

**THE 81st LEGISLATURE'S
ENVIRONMENTAL AND WATER LAW LEGACY**

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Mr. McPherson has over 19 years of experience in commercial real estate, water and environmental law. He has represented national and local companies, entrepreneurs, and landowners in a wide variety of matters, including:

- Water Purchase and Sales Transactions
- Contested Case Hearings over Water Rights and Environmental Issues
- Defense of TCEQ Enforcement Actions
- Comments to Proposed Agency Rules
- Air Quality, Solid Waste and Water Supply (CCN) Issues and Compliance
- Environmental and Water Supply Due Diligence in Transactions

Mr. McPherson has written over 10 professional papers, co-authored additional papers, given over 35 professional lectures, and served on more than 15 CLE course planning committees, including one as Course Director. He has served in numerous leadership positions with the State Bar of Texas' Real Estate, Probate and Trust Law (REPTL) Section, including as a member of the REPTL Council, and Chair of its Real Estate Legislative Affairs Committee (RELACs) for the 79th and 80th Legislatures. He is currently Vice Chair of its Water Rights Committee and Editor-in-Chief of its official publication, **THE REPTL REPORTER**.

He is also the Administrator and Host of the MCTEXLAW REAL ESTATE E-MAIL DISCUSSION GROUP, an E-mail based discussion group for professionals in the Texas real estate industry, with approximately 110 members as of November, 2009. Free subscriptions are available to qualified individuals upon request to mark@mctexlaw.com

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THE 81st LEGISLATURE'S ENVIRONMENTAL AND WATER LAW LEGACY

I. AN INFORMAL AND ANECDOTAL OVERVIEW OF THE 81st LEGISLATURE

Every Legislature makes its own history, both in terms of the substantive bills it passes, and in terms of its style. The bulk of this paper addresses the substantive bills passed by the 81st Legislature. But to begin, I will review anecdotally some of the context of the 81st Legislature, including the manner in which it chose to conduct itself.

The 81st Legislature passed fewer landmark types of legislation and instead tended to pass more detail oriented pieces of legislation. This continued a trend from the 80th Legislature. While determining why a particular Legislature acts or refuses to act is a particularly hazardous inquiry, it appears that part of the reason was because some of the more significant bills passed in prior sessions have long implementation time periods and will not become fully effective until 2010 and after. It appeared that this Legislature wanted to wait to see the full effects of these changes before launching more changes.

This was also a Legislature in transition. While the leadership issues that challenged the 80th Legislature, both in the House of Representatives and Senate, were absent from the 81st Legislature, in the House of Representatives Rep. Joe Strauss served his first term as Speaker, replacing former Speaker Rep. Tom Craddick. With a new leadership team in place in the House, the political process did not always run as efficiently as in prior sessions, because the new leaders had to grow into their leadership style and hone their leadership skills. Also, Rep. Robert Puente, who served as Chair of the House Natural Resources Committee for many sessions, resigned after the last regular session and so his leadership and expertise was missing from this session. Fortunately, Texas has other politicians interested in and knowledgeable about water and environmental matters, but statesmen such as Rep. Puente are not replaced.

Although before the session began some pundits expected this session to be dominated by big environmental issues, perhaps as a continuation of the way environmental issues have been growing in perception and importance in our pop culture, this session failed to live up to that billing. The session was actually dominated by two issues, neither of which could be classified as particularly involving water or environmental issues. It was dominated by a failed attempt to pass a Voter Identification bill, and by attempts to obtain and spend as much of the federal economic stimulus bill as possible. The legislative time and resources these issues took directly affected (i.e. eliminated) several specific bills that otherwise would have been in this report.

A. The Voter ID Battle Royale

SB 362¹ was colloquially known as the “Voter ID bill.” It would have required persons to show particular forms of identification before being allowed to vote in elections. This bill began its ill-fated legislative voyage with passage by the Senate Committee as a Whole on March 11, which took a twenty-three hour marathon session. The Senate passed this bill on March 18, 2009, finally succeeding in passing what nearly melted down the Senate in the closing weeks of the 80th Legislature. But this acrimony was a small harbinger of things to come.

SB 362 then passed the House Elections Committee on May 11, and was set on the House Major State Calendar for Saturday, May 23, 2009. The last day of the regular session was June 1. The House rules prohibit filibusters (Senate rules do not), but “chubbing”, the term given to the art of wasting time, is allowed and, as we learned this session, chubbing can effectively delay consideration of legislation beyond the deadline for action, thus killing the bill(s) for this session.

¹Bill references in this paper are to the 81st Legislature, R.S. 2009, unless otherwise specifically noted.

The Local and Consent Calendar is generally comprised of local or non-controversial bills. The House Local and Consent Calendar for March 23 was 22 pages long. Under House rules, a bill on the local and consent calendar must be withdrawn if an opponent maintains discussion about the bill for ten minutes. Voter ID opponents began “chubbing” every bill on this 22 page Local and Consent Calendar by asking (often ridiculous) questions and otherwise continuing discussion for around nine and a half minutes per bill. What normally would have taken five minutes took almost five days. Because this occurred at the end of the session against final deadlines to consider and pass legislation, this chubbing killed the Voter ID bill and every bill on the calendar after the Voter ID bill, simply by the expiration of time. The session ended on June 1 before the House reached the Voter ID bill.

As legislators began to realize how effectively this strategy would kill certain bills (keeping in mind these bills had already passed the Senate and their respective House Committees, including House Calendars), many of them scrambled to amend bills on the calendars that were scheduled for a vote after the Voter ID bill, to a bill scheduled for a vote prior to the Voter ID bill. At the end of a general session legislators always attempt to save bills that are dying due to the expiration of time by attaching them as amendments in part or in whole to bills that are more likely to pass, but in the 81st Legislature the number of bills subjected to this process increased dramatically, making it even more difficult to determine which bills, in whole or in pieces and parts, actually passed.

One of these imperiled bills was SB 1544, which was to create the Prairielands Groundwater Conservation District. Passage of this bill in the 81st Legislature was critical because on October 31, 2008, the Texas Commission on Environmental Quality (TCEQ) designated Bosque, Coryell, Eastland, Hill, McClennan and Somervell counties as the Central Texas (Trinity Aquifer) Priority Groundwater Management Area (a PGMA). Within 2 years after the TCEQ issues its order designating

a PGMA, the landowners in the PGMA must create one or more groundwater conservation districts (GCDs) to cover the entire PGMA.² For land in the PGMA not in a GCD by the end of this two year period, the TCEQ must either create a GCD for some or all of those areas, or recommend to an existing GCD that some or all of the land be added to that GCD.³ The 81st Legislative session would be the only legislative session held before the expiration of this two year period applicable to these counties, so any legislation creating a GCD for these counties had to be passed in the 81st Legislature.

SB 1544 was on the calendar for consideration after the Voter ID bill. On May 28, a floor amendment was filed to SB 726, which was originally only intended to create the Harrison County GCD. Upon passing the House, the Legislature sent SB 726 to a Conference Committee. Both the House and Senate had to adopt resolutions authorizing the Conference Committee to “go outside the bounds.” The Conference Committee laid out its report for consideration in the House at 6:43 p.m., on May 31. Later that day both the House and Senate passed SB 726, and both chambers passed it unanimously. On June 1, SB 1544 died as the regular session ended. The governor signed SB 726 on June 19 and it became effective immediately. Thus was saved the Prairielands GCD.

Chubbing the Voter ID bill killed 35 bills on the major state calendar, 7 on the constitutional amendments calendar, and 184 bills on the general state calendar.

B. Spending Federal Stimulus Funds

The second matter that dominated the 81st Legislature was the determination of how to spend \$16.8 billion in federal economic stimulus money

²Texas Water Code §35.012(a) (Vernon 2009). All statutory references here are to Vernon 2009 unless otherwise specifically noted.

³Texas Water Code §35.012(b)

Texas is slated to receive under the American Reinvestment and Recovery Act. According to the nonprofit organization ProPublica Texas, Texas received more than \$6.5 billion of the \$787 billion stimulus package as of June, 2009. Texas ranked 48th on a per-capita basis, spending an average of \$269.30 per person. The federal government has spent an average of about \$216 per person after allocating more than \$121 billion of the stimulus funds.

Three state agencies dominate spending of the nearly \$3 billion already appropriated by the state:

- Health and Human Services Commission;
- Texas Education Agency; and
- Texas Workforce Commission.

ProPublica Texas reported that Harris County led the state in total spending with \$569.5 million. Tarrant and Dallas counties ranked second and third, respectively.

C. RELACs’ Monitoring Activities

By my count, based on data reported by the Texas Legislative Service (Telicon), in the 81st Regular Legislative Session the Texas Legislature passed and sent to the Governor the following numbers of bills and resolutions:

House Bills	847
House Joint Resolutions	9
House Concurrent Resolutions	201
Senate Bills	577
Senate Joint Resolutions	0
Senate Concurrent Resolutions	54
TOTAL PASSED:	1,688

The Real Estate Legislative Affairs Committee (RELACs) is a standing committee of the Real Estate, Probate and Trust Law Section of the State Bar of Texas (REPTL) that monitors bills filed in each legislative session, and identifies and summarizes each new law affecting real estate and other related commercial matters. The full legislative report of the Committee, entitled *Legislative Update: Significant Bills of the 81st*

Legislature Affecting Real Estate, Lending and Other Commercial Matters (2009) (the Full Report), is available for download from the “Legislative Committee Projects” page in the members section of the REPTL website:

www.reptl.org

and also from McPherson LawFirm, PC’s 2009 Legislation website page:

www.mctexlaw.com/2009Legislation.asp

For the 81st Legislature, RELACs tracked approximately 2,000 bills, and included 248 bills in its Full Report. By comparison, in the 80th Legislature, by my count 6,374 bills were filed, 1,495 passed, RELACs tracked 1,910 bills and included 231 bills in its full report.

I served as a member of RELACs for the 78th Legislature, and as Chair of RELACs for the 79th and 80th Legislatures. For the 81st Legislature, I served as RELACs’ Political Affairs Advisor. This was my fourth legislative session serving on RELACs, which translates into a mere fifty-six years in a dog’s life.

This paper addresses the new laws passed in the 81st Legislature’s Regular Session that relate to environmental, water and water rights matters. Attached as Appendix A to this paper is an excerpt of 74 bills from the Full Report. As readers will note, these bills are not confined to the Health and Safety Code and Water Code, but rather are scattered across many different codes.

All references to legislative history, author/sponsor statement of intent, and similar anecdotal background information, are derived from information as reported by Telicon unless otherwise specifically stated herein.

II. THE TCEQ’S VIEW OF AND RESPONSES TO THE 81ST LEGISLATURE

According to the TCEQ, it tracked 957 bills filed in the 81st Legislature that it felt had the potential to affect the TCEQ or its operations. Of

those, 235 bills passed, of which 164 were utility and/or district creation bills. Its Legislative Wrap-Up Report may be downloaded here:

http://www.tceq.state.tx.us/comm_exec/igr/81_leg_sum.html

Legislation often requires the TCEQ to respond by adopting new rules and regulations, and/or providing formal guidance. I have included notes below bill summaries to indicate those bills pursuant to which the TCEQ either has already issued, or intends to issue, new rules or guidance. To the extent future dates are known, I have also included those. The source for this information is the TCEQ Report entitled "Legislative Implementation: 81st Legislature" which may be downloaded here:

http://www.tceq.state.tx.us/comm_exec/igr/implementation/implement_81st.html

A. TCEQ APPROPRIATIONS⁴

Pursuant to SB 1, the TCEQ received \$964.2 million for the 2010-2011 biennium. These amounts include approximately \$33.2 million for exceptional items. Overall, this biennial funding was a reduction of \$126.8 million from the 2008-2009 biennium. Additional funds were appropriated to the TCEQ pursuant to HB 4586, the Supplemental Appropriations bill.

B. TCEQ SUNSET REVIEW HEARING MOVED TO THE 82nd LEGISLATURE

The Sunset Advisory Commission is an independent state agency composed of 12 members appointed by the Lieutenant Governor and the Speaker of the House. During the 81st Legislature's Special Session (the one necessitated because chubbing killed several Sunset Advisory Commission bills, which would have terminated certain agencies), the Legislature moved forward by two years, and thus into the 82nd Legislature, the

Sunset Advisory Commission's review of the TCEQ, along with several other agencies.⁵

On November 9, 2009, Speaker Straus announced the legislative appointees and one public member to the Sunset Advisory Commission. Each appointee will serve a four-year term. Legislative appointees are Representatives Dennis Bonnen, Rafael Anchia and Byron Cook. Representative Bonnen will serve as vice-chair of the Commission. Mr. Lamont Jefferson will serve as the public member. The new appointees join Representatives Linda-Harper Brown and Carl Isett who currently serve on the Commission.

The overall purpose of the Sunset Advisory Commission's review of the TCEQ is to assess the need to retain the TCEQ, look for potential duplication of programs within the TCEQ and other state agencies, and consider changes to improve the TCEQ. The initial step in the process was for the TCEQ to submit a preliminary self-evaluation report by October 29. The TCEQ completed this task and its 534 page report may be downloaded here:

<http://tceq.state.tx.us/agency/sunset/tceq-evalrpt.html>

As part of the review process, the Sunset Advisory Commission will seek public input through interviews and discussions with external interested parties. Their staff will conduct their own analysis and audit, as well as meet with TCEQ staff. The Sunset Advisory Commission will conduct two types of hearings addressing the TCEQ. The first, to be conducted in December 2010, is to hear testimony from the public about the agency. The second, to be held in January 2011, will be to adopt management and statutory recommendations regarding the TCEQ.

The statutory recommendations adopted at the January 2011 Sunset Advisory Commission

⁴Information in this Section is based on *Texas Commission on Environmental Quality, Legislative Wrap-Up Report, 81st Texas Legislature*, June 2009

⁵The Texas Water Development Board is also going through Sunset Advisory Commission review now, for consideration by the 82nd Legislature in 2011.

hearing will be considered by the 82nd Texas Legislature in 2011. Interested readers should follow and participate in this process.

IV. THE TEXAS BUSINESS ORGANIZATIONS CODE TAKES EFFECT JANUARY 1, 2010

The Texas Business Organizations Code (TBOC) was adopted in 2003 by the 78th Legislature.⁶ It became effective January 1, 2006, and applies to all business entities formed on or after that date, including nonprofit water supply and sewer service corporations formed under Water Code Chapter 67. From January 1, 2006, to January 1, 2010, water supply and sewer nonprofit corporations governed by the Texas Non-Profit Corporation Act (TNPCA) may choose to be governed by the TBOC, by filing an election with the Secretary of State. All Texas business entities, including water supply and sewer service corporations, formed prior to January 1, 2006, that do not file such an election will automatically be governed by the TBOC beginning on January 1, 2010. On that same date, the underlying statutes (including the TNPCA) will be repealed.

Appendix B to this paper is an explanation of the Texas Business Organizations Code as it relates to nonprofit water supply and sewer service corporations formed under Water Code Chapter 67. Various related forms follow in Appendix B as exhibits.

V. INTERIM CHARGES

As of the publication of this paper, Senate interim charges had not been formally issued. However, at a conference just a few days before this paper was submitted for publication, in his speech at the water conference “h2o4Texas”, Lt. Gov. David Dewhurst listed three interim charges he

would be issuing to the Senate Natural Resources Committee. My paraphrasing of those charges (I was writing as fast as I could), and with the further caveat that I cannot always decipher my own writing, is as follows:

1. Determine, analyze and compare the cost differences between immediate and delayed implementation of the state water plan;
2. Review the joint management planning process experiences to date and consider any changes that may need to be made; and
3. Take a new look at implementing conservation and reuse strategies.

Speaker Straus released interim charges for the House on November 19. Relevant charges include:

House Appropriations:

Charge No. 3:

Examine the growth of constitutionally and statutorily dedicated accounts and their utilization in the budget.

Charge No. 4:

Examine the Constitutional Debt Limit, the state’s current bonding practices and projected bonding needs, and their impact on the state budget.

These may be relevant because some legislators was want to see the State Water Plan fully funded, and they want a dedicated revenue stream to provide the funds instead of using general revenues. The concern is that general revenues are subject to the whims and priorities of each individual legislature, thus causing the level of funding for water needs to fluctuate unpredictably.

House Committee on Energy Resources:

Charge No. 1:

Survey current local ordinances governing surface use of property in oil and gas development. Recommend changes, if any, to the authority of the

⁶The TBOC was amended by House Bill 1319 (Tex. Leg. R.S. 2005), House Bill 1737 (Tex. Leg. R.S. 2007), and Senate Bill 1442 (Tex. Leg. R.S. 2009). This paper will cite to “TBOC Section __, to refer to the TBOC as amended through Senate Bill 1442, effective on September 1, 2009.

Railroad Commission to regulate the operation of oil and gas industries in urban areas of the state, particularly the Barnett Shale.

House Committee on Environmental Regulation:

Charge No. 1:

Examine the regulation of air quality in the areas of permitting new and modified sources, public participation, and enforcement. Consider data and proposed federal standards and rules as they relate to the State Implementation Plan.

Charge No. 2:

Survey existing recycling programs and suggest needed improvements.

Charge No. 3:

Monitor federal legislative and regulatory initiatives as they pertain to climate change. Consider Texas' responses to proposals and make recommendations as to any further preparations.

Charge No. 4:

Study the Texas Commission on Environmental Quality's use of supplemental environmental projects in its enforcement process.

House Committee on Land Resource Management:

Charge No. 2:

Examine unresolved issues relating to eminent domain legislation introduced during the 81st Legislative Session. Monitor any pending litigation.

House Committee on Natural Resources:

Charge No. 1:

Evaluate groundwater regulations and permitting processes throughout the state, including the role of state agencies in groundwater management, the development of desired future conditions, and the adoption of groundwater management plans in relation to regional and state water planning.

Charge No. 2:

Monitor the effects of current and proposed federal initiatives that could impact the implementation of

the State Water Plan. Evaluate the policies and investments developed by other states dealing with water issues similar to the State of Texas.

Charge No. 3:

Monitor ongoing drought conditions and initiatives to promote water conservation through the review of the following: state requirements for the submittal of water conservation plans and annual reporting; the "trigger" for use of drought contingency plans; recommendations by state agencies and the Water Conservation Advisory Council; and progress toward the development of recycled water resources and desalination projects.

Charge No. 4:

Evaluate the regulatory model for investor-owned water and sewer utilities, including rate case process and timing, consultant fee recovery, overall cost reductions, and more effective consumer participation.

House Committee on State Affairs

Charge No. 2:

Examine state policy on "green" technologies for all state buildings and costs associated with such implementation.

Charge No. 4:

Examine the state's portfolio of electric generation resources, including traditional sources, emerging renewable technologies, and energy efficiency. Determine whether the existing state regulatory programs and incentives are adequate to meet the energy needs of the future. Consider factors relating to reliability, requirements for additional transmission, or auxiliary services. *Joint Interim Charge with House Committee on Energy Resources*

House Committee on Urban Affairs

Charge No. 2:

Review the TDCHA's Weatherization Assistance Program and increased funding from the American Recovery and Reinvestment Act. Examine the methodology used to distribute funds and the

program's effectiveness at reducing residential energy costs. *Joint Interim Charge with House Select Committee on Federal Economic Stabilization Funding*

VI. ACKNOWLEDGMENTS

RELACs is almost entirely dependent on volunteer efforts from members of the Texas real estate lawyers community. Without these lawyers' collective efforts, this report would not be feasible. Each of these lawyers has given RELACs scores of hours he or she may have otherwise spent in countless different (and, most likely, less arduous) pursuits. The RELACs members for the 81st Legislature, with their contact information, is attached as Appendix C. The Bar is richer for their service.

I would also like to thank RELACs for allowing me to serve as its Political Affairs Advisor this session.

VI. CONCLUSION

Days before submitting this paper for publication I attended a conference about Texas water, coordinated by Sen. Kip Averitt, Chair of the Senate Natural Resources Committee, and Rep. Allan Ritter, Chair of the House Natural Resources Committee. Among other things, they introduced a new website and public relations campaign to increase awareness of water issues for Texans of all walks:

<http://www.h2o4Texas.org>

The presentations at this two-day conference should be online and available for your viewing on that website (in other words, what I had to pay for you can see for free). Please consider joining the efforts to promote greater awareness of water issues by publicizing this website to your friends, colleagues and acquaintances.

This conference was in part intended to raise public awareness of the need to replace our aging water infrastructure and fully fund our state water plan with a dedicated revenue stream. It further appears to me that this conference was not

just a momentary spotlight but that it was intended to generate momentum for these priorities to receive serious legislative consideration in the upcoming 82nd Legislature. I have never seen water-related issues receive such wide publicity and strong support from politicians as they did with this conference. And so, as we review the 81st Legislature's water law legacy, I think we can look forward to an 82nd Legislature that may be very active in water and environmental issues.

For current water news and other water-related developments, please visit my law firm's water law website:



For environmental issues, please visit my law firm's environmental website:



For more information about the bills passed in the 81st Legislature, see:

www.mctexlaw.com/2009legislation.asp



And now, without further delay, here are the Appendices.

APPENDIX A

I. INTRODUCTION

This appendix is an excerpt from the final report of the Real Estate Legislative Affairs Committee of the Real Estate, Probate and Trust Law Section of the State Bar of Texas (RELACs). The full report summarizes significant bills passed during the Regular Session of the 81st Texas Legislature affecting real estate, mortgage lending, and other business and commercial issues of interest to Texas real estate law practitioners.

During the Session, Texans' elected representatives introduced more than 7,500 bills. Among those bills, RELACs identified approximately 2,000 bills it believed, if passed, would be of general interest to practitioners of Texas real estate law. Of those bills identified, 248 actually passed into law and were chosen for inclusion in the final report.

This excerpt categorizes bill summaries by code in alphabetical order. Some bills may be broad enough in scope to justify placement under multiple codes and/or under multiple titles within a code; however, in the interest of brevity, each bill summary appears in this report only once, under the primarily affected code and title. Consequently, we encourage the reader to carefully review the entire report to ensure recognition of every bill of relevance to a particular topic.

Bill captions in this report are copied from the actual legislation. However, neither the bill caption nor RELACs' general summary can address all relevant aspects of each bill. Rather, this report serves only to alert the reader to each bill's general scope and effect. The reader must choose which bills, if any, merit closer scrutiny for their potential effect on his or her practice.

II. EFFECTIVE DATES

Pursuant to Section 39, Article III, of the Texas Constitution, the effective date of acts without specific effective dates (and without provisions for immediate effect) passed by the

Legislature in regular session is ninety-one days after adjournment of the regular session. For the 81st Legislature's Regular Session this date is Monday, August 31, 2009. If, however, a bill has a provision for immediate effect and is passed by a two-thirds majority in each of the House and Senate, then the bill becomes law immediately upon: (a) the date the Governor signs it, (b) the date the Governor files it with the Secretary of State (with neither signature nor veto), (c) in the absence of signing or filing, the date the deadline for gubernatorial action expires, or (d) if the Governor vetoes the bill, the date the Legislature overrides the veto.

To reduce the potential for confusion and uncertainty as to effective dates, this report states the earliest effective date for each summarized bill as reported by Telicon on its website. RELACs advises the reader to review these effective dates, in that over ninety bills included in this report have effective dates prior to August 31, 2009. Note as well that different portions of a bill may have different effective dates. The summaries in this report do not necessarily indicate all effective dates within a bill.

III. INTERNET RESOURCES

Bills from the 81st Texas Legislature can be accessed at:

<http://www.capitol.state.tx.us>

RELACs generally avoids summarizing bills that affect only a particular county or municipality (unless the county or municipality is a major urban center). Nevertheless, some bills in this report may be limited ("bracketed" in legislative parlance) to certain geographic areas in Texas by reference to municipality or county population and/or square miles contained in the county. The following websites are helpful in deciphering the bracketing system:

<http://www.tsl.state.tx.us/ref/abouttx/popcity32000.html>

and

<http://quickfacts.census.gov/qfd/states/48/48029.html>

IV. BILL SUMMARIES

GOVERNMENT CODE

Title 5. Open Government; Ethics

House Bill 3544

Relating to the standards, methods, and procedures used by governmental bodies in taking certain actions and managing certain information, including standards, methods, and procedures relating to electronic notices by the Texas Commission on Environmental Quality, electronically stored information provided by a governmental body, confidentiality of e-mail addresses provided to a governmental body, and determinations regarding whether property is pollution control property for ad valorem tax purposes.

Amends Government Code, Chapter 552, Sections 552.137 and 552.228; Tax Code, Chapter 11, Section 11.31; and Water Code, Chapter 5, Section 5.128.

Author: Lucio III Sponsor: Fraser

Allows TCEQ to use electronic media to transmit items like notices, orders and decisions issued or sent by the commission. Provides that standards and methods for making determinations under Tax Code, Section 11.31 (exemptions for pollution control property) apply uniformly to all determinations under that section. Requires TCEQ to establish a permanent advisory committee to advise the commission regarding implementation. Makes confidential certain email addresses provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Government Code, Section 2001.003(2), or receiving orders or decisions from a governmental body. Amends Public Information

Act (Section 552.228, Government Code) regarding providing copies of public information in electronic form.

Effective Date: September 1, 2009

NOTE: TCEQ Rule implementation is scheduled for September 1, 2010 and September 30, 2010.

Senate Bill 1182

Relating to public information and open government.

Amends Government Code Chapter 552, Sections 552, 552.009, 552.263(a), 552.274(a), 552.301(e-1), 552.323(b), 552.324, 552.325(b), and 552.353(b) and (c). Adds Family Code Chapter 261, Section 261.201(k) and (l); Government Code, Chapter 551, Section 551.0415; Chapter 552, Sections 552.008(b-1) and (b-2), 552.150, and 552.151.

Author: Wentworth Sponsor: Ortiz

Allows a quorum of a municipal governing body to receive or allow to be made reports about items of community interest such as congratulations, holiday schedules, honorary recognitions, event reminders, information on social events, and announcements about imminent threats that arose since the agenda posting, without having given notice so long as no action is taken and possible action is not discussed. Clarifies that the Open Records Steering Committee provides its advice and reports to the Attorney General and not to the Texas Building and Procurement Commission. Creates a new exception from required disclosure of public information for information in the custody of a hospital district that could reasonably be expected to compromise the safety of an employee or officer of the hospital district, with the exception expiring September 1, 2013. Creates a new exception from required disclosure of public information related to certain details of biological agents and toxins, including the specific location, personal identifying information of those in the chain of custody, and identity of individuals authorized to possess, use, or access

the agents and toxins. Specifies details of written itemized statement that must be given to requestor of public information before the public information officer can require a deposit or bond for payment. Reauthorizes requirement for the Attorney General to prepare and post on the Internet a biennial report on the charges for receiving public information from the various state agencies. Requires a governing body providing comments to the Attorney General on why certain exceptions apply to the disclosure of information to provide a copy of those comments to the requestor of the information within fifteen business days after receiving the request for information. Requires the court to review the reasonable basis in law of the governing body, as opposed to that of the public information officer, in its determination of whether to issue an award of costs and reasonable attorneys' fees for suits brought by a governing body related to withholding information. Clarifies that suits brought by governing bodies with respect to withholding information must seek declaratory relief and that suits brought in relation to public information must be brought in Travis County district court.

Further, requires investigating agencies (other than the Texas Youth Commission) to provide the parent, managing conservator, or other legal representative of a child who is the subject of alleged abuse or neglect with a copy of the information concerning the alleged abuse or neglect. Before such information is released, information exempted from disclosure must be redacted, as well as personally identifiable information of a victim or witness under 18, unless the victim or witness is the subject of the report or also a child of the one to whom the information is being provided under this section. The information shall not be released if the one requesting the information is suspected of the abuse or neglect.

Provides a process by which a member, committee, or agency of the legislature required to sign a confidentiality agreement by a governmental body may seek an appealable

decision from the Attorney General about whether the information covered by the agreement is confidential. (This portion of the bill takes effect September 1, 2010.)

Effective Date: September 1, 2009

Title 10. General Government

Senate Bill 184

Relating to “no regrets” greenhouse gas emissions reduction strategies.

Adds Government Code, Chapter 2305, Section 2305.201.

Author: Watson

Sponsor: Chisum

Directs Comptroller to prepare a report by December 31, 2010, listing strategies for reducing greenhouse gases that result in a net savings to consumers or businesses in Texas, can be achieved without financial cost to consumers or business, or help businesses in Texas maintain global competitiveness. Directs Comptroller to consider total net costs over the lifetime of the strategies, including initial short term costs as well as lifetime costs and savings. Directs Comptroller to appoint one or more advisory committees made up of representatives of other agencies to advise in identifying and evaluating reduction strategies.

Effective Date: September 1, 2009

HEALTH AND SAFETY CODE

Title 4. Health Facilities

Senate Bill 1478

Relating to the authority of hospital districts to lease undeveloped real property.

Amends Health and Safety Code, Chapter 281, Section 281.050.

Author: Carona

Sponsor: Vaught

Allows a hospital district, with approval of the commissioners court, to lease undeveloped real property. Limits such leases to not more than 50 years and should provide for the development of facilities designed to generate revenue for the district. Allows district to enter into a joint venture to enter into the lease.

Effective Date: June 19, 2009

Title 5. Sanitation and Environmental Quality

House Bill 1796

Relating to the development of carbon dioxide capture and sequestration in this state.

Amends Health and Safety Code, Chapters 382, 386, and 387, various sections; Tax Code Chapter 151, Sections 151.0515 and 152.0215; and Transportation Code, Chapter 501, Section 501.138, Chapter 502, Section 502.1675 and Chapter 548, Section 548.5055. Adds Health and Safety Code, Chapter 382, Subchapters J and K; Chapter 387, Section 387.010; and Chapter 391.

Author: Chisum

Sponsor: Watson

Allows Texas Commission on Environmental Quality to adopt rules setting standards for location, construction, maintenance, monitoring, and operation of an offshore deep subsurface geologic repository for the storage of carbon dioxide and requires such rules to comply with any similar rules, if any, adopted by US Environmental Protection Agency. Directs General Land Office to contract with the Bureau of Economic Geology at the University of Texas to study state-owned off shore submerged lands for suitable locations for the repository and directs the School Land Board to make a final determination on the suitable locations. Allows Board to lease the land for the construction of the repository and the associated infrastructure, and to contract for construction and operation of the repository. Allows Board to set a fee for storage of carbon, in part based upon carbon credits generated by the storage if Texas participates in a

carbon trading program. Provides that Board acquires title to any carbon dioxide stored in the repository but this does not relieve a producer of the carbon of liability for acts performed before the carbon was stored, but does relieve the producer of liability for any act or omission regarding the carbon dioxide in the repository. Requires the General Land Office to prepare an annual report regarding the repository including total volume stored.

Expands the definition of an advanced clean energy project to include additional type of projects including certain modifications of existing facilities and projects involving less than the entire emissions from a facility. Directs Texas Commission on Environmental Quality to establish a new technology implementation grant program for certain sources. These projects may include among other things, advanced clean energy project and electricity storage projects for renewable energy. Changes other Commission grant programs aimed at emissions reductions. Directs Commission to implement a program (with a nonprofit or institute of higher education) to support research related to air quality.

Extends the current Texas Emissions Reduction Program for six additional years, through August 31, 2019 and makes some changes to projects eligible for grants under the Texas Emissions Reduction Program.

Directs Texas Commission on Environmental Quality, the Railroad Commission, the Department of Agriculture and the Public Utility Commission to collaborate in the federal process of developing greenhouse gas reporting requirements and federal greenhouse gas registry.

Effective Date: September 1, 2009

NOTE: TCEQ Rule implementation and Guidance is scheduled for March and May, 2010, and August, 2011.

House Bill 2667

Relating to performance standards for plumbing

fixtures sold in this state.

Amends Health and Safety Code, Chapter 372, Sections 372.001 and 372.002, Water Code Chapter 5, Section 5.701. Adds Health and Safety Code Chapter 372, Sections 372.0025, 372.0045, and 372.006. Repeals Health and Safety Code, Chapter 372, Sections 372.002(d), (e), and Section 372.003(a), (b).

Author: Ritter Sponsor: Hinojosa

Phases in water efficiency performance standards for various plumbing fixtures. Allows an exception to new standards for fixtures certified by United States Environmental Protection Agency Water Sense Program. Allows a municipality or county to allow sales of fixtures not complying with the standards if a greater quantity of water is required by the public sewer system. Requires the owner of an apartment house, manufactured home rental community or multiple use facility or a manager of a condominium to install toilets meeting the plumbing standards by the first anniversary of the commencement of billing for submetered or allocated water service.

Effective Date: September 1, 2009

NOTE: TCEQ Rule proposed October 2009, for adoption on March 30, 2010

House Bill 3547

Relating to an order of the closure of unregistered dry cleaning facilities and dry cleaning drop stations by the Texas Commission on Environmental Quality.

Adds Health and Safety Code, Chapter 374, Section 374.2511

Author: Elkins Sponsor: Mike Jackson

Allows Texas Commission on Environmental Quality to issue a notice of violation to a dry cleaning facility or dry cleaning drop station that is not registered as required by law. Allows the

agency to order the facility or drop station to cease operation if the violation is not corrected within thirty days.

Effective Date: September 1, 2009

NOTE: TCEQ Guidance is scheduled for issuance on December 1, 2009.

House Bill 3661

Relating to standards for installing fire hydrants in certain residential areas.

Amends Health and Safety Code, Chapter 341, Section 341.0358(b).

Author: Turner, Sylvester Sponsor: Gallegos

Requires the regulatory authority for a public utility to adopt standards for installation of fire hydrants to protect public safety in residential areas in municipalities with a population of 1 million or more. (Prior legislation only required adoption of standards for maintenance of water pressure sufficient to service fire hydrants to protect public safety in such areas.)

Effective Date: September 1, 2009

NOTE: TCEQ Rules are scheduled for proposal on January 13, 2010, for adoption on May 19, 2010.

House Bill 3765

Relating to the use of hazardous and solid waste remediation fee funds for lead-acid battery recycling activities.

Amends Health and Safety Code, Chapter 361, Section 361.133(c).

Author: Paxton Sponsor: Averitt

Allows Texas Commission on Environmental Quality to use up to ten percent of the fees on batteries collected and appropriated to be used for various lead acid battery recycling activities, including remediation of contaminated sites, and

for incentives to create technology to increase the efficiency of the recycling process to reduce the environmental impacts of the process.

Effective Date: September 1, 2009

Senate Bill 968

Relating to interactive water features and fountains.

Amends Health and Safety Code, by adding Chapter 341, Section 341.0695.

Author: West

Sponsor: Truitt

Requires that owners, manager, operators or other attendants of interactive water features or fountains (which includes water sprays, dancing water jets, waterfalls, dumping buckets or shooting water cannons maintained primarily for public recreation) to keep the feature in a sanitary condition. Allows counties, municipalities, or the Department of State Health Services to require permits for the feature, inspect such features for compliance, and collect fees for the permit or inspection. Allows counties, municipalities, or the Department to close water features that violate sanitary, permitting, or inspection requirements. Exempts recreational water parks that use freshwater originating from a natural watercourse from the requirements.

Effective Date: June 19, 2009

Senate Bill 1472

Relating to public meetings for permit applications under the Texas Clean Air Act.

Amends Health and Safety Code, Chapter 382, Section 382.056.

Author: Gallegos

Sponsor: Hernandez

Requires that a permit applicant or an applicant's designated representative attend the public meeting held on its application for certain types of air permits and make a reasonable effort to respond to questions about the application at the meeting.

Effective Date: September 1, 2009

NOTE: TCEQ Guidance was completed on September 1, 2009

Senate Bill 1732

Relating to safety requirements for public swimming pools and other artificial bodies of water.

Author: West

Sponsor: Harless

Adds Health and Safety Code, Chapter 341, Section 341.0645.

Directs the Health and Human Services Commission to adopt pool safety standards, at least as stringent as those imposed under the federal Virginia Graeme Baker Pool and Spa Safety Act, as necessary to prevent drowning. Requires owners, managers, operator or other attendants in charge of public swimming pools, wading pools, baby pools, hot tubs, water parks and other various artificial bodies of water used for recreational swimming, bathing or play to comply with the standards. (The federal act generally specifies certain items which must be used on the pools to prevent drain entrapment, among other things.)

Effective Date: September 1, 2009

Title 8. Death and Disposition of the Body

House Bill 2927

Relating to the regulation of cemeteries by state and local government.

Amends Health and Safety Code Chapter 711 various Sections; Chapter 713, Sections 713.009, 713.010, 713.025, and 715.005. Adds Health and Safety Code, Chapter 711, Sections 711.0105 and 711.0515; Chapter 713, Section 713.011.

Author: Donna Howard

Sponsor: Nelson

Clarifies and reconciles various state laws dealing with cemeteries, including historical burial sites. Expands the definition of a cemetery to include

any area containing one or more graves and expands the definition of a grave to be any space of ground that contains interred human remains, not just limited to such space that is in a burial park. Gives district courts jurisdiction over consents for removal of remains when other consent cannot be obtained. Requires notice of removal of remains to the Texas Historical Commission if no applicable cemetery association exists. Requires notice to the Texas Funeral Service Commission and the Department of State Health Services of intent not to reinter removed remains. Provides additional procedures for abating a cemetery whose condition constitutes a nuisance and establishes a municipality's responsibility for maintaining a public cemetery. Provides that in removing of a dedication for cemetery purposes, the district court must find that the removal of the dedication is in the public interest.

Requires that the removal of any remains be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner or a professional archeologist, and requires that any removed remains be reburied unless approval of alternate disposition is obtained. Requires notice to the Texas Historical Commission and filing in deed records upon discovery of an unknown or abandoned cemetery.

Prohibits installation of wind turbines or cell towers on a dedicated cemetery without consent of the directors of the cemetery organization or at least two-thirds of the owners of the plots.

Effective Date: September 1, 2009

Title 9. Safety

House Bill 527

Relating to the removal of an appointed emergency services district board member by a country commissioners court.

Amends Health and Safety Code, Chapter 775, Sections 775.036, 775.0422, and 775.042. Repeals Health and Safety Code, Chapter 775,

Section 775.036(d).

Author: Leibowitz Sponsor: Zaffirini

Specifies that upon request from a commissioners court, an emergency services district must give a report of its year specifically including the district's budget, tax rate and debt service. Allows the commissioners court to remove by a majority vote one or more appointed (not elected) board members of an emergency services district if it fails to make the requested report. Makes clear that the reporting requirement applies even to those districts located wholly within one county.

Effective Date: June 19, 2009

LOCAL GOVERNMENT CODE

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Senate Bill 1449

Relating to the appointment of a receiver to remedy hazardous properties.

Adds Local Government Code, Chapter 214, Section 214.0031.

Author: West Sponsor: Deshotel

Allows a home-rule municipality or eligible nonprofit housing organization to bring an action in district court against a property owner not in substantial compliance with municipal ordinances regarding health and safety. Allows the court to appoint a receiver, if the property is not an owner-occupied single family residence, upon finding that the property constitutes a health or safety hazard. Establishes procedural rules. Specifies rights and duties of the receiver. Allows the receiver to demolish structures, under certain conditions. Allows the court to order a public or private sale of the property if a property owner fails to repay the receiver's costs and expenses related to demolition or rehabilitation.

Effective Date: September 1, 2009

Senate Bill 1676

Relating to fees charged by certain counties near international borders for issuing certain utility certificates.

Amends Local Government Code, Chapter 232, Sections 232.028 and 232.029.

Author: Hinojosa Sponsor: Gonzales

Authorizes a commissioners court to impose a fee for issuing a certificate allowing the connection of utilities. Applies only to subdivisions located outside a municipality in counties near an international border (sometimes called “colonias” areas). Sets guidelines regarding the amount of the fee. Specifies that persons who obtain such a certificate need not obtain a certificate under Section 212.0115 (regarding compliance with plat requirements).

Effective Date: September 1, 2009

Senate Bill 1945

Relating to the issuance of a citation to an owner of real property for a violation of a county or municipal rule or ordinance.

Amends Local Government Code, Chapter 250, Sections 250.003 and 250.004.

Author: West Sponsor: Deshotel

Sets a five-day time period after an employee of a property owner (or property management company) receives a citation, during which the employee may provide the property owner’s current contact information—and thereby avoid personal liability for the violation. Declares that such an employee is the owner’s agent for accepting service. Requires the county or municipality to mail notice of the citation to the property owner at the address most recently provided.

Effective Date: January 1, 2010

House Bill 1937

Relating to the voluntary assessment of property owners by a municipality to finance certain energy conservation improvements.

Adds Local Government Code, Chapter 376.

Author: Villareal Sponsor: Seliger

Authorizes municipalities to use “contractual assessments” to finance: (i) certain “energy efficiency public improvements to developed lots” and (ii) “distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.” Requires owner consents. Provides that assessments, interest and penalties will be a lien on the property assessed. Prescribes standards and procedures. Provides for owners making direct purchases of equipment and installation.

Effective Date: September 1, 2009

Title 13. Water and Utilities

Senate Bill 874

Relating to the exemption of certain counties from the drainage charge imposed by a municipal drainage utility system.

Amends Local Government Code, Chapter 552 Section 552.053.

Author: Shapleigh Sponsor: Quintanilla

Exempts certain county-owned property from municipal drainage charges and ordinances. Applies to a county with a municipality of more than 500,000 population located within 50 miles of an international border.

Effective Date: May 30, 2009

Senate Bill 1299

Relating to the regulation of stormwater management by certain counties.

Amends Local Government Code, Chapter 573,

Section 573.001.

Author: Watson Sponsor: Rodriguez

Adds “a county with a population of 800,000 or more that contains a portion of the Edwards Aquifer” to the list of entities authorized to undertake a stormwater permitting program under the national pollutant discharge elimination system (Section 402, Federal Water Pollution Control Act (33 U.S.C. Section 1342)).

Effective Date: June 19, 2009

NATURAL RESOURCES CODE

Title 2. Public Domain

House Bill 1213

Relating to the promulgation by the commissioner of the General Land Office of rules authorizing the use on a public beach of a golf cart for the transportation of a person with a physical disability.

Amends Natural Resources Code, Chapter 61, Section 61.011(d).

Author: Rios Ybarra Sponsor: Lucio

Authorizes the Commissioner to promulgate rules concerning the use of motorized golf cart vehicles on beaches by disabled persons.

Effective Date: May 19, 2009

House Bill 1445

Relating to the authority of certain political subdivisions to erect or maintain shore protection structures and the location of the line of vegetation in relation to those structures.

Amends Natural Resources Code, Chapter 61, Sections 61.017 and Section 61.022.

Author: Bonnen Sponsor: Huffman

Provides that, in an area of public beach where a

shore protection structure constructed in accordance with Section 61.022(a)(6) of the Natural Resources Code interrupts the natural line of vegetation for a distance of at least 1,000 feet, the line of vegetation is along the seaward side of the shore protection structure for the distance marked by the structure, and will be the landward boundary of the public beach and of the public easement for all purposes, provided that (1) a perpetual easement has been granted in favor of the public affording pedestrian, non-commercial use along and over the entire length of the structure, and the subdivision constructing the shore protection structure has provided a public parking area sufficient to provide at least one parking space for each 15 linear feet of the structure with entrances and exits no more than one-half mile apart. Provides that a subdivision of this state, may construct a shore protection structure with the approval of the Commissioner, if the structure is a shore protection structure that: (1) is designed to protect public infrastructure, including a state or county highway or bridge; (2) is located on land that is state-owned submerged land or was acquired for the project by a subdivision of this state and is located in or adjacent to the mouth of a natural inlet from the Gulf of Mexico; and (3) extends at least 1,000 feet along the shoreline. Authorizes the Commissioner to specify requirements for the design and location of the structure.

Effective Date: June 19, 2009

House Bill 2073

Relating to plans by local governments in coastal areas for reducing public expenditures for erosion and storm damage losses to public and private property.

Amends Natural Resources Code, Chapter 31, Sections 33.605(b) and 33.607(e), (f), and (g).

Author: Bonnen Sponsor: Hegar

Requires the Commissioner of the General Land Office, in determining whether to approve an expenditure for a study or project, to consider, in

addition to the matters set out in Section 33.605(b), the plan for reducing public expenditures for erosion and storm damage losses prepared by the local government under Section 33.607. Requires, a local government to use historical erosion data and the coastal erosion response plan published by the Commissioner under Section 33.602 to prepare a local plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches. Authorizes the Commissioner to adopt rules for the preparation and implementation by a local government of a local plan for reducing public expenditures for erosion and storm damage losses to public and private property.

Effective Date: September 1, 2009

House Bill 2074

Relating to the designation by the commissioner of the General Land Office of critical coastal erosion areas for purposes of the coastal erosion response plan.

Amends Natural Resources Code, Chapter 33, Section 33.602(b). Adds Natural Resources Code, Chapter 33, Section 33.602(e).

Author: Bonnen
Hegar

Sponsor:

Allows Commissioner to designate critical erosion areas in the State's coastal erosion response plan. Authorizes Commissioner to conduct a coast-wide analysis of the costs and benefits of coastal erosion avoidance, remediation, and planning in order to determine which areas should be designated as critical coastal erosion areas and guide the allocation of resources. Authorizes the analysis to consider the historical erosion rates in an area, the elevation of an area adjacent to the shoreline, the presence of critical infrastructure in an area adjacent to the shoreline, the population density of an area adjacent to the shoreline, the presence of economic activity conducted in an area adjacent to the shoreline, the presence of critical natural resources in an area adjacent to the

shoreline, anthropogenic contributions to erosion, and any other factor identified as relevant by the Commissioner.

Effective Date: September 1, 2009

House Bill 2387

Relating to the authority of the General Land Office to undertake coastal erosion studies and projects in conjunction with qualified project partners.

Amends Natural Resources Code, Chapter 33, Sections 33.603(b), (d), (f), and (h).

Author: Bonnen

Sponsor: Hegar

Authorizes the use of Coastal Erosion Planning and Response Act funds for the purchase of property located on a public beach and the acquisition of such property for the construction, reconstruction, maintenance, widening, or extension of erosion response projects. Authorizes Commissioner to undertake at least one erosion response project without requiring a qualified project partner to pay a portion of the shared project costs if the total cost of the projects without a cost share requirement does not exceed one-half of the total amount appropriated to the General Land Office for coastal erosion planning and response.

Effective Date: September 1, 2009

House Bill 3632

Relating to the authority of the state to acquire, sell, or exchange certain land.

Amends Natural Resources Code, Chapter 31, Sections 31.065(a) and (c), 31.066(a) and (c), and Section 31.167(c); Chapter 183, Section 183.058(a); and Chapter 191, Sections 191.021(b), and 191.021(d). Adds Natural Resources Code, Chapter 31, Sections 31.065(d) and (e), 31.066(d), and 31.167(d) and (e).

Author: Geren

Sponsor: Veritt

Authorizes the Commissioner of the General Land

Office to accept grants, gifts, devises, or bequests, either absolutely or in trust, of money or real or personal property on behalf of the State, if the Commissioner determines it to be in the best interest of the State, to be held as public free school land unless the person making the transfer provides that the real property is to be held in some other manner by the State. Authorizes the Commissioner to determine the suitability of the real property and to exchange the real property for real property that is suitable for such purposes. Authorizes the Commissioner, if real property acquired by grant, gift, devise, or bequest is not held as part of the permanent school fund or possessed, administered, or used by a particular State agency, board, commission department or other state entity, to manage that real property or sell or exchange the real property. Requires that proceeds of the sale that are not required for the management of real property under this subsection be deposited in the farm and ranch lands conservation fund established under Chapter 183. Authorizes the Commission to dedicate real property acquired under this subsection to any state agency, board, commission, or department, a political subdivision, or other governmental entity of this state, or the federal government, for the benefit and use of the public in exchange for nonmonetary consideration, if the Commissioner determines that the exchange is in the best interest of the State.

Authorizes the Commissioner (instead of the land office) to accept from the federal government title to property on which the federal government has performed remediation work under CERCLA, following the completion of the remediation work, and to hold it in the name of the State. Authorizes the Commissioner to sell any title or interest acquired by the state following remediation in accordance with Section 31.158. Requires that proceeds of the sale be deposited in the farm and ranch lands conservation fund.

Provides for revisions to special board of review development plans after the later of the 10th anniversary of the date on which the development plan was promulgated by the special board of

review, or the date on which the State no longer holds a financial or property interest in the real property subject to the plan.

Effective Date: June 19, 2009

Title 3. Oil and Gas

House Bill 469

Relating to the establishment of incentives by this state for the implementation of certain projects to capture and sequester carbon dioxide that would otherwise be emitted into the atmosphere.

Amends Tax Code, Chapter 202, Section 202.0545(a) & (d); Chapter 313, Section 313.021(4); and Health and Safety Code, Chapter 382, Section 382.003(1-a). Adds Government Code, Chapter 490, Subchapter H; Natural Resources Code, Chapter 120; Tax Code, Chapter 151, Section 151.334.

Author: King, Phil Sponsor: Seliger

Directs the Comptroller to adopt rules for the issue to an entity implementing a clean energy project (defined as a project to construct a coal-fueled or petroleum coke-fueled electric generating facility that meets the parameters specified in new Section 120.001(2) of the Natural Resources Code) franchise tax credits of 10 percent of the total capital costs of the project or \$100 million, whichever is less. Provides that a clean energy project is eligible for the franchise tax credit only if implemented in connection with the construction of a new facility, and after the Railroad Commission has issued a certificate of compliance for the project pursuant to Section 120.004 of the Natural Resources Code, the construction of the project has been completed, the electric generating facility associated with the project is fully operational, the Bureau of Economic Geology of the University of Texas at Austin verifies to the Comptroller that the electric generating facility associated with the project is sequestering at least 70 percent of the carbon dioxide from the generation, and the owner or operator has entered into an interconnection

agreement relating to the project with the Electric Reliability Council of Texas. Prohibits issuance of a franchise tax credit before September 1, 2013, the subsection expires September 2, 2013. Authorizes the Bureau of Economic Geology to certify that a project meets the requirements for a clean energy project (and specifies the application process) and to monitor, measure, and verify the permanent status of sequestered CO2 generated. Requires the applying entity to contract with the Bureau of Economic Geology to perform these services, and to reimburse Bureau for certain costs. Authorizes the Commission to issue a certificate of compliance on verification that a project meets the requirements, and to provide a copy of the certificate to the Comptroller; however, the Commission may not issue a certificate of compliance for more than three clean energy projects.

Authorizes that the current reduced severance tax rate for manmade CO2 used in enhanced oil recovery would apply to the use of CO2 from clean energy projects for 30 years. Amends current law relating to the establishment of incentives for implementation of certain projects to capture and sequester in geological formations carbon dioxide that would otherwise be emitted into the atmosphere. Requires the TCEQ to make recommendations to the legislature on whether the emissions profile provided for by the Act should be adjusted, based on other commercially demonstrated electric generating facilities operating in the United States and factors specified in the Act.

Effective Date: September 1, 2009

NOTE TCEQ Guidance is scheduled for issuance on July 31, 2010.

House Bill 472

Relating to the effect and implementation of the law regarding reporting by a common carrier or pipeline owner or operator of contamination.

Reenacts Natural Resources Code, Chapter 81, Section 81.056(e). Amends Natural Resources

Code, Sections 81.056(g) and 91.112(a).

Author: Hilderbran Sponsor: Hinojosa

Provides that a common carrier or pipeline owner or operator who reports contamination under this section is released from all liability for the reported contamination or cleanup, except for any contamination caused by the common carrier or pipeline owner or operator. Authorizes the Railroad Commission to use money in the oil-field cleanup fund to implement Section 81.056(g), provided that the amount used does not exceed the amount of money in the fund that is derived from fees collected under Section 91.142 from common carriers or owners or operators of pipelines. Amends Section 81.056(g) of the Natural Resources Code to permit money in the fund to be used by the Railroad Commission for implementing Section 81.056, subject to the limitations provided in Section 81.056(g). Applies only to contamination that a common carrier or an owner or operator of a pipeline observes or detects on or after the effective date of the Act.

Effective Date: September 1, 2009

House Bill 2259

Relating to the plugging of certain inactive oil or gas wells and to standards for electrical power lines serving certain oil and gas facilities.

Amends Natural Resources Code, Chapter 89, Section 89.002(a); Chapter 91, Section 91.111(c). Adds Natural Resources Code, Chapter 89, Subchapter B-1; Chapter 91, Section 91.019.

Author: Crownover Sponsor: Duncan

Redefines "delinquent inactive well" as an inactive well for which, after notice and opportunity for a hearing, the Commission has not extended the plugging deadline. Adds definitions for "cost calculation for plugging an inactive well", "enhanced oil recovery project", "good faith claim", "inactive well", and "physically terminated electric service to the well's production

site".

Sets requirements for plugging certain inactive wells and deadlines and tests associated therewith. Sets out standards for construction, operation, and maintenance of electrical power lines serving a well site or other surface facility employed in operations incident to oil and gas development and production.

Effective Date: September 1, 2009

OCCUPATIONS CODE

Title 8. Regulation of Environmental and Industrial Trades

House Bill 1758

Relating to the requirements for a plumber's apprentice to obtain a plumber's license.

Amends Occupations Code, Chapter 1301, Section 1301.354(b). Adds Occupations Code, Chapter 1301, Sections 1301.345(c), (d), and (e).

Author: Thompson Sponsor: Carona

Makes minor changes to the licensing and regulation of plumbers. Requires certain classroom training, work experience, or an associate college degree for a plumber's apprentice to take the journeyman plumber or tradesman plumber licensing examination.

Effective Date: September 1, 2009

House Bill 1973

Relating to the licensing and regulation of pool-related electrical maintenance.

Amends Occupations Code, Chapter 1305, Sections 1305.002(12-a)-(12-e). Adds Occupations Code, Chapter 1305, Sections 1305.002(14)-(16) and 1305.162(d). Reenacts Occupations Code, Chapter 1305, Section 1305.003(a).

Author: Hamilton Sponsor: Patrick, Dan

Expands the "residential appliance" definition to include a "pool-related electrical device" and establishes related definitions in the Texas Electrical Safety and Licensing Act. Excludes from the Act maintenance, alteration, or repair of a pool-related electrical device for municipally-owned pools. Requires Texas Department of Licensing and Regulation to accept, develop, or contract for a residential appliance installer's examination that tests an applicant's knowledge of the materials and methods used in the installation of residential appliances and pool-related devices and the National Electrical Code standards as adopted by the executive director. Requires Texas Commission of Licensing and Regulation to adopt rules necessary to implement the changes made by the Act no later than January 1, 2010. Changes to definitions take effect March 1, 2010.

Effective Date: September 1, 2009

House Bill 3129

Relating to the regulation of certain consumer transactions involving plumbing, air conditioning, and electrical services.

Adds Occupations Code, Chapter 1301, Sections 1301.004; Chapter 1302, Section 1302.003; and Chapter 1305, Section 1305.004.

Author: King, Tracy O. Sponsor: Wentworth

Provides that the three-day right to cancel a consumer contract under Business & Commerce Code Chapter 601 (cancellation of certain consumer transactions) does not apply to certain plumbing, air conditioning, and electrical goods and services if the contract is initiated by the consumer. Provides that Chapter 601 does apply, however, to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

Effective Date: June 19, 2009

Senate Bill 470

Relating to training and continuing education for

licensed electrical apprentices.

Amends Occupations Code, Chapter 1305, Section 1305.168(b). Adds Occupations Code, Chapter 1305, Sections 1305.002(1-b), 1305.102(d), and 1305.168(b-1).

Author: Carona Sponsor: Hamilton

Amends the Texas Electrical Safety and Licensing Act as to requirements of electrical apprenticeship training programs and requires four hours of continuing education to renew an electrical apprentice's license. Requires that safety be made a part of any continuing education program under the Act.

Effective Date: September 1, 2009

Senate Bill 1354

Relating to the licensing and regulation of plumbers.

Amends Occupations Code, Chapter 1301, various sections. Adds Occupations Code, Chapter 1301, various sections.

Author: Jackson Sponsor: Hamilton

Clean-up bill related to licensing plumbers and regulating the business of plumbing. The Texas State Board of Plumbing Examiners is given rule-making authority to implement the many minor changes created in the bill.

Effective Date: September 1, 2009

Senate Bill 1410

Relating to the licensing and regulation of plumbers and multipurpose residential fire protection sprinkler specialists; prohibiting municipal regulations requiring the installation of fire protection sprinkler systems in certain residences.

Amends Occupations Code, Chapter 1301, various sections. Adds Occupations Code, Chapter 1301, various sections.

Author: Jackson, Mike Sponsor: Gutierrez

Makes several minor changes to provisions related to the licensing and regulation of plumbers. Establishes a Multipurpose Residential Fire Protection Sprinkler Specialist (MRFPS) license endorsement for licensed master plumbers or journeyman plumbers meeting certain training and examination requirements. Prohibits municipalities from enacting any regulation requiring a fire protection sprinkler system in a new or existing one- or two-family dwelling, but permits regulations allowing a MRFPS or other contractor to offer such installation.

Effective Date: September 1, 2009

Senate Bill 1982

Relating to the licensing and regulation of pool-related electrical maintenance.

Amends Occupations Code, Chapter 1305, Sections 1305.002(12-a)-(12-e). Adds Occupations Code, Chapter 1305, Sections 1305.002(14)-(16) and 1305.162(d). Reenacts Occupations Code, Chapter 1305, Section 1305.003(a).

Author: Patrick Sponsor: Hamilton

Expands the "residential appliance" definition to include a "pool-related electrical device" and establishes related definitions in the Texas Electrical Safety and Licensing Act. Excludes from the Act maintenance, alteration, or repair of a pool-related electrical device for municipally-owned pools. Requires Texas Department of Licensing and Regulation to accept, develop, or contract for a residential appliance installer's examination that tests an applicant's knowledge of the materials and methods used in the installation of residential appliances and pool-related devices and the National Electrical Code standards as adopted by the executive director. Requires Texas Commission of Licensing and Regulation to adopt rules necessary to implement the changes made by the Act no later than January 1, 2010. Changes to

definitions take effect March 1, 2010.

Effective Date: September 1, 2009

Title 12. Practices and Trades Related to Water, Health, and Safety

House Bill 693

Relating to an exemption from the structural pest control license requirement for certain falconers.

Adds Occupations Code, Chapter 1951, Section 1951.057.

Author: Truitt

Sponsor: Hegar

Exempts a falconer (defined in the Parks & Wildlife Code) from license requirements of the Texas Structural Pest Control Act if such falconer holds a falconer's permit as provided by the Parks & Wildlife Code and uses a raptor to control or relocate other birds.

Effective Date: June 19, 2009

PARKS AND WILDLIFE CODE

Title 2. Parks and Wildlife Department

House Bill 3391

Relating to the continuation and functions of the Parks and Wildlife Department; changing the elements of an offense.

Amends Parks and Wildlife Code, Chapters 11, 12, 24, 43, 62, 64, and 66, various sections. Adds Parks and Wildlife Code, Chapter 11, various sections, and Chapter 12, Sections 12.0011(c) and (d).

Author: Harper-Brown

Sponsor: Hegar

Continues the Parks and Wildlife Department until September 1, 2021. Requires all commissioners to be public members (previously 3 of 9 members). Requires implementation of policies to ensure the public can interact with the agency on the internet. Requires development and

implementation of a negotiated rulemaking procedure and for alternative dispute resolution procedures that conform to the guidelines issued by the State Office of Administrative Hearings. Requires the executive director to create an Internal Affairs Office. Requires the head of the office of internal affairs to report at each regularly scheduled commission meeting regarding investigations and recommendations to avoid future complaints. Allows the Department to keep in the state parks account (as opposed to crediting it to the state for general use) revenue derived from private contributions, grants, and donations for parks related purposes, and federal funds for parks related purposes. Allows the Department to make recommendations to other state agencies which must respond with a description of any modification made to a proposed project, fish and wildlife resource decision, or ground flow schedule resulting from the recommendation or comment, or why the agency refused to do so. Allows the executive director or commission to adopt emergency rules, if strict compliance with existing department rules would prevent, hinder, or delay necessary action to cope with a disaster declared by the governor. Allows deposits of private contributions and grants or federal funds into the Texas Recreation and Parks Account. Allows the sale of feathers, feet, or bones of non-migratory game birds, or the hair, horns, skull of pronghorns, bighorn sheep, javelinas, or red or grey squirrels. Requires the Department to adopt rules relating to exotic aquatic plants that are as permissive as possible without allowing importation of plants that pose environmental, economic, or health problems. Such plants cannot be imported unless they are on an approved list, or there is an exotic species permit issued by the Department. Allows the Parks and Wildlife Commission to enter into or withdraw from the Interstate Wildlife Violator Compact. Requires the Department and the Texas Youth Commission to jointly seek representation by the attorney general to pursue modification of the terms of the Parrie Haynes Trust so the Department may be designated as the state agency responsible for the trust.

Effective Date: September 1, 2009

PENAL CODE

TITLE 7: Offenses Against Property

House Bill 2609

Relating to the prosecution and punishment of the offense of criminal trespass.

Amends Penal Code Chapter 30, Section 30.05.

Author: Miller Sponsor: Wentworth

Reworks the criminal trespass statute, including a range of offenses (Class C to Class A misdemeanors). Declares trespass on residential land within 100 feet of a “protected freshwater area” (defined in Parks and Wildlife Code Section 90.001) to be Class C. Provides defenses, in certain cases, for: (i) firefighters and emergency medical personnel, (ii) employees or agents of certain utilities (electric, telecommunication, gas, video, cable, pipeline) and (iii) employees or agents reasonably believing they have consent or authorization.

Effective Date: September 1, 2009

TAX CODE

Title 1. Property Tax Code

House Bill 3206

Relating to the implementation of the exemption from ad valorem taxation for pollution control property.

Adds Tax Code, Chapter 11, Sections 11.31 (g-1) and (n).

Author: Edwards Sponsor: Ellis

Clarifies that the standards and methods used to determine whether all or a portion of a property should receive a tax exemption because the property is a pollution control property shall apply uniformly to all properties for which an

exemption is sought. Also requires Texas Commission on Environmental Quality to establish a permanent advisory committee to advise the commission regarding implementation of this section relating to tax exemptions for pollution control property. The advisory committee shall consist of representatives from industry, appraisal districts, taxing units, and environmental groups, as well as representatives with substantial technical expertise with pollution control technology and environmental engineering.

Effective Date: September 1, 2009

NOTE: TCEQ Rule proposal and Guidance scheduled for issuance on September 30, 2010.

TRANSPORTATION CODE

Title 6. Roadways

Senate Bill 448

Relating to the authority of the Texas Department of Transportation to mitigate adverse environmental impacts resulting from the construction, improvement, or maintenance of state highways or state highway facilities.

Amends Transportation Code, Chapter 201, Section 201.617(a).

Author: Carona Sponsor: Pickett

Authorizes the Texas Department of Transportation, if authorized by an applicable regulatory authority, to mitigate adverse environmental impacts that are a direct result of the construction, improvement, or maintenance of a state highway or the construction, improvement, or maintenance of a facility used in connection with the construction, maintenance, or operation of a state highway, to (1) pay a fee to an appropriate public agency or private entity in lieu of acquiring or agreeing to manage property; (2) transfer any interest in real property to an appropriate public agency or private entity, as authorized by the regulatory authority that

requires the mitigation, with or without monetary consideration if the property is used or is proposed to be used for mitigation purposes; or (3) contract with any public or private entity for the management of property owned by the department and used for mitigation purposes.

Effective Date: June 19, 2009

Senate Bill 480

Relating to the authority of the Texas Transportation Commission to enter into a covenant for environmental remediation of real property owned by the Texas Department of Transportation.

Adds Transportation Code, Chapter 202, Section 202.061.

Author: Carona Sponsor: Smith, Wayne

Authorizes the Texas Transportation Commission to enter into an environmental covenant for the purpose of subjecting real property in which TxDOT has an ownership interest to a plan or the performance of work for environmental remediation if the plan or work performed is first approved by the Texas Commission on Environmental Quality or a federal agency with the authority to approve the plan or work under applicable laws and regulations. Requires that the environmental covenant (1) contain a legal description of the affected property, (2) describe the nature of the contamination, including the contaminants, if known, and the location and extent, and (3) describe the activity and use limitation on the property. Requires the plan or work to (1) meet applicable state and federal standards for environmental remediation, and (2) bring the property into compliance with zoning or land use controls imposed on the property by each applicable local government. Authorizes the Commission to authorize the executive director to execute an environmental covenant on behalf of the Commission for each such property. Requires the Commission to mail, at least 30 days before the date the Commission considers a proposed such order, to each owner of a property interest in

the applicable property, each adjacent landowner, and each applicable local government, a notice that includes a description of the proposal to enter into the environmental covenant and a statement of the manner in which comments may be submitted to the Commission.

Effective Date: June 19, 2009

UTILITIES CODE

Title 2. Public Utility Regulatory Act

House Bill 3309

Relating to certificates of convenience and necessity for the construction of transmission facilities.

Amends Utilities Code, Chapter 37, Sections 37.051, 37.053(a), 37.055, 37.057, and 37.151. Adds Utilities Code, Chapter 37, Section 37.0541.

Author: Gattis Sponsor: Ogden

Directs Public Utility Commission (PUC) to consolidate proceedings regarding certificates of convenience and necessity (CCNs) for transmission line construction, if the lines share a common point of interconnection. Allows non-utility persons to apply for CCNs for facilities “used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity” provided such persons have technical and financial ability to operate and maintain reliable transmission facilities. Specifies that CCNs will not be granted to non-utility persons if the CCN would affect wholesale transmission rates. Exempts non-utility persons from requirements to serve call customers and render continuous and adequate service. Requires detailed business plans from all entities and persons applying for CCNs for transmission line construction. Requires PUC to adopt rules.

Effective Date: June 19, 2009

Title 3. Gas Regulation

House Bill 2572

Relating to the right of a gas corporation to use a public right-of-way.

Amends Utilities Code, Chapter 121, Section 121.2025(a); and Chapter 181, Section 181.005.

Author: Gonzalez Sponsor: Jackson, Mike

Grants authority to gas companies to lay and maintain gas transmission lines along and under (in addition to “over,” as currently allowed) public roads, railroads, municipal streets and alley and other rights of way, if there is compliance with applicable state and federal regulations and public right of way is restored. Requires gas companies to pay municipal charges and to consider: (i) using existing easements, streets, highways and utility rights of way and (ii) economic practicality, available space, and compliance with safety regulations. Empowers TxDOT to require relocation of pipelines in certain circumstances. Requires TxDOT rules regarding lines in public roads and highways to be reasonable and include an appeals process.

Effective Date: June 19, 2009

Senate Bill 1658

Relating to an increase in the fee for natural gas pipeline safety inspections.

Amends Utilities Code, Chapter 121, Section 121.211(d).

Author: Averitt Sponsor: Crownover

Changes the annual inspection fee that can be assessed against operators of natural gas distribution systems from \$0.50 to \$1.00 per service line.

Effective Date: September 1, 2009

WATER CODE

Title 2. Water Administration

House Bill 857

Relating to the penalty for certain outdoor burning violations.

Amends Water Code, Chapter 7, Section 7.187.

Author: Laubenberg Sponsor: Estes

Classifies outdoor burning violations, by severity and nature of the offense, as Class A, Class B, and Class C misdemeanors.

Effective Date: September 1, 2009

House Bill 1295

Relating to notification of an application related to a certificate of public convenience and necessity for water or sewer service.

Amends Water Code, Chapter 13, Section 13.246.

Author: Aycock Sponsor: Averitt

Requires applicants for certificates of public convenience and necessity to notify each county and groundwater conservation district wholly or partly in the area proposed to be certified (in addition to each affected party).

Effective Date: September 1, 2009

NOTE: TCEQ Rule proposal scheduled for June 10, 2010.

House Bill 1433

Relating to the amount of the annual water quality fee imposed on holders of wastewater discharge permits and on users of water.

Amends Water Code, Chapter 26, Section 26.0291.

Author: Lucio III Sponsor: Averitt

Increases maximum permit fee from \$75,000 to \$100,000, beginning September 1, 2009. Prescribes annual adjustment based on change in the Consumer Price Index for All Urban

Consumers, subject to a cap of \$150,000.

Effective Date: September 1, 2009

NOTE: TCEQ Rule adoption completed.

House Bill 1922

Relating to the authorization of certain reuse water system contributions and discharges.

Adds Water Code, Chapter 26, Section 26.0271.

Author: Martinez, Fischer Sponsor: Uresti

Applies to wastewater treatment facilities operated by an agency of a home-rule municipality with a population of 1,000,000 or more. Allows and regulates use of reclaimed water for a reuse water system.

Effective Date: June 19, 2009

House Bill 2063

Relating to the enforcement of rules by a groundwater conservation district.

Amends Water Code, Chapter 36, Section 36.102.

Author: Callegari Sponsor: Duncan

Allows groundwater conservation districts to enforce law and rules—and impose penalties—against “any person.” Limits fees, costs and penalties that may result from an enforcement action by a district against a “person” that is a governmental entity.

Effective Date: June 19, 2009

House Bill 2374

Relating to financial assistance by the Texas Water Development Board for the connection of residences in economically distressed areas to public water supply and sanitary sewer systems.

Adds Water Code, Chapter 17, Section 17.9225.

Author: Marquez Sponsor: Lucio

Permits a political subdivision to use TWDB financial assistance from the economically distressed areas account to connect low-income residents to public water and sanitary sewer systems. Allows TWDB financial assistance for yard service lines, indoor plumbing facilities, etc.

Effective Date: September 1, 2009

House Bill 4043

Relating to notifications to certain purchasers of real property that may be located in an area subject to a certificate of convenience and necessity for water or sewer service.

Amends Water Code, Chapter 13, Section 13.257.

Author: Callegari Sponsor: Hegar

Limits the existing, “inside-city” exception to Section 13.257 (which generally requires notice to purchasers of property that the property is in a CCN area), so that the exception would only apply to “transfer of title to property located within the corporate limits of a municipality that is served by a municipally owned utility.”

Effective Date: June 19, 2009

House Bill 4110

Relating to the purchase, donation, and sale of promotional items by the Texas Water Development Board.

Adds Water Code, Chapter 6, Section 6.198.

Author: Martinez Fischer Sponsor: Uresti

Authorizes TWDB to purchase, donate, sell or contract for items to promote the programs of the TWDB. Authorizes the TWDB to use its Internet website to advertise and sell such promotional items. Earmarks the proceeds to be used to further the purposes and programs of the TWDB. Provides that Government Code, Section 403.095, does not apply to money deposited in the general revenue fund under this section.

Effective Date: September 1, 2009

House Bill 4231

Relating to the conveyancing or transfer in this state of water imported into this state from a source located outside this state.

Amends Water Code, Chapter 11, Sections 11.0237, 11.042, and 11.085.

Author: Ritter

Sponsor: Eltife

Enables TCEQ to permit the use of the bed and banks “of any flowing natural stream in the state” to convey water imported from outside the state (except from Mexico) for use inside the state. Imposes restrictions, including protection of water quality. Relaxes restrictions on interbasin transfers to facilitate such use of imported water. Provides that Section 11.0237(b) (relating to instream flows) does not alter TCEQ obligations related to such use of imported water.

Effective Date: June 19, 2009

NOTE: TCEQ Rule proposal scheduled for November 4, 2009, for adoption on April 14, 2010.

Senate Bill 361

Relating to the requirement that water and sewer service providers ensure operations during an extended power outage.

Adds Water Code, Chapter 13, Sections 13.1395 and 13.1396.

Author: Patrick

Sponsor: Callegari

Requires most water providers in a county with a population of 3.3 million or more (or in an adjacent county with a population of 400,000 or more) to plan for emergency operations of their water systems during an extended power outage. Requires submission of plans to TCEQ for approval. Requires submission of an approved plan to the county judge, the Public Utility Commission and emergency management

agencies. Requires reports regarding water and wastewater facilities that qualify for critical load status under PUC rules. Allows various means to provide emergency power, but requires raw-water providers to have automatically-starting auxiliary generators or “distributive generation facilities.” Authorizes rulemaking and other procedures.

Effective Date: June 19, 2009

NOTE: TCEQ Rule adopted on November 18, 2009.

Senate Bill 876

Relating to the performance of annual soil tests for certain concentrated animal feeding operations by the Texas Commission on Environmental Quality.

Amends Water Code, Chapter 26, Sections 26.504(a) and (b). Repeals Water Code, Chapter 26, Section 26.504(f).

Author: Averitt

Sponsor: Dunnam

Requires TCEQ to take annual soil samples from each “waste application field” associated with a concentrated animal feeding operation. Requires samples to be tested for phosphorus and other nutrients designated by the commission. Repeals Section 26.054(f), which required rules relating to waste application field soil sampling and testing.

Effective Date: June 1, 2010

NOTE: TCEQ Guidance scheduled for issuance on June 1, 2010.

Senate Bill 1080

Relating to compliance with federal occupational safety and health standards in environmental enforcement.

Amends Water Code, Chapter 7, Section 7.256.

Author: Jackson, Mike Sponsor: Hancock

Creates a defense to TCEQ enforcement in

situations where duties under the federal Occupational Safety & Health Act of 1970 conflict with the state statute, rule, order or permit, enforced by TCEQ.

Effective Date: September 1, 2009

NOTE: TCEQ Guidance completed on August 31, 2009; additional Guidance scheduled for issuance on November 15, 2009.

Senate Bill 1371

Relating to the colonia self-help program.

Amends Water Code, Chapter 15, Sections 15.951, 15.953, 15.954, 15.955 and 15.956. Repeals Water Code, Chapter 15, Section 15.959.

Author: Lucio Sponsor: Lucio III

Redefines "colonia" and defines "nonprofit organization" and "political subdivision." Authorizes TWDB to use funds in the colonia self-help account to reimburse a political subdivision or a nonprofit organization for eligible expenses incurred in a self-help project that results in the provision of adequate water or wastewater services to a colonia. Authorizes TWDB to award a grant under the program directly to a political subdivision or nonprofit organization to reimburse the subdivision or organization for expenses incurred in a self-help project described. Authorizes a limited advance of grant funds if the board determines that a retail public utility has made a commitment to ensure that retail water or wastewater service will be extended to the colonia. Defines eligibility requirements and sets out grant parameters.

Effective Date: September 1, 2009

Senate Bill 1387

Relating to the implementation of projects involving the capture, injection, sequestration, or geologic storage of carbon dioxide.

Amends Water Code, Chapter 27, various sections. Adds Water Code, Chapter 27, various

sections; and Subchapter C-1; Natural Resources Code, Chapter 91, Subchapter R; and Chapter 120. Repeals Water Code, Chapter 27, Section 27.038.

Author: Seliger Sponsor: Crownover

Provides definitions for the following terms: "anthropogenic carbon dioxide", "anthropogenic carbon dioxide injection well", "enhanced recovery operation", "geologic storage", "geologic storage facility", "oil or gas", and "reservoir". Provides jurisdiction, permitting, fees and rules related to geologic storage and associated injection of anthropogenic carbon dioxide. Requires Railroad Commission to adopt rules allowing a person to obtain a permit for a well from TCEQ that authorizes the well to be used for multiple purposes and an operator of a well authorized by a permit issued by the Railroad Commission to convert the well from its authorized purpose to a new or additional purpose. Defines "anthropogenic carbon dioxide injection well." Provides that if a well is authorized as or converted to an anthropogenic well for geologic storage, Subchapter C-1, Chapter 27, Water Code, applies to the well. Provides that a conversion of an anthropogenic well from use for enhanced recovery operations to use for geologic storage is not considered to be in a change in the purpose of the well. Defines ownership and stewardship of anthropogenic carbon dioxide. Creates an anthropogenic carbon dioxide storage trust fund and associated rules. Provides for the adoption of rules allowing anthropogenic carbon dioxide stored in a geologic storage facility to be extracted for a commercial or industrial use.

Effective Date: September 1, 2009

NOTE: TCEQ OPPs scheduled for December 1, 2010, TCEQ Rule proposal scheduled for August 18, 2010, and additional OPPs scheduled for December 1, 2010.

Senate Bill 1711

Relating to the use of reservoirs for sediment control or to satisfy certain environmental and

safety requirements at surface mining operations.

Amends Water Code, Chapter 11, Section 11.142.

Author: Hegar

Sponsor: Frost

Expands exemption allowing construction of a reservoir (without a permit) as part of the surface coal mining operation to include those reservoirs used for compliance with requirements for fire or dust suppression.

Effective Date: May 19, 2009

TCEQ Rule proposal scheduled for December 9, 2009.

Senate Bill 2126

Relating to the authority of owners and managers of apartment houses to assess a service charge for the submetering of water and wastewater services.

Amends Water Code, Chapter 13, Sections 13.503.

Author: Estes

Sponsor: Miller, Doug

Allows owner or manager of an apartment house to impose a service charge for the costs of submetering. Prohibits the service charge on a resident in a unit that has received an allocation of low income housing tax credits or receives tenant based voucher assistance.

Effective Date: September 1, 2009

NOTE: TCEQ Rule proposal scheduled for March 17, 2010.

Senate Bill 2306

Relating to rates and methods of depreciation applied to a retired class of property for regulated water utilities.

Amends Water Code, Chapter 13, Section 13.131.

Author: Williams

Sponsor: Miller, Doug

Changes how a water utility may recover depreciation in its rates. Includes provisions relating the cost of salvaging an asset.

Effective Date: June 19, 2009

NOTE: TCEQ Rule proposal scheduled for January 27, 2010, for adoption on June 16, 2010.

Senate Bill 2312

Relating to eligibility for funds from the water infrastructure fund from the Texas Water Development Board.

Amends Water Code, Chapter 15, Section 15.971.

Author: Averitt

Sponsor: Miller, Doug

Modifies definition of an “eligible political subdivision” (eligible to apply to TWDB for assistance) to add an interstate compact commission and a nonprofit water supply corporation.

Effective Date: September 1, 2009

Senate Bill 2314

Relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.

*Amends Water Code, Chapter 15, Section 15.604.
Adds Water Code, Chapter 15, Section 15.6055.*

Requires TWDB to adopt rules relating to use of: (i) a capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund and (ii) any special capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund received as a result of federal economic recovery legislation, to be used to provide financial assistance to an eligible applicant for public works. Relaxes some procedures to allow expedited adoption.

Effective Date: June 19, 2009

Senate Bill 2445

Relating to the disposal of sewage by certain boats.

Amends Parks and Wildlife Code, Chapter 31, Section 31.129; and Water Code, Chapter 26, Sections 26.044 and 26.045.

Author: Uresti Sponsor: King, Tracy

Requires TCEQ to adopt rules regarding disposal of sewage from boats on all surface waters in the state (not just on certain inland fresh waters as currently). Directs that the rules provide for shoreside and mobile boat pump out stations in addition to on-shore facilities. Allows a game warden or peace officer who is certified as a marine safety enforcement officer to enforce the Commission's rules on disposal of sewage from boats and allows such officer to board a boat on which the owner or operator is present in order to test the sanitation and holding devices if there is a reasonable suspicion that a prohibited discharge is occurring.

Effective Date: September 1, 2009

NOTE: TCEQ Rule proposal scheduled for April, 2010, for adoption in September, 2010; Guidance scheduled for issuance in April, 2010.

Title 4. General Law Districts

House Bill 1972

Relating to contracts and purchases by certain navigation districts.

Amends Water Code, Chapter 60, Sections 60.403(a), 60.4035(a), 60.404(a) and (d), and 60.406(a).

Author: Hamilton Sponsor: Williams

Raises (from \$25,000 to \$50,000) the threshold for requiring public bidding for contracts made by a navigation district.

Effective Date: June 19, 2009

House Bill 2348

Relating to a contract between a water district and a municipality for the provision of fire-fighting services in certain counties.

Adds Water Code, Chapter 49, Section 49.353.

Author: Dutton, Flynn Sponsor: Whitmire

Mandates disannexation of territory from an emergency services district, if the territory is subject to a pre-2007 strategic partnership agreement between a water district and a city, and the agreement calls for city firefighting. Applies only to a water district located wholly or partly in a county with a population of more than 3.3 million, where the district overlaps an emergency services district.

Effective Date: June 19, 2009

House Bill 3785

Relating to the powers and duties of a navigation district or port authority.

Amends Water Code, Chapter 60, Sections 60.153, 60.4035, 60.404(a) and (d), 60.406, 60.408(e), (f), (g), (h) and (i), 60.411(b), and 60.463(e). Adds Water Code, Chapter 60, Subchapter B-1. Repeals Water Code, Chapter 60, Section 60.012.

Author: Callegari Sponsor: Ellis

Defines "administrator," "assistance fund" and "employee." Authorizes the Navigation and Canal Commission or executive director of a district to establish an employee catastrophic assistance fund and promulgate rules governing such a fund. Requires a resolution of the commission and formal execution for contracts under Section 60.153. Modifies emergency purchasing powers under Section 60.4035. Modifies the notice requirement for certain purchases and contracts. Revises competitive bidding and proposal procedures. Revises requirements for certain

contracts under Section 60.403(a). Revises exemptions from competitive bidding and proposal procedures.

Effective Date: June 19, 2009

Senate Bill 1253

Relating to the repeal of the power of certain districts and water supply corporations to allow the use of right-of-way easements for certain energy-related purposes.

Repeals Water Code, Chapter 49, Section 49.2205.

Author: Seliger Sponsor: Smithee

Repeals Section 49.2205, which currently allows a district or water supply corporation to let “others” use its rights of way and easements for lines and pipelines to transmit electricity, carbon dioxide and other greenhouse gases.

Effective Date: September 1, 2009

UNCODIFIED LEGISLATION

House Bill 2275

Relating to creating a task force to develop uniform standards for subdivisions in the unincorporated areas of counties near the international border and in economically distressed counties.

No statute or code referenced.

Author: Raymond Sponsor: Zaffirini

Creates a task force in response to legislative findings that current law regarding regulation of subdivisions in unincorporated areas of counties near the international border and in economically distressed counties should be reviewed for consistency and for promoting uniform standards. Authorizes appointment of a task force on uniform county subdivision regulation comprised of 15 members, including county officials from border counties, 3 county employees responsible for

regulating subdivisions, 3 members appointed by the governor, 1 member of the Texas Water Board, 1 member with legal expertise in subdivision, and 1 member with expertise in land development. Authorizes task force to research and identify conflicts and deficiencies in current law regarding regulation of subdivision development and to draft legislation to create uniform standards for such subdivision development. Requires task force to submit findings no later than December 1, 2010. Abolishes the task force on September 2, 2011.

Effective Date: June 19, 2009

House Bill 3861

Relating to the financing by the Texas Water Development Board of the proposed Lake Columbia reservoir project.

No statute or code referenced.

Author: Hopson Sponsor: Nichols

Defines the Lake Columbia reservoir project, finds that the construction and development of the project are in the public interest and notes that the Texas Water Development Board (“*TWDB*”) has committed to acquire an interest in the project for an amount not to exceed 50 percent of the total project costs. Authorizes the TWDB, in making any statutory finding under Water Code, Section 16.135(1), to take into account any revenue reasonably expected to be received from a political subdivision not currently under contract with the authority to participate in paying the costs of the site acquisition stage of the project; or a political subdivision not currently under contract to purchase a portion of the water to be supplied by the project.

Effective Date: June 19, 2009

House Bill 4762

Relating to the territory of and the validation of certain governmental acts and proceedings of the Edwards Aquifer Authority.

Amends Acts of the 73rd Legislature, Regular Session, 1993, Chapter 626, Section 1.04;

Author: King, Tracy

Sponsor: Uresti

Changes the territory of the Edwards Aquifer Authority and validates acts and proceedings relating to three initial regular permits (designated P100-013, P100-014, and P100-017), except for certain matters in litigation.

Effective Date: September 1, 2009

END OF REPORT

APPENDIX B

THE TEXAS BUSINESS ORGANIZATIONS CODE

I. THE TEXAS BUSINESS ORGANIZATIONS CODE

In addition to changes to the Water Code, changes to Texas business entity statutes, in the form of the TBOC, now affect non-profit water supply and sewer service corporations. If your water-related practice includes representation of non-profit water supply and sewer service corporations, you should become familiar with the TBOC's application to them, as modified by the Water Code.

A. APPLICABILITY OF THE TBOC

The TBOC was adopted in 2003 by the 78th Legislature. It is the culmination of eight years of work by the drafting committee, and in the author's opinion is a monumental drafting achievement. It became effective January 1, 2006, and applies to all business entities formed on or after that date, including nonprofit water supply and sewer service corporations formed under Water Code Chapter 67.

From January 1, 2006, to January 1, 2010, water supply and sewer nonprofit corporations governed by the Texas Non-Profit Corporation Act (TNPCA) may choose to be governed by the TBOC, by filing an election with the Secretary of State. An election form based on the form promulgated by the Secretary of State's office is attached hereto as Exhibit 1. All Texas business entities, including water supply and sewer service corporations, formed prior to January 1, 2006, that do not file such an election will automatically be governed by the TBOC beginning on January 1, 2010. On that same date, the underlying statutes (including the TNPCA) will be repealed.

TBOC Section 2.010 provides, in relevant part, as follows:

A nonprofit corporation may not be organized or registered under this code to conduct its affairs in this state to.....(2)

engage in water supply or sewer service except as an entity incorporated under Chapter 67, Water Code.

Water Code Section 67.004 provides:

To the extent it does not conflict with this chapter, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a corporation created under:

- (1) this chapter [Chapter 67]; or
- (2) Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Reading these two provisions together, the exclusive manner in which to organize a non-profit corporation for the supply of water or sewer service on or after January 1, 2006, is to form the non-profit corporation pursuant to the TBOC under Water Code Section 67.

The TBOC makes substantive changes to the pre-existing Texas entity statutes, including the TNPCA. Generally, the TBOC consists of thirty (30) chapters divided into eight (8) titles. The TBOC's non-profit corporation provisions may be found in Title 2. Its general provisions applicable to all entities are in Title 1, and its miscellaneous and transition provisions are in Title 8.

Nonprofit corporations are primarily governed by TBOC Chapter 22. Attached to this paper as Exhibit 2 is a sample Certificate of Formation for the formation of a water supply corporation under Water Code Chapter 67 that complies with the new TBOC. Since an entity must amend their articles of incorporation if necessary to bring them into compliance with the TBOC (TBOC Section 402.003), attached as Exhibit 3 is a Restated Certificate of Formation.

While TBOC 402.003 directs the entity to file a “Certificate of Amendment”, as opposed to a Restated Certificate of Formation, the author suggests that TNPCA entities fully conform their former “articles of incorporation” to a “certificate of formation” as allowed by TBOC Sections 3.057 and 3.058. For the required contents of a certificate of formation for a nonprofit entity, see TBOC Sections 3.059 and 3.061.

TBOC Section 22.357 requires a nonprofit corporation to file a periodic information statement. Attached as **Exhibit 4** is the periodic information statement form promulgated by the Secretary of State. TBOC Section 22.360 provides:

FAILURE TO FILE REPORT. (a) A domestic or foreign corporation that fails to file a report under Sections 22.357 and 22.359 when the report is due forfeits the corporation's right to conduct affairs in this state.

(b) The forfeiture takes effect, without judicial action, when the secretary of state enters on the record of the corporation kept in the office of the secretary of state:
 (1) the words "right to conduct affairs forfeited"; and
 (2) the date of forfeiture.

It is therefore very important to assist your clients in the completion and timely filing of this report when required by the Secretary of State.

B. NEW TBOC TERMINOLOGY

Because Title 1 of the TBOC applies to most business entities, the TBOC defines and uses terminology suitable for generic references as compared to the TNPCA, whose only focus is nonprofit corporations. Since the “old” terms are still used in Water Code Chapter 67, it is necessary to understand the relationship of the Water Code Chapter 67 terminology to the new TBOC terminology.

and along with statutory references for their definitions:

<i>Term</i>	<i>Water Code</i>	<i>TBOC</i>
Board of Directors	67.001(1)	1.002(35) (Governing Authority); 22.001(1) (Board of Directors)
Corporation	67.001(1)	1.002(14)
Non-profit Corporation	67.004	1.002(59)
Directors	67.001(3); 67.005	1.002(37) (Governing Person)
Officers	67.006	1.002(61)
Annual Meeting	67.007(a), (b)	22.153
Special Meeting	67.007(b)	22.155
Articles of Incorporation	67.003 (Application for Charter)	1.002(6) (Certificate of Formation)
Bylaws	Not Defined	22.001(2); 22.102
Governing Documents	Not Used	Certificate of Formation, Bylaws
Transfer of Membership	67.016	Not Defined
Distribution of Profits	67.008	22.053
Transfer of Ownership	67.016	Not Addressed

The following table lists common terms

In addition, one should note that Chapter 67 clearly contemplates a non-profit entity that has either members or shareholders. The TBOC does not provide non-profit corporations with this choice. It only allows for members. As such, the TBOC does not provide for non-profit corporations to issue “stock certificates.” It uses the terms “certificated ownership interests” (TBOC Section 1.002(7)) and uncertificated ownership interests (TBOC Section 1.002(87)), either of which is available to a nonprofit corporation. However, TBOC Section 22.151(c) provides: “A [nonprofit] corporation may issue a certificate, card, or other instrument evidencing membership rights, voting rights, or ownership rights as authorized by the certificate of formation or bylaws.” It is presumed that “other instrument” could include the traditional notion of a stock certificate.

This issue affects nonprofit water supply and sewer service corporations formed under the TNPCA differently than newly formed entities under the TBOC. TNPCA entities electing to be governed by the TBOC may be able to continue to use the term “shareholder.” Nonprofit entities formed under the TBOC could, in theory, rely on Water Code Chapter 67’s precedence over the TBOC, and its use of both terms, to have shareholders instead of members. However, since one code has only one choice, while another code allows that choice plus one other, the safer and better practice is to choose the term used by both codes and therefore form new TBOC nonprofit corporations using the term “members” instead of “shareholders.” One should also consider the possibility that Water Code Chapter 67 may be amended in the future to conform it to the TBOC.

C. TRANSITION PLANNING

The transitional provisions of the TBOC are generally found in Chapter 402, which contains 14 sections. Due to the extensive changes enacted by the TBOC, its effectiveness has been delayed. Enacted in 2003, the TBOC does not apply mandatorily to all Texas entities until January 1, 2010. From January 1, 2006, to December 31, 2009, non-profit water supply and

sewer service corporations formed prior to January 1, 2006, may voluntarily elect to be governed by the TBOC.

D. WHETHER TO ELECT EARLY APPLICATION

Since an entity *may* now “opt in” to the TBOC, the question becomes whether or not a non-profit water supply or sewer services corporation *should* elect to be governed by the TBOC instead of the TNPCA. While this is a very fact-specific inquiry, the answer to which may vary by entity, there are some general guidelines for this inquiry. The reader is also cautioned to answer the question “who is my client?” before proceeding to analyze the effect of the TBOC changes.

1. Contemplation of our Electronic World

One of the most dramatic changes of the TBOC is the recognition and incorporation of the electronic media we have available in 2006. Among other things, it has specific provisions that:

- (1) provide filing procedures and forms that can be completed and filed with the Secretary of State electronically;
- (2) enable owners to use electronic communication methods such as E-mail;
- (3) allow entities to hold meetings electronically in certain circumstances; and
- (4) allow individual to sign documents digitally.

All of these provisions provide added flexibility and convenience for members, shareholders, directors and officers of water supply and sewer services nonprofit corporations.

2. Mergers

The TBOC enacts substantive changes for non-profit corporations that merge with other non-profit corporations, a possible although perhaps

unlikely event for two non-profit water supply and sewer services corporations.

Since revisions effected in the 1997 Texas Legislature, the provisions of the Texas Business Corporation Act (TBCA) and many other entity governance codes relating to mergers, interest exchanges and conversions have been comparable in most respects. The provisions of TBOC Chapter 10 are based on these provisions. However, the provisions of the TNPCA have not been updated to parallel the provisions of these other statutes. This means that TBOC Chapter 10, which harmonizes the merger provisions of non-profit entities with the more modern provisions for-profit entities, represents a substantive change from existing law for non-profit corporations.

3. Sales of Assets

TBOC Sections 10.251 through 10.254 contain provisions regarding the power of domestic entities to transfer, sell and lease their property. These provisions are based generally on similar provisions contained in the TBCA and TNPCA. TBOC Section 22.252(h) clarifies and sets forth a general rule that, except as may be provided elsewhere in the TBOC or in the governing documents of an entity, transfers of property do not require owner or member approval. TBOC Section 22.252 also sets forth the requirements for approval by owners or members of sales of all or substantially all the assets of a nonprofit corporation, which provides in relevant part:

- (c) If the management of the affairs of the corporation is vested in its members under Section 22.202, a resolution authorizing a sale of all or substantially all of the assets of the corporation:
 - (1) must be submitted to a vote at an annual, regular, or special meeting of the members; and
 - (2) must be approved by the members by the vote required by Section 22.164.
- (d) If the corporation has members with

voting rights:

(1) the board of directors of the corporation must adopt a resolution that:

(A) recommends the sale; and

(B) directs that the resolution be submitted to a vote at an annual or special meeting of the members having voting rights; and

(2) the members must approve the resolution by the vote required by Section 22.164.

(e) At the meeting required by Subsection (c) or (d), in addition to approving the resolution authorizing the sale, the members may set, or authorize the board of directors to set, the terms and conditions of the sale and the consideration to be received by the corporation for the sale by the same vote of members.

(f) After the members authorize a sale under Subsection (d), the board of directors may abandon the sale, subject to the rights of third parties under any contracts relating to the sale, without further action or approval by members.

4. Indemnification

There are at least three substantive changes to the indemnification provisions of the TBOC as compared specifically to the TNPCA:

- (1) In TBOC Section 8.103(a)(2), a determination that the standard for indemnification in Section 8.101(a) has been met may be made by a committee of one disinterested director if no quorum of disinterested directors can be obtained. The TNPCA requires two such directors.
- (2) TBOC Section 8.103(a)(5) has no explicit source in the TNPCA

but is implicit in the general principle that all the owners or members of an enterprise may make any disposition of its assets, including indemnification of a governing person.

- (3) TBOC Section 8.105(a)(3) has no explicit source in TNPCA but is implicit in the general principle that the owners or members of an enterprise may make any disposition of its assets for the benefit of a person who is not a governing person.

TBOC Section 402.007 specifies that Chapter 8 of the TBOC governing any proposed indemnification by a domestic entity after the TBOC becomes applicable to that entity will apply regardless of whether the events on which the indemnification is based occurred before or after the TBOC's application to the entity.

The TBOC's indemnification provisions were amended by House Bill 1319 in the 79th Legislature. As amended, a provision relating to indemnification contained in the governing documents that would otherwise have the effect of limiting the nature or type of indemnification permitted by Chapter 8 may not be construed after the TBOC becomes applicable to the entity as limiting the indemnification authorized by Chapter 8 unless the provision is intended to limit or restrict permissive indemnification under applicable law.

5. Dissolution

Water Code Section 67.052 sets forth a unique dissolution process applicable only to a water supply or sewer service nonprofit corporation and a municipality located in a county: (1) with a population of 650,000 or more; and (2) adjacent to an international border. Since the TBOC applies to water supply and sewer service nonprofit corporations to the extent it does not conflict with Water Code Chapter 67, and Chapter 67 does not otherwise provide for

dissolution, all water supply and sewer service nonprofit corporations subject to Chapter 67, but not within the definition of Water Code Section 67.052, are subject to the dissolution provisions of the TBOC.

Generally, the TBOC has more generous provisions that permit survival and reinstatement of an entity after dissolution for various purposes. TBOC Chapter 11 applies to a voluntary winding up and termination proceeding initiated after the date the TBOC first begins to apply to an entity. Any voluntary winding up and termination proceeding initiated before such date will continue to be governed by the TNPCA.

E. TIMING THE TRANSITION

Because of the transitional rules regarding when the TBOC begins to apply to an entity and the acts of its officers and directors, which are generally found in TBOC Chapter 14, transitioning from the TNPCA to the TBOC can be fairly simple, or complex, because some times are more convenient for making the election than others.

TBOC Sections 402.008 and 402.009 provide that the TBOC applies to meetings of owners, members or governing persons held, and to any actions by written consent that take effect, on or after the date that the TBOC becomes applicable to the entity. If a meeting was originally called for a date before the entity elects to be governed by the TBOC, the TNPCA applies to the meeting, regardless of any postponement or adjournment. The simpler process is to call a meeting, hold the meeting, then file the election prior to calling any other meeting, and then set the next meeting.

Chapter 10 of the TBOC (mergers, conversions, sales of assets, etc.) applies to a transaction consummated by an entity after the date the TBOC begins to apply to the entity. However, if required approval of the owners and members of the entity has been given before such date or has been given after the date but at a meeting of owners or members initially called for

a date before such date, the transaction will be governed by the TNPCA and not the TBOC. For simplicity, and for added flexibility, an entity should file the TBOC election prior to initiating a merger, conversion, or sale of assets.

Chapter 11 of the TBOC (dissolution, survival, reinstatement) applies to a voluntary winding up and termination process initiated after the date the TBOC first begins to apply to the entity. Any voluntary winding up and termination proceeding initiated before such date will continue to be governed by the TNPCA, not the TBOC. Again, the simpler process is for the entity to file the TBOC election prior to initiating a dissolution.

Generally, then, a water supply or sewer service nonprofit corporation should adopt the TBOC at a time when little else is occurring. If any reader successfully accomplishes this by convincing their entity or owner client(s) to spend legal fees in the face of no imminent threat, please contact the author of this article to share your story. Alternatively, you should plan to become very familiar with TBOC Chapter 14.

F. TO CONVERT, OR NOT CONVERT...

TBOC Section 3.102 allows directors of a non-profit water supply or sewer services corporation:

...in good faith and with ordinary care, rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning a domestic entity or another person and prepared or presented by:

- (1) an officer or employee of the entity;
- (2) legal counsel
- (3) a certified public accountant;
- (4) an investment banker;
- (5) a person who the governing person reasonably believes possesses professional expertise in the matter; or
- (6) a committee of the governing

authority of which the governing person is not a member.

This is supplemented with TBOC Section 22.221, specifically applicable to directors of nonprofit corporations:

22.221. GENERAL STANDARDS FOR DIRECTORS. (a) A director shall discharge the director's duties, including duties as a committee member, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.

(b) A director is not liable to the corporation, a member, or another person for an action taken or not taken as a director if the director acted in compliance with this section. A person seeking to establish liability of a director must prove that the director did not act:

- (1) in good faith;
- (2) with ordinary care; and
- (3) in a manner the director reasonably believed to be in the best interest of the corporation.

Similarly, TBOC Section 22.235 provides the safe harbor to officers. Nothing in Water Code Chapter 67 contradicts or otherwise preempts these provisions. No similar safe harbor is found in the Water Code for the benefit of the directors or officers of any quasi-public entity. The following section of Water Code Chapter 49 is the closest similar provision:

§ 49.235. DISTRICT ACT OR PROCEEDING PRESUMED VALID.

(a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules 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.

- (b) This section does not apply to:
- (1) an act or proceeding that was void at the time it occurred;
 - (2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;
 - (3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or
 - (4) a matter that on the effective date of this section:
 - (A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or
 - (B) has been held invalid by a final judgment of a court.

While the entity itself, and its members, may benefit from converting a water supply or sewer services corporation to a quasi-public entity, the officers and directors may see their risk of service increased.

The Water Code law authorizes the following conversions:

<i>Converting Entity Form</i>	<i>Surviving Entity Form</i>	<i>Water Code Source Law</i>
Water Improvement District	WCID	51.040

Levee Improvement District	WCID	51.040
Irrigation District	WCID	51.040
Conservation and Reclamation District (Art. XVI, Sec. 59)	WCID	51.040
WCID	Fresh Water Supply District	51.045
Water Improvement District	MUD	54.030
WCID	MUD	54.030
Fresh Water Supply District	MUD	54.030
Levee Improvement District	MUD	54.030
Irrigation District	MUD	54.030
Another conservation and reclamation district (Art. XVI, Sec. 59)	MUD	54.030
Water Improvement District (Art. III, Sec. 52)	Water Improvement District (Art. XVI, Sec. 59)	55.053
Water Supply or Sewer Services Corp.	Special Utility District	65.020

As the Legislature changes, from time to

time, the authorities, powers, discretion, flexibility, and responsibilities of the various water-related quasi-public entities, directors and governing boards should consider whether a conversion may be in their best interest.

END

EXHIBIT 1 TO APPENDIX B

TEXAS BUSINESS ORGANIZATIONS CODE ELECTION

**EARLY ADOPTION OF THE BUSINESS ORGANIZATIONS CODE
BY AN EXISTING DOMESTIC ENTITY**

ARTICLE 1
ENTITY INFORMATION

1. The name of the domestic entity is _____ (the Corporation).
2. The date of formation of the Corporation is _____.
3. The file number issued to the entity by the Secretary of State is _____.

ARTICLE 2
ENTITY TYPE

4. The Corporation is a nonprofit corporation.

ARTICLE 3
ELECTION TO ADOPT

5. The Corporation voluntarily elects to adopt and become subject to the Texas Business Organizations Code by filing this statement with the Secretary of State.

ARTICLE 4
EXECUTION

6. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

DATE: _____

[name]
a Texas nonprofit corporation

By: _____
[name]
Its: _____

NOTE: The filing fee for a nonprofit corporation is \$5.00. Submit the completed form in duplicate along with the filing fee.

EXHIBIT 2 TO APPENDIX B

**TBOC CERTIFICATE OF FORMATION
FOR A NON-PROFIT WATER SUPPLY AND SEWER SERVICES CORPORATION**

**CERTIFICATE OF FORMATION
NONPROFIT CORPORATION**

ARTICLE 1
ENTITY NAME AND TYPE

1. The filing entity being formed is a nonprofit corporation pursuant to the Texas Business Organizations Code and Texas Water Code Chapter 67. The name of the entity is _____ Water Supply Corporation (the Corporation).

ARTICLE 2
REGISTERED AGENT AND REGISTERED OFFICE

2. [Choose either]: The initial registered agent is an organization by the name of _____.
[or] The initial registered agent is an individual resident of the state whose name is _____.
3. The business address of the registered agent and the registered office address is:

_____, TX _____

ARTICLE 3
MANAGEMENT

4. The management of the affairs of the Corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

Director 1 Name	Director 2 Name	Director 3 Name
Director 1 Address	Director 2 Address	Director 3 Address
Director 1 Address	Director 2 Address	Director 3 Address

ARTICLE 4
MEMBERS

5. The Corporation shall have members.

ARTICLE 5
PURPOSE

6. The Corporation is formed under Texas Water Code Chapter 67, as amended, and to the extent it

does not conflict with Texas Water Code Chapter 67, the Corporation is formed for any lawful purpose or purposes not expressly prohibited under chapters 2 and 22 of the Texas Business Organizations Code, including any purpose described by section 2.002 of the Texas Business Organizations Code.

ARTICLE 6
MANNER OF DISTRIBUTION UPON WINDING UP

7. The Corporation is authorized on its winding up to distribute the Corporation's assets in a manner other than as provided by section 22.304 of the Texas Business Organizations Code. The manner of distribution shall be as provided in a plan of distribution adopted by the Corporation, the provisions of which shall comply with Texas Water Code Chapter 67, as amended.

ARTICLE 7
SUPPLEMENTAL PROVISIONS

8. A dividend will not be paid to the members. All profits of the Corporation will be paid annually to political subdivisions, private corporations, or other persons that have transacted business with the Corporation during the previous year, or as otherwise allowed by Texas Water Code Chapter 67, as amended.

ARTICLE 8
ORGANIZER

9. The name and address of the organizer is:

Organizer Name
Organizer Address
Organizer Address

ARTICLE 9
EFFECTIVENESS OF FILING

10. [choose:] This document becomes effective when the document is filed by the Secretary of State. [or]
This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____. [or]
This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is _____. The following event or fact will cause the document to take effect in the manner described below:

ARTICLE 10
EXECUTION

11. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

DATE: _____

Organizer

EXHIBIT 3 TO APPENDIX B

**TBOC RESTATED CERTIFICATE OF FORMATION
FOR A NON-PROFIT WATER SUPPLY AND SEWER SERVICES CORPORATION**

ARTICLE 1
ENTITY INFORMATION

1. The name of the filing entity is: _____ Water Supply Corporation (the Corporation).
2. The Corporation is a nonprofit corporation.
3. The filing number issued to the Corporation by the Secretary of State is: _____.
4. The date of formation of the Corporation is: _____.
5. The Corporation was formed under the Texas Nonprofit Corporation Act. Simultaneously herewith the Corporation has filed an Early Election of the Texas Business Organizations Code. This filing is to bring the Corporation's former articles of incorporation into compliance with the Texas Business Organizations Code.

ARTICLE 2
AMENDMENTS TO ARTICLES OF INCORPORATION/CERTIFICATE OF FORMATION

6. This restated Certificate of Formation makes new amendments to the certificate of formation. Provided below is an identification by reference or description of each added, altered, or deleted provision.

[Add amendments as necessary]

ARTICLE 3
STATEMENT OF APPROVAL

7. Each new amendment has been made in accordance with the provisions of the Texas Business Organizations Code. The amendments to the Articles of Incorporation, and the Restated Certificate of Formation, have been approved in the manner required by the Texas Business Organizations Code as modified by Texas Water Code Chapter 67, and by the governing documents of the Corporation.

ARTICLE 4
REQUIRED STATEMENTS

8. The restated Certificate of Formation, which is attached to this form, accurately states the text of the certificate of formation being restated and each amendment to the Certificate of Formation being restated that is in effect, and as further amended by the Restated Certificate of Formation. The attached Restated Certificate of Formation does not contain any other change in the Certificate of Formation being restated except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the Corporation.

ARTICLE 5
EFFECTIVENESS OF FILING

9. [choose:] This document becomes effective when the document is filed by the Secretary of State. [or]
This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____. [or]
This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is _____. The following event or fact will cause the document to take effect in the manner described below:
-

ARTICLE 6
EXECUTION

10. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

DATE: _____

Signature

Title

NOTE: Attach the text of the amended and restated certificate of formation to the completed statement form. Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."

EXHIBIT 4 TO APPENDIX B

**TBOC PERIODIC INFORMATION STATEMENT
FOR A NON-PROFIT WATER SUPPLY AND SEWER SERVICES CORPORATION**

Periodic Report of a Nonprofit Corporation

File Number: _____

1. The corporation name is: _____

2. It is incorporated under the laws of: _____

3. The name of the registered agent is:

A. The registered agent is a corporation (cannot be corporation named above) by the name of:

OR _____

B. The registered agent is an individual resident of the state whose name is:

4. The registered office address, which is identical to the business office address of the registered agent in Texas, is: (use street or building address) _____

5. If the corporation is a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated is:

6. The names and addresses of all directors of the corporation are: (A Texas corporation must have at least 3 directors.)

7. The names, addresses and titles of all officers of the corporation are: (A Texas corporation must include a president and a secretary and the same person cannot hold both offices.)

Execution:

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

DATE: _____

Signature of authorized officer

APPENDIX C

Real Estate, Probate and Trust Law Section, State Bar of Texas Real Estate Legislative Affairs Committee 81st Legislative Session

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