1202.005, Government Code.
[4] Section 1202.006, Government Code.
[5] Section 1202.007, Government Code.
[6] 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.
[7] Section 1203.021, Government Code.
[8] Section 1204.006, Government Code.
[9] See Revisor's Note (2) to Section 1204.002, Government Code.
[10] See Subchapters B and C, Chapter 1207, Government Code.
[11] See Subchapter D, Chapter 1207, Government Code.
[12] See Sections 1207.005 and 1207.0621, Government Code.

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.[1] 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.[2] Numerous other statutes and rules provide that public securities, or specified types of public securities, are authorized investments for certain entities.[3] 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.[4] 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.[5]

[1] Section 1201.041, Government Code.
[2] Section 2256.009, Government Code.
[3] 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).
[4] 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).
[5] 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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DAVID DEWHURST
Lieutenant Governor
Joint Chair

TOM CRADDICK
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."[1] 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"[2] and "proceed under the notion that what the legislature meant is best understood by the words it used."[3]

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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[1] *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).
[2] *Beef Cattle Co. v. N.K. Parrish, Inc*., 553 S.W.2d 220, 222 (Tex. Civ. App.--Amarillo 1977, no writ).
[3] *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*,[1] 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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[1] 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).

Biskind, Elliott L. *Simplify Legal Writing*. 2nd ed. New York: Arco, 1975. Aimed at the general practitioner. Examines the style and ambiguities of certain examples and rewrites them in proper form. A large portion is devoted to suggestions for avoiding common errors in legal writing. (SL) KF 250 B5

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

Darmstadter, Howard. *Hereof, Thereof, and Everywhereof: A Contrarian Guide to Legal Drafting*. 2nd ed. Chicago: American Bar Association, Section of Business Law, 2008. A thorough and entertaining discussion of working toward clarity and brevity in legal drafting. Does not address legislative drafting but includes chapters on other types of legal documents as well as conventions and considerations applicable to legal drafting. (SL) KF 250 D37 2008

Dickerson, Reed. *The Fundamentals of Legal Drafting.* 2nd ed. Boston: Little, Brown and Company, 1986. An updated and expanded version of the 1965 edition. Aimed at legal drafting in general but also useful in legislative drafting. Considers substantive policy, construction, clarity, form, and style. New segments address "plain English" laws, computer aids, amendments, and verbal sexism. (SL) KF 250 D5 1986

Dickerson, Reed. *The Interpretation and Application of Statutes.* Boston: Little, Brown and Company, 1975. An analysis of how courts go about ascertaining the meaning of statutes, applying statutory law to specific cases, and, under the guise of statutory interpretation, using statutes as a springboard for judicial lawmaking. Of limited practical use for day-to-day drafting, but of great interest to anyone with a serious interest in statutory interpretation and the interaction between legislatures and courts. (LR) 340.11 D558; (SL) KF 425 D5

Dickerson, Reed. *Legislative Drafting*. Boston: Little, Brown and Company, 1954. The bible for legislative drafting. Primarily gives answers to everyday drafting problems. (LR) 328.373 D558

Dickerson, Reed. *Legislative Drafting*. Westport: Greenwood Press, 1977. Reprint of the 1954 edition. (SL) KF 4950 D5

Eskridge, William N. Jr., Philip P. Frickey, and Elizabeth Garret. *Cases and Materials on Legislation*. 3rd ed. St. Paul: West Group, 2001. A collection of materials for use in courses on legislation. Addresses public policy philosophy and the process of the creation, interpretation, and evolution of law. Contains a chapter on legislative drafting. (LR) 348.73 ES46C 2001

Filson, Lawrence E., and Sandra L. Strokoff. *The Legislative Drafter's Desk Reference*. 2nd ed. Washington, D.C.: CQ Press, 2008. An overview of legislative drafting concerns

and considerations with an emphasis on federal statute construction. Provides statutory examples, case studies, and court decision citations to illustrate drafting principles. Also examines the dynamics between legislative and judicial branches in interpreting legislation. (LR) 328.373 F488 2008

Garner, Bryan A. *A Dictionary of Modern Legal Usage*. 2nd ed. New York: Oxford UP, 2001. A general reference work that provides definitions of legal terms and guidance on specific points of usage. (LR) 340.03 G186D; (SL) KF 156 G38 2001 (noncirculating reference)

Goldfarb, Ronald L., and James C. Raymond. *Clear Understandings*. New York: Random House, 1982. Demonstrates through anecdotes and examples problems common to legal writing and how to solve them. Does not address legislative drafting but is a readable and entertaining guide to improved legal expression in general. (SL) KF 250 G6

Haggard, Thomas R. *Legal Drafting in a Nutshell*. 3rd ed. St. Paul: Thomson/West, 2007. Addresses many facets of the legal drafting process, including style and usage, construction of definitions, contract drafting, and legislative drafting. (SL) KF 250 H3 2007. The 5th edition is available electronically from the State Law Library.

Mehlman, Maxwell J., and Edward G. Grossman. *Yale Legislative Services Handbook of Legislative Drafting*. New Haven: Yale Legislative Services, 1977. Designed to provide instruction in the basic techniques of legislative drafting for nonprofessional drafters. Divided into two main sections—one section concerns word choice and sentence structure and the other concerns the parts of a bill. (SL) KF 4950 M3

Mellinkoff, David. *The Language of the Law*. Boston: Little, Brown and Company, 1963. Explores the history and usage of legal language. Well researched, understandable, and humorous. Not a guide for legal drafting but useful to improve writing and drafting skills. (SL) KF 250 M4

Mellinkoff, David. *Legal Writing: Sense and Nonsense*. New York: Charles Scribner's Sons, 1982. Provides lively instruction in ways to make legal documents more precise and readable. Does not deal specifically with legislative drafting. (SL) KF 250 M4s

Sutherland, Jabez G. *Statutes and Statutory Construction*. 8th ed. Edited by Norman J. Singer. St. Paul: West, 2018. Discussion of legislative powers, constitutional regulations relative to the forms of legislation and to legislative procedure, together with an exposition at length of the principles of statutory interpretation and construction. (LR) 345.Su94s. The 7th edition is available from the State Law Library. (SL) KF 425 S3

Weihofen, Henry. *Legal Writing Style*. 2nd ed. St. Paul: West Publishing Co., 1980. Does not deal with legislative drafting but contains chapters on writing skills and construction of letters, opinions, memoranda, and briefs. (SL) KF 250 W4

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