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Legislature Adopts Budget, Passes Tax Bill, and Goes Home—At Last

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When the legislature adjourned *sine die* in 1985, a prominent state leader observed that the 1987 regular session may make this year look like the "good old days." Indeed true! When the 140-day regular session ended in June, the Governor's Office, Senate and House were still in a budget-tax stare down. But, compromise was quickly reached in a 30-day special session that ended on July 21st.

1988–1989 Appropriations

The \$38.3 billion 1988–1989 compromise budget adopted by the legislature was substantially below both the original Senate (\$40 billion) and House (\$39.3) proposals, but well above the \$36.9 executive budget. Gubernatorial vetoes subtracted \$166.5 million, leaving the final 1988–1989 appropriation at \$38.2 billion, or \$1.3 billion (3.6%) above the FY 1987 service level. (The appropriation items by function are shown in the table on page 2.)

Spending Patterns Change

The two charts below compare the current spending pattern with that anticipated for 1988–1989, and show some fairly significant shifts.

(continued on page 3)

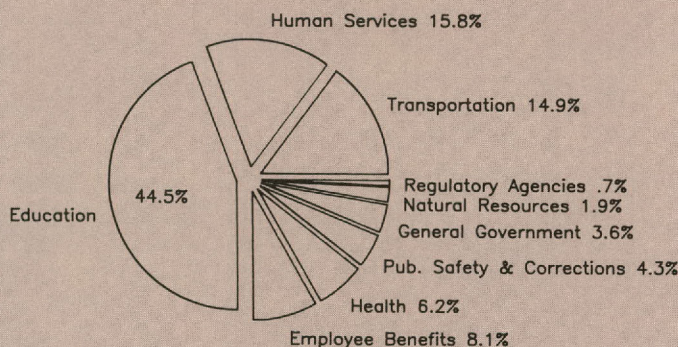
Inside This Issue

More than 15 years ago, TRL reports suggested that a budget execution system was needed to allow the state's leaders to make emergency budget adjustments between biennial legislative sessions. And, about 10 years ago the League began recommending the creation of a surplus-management fund that would permit the state to bridge revenue peaks and valleys.

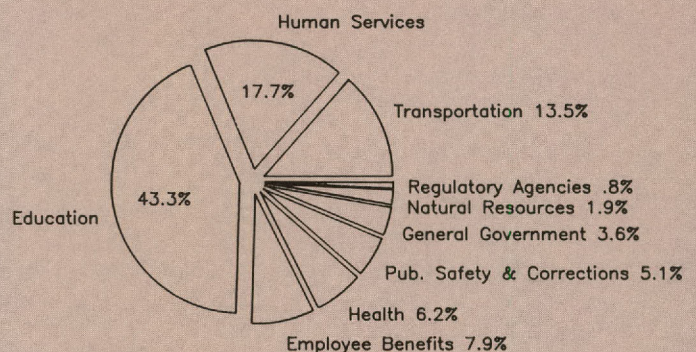
Though these ideas were sound, the timing—coming in the midst of a state revenue boom—was wrong. But, the timing was right in 1987 as the legislature wrestled with the most serious state fiscal problems ever faced in Texas, and both these recommendations were finally adopted (see page 7). A government researcher once noted: "To survive in this field, one must have a geologist's sense of time."

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1987 Biennial Operating Level



1988–1989 Appropriations



Biennial Appropriations

1987 Biennial Operating Level and 1988-1989 Appropriations

(Millions of Dollars)

	1987* Biennial Operating Level	1988-1989 Appropriations Bill	Governor Vetoes	1988-1989 Appropriations	Increase/ (Decrease) Amount	(Decrease) Percent
EDUCATION						
-Public Schools	\$ 11,528.9	\$ 11,949.9	\$ 52.0	\$ 11,897.9	\$ 369.0	3.2%
-Universities*	2,671.0	2,592.1		2,592.1	-78.9	-3.0%
-Medical and Dental*	1,092.5	1,030.6		1,030.6	-61.9	-5.7%
-Junior Colleges	810.6	877.9	45.4	832.6	22.0	2.7%
-Other	303.4	299.1	8.6	290.5	-12.9	-4.3%
Total Education	\$ 16,406.4	\$ 16,749.6	\$ 106.0	\$ 16,643.7	\$ 237.3	1.4%
HUMAN SERVICES						
-Aged and Disabled	\$ 1,765.6	\$ 2,026.6	\$ 3.4	\$ 2,023.2	\$ 257.6	14.6%
-Health Care	1,656.8	2,103.6		2,103.6	446.8	27.0%
-Income Assistance	963.7	1,174.0		1,174.0	210.2	21.8%
-Family & Children	474.6	513.0	16.2	496.8	22.2	4.7%
-Rehabilitation	401.2	408.0		408.0	6.9	1.7%
-Employment	276.1	316.3		316.3	40.2	14.6%
-Other	298.4	257.6	0.3	257.3	-41.1	-13.8%
Total Human Services	\$ 5,836.4	\$ 6,799.1	\$ 20.0	\$ 6,779.2	\$ 942.8	16.2%
TRANSPORTATION						
-Highways & Public Transit	\$ 5,467.6	\$ 5,171.9	\$ 34.0	\$ 5,137.9	\$ -329.7	-6.0%
-Other	35.4	35.8	0.2	35.7	0.3	0.7%
Total Transportation	\$ 5,503.0	\$ 5,207.7	\$ 34.1	\$ 5,173.5	\$ -329.4	-6.0%
EMPLOYEE BENEFITS						
-Retirement Programs	\$ 1,869.6	\$ 1,830.5		\$ 1,830.5	\$ -39.1	-2.1%
-Social Security	799.9	815.5		815.5	15.6	2.0%
-Insurance	299.0	384.5		384.5	85.4	28.6%
-Other	2.5	5.4		5.4	2.9	117.3%
Total Employee Benefits	\$ 2,971.0	\$ 3,035.8		\$ 3,035.8	\$ 64.8	2.2%
HEALTH						
-Mental Health & Mental Retardation	\$ 1,271.6	\$ 1,422.7	\$ 0.4	\$ 1,422.3	\$ 150.7	11.9%
-Health Care	650.6	687.6	1.9	685.8	35.2	5.4%
-Cancer Center*	276.4	185.3		185.3	-91.1	-33.0%
-Other	72.0	68.0		68.0	-4.0	-5.5%
Total Health	\$ 2,270.7	\$ 2,363.7	\$ 2.3	\$ 2,361.5	\$ 90.7	4.0%
PUBLIC SAFETY & CORRECTIONS						
-Prison System	\$ 948.4	\$ 1,233.7		\$ 1,233.7	\$ 285.3	30.1%
-Public Safety	300.5	309.3		309.3	8.8	2.9%
-Other	352.2	413.4		413.4	61.2	17.4%
Total	\$ 1,601.1	\$ 1,956.5		\$ 1,956.5	\$ 355.3	22.2%
GENERAL GOVERNMENT						
-General Services	\$ 849.0	\$ 915.3	\$ 1.9	\$ 913.4	\$ 64.4	7.6%
-Economic Development and Intergovernmental Agencies	479.8	482.8		482.8	2.9	0.6%
Total	\$ 1,328.8	\$ 1,398.0	\$ 1.9	\$ 1,396.2	\$ 67.3	5.1%
NATURAL RESOURCES						
Total	\$ 689.8	\$ 718.4	\$ 1.9	\$ 716.6	\$ 26.8	3.9%
REGULATORY AGENCIES						
Total	\$ 250.1	\$ 293.2	\$ 0.4	\$ 292.8	\$ 42.8	17.1%
TOTAL	\$ 36,857.3	\$ 38,522.1	\$ 166.5	\$ 38,355.6	\$ 1,498.3	4.1%
Across the Board Reduction**		177.6		177.6		
TOTAL APPROPRIATIONS	\$ 36,857.3	\$ 38,344.5	\$ 166.5	\$ 38,178.0	\$ 1,320.7	3.6%

*Biennial operating level adjusted to exclude budgeted Education and General Funds in Education and Health functions.
 **The Comptroller is directed to reduce by .65 of 1% Appropriations from the General Revenue Fund, the Highway Fund, and the Foundation School Fund to all agencies except the judiciary.

State education programs comprise 43.6% of the 1988–1989 budget, contrasted to a 44.5% share of current spending. However, the budgeted amounts do not include educational and general funds (e.g., tuition and patient charges) available to supplement operations at universities, medical and dental schools, and the cancer center.

The budget portion allocated to transportation declined by 1.3% (14.9% to 13.6%). The big offsets were in human services (up 2% from the current 15.8% budget portion) and in public safety and corrections (up .8% from 4.3%). The proportional share in other areas remained essentially unchanged.

In total appropriations, transportation is the only functional area where less dollars (\$329 million) will be available in 1988–1989. The biggest dollar increases were in human services, \$943 million spread across several program areas; public safety and

corrections, \$355 million mostly for the prison system; and education, \$237 million with a \$369 million increase in public school spending offset by decreases in higher education programs. But, as noted above, some portion of the higher education decrease will be offset by outside income.

The big items vetoed by the governor were a \$52 million subsidy to offset losses in school districts from decreased property values, \$34 million for the construction of a new headquarters building for the highway department, and \$45 million to fund junior college staff group insurance programs.

Record Level Tax Bill Required

Spending in 1988–1989 is budgeted at only a 3.6% increase over current (1987) operating levels—easily the smallest growth rate in memory. Still there were big revenue problems.

To take care of the \$1 billion deficit expected to exist at the close of FY 1987 on August 31st and to provide the additional revenue needed to finance the 1988–1989 spending package required a tax increase estimated to produce \$5.7 billion over the next two years—reputedly the largest state increase in U.S. history.

Two separate tax bills were involved. HB 62 made permanent the 5 cents-per-gallon gasoline “temporary” tax increase adopted last Fall, producing an estimated \$900 million over the next two years. HB 61, the “omnibus tax bill,” increased the sales, motor vehicle sales, franchise, cigarette, hotel occupancy, and insurance gross premiums taxes, and hiked a number of professional license fees, to provide an additional \$4.8 billion to the state coffers. (Details of the tax bills were described in *TRL Bulletin on Texas State Finance*, No. 11—1987, July 29, 1987.)

Employers Face Another UC Tax Hit

The increase in unemployment that has accompanied the downturn of the Texas economy has once again threatened the stability of the Unemployment Compensation Trust Fund. As a result, since January of 1986 it has been necessary to borrow funds from the federal government in order to make benefit payments. It is now estimated that the Trust Fund will be \$683 million in the red at the end of 1987.

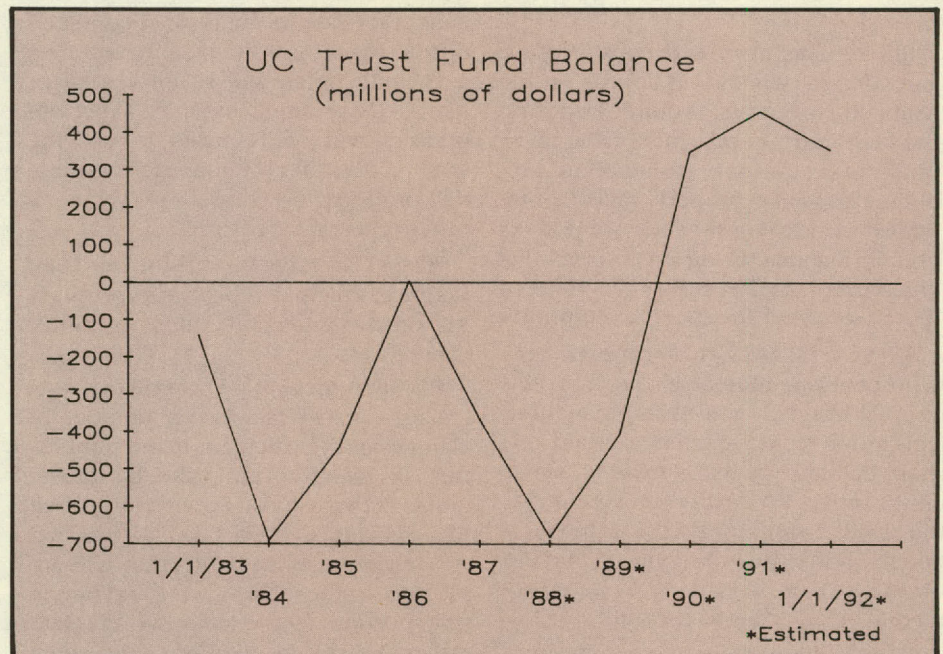
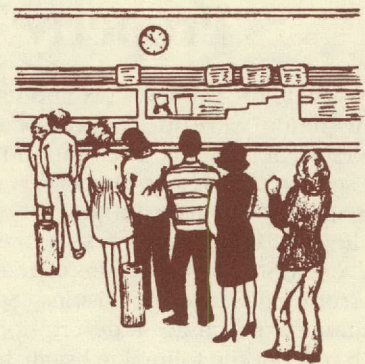
There are two principal reasons for the current situation. First, unemployment rates have been much higher than anticipated. Full recovery of the Trust Fund realistically cannot be expected until significant improvement in unemployment levels is experienced.

Second, the methodology currently used by the Texas Employment Commission (TEC) to calculate the deficit tax (the portion of the total tax designed to maintain the required minimum Trust Fund balance) limits the amount of taxes that would otherwise be collected. The TEC applies the deficit ratio only to the experience-rated portion of employer tax rates (the portion of the tax based on past unemployment experience), rather than to total tax rates. As a result, only about 30% of employers are now paying any deficit taxes.

Legislative Modifications

HB 979 and HB 2090 were passed to deal with the anticipated continuing problems of UC financing.

Deficit Tax HB 979 amends current law to clarify the calculation of the deficit tax. Specifically, the deficit ratio will now be multiplied by each employer's previous year's effective (total) tax rate



rather than only the general (experience-rated) tax rate. This will substantially increase the taxes of employers with relatively low experience rates and will approximately double the taxes paid next year by employers who now pay at the minimum rate.

Taxable Wages Currently taxable wages are set at \$7,000 per employee—the minimum required by federal law. Pursuant to HB 2090 taxable wages will be increased to \$8,000 in 1988 and \$9,000 in 1989 and thereafter. Increasing the wage base will bring in more revenue through experience-rated taxes and reduce the amount of deficit taxes triggered to restore Trust Fund solvency.

Maximum Benefits HB 2090 further provides that maximum benefit levels will not increase in 1988 and 1989. The maximum benefit amount is now \$210 a week. The average benefit check is about \$157 a week. As required by statute, the maximum benefit amount

goes up each year in an amount equal to \$7 for each \$10 increase in the average weekly wage for manufacturing production workers in Texas. This automatic escalator provision will be suspended for the next two years.

Interest Taxes Currently taxes to make required interest payments on federal borrowings are levied at a rate of 0.1% on taxable wages for the first two calendar quarters of the year. To cover increased interest costs of the higher than expected federal borrowings, HB 2090 provides that the TEC shall set an interest tax rate sufficient to ensure timely payment of interest, but not to exceed 0.2%.

Bonds Finally, HB 2090 provides that the TEC could issue bonds as an alternative to federal advances or to refinance the federal debt. The issuance of the bonds would be subject to several conditions. The TEC must make an affirmative finding that bond financing will be cheaper than federal borrowing.

The bonds will be subject to approval by a bond review board composed of the governor, lieutenant governor, speaker, treasurer and comptroller. Any bonds issued will be repaid by proceeds from a separate flat tax levied on all experience-rated employers.

Increased Taxes

Based on an average unemployment rate of 8.8% for 1987, the TEC now estimates that Texas employers will pay just under \$1 billion this year to finance the UC system. Assuming unemployment rates of 8.0% in 1988 and 7.5% in 1989, it is estimated that under the new law total employer costs will increase to \$1.5 billion in 1988 and \$1.8 billion in 1989. It should be emphasized that substantial changes in these estimated costs would result from different unemployment rate assumptions, but it is clear that UC taxes will increase dramatically over the next two years.

Property Tax Legislation

As usual, the property tax and its administration were the subject of considerable legislative attention during the session. As a result, almost fifty separate pieces of legislation were enacted dealing with property tax appraisals and exemptions, local administration, or truth-in-taxation provisions. Space limitations preclude a description of each bill, but the following briefly highlights some of the more significant provisions.

SJR 12 This proposed constitutional amendment, which will appear on the ballot in November, would (1) permit the legislature to provide for the local-option exemption of non-income producing personal property, and (2) establish a local-option exemption of certain manufacturing inventories that are located in Texas for 175 days or less (a so-called "freeport" exemption).

HJR 96 & HB 2082 This proposed constitutional amendment, also to be voted on in November, and its implementing legislation would exempt certain offshore drilling rigs that are not in use or under repair. To qualify for exemption, the drilling units must be stored in a county bordering the Gulf of Mexico or on a bay or other body of water immediately adjacent to the gulf.

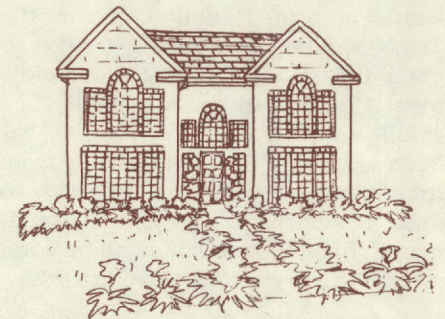
SB 367 This bill exempts nonbusiness

boats that are used for recreational activities. Local governments may choose to continue to tax such boats but, if they do so, must pay appraisal districts for the cost of their appraisal. Since this bill took immediate effect, all nonbusiness boats will be exempt for the current 1987 tax year unless a taxing unit has chosen otherwise.

HB 2445 Pursuant to this legislation, next year new residential property that is held for sale in the normal course of business will be valued as inventory if it is unoccupied and is not rented or leased to produce income. Chief appraisers will be required to use the same method for valuing such residential property as is used to value all other types of inventories.

HB 485 Effective for the current 1987 tax year, this bill repeals the property tax on the intangible values of motor carriers.

HB 1866 Beginning next year, this legislation will mandate a number of changes in the calculation and publication of effective tax rates by taxing units. Perhaps most noteworthy of all the changes, the 8% tax increase that can trigger a rollback election will apply only to the maintenance and operation portion of the effective tax rate rather than to the total rate (including



debt service). Also taxing units will be permitted to consider historical collection rates in the calculation of effective tax rates.

HB 328 This bill substantially expands the information which taxing units are required to publish when considering a proposed tax increase and directs the State Property Tax Board to prescribe a standard form. Among the many additional items to appear on the new tax increase notice are the average appraised value and taxes on a residence homestead in both the preceding and current tax year. In addition, the proposed tax rate increase will be expressed both as a percentage amount

and as an amount per \$100 of valuation.

HB 2151 This bill requires tax collectors to accept conditional tax payments before the delinquency date for prop-

erty taxes that are subject to a pending challenge. A property owner protesting his value may pay the undisputed portion of the taxes or last year's taxes,

whichever is greater, but no more than would be due based upon the protested values.

Economic Development Efforts

Not surprisingly, economic development and diversification has been of great interest to the legislature for a number of years. This session marked the creation of a state department to address the issue, the passage of a number of proposed constitutional amendments for the issuance of development related bonds, and the authorization of local research and development authorities. Tort reform and the partial deregulation of intrastate trucking and communications, often promoted under the general rubric of economic development, are discussed elsewhere.

Establishing the Texas Department of Commerce

Early this year, League president Jared Hazleton authored a report for the House Speaker's Economic Advisory Group on state economic development policy. The findings of that report, paralleling those of the Governor's Task Force on Business Development and Job Creation in which the League also participated, were summarized in the January/February issue of ANALYSIS.

The report noted that "the public sector can play an important role [in economic development] by providing a general business environment conducive to economic growth and by supplying direct support services to business." It was found also that the state needs to coordinate its own economic development efforts with each other and with those carried out in local communities.

The legislature apparently agreed with this finding and so passed HB 4, creating the Texas Department of Commerce. This legislation enacted substantially all the League's recommendations concerning a state department of commerce. Below is a brief recap of the League's recommendations and the actions taken by the legislature. (League recommendations are in bold-face print.)

The Texas Economic Development Commission should be replaced by a newly structured agency called the Texas Com-

merce Department. The department should be given primary responsibility for the programs administered by the commission. The commission will be abolished and the department is to perform all duties formerly assigned to the commission, effective July 1988.

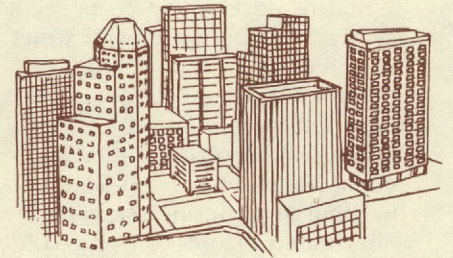
The Texas Tourist Development Agency should be moved to the Texas Commerce Department, provided that the transfer is supported by the various local and regional constituency groups. The Tourist Development Agency was moved to the new Department of Commerce. The department's duties include promoting the state as a tourist destination for Texans and non-Texans, coordinating development of tourist attractions, and cooperating with the Parks and Wildlife Commission, State Highway and Public Transportation Commission, and local communities and organizations in promoting tourism.

Responsibility for the Job Training Partnership Act should be given to the Texas Commerce Department. As of July 1988, the primary responsibility for the implementation of this act is moved from the Texas Department of Community Affairs to the commerce department.

The economic development portion of the community development block grant program, currently administered by the Texas Department of Community Affairs, should be moved to the Texas Commerce Department and the percentage share of the program allocated to economic development should be increased. The entire community development block grant program has been transferred to the commerce department, effective July 1988.

Other agencies that were abolished and whose powers and duties were transferred to the department include the Texas World Trade Development Authority, the Texas World Trade Council, the Enterprise Zone Board, the Technology Training Board, and the Texas Music Commission.

The governing body of the department should consist of three members rather than the 15 board members for the economic development commission. Actually,



the enabling legislation calls for six board members but this still is a much more workable number.

The enabling legislation should not specify an organizational structure for the department, but should outline the principal functions of the department. The legislation lists 16 general duties, ranging from attracting new businesses to the state to encouraging maquiladora projects. It also notes that the governing board shall establish divisions within the department, which may include the following divisions: administrative, promotions and marketing, research, planning and data development, domestic business development, international business development, job training, and tourism.

The Texas Commerce Department should focus its efforts on working with local communities and development entities rather than providing services directly. The enabling legislation puts a high value on coordinating efforts. It also calls for an expansion of the state's involvement in economic development efforts. The department is to establish a number of programs:

- assisting businesses involved in international trade, small businesses, and product development, among others;
- developing and coordinating a comprehensive permit application procedure; and
- gathering information characterizing the state's demographics, economics, and physical characteristics.

Revenue bonds proceeds may be used to provide financial assistance to businesses exporting goods and services.

If approved in November, several constitutional amendments would provide the department the authority to issue general obligation bonds for certain programs:

- \$15 million will be the starting capital of the Texas Product Development Fund to provide venture capital to develop products ready for practical applicability for which no other money is available;
- \$10 million will go to low interest loans for local sponsors of "small business incubators"—facilities, technical assistance, and advice to fledgling small businesses; and
- \$400 million to make loans to local governments to finance the cost of public facilities through the purchase of local government obligations.

The latter was a cornerstone of Lt. Governor Hobby's Build Texas plan envisioning greater state involvement in infrastructure development and more state assistance to localities.

The Texas Commerce Department should be required to work with other state agencies in preparing a state comprehensive economic development plan and ensuring that it is updated every two years. A task force of appropriate agency chairmen, led by the chairman of the department, should oversee the preparation. HB 3 creates the Texas Strategic Economic Policy

Commission, composed of the governor, Lt. governor, speaker, and three persons appointed by each. The commission, staffed by the Texas Commerce Department, will develop a long range plan for developing the state's economy, evaluate current efforts, and make recommendations for improving the business climate. The commission will expire June 1989, at which time its duties will be transferred to the Texas Commerce Department.

Legalizing Public Grants and Loans to Private Entities

This legislature also passed other pending constitutional amendments and statutes related to economic development. Currently the constitution prohibits grants or loans of state or local government money to private entities (Article III, Sections 50, 51 and 52). HJR 52 would amend the constitution so that the legislature may authorize loans and grants of public money "for the public purposes of development and diversification of the economy of the state. . . ."

Getting the Super Collider

To make sure Texas is represented adequately in its attempt to become the location of the superconducting super collider, the legislature passed HB 1909 and HJR 88. According to the

bill, the Texas National Research Laboratory Commission "shall take all . . . steps necessary to effect the siting, development and operation of the Superconducting Super Collider research facility within the state." The commission may use the proceeds of donations, revenue bonds, and, if approved by the electorate, up to \$500 million in general obligation bonds to achieve these purposes. The commission can issue the bonds only if Texas is chosen as the site for the facility.

Introducing Research and Development Authorities

The legislature also authorized the creation of research and development authorities in SB 705. The purpose of these will be to promote research, development and commercialization of research in affiliation with public and private institutions of research, higher education, or health science centers. Authorities may be created by a county or contiguous counties in affiliation with one or more eligible research institutions. The authorities will be public bodies that may acquire and dispose of property, patents, licenses, etc. They may accept loans or grants from other governmental entities. While they do not have taxation powers, they may each issue up to \$500 million in revenue bonds.

Disciplining Doctors

In 1985, the League studied the operations of the Texas State Board of Medical Examiners at their request. The League made 34 recommendations to address problems identified.

League Findings

The study found that investigations of complaints against doctors were severely backlogged. Cases routinely awaited action for two or three years, during which time the doctors in question continued to practice medicine. Much of the delay was caused by the lack of a full-time administrator and any explicit goals and objectives for the board. In addition, the League found that the board tended to overemphasize the investigation of drug-related cases to the detriment of complaints of medical incompetency, which are more difficult to investigate and prove.

This was the first recent analysis of

the issue of disciplining doctors in Texas, although public attention soon focused on this area with the publicity surrounding several infamous malpractice cases. In addition, the House Research Organization noted the League's study in its own report published last spring.

League Recommendations

All this attention resulted in the 70th Legislature making some major reforms to the act that governs the licensing and disciplining of doctors in Texas. Amendments to the medical practice act will make it easier for patients to determine if a doctor has been disciplined by the medical examiners board. In addition, a number of reforms will be implemented that should make the investigation of complaints more timely.

Many of the reforms incorporated into law were recommended in the



League's study. Several, however, were recommendations to the board for changes in administrative practices at the agency, the bulk of which were accepted. Those requiring changes in the medical practice act included clarifying the role of the agency's executive director, making the executive director a full-time administrator, and revising the board's fee structure to include fees

for certain licenses that had previously been processed free of charge.

Other Statutory Changes

In addition to changes reflecting League recommendations, others were made by the legislature to make the investigation of complaints more efficient and to make it easier for the general public to obtain information concerning disciplinary actions taken against doctors. Among these are:

- expanding the grounds for revocation or suspension of a doctor's li-

cense if the doctor poses a "continuing threat to the public welfare;"

- requiring the dissemination of disciplinary actions taken by the board to all physicians, health care entities, public libraries and, upon request, the general public;
- establishing a toll free telephone number for the public to obtain information on disciplinary actions against particular doctors;
- allowing the use of hearings examiners to hear appeals when a license is denied;
- requiring the suspension of a li-

cense following the initial conviction of a felony, or a misdemeanor involving moral turpitude (previously a doctor could practice medicine during the appeals process after an initial conviction); and

- abolishing the use of private reprimands, making all reprimands public.

Even with the changes in the medical practice act and the changes regarding tort reform and insurance regulation, the battle over how to prevent, recognize, and pay for medical malpractice is not over yet.

Good Government

Rainy Day Fund

The state's present fiscal problems stem from the revenue feasts of the 1970s as well as the famine of the mid 1980s. The "rainy day" concept is to smooth revenue peaks and valleys. After several unsuccessful incarnations in the past few sessions, the rainy day fund has made it out of the legislature. As noted most recently in the November 1986 ANALYSIS, the League has been calling for such a fund for at least 10 years. This November, the electorate will have a chance to approve a constitutional amendment implementing the proposal.

The money for the economic stabilization fund, as it now is termed, will come from surplus general revenue and additional oil and gas production tax revenues. At the end of each biennium, the comptroller is to transfer half of any unencumbered general revenue to the fund. In addition, if the state should receive greater net revenue from oil or gas production taxes than it did in fiscal year 1987, then 75% of the difference goes to the fund.

The comptroller, with the consent of the treasurer, can use the fund to cover temporary cash shortfalls during the biennium. Upon a 3/5ths vote, the legislature can appropriate money from the fund for previously established programs when there is a shortfall in the general revenue fund. The legislature, again upon a 3/5ths vote, also may use the fund if the revenue projected for the next biennium is less than the revenue for the last biennium. The fund

may be used for any purpose with a 2/3rds vote of the legislature.

Budget Execution

For at least fifteen years the League has been suggesting the need for a budget execution mechanism. As noted by the League in the November 1986 ANALYSIS, the past few years have illustrated amply that fiscal emergencies do arise when the legislature is not in session. Some of these, though admittedly not all, can be addressed by temporarily shifting funds or curtailing expenditures.

Although voters approved a constitutional amendment allowing the legislature to provide for budget execution several years ago, proposed bills always had died in the face of the legislature's reluctance to surrender any budget-related powers. This time, however, the legislature responded to the call for adequately safeguarded budget execution.

HB 7, 3rd C.S., gives the governor the power to propose that a state agency be prohibited from spending all or part of its appropriation. He also may propose that part or all of an agency's appropriation be transferred to another use within that agency or to another agency. In addition, the governor may propose changing the timing of an appropriation.

After the governor's proposal is published, the Legislative Budget Board may ratify the proposal, reject it, or recommend changes. In the latter case, the governor in turn has the opportunity to accept or reject the contingent order.



Potential changes to the budget are circumscribed:

- an appropriation cannot be postponed for more than 180 days;
- salaries for elected state officials or state board members cannot be affected;
- appropriations to the legislature cannot be changed;
- total appropriations for any state agency cannot be increased more than 5% or cut more than 10% in any year;
- while statutorily dedicated funds may be transferred for purposes not authorized in the dedication, constitutionally dedicated funds cannot be, although they can be withheld; and
- no change can be made to public school appropriations that would be contrary to statutory prorations among programs.

Budget execution orders cannot extend beyond the end of the biennium in which they are promulgated.

Expanding Prison Capacity

As the deadlines for decreasing the prison population under the Ruiz court orders loomed, as the cries to "lock em up and throw away the key" continued, and as the budget constraints tightened, legislators struggled to address the corrections crisis.

Emergency Release Program

In one of its first actions, the 70th Texas Legislature approved SB 215, a prison emergency release program, and funded the program with money transferred from the State Highway Fund. The bill provides for additional halfway house capacity and allocates funds to implement court-ordered improvements in the prisons' health services. (For a more detailed description of SB 215, see Bulletin No. 6, March 13, 1987.) In addition, HB 680 changes the computation of good conduct time and amends parole eligibility guidelines. Generally, the effect of the bill will be to limit changes in good time classifications and to tighten parole eligibility.

Meanwhile, estimates by the Criminal Justice Policy Council that admissions to Texas prisons would increase by 8,000 by 1991, in combination with the continuing overcrowding crisis, persuaded legislators that additional prison capacity was needed.

Alternate Construction Funding Options

Conventional methods of construction financing for many governmental units include issuing general obligation bonds and/or revenue bonds. G.O. bonds are backed by governmental taxing and borrowing power. Revenue bond issues generally are repaid out of revenues from projects built with the bond proceeds.

Historically, prison construction in Texas has been financed through biennial appropriations. Nevertheless, the 70th Legislature passed two related pieces of legislation which add G.O. bonds and revenue bonds as methods to fund new prison construction—SJR 56 and SB 1407.

Constitutional Amendment Required

Currently the state has no authority to incur debt for prison construction. Therefore, SJR 56, which will be submitted to the voters in November, pro-

poses a constitutional amendment enabling the state to issue up to \$500 million in G.O. bonds for the construction, improvement, and expansion of adult and youth corrections institutions and mental health and mental retardation institutions.

The implementing bill, SB 1407, authorizes the legislature to provide for the issuance of G.O. bonds and also includes an alternate funding mechanism—issuance of revenue bonds.

Lease Appropriation Debt Revenue bonds are not secured by the full faith and credit of the government and therefore do not require voter approval. In a prior action, the 68th Legislature created the Texas Public Building Authority to issue revenue bonds for certain projects and to act as the lessor of the facilities.

Senate Bill 1407 authorizes the Texas Public Building Authority, after review and approval by a bond review board, to issue revenue bonds for corrections projects. Proceeds will be used for acquiring, constructing, renovating, or equipping new and/or existing corrections facilities. Then the legislature will appropriate funds to the Texas Department of Corrections which in turn will lease the correctional facilities or equipment from the Texas Public Building Authority until the bonds are retired.

Financing Prisons Regardless of the construction financing method used, the combined amount of outstanding general obligation and revenue bonds may not exceed \$500 million. The exact amount of bonds to be issued depends upon the projects approved in the final appropriations bill. The type of bond used depends upon the success of the constitutional amendment election in November.

Although largely avoided by the state, the use of long-term debt has some advantages. Not only does the legislature not have to pay the entire cost of a project up front, but using bonds for capital projects has some basis in good fiscal management. The theory behind the use of bonds for long-lived items is that the pay-out should approach the life of the project.

The state now has another option that might save money in building and operating prisons. SB 251 allows the state to contract with private corpo-



rations for the construction, maintenance, and/or operation of correctional facilities.

Jail Overcrowding

The problems experienced at the state department of corrections are echoed in many cities and counties. Several bills were passed last session to address jail problems.

HB 2119 allows municipalities to contract with counties or private vendors for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp or related facility. The facility cannot hold more than 500 inmates. A "city with a population of more than 1.5 million in a county with a population of more than 2 million" (i.e. Houston) must contract with the county to house persons charged with crimes punishable by confinement in the county jail.

Under the provisions of HB 400, the commissioners court must, upon petition of 10% of the registered voters in a county, consider the creation of a county jail district. The district's purpose is to construct jail facilities. If the commissioners court approves creation, it must be ratified by popular vote.

The district may use revenue bonds, or if approved by the electorate, bonds repaid by the proceeds of an ad valorem tax levied by the district to finance construction. The district also may levy operation taxes. After construction is completed, the facilities are conveyed to the county.

This act takes effect only if HJR 18, a constitutional amendment authorizing creation of these districts and their use of G.O. bonds, is approved at the November 1987 election.

Liability Law and Insurance Reforms

When the legislature met last spring, it had a short list of matters meriting immediate attention. One was, of course, the budget. Another was the extreme pressure exerted from all sides regarding certain changes in the tort laws. The hard fought compromises on tort and insurance reforms just missed approval in the regular session, but were passed in the first special session.

Revising Determinations of Liability and Damages

One prong of the attack on the liability insurance crisis is the amendment of the Civil Practice and Remedies Code. SB 2, 1st C.S., made numerous changes in this code.

Frivolous Cases One such change is a new chapter entitled frivolous pleadings and claims. In any action in which a claimant is seeking recovery of damages for personal injury, property damage, or death, the court may determine that the pleading is groundless. This is defined as a claim having no basis in fact—i.e. not warranted by existing law or by a good faith argument for extension, modification, or reversal of existing law.

If the court determines that the pleading is frivolous, it may impose the following sanctions: striking of the pleading, dismissal of a party, or an order to pay the defendant reasonable expenses incurred in his defense. The claimant cannot be forced to pay the defendant's expenses if the claimant withdraws or amends his pleadings within 90 days of the court's determination. In addition, if the court imposes a sanction and the court finds that the claimant's attorney consistently has engaged in frivolous pleadings, then the court is to report this to the appropriate bar grievance committee.

Bars to Recovery Another change in the law is contained in that section now entitled comparative responsibility. Except in cases involving intentional torts, workers' compensation, the Deceptive Trade Practices-Consumer Protection Act, and parts of the insurance code, the court now must determine the percentage of responsibility of each claimant, defendant, and settling person.

The law previously read that in an ac-

tion to recover damages for negligence resulting in injury, death, or property damage, negligence of the claimant does not bar recovery if his negligence was less than that of the defendant or defendants. However, the amount of damages awarded must be diminished in proportion to the claimant's negligence.

Except as noted below, the law still specifies that in most cases the claimant may recover damages only if his responsibility is less than 50%. In any action in which at least one defendant is found liable on the basis of strict liability (generally in cases where the defendant's activity or product is inherently dangerous, mainly products liability cases), a claimant may recover only if his percentage of liability is less than 60%. Previously, a claimant could collect in strict liability cases no matter how small the responsibility of the defendant.

Joint and Several Liability For the most part, in the past and now, a liable defendant is to pay a percentage of the damages equal to his percentage of responsibility. In the past, any defendant whose negligence was greater than the claimant's was jointly and severally liable for the entire amount of damages. In other words, if some defendants did not have the financial resources to pay their share of the judgement, those able to pay—the "deep pockets"—had to pay a percentage of the damages in excess of their percentage of responsibility. In turn, these defendants can seek repayment by the nonpaying defendants.

The doctrine of joint and several liability is now limited. A defendant is jointly and severally liable if he is more than 20% responsible and, if the case does not involve strict liability, the defendant is more responsible than the claimant. Or if the claimant is not responsible at all and the percentage of the defendant's responsibility is more than 10%, then that defendant is jointly and severally liable. However, if the claimant's loss is caused by exposure to hazardous chemicals or radiation in the environment or workplace, then the defendants are jointly and severally liable no matter how small their percentage of responsibility.



Punitive Damages The bill also adds another chapter, one regarding exemplary or punitive damages. The chapter does not apply to a long list of actions, including those mentioned above among many others. For all other cases, exemplary damages may be awarded only if the claimant proves that the personal injury, death, property damage or other harm resulted from fraud, malice or gross negligence (meaning more than thoughtlessness—rather a conscious indifference to safety).

Exemplary damages are limited to four times the economic and noneconomic damages or \$400,000, whichever is greater. These limits do not apply in cases of malice (where the harm resulted from conduct intended to cause injury) or in intentional torts.

Drug Manufacturers Yet another new chapter applies to the liability of drug manufacturers and sellers. Now claimants cannot be awarded exemplary damages for drug related injuries if the drug was manufactured and labeled in accordance with FDA approval. If the defendant was grossly negligent or committed an intentional tort and knew, but did not reveal, pertinent information to the FDA, then the limitation on exemplary damages does not apply.

Governmental Liability Finally, the bill addresses the liability of municipalities and public officials. Previously, local government liability for actions arising from public functions was limited to \$100,000 for each person and \$300,000 for each occurrence of bodily injury or death and \$100,000 for each occurrence of property damage. The limits for municipalities in particular are now \$250,000 for each person and \$500,000 for each occurrence of bodily injury or death.

continued on page 10

In addition, the legislature passed a proposed constitutional amendment that would give the legislature the power to define public and proprietary functions of municipalities. Depending upon changes in the classifications of functions, the amendment may expand the immunity of municipalities for damages arising out of proprietary functions (those now considered not governmental or public in nature).

Also, employees or officers of the state now are not personally liable for damages that are the result of actions in the course of the person's office or employment to the extent that the state is liable for indemnification. The limits on state indemnification remain the same, \$100,000 per person and \$300,000 per occurrence in the case of personal injury, death, or deprivation of right, privilege or immunity; and \$10,000 per occurrence of property damage.

Interest and Venue Two other bills affecting tort law were passed in the special session. SB 6 limits prejudice interest. It now cannot begin until 180 days after the defendant receives notice of the claim or the suit is filed. Interest accumulates at a simple rather than compound rate.

SB 7 limits the counties in which companies owning railroads can be sued. Previously, suits involving these companies could be tried in any county where the company owned or leased tracks. Now the venue for these companies is the same as for any other: suits may be brought in the county of the company's principal office, in the county where the cause of action occurred, or in the county nearest to the claimant's residence where a company office or representative is located.

Insurance Regulation

The other prong of the tort reform compromise involved regulating insurers. SB 2, 1st C.S., is long and complicated, but in essence the bill's purpose is to gather more information about the insurance industry and to increase the availability of liability insurance.

Insurance Reports Each insurer must now file with the State Board of Insurance an annual report on its liability insurance program including information on income, losses, reserves, expenses, etc. In addition, each insurer must make quarterly reports on claims paid for bodily injuries with details on the policies, the losses leading to the claims, amounts paid, etc. In turn, the SBOI is

to make an annual report to the legislature and to the public.

Public Counsel The bill also creates a division of consumer protection within the SBOI. The director of the division will be a public counsel appointed by the governor. He is to assess the impact of insurance rates, rules, and forms on consumers of property and casualty insurance. The counsel also is to act as advocate for positions advantageous to these consumers. He may intervene in SBOI hearings and act as counsel if requested by parties appealing decisions of the SBOI. The division's budget will be financed by a limited assessment against property and casualty insurance companies.

Establishing Rates In determining rates, the SBOI is to use data on experiences in Texas as much as possible. Rates for liability insurance are to remain in effect for a two year period unless the board specifically agrees to a shorter time period. In setting car insurance rates and forms, the board will review reports of earnings and losses annually and so may adopt new rates annually.

Cancelling Policies For all types of liability insurance except medical liability, the insurer cannot cancel a policy past 60 days after issuance. Exceptions include fraud in obtaining coverage, failure to pay premiums, and loss of the insurance company's reinsurance, among others. In notifying the insured of cancellation or refusal to renew, the insurance company must provide the reasons for such a decision.

Loss Control Insurers providing professional liability insurance to hospitals already must provide loss control information to their clients. Insurers providing commercial automobile liability insurance, other professional liability insurance and general liability insurance now also must provide such information. The bill also adds a section for the licensing of risk managers.

SB 8, also passed in the special session, creates a division within the Industrial Accident Board to administer risk management programs for all state agencies lacking one.

Alternative Sources The bill introduces market assistance programs established by the SBOI to ease availability of liability insurance. In addition, the bill increases the regulation of surplus lines insurers and agents. Further, the bill establishes potential alternative sources

of liability insurance:

- a nonprofit organization underwriting association;
- risk management pools for school districts and junior colleges; and
- excess liability pools for school districts, junior colleges, counties and cities.

Another bill passed in the special session, SB 9, authorizes the creation of the Texas Nonprofit Organizations Liability Pool.

One limitation on the availability of coverage has been the loss or threatened loss of reinsurance in some areas. Now, however, any company, including life insurance companies, that is authorized to write any line of insurance in Texas also may provide reinsurance. In addition, a bill passed in the regular session, SB 293, created the Texas Insurance Exchange for reinsurance, insurance for risks outside the United States, and "last resort" insurance. The expenses entailed in regulating the insurance covered by the bill are paid by a limited assessment on gross premiums.

Medical Malpractice Finally, SB 2 increases the amount of coverage provided by the Texas Medical Liability Insurance Underwriting Insurance Association from \$750,000 per occurrence and \$1.5 million total per year to \$1 million per occurrence and \$3 million total per year.

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AT&T and Trucking Deregulation

The impetus for deregulation, felt at the federal level for nearly a decade, now has been felt in the state legislature, resulting in bills to begin the deregulatory process regarding long distance communications (AT&T) and intrastate trucking.

Communications

At present, the Public Utility Commission sets the rates AT&T can charge for its services. While AT&T wanted to set its own rates, consumer groups claimed that AT&T was by far the dominant long distance carrier and that, in the absence of state regulation, it could act monopolistically.

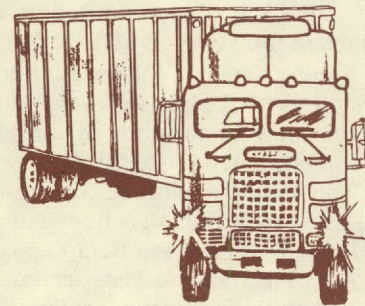
SB 229 found the middle ground by requiring the Public Utility Commission to determine if any carrier is dominant in each telecommunications service market. Nondominant carriers are sub-

ject to less strict regulatory scrutiny. November 1988 is the deadline for the first review. In addition, after 1989, carriers may petition the commission for determinations of dominance.

Trucking

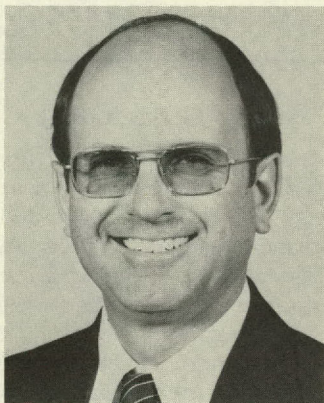
The battle for trucking deregulation was fought on behalf of large multistate shippers versus smaller trucking firms. SB 595, like the AT&T bill noted above, only begins the process of deregulation.

Prices for shipment of more than 500 pounds but less than 10,000 pounds can vary 5% from the base rate established by the Texas Railroad Commission. Prices for shipments above 10,000 pounds can vary 15% from the base rate. However, if the commission determines that a carrier has engaged in predatory pricing (generally prices below operating costs or unduly discrimi-

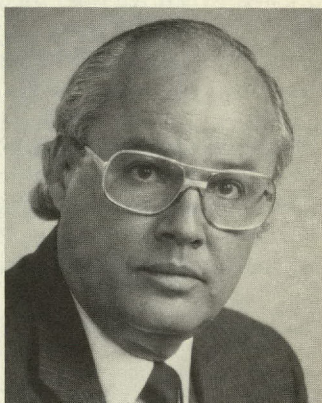


natory prices), the commission may require the carrier to charge the base rate and to repay overcharges or collect undercharges. If a carrier violates the provisions of this act or commission regulations, the commission may, after an administrative hearing, impose penalties up to \$10,000 per violator and revoke or suspend the vehicle registration certificate.

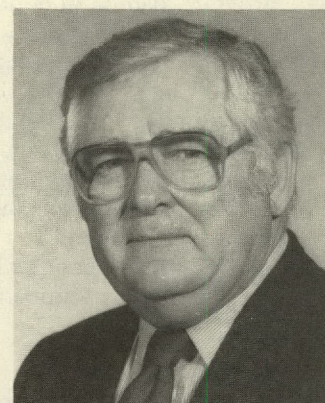
New League Directors



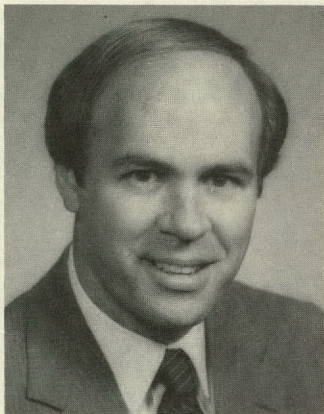
Ron Betz, Director, State Affairs, Phillips Petroleum Company, Bartlesville, Oklahoma



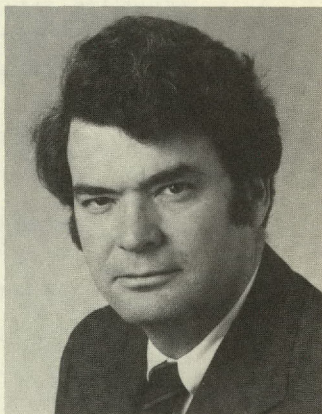
Donald L. Howell, Partner, Vinson & Elkins, Houston



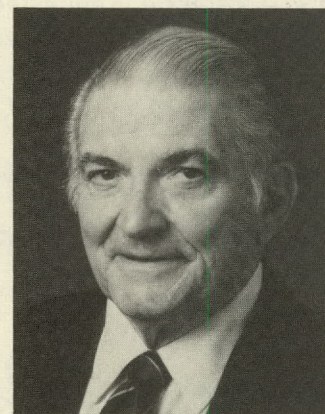
Dwayne Jose, Senior Vice President, Bell Helicopter Textron, Fort Worth



David Biegler, President & Operating Officer, Lone Star Gas Company, Dallas



Michael Jordan, President & Chief Executive Officer, Frito Lay, Inc., Dallas



Nash Phillips, Partner, Nash Phillips/Copus, Austin

Welcome Summer Interns

Anne Dunkelberg and Robert Turner are spending the summer as participants in the League's Alvin A. Burger Memorial Intern Program.

Anne, a native of Austin, has her B.A. from the University of Texas at Austin. She graduated Magna Cum Laude in 1979 from the prestigious Plan II program. Anne is currently at the LBJ School of Public Affairs and anticipates completing her master's work there in May of 1988.

The recipient of numerous academic honors, Anne has been awarded merit fellowships at the LBJ School and as an undergraduate was a member of Alpha Lambda Delta and Phi Beta Kappa academic honors societies.

Anne's career interests are in health and human services policy planning and analysis. Her intern project this summer, a preliminary study on options for expansion of Texas' Medicaid Program, is providing valuable experience in this area.

Robert, from Northern California, holds undergraduate degrees in public administration and in communication studies from California State University, Sacramento. He is currently enrolled in the Masters of Business Administration/Masters of Public Affairs Joint Degree Program at UT Austin and expects to graduate in May of 1989.

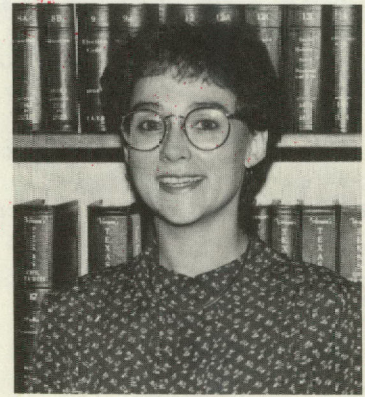
For his intern project, Robert is producing the biannual revision of *Inventory of Texas Basic Personnel Statutes* for the governor's office. His career interests are in emergency service, specifically as a public sector consultant. He has 11 years of involvement in fire service and is currently a training officer for the Southeast Travis County Volunteer Fire Department.

When asked to list his awards and honors, Robert included his internship at the League along with his other accolades. Indeed, the League's intern program provides rewarding, hands-on experience in public policy research.

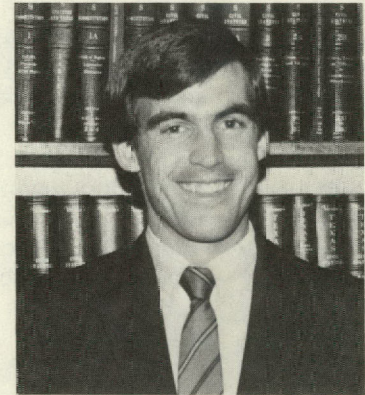
The program, named in honor of the League's first executive director, has three objectives:

- to give participating students some very practical research experience with a business-supported, nonpolitical, highly professional research organization;
- to provide the League staff an opportunity to become well acquainted with a small group of potential League and/or government employees; and
- to permit a limited expansion of League staff capability to undertake major projects plus related short-term projects.

Funding for the program, which is separate from the League's operating budget, is provided by foundations.



Anne Dunkelberg



Robert Turner

In Memoriam

Hayden W. Head, a partner in the Corpus Christi law firm of Head & Kendrick, was killed in a plane crash on July 24. Head was a devoted friend and strong supporter of the Texas Research League, beginning in 1953 as a founding member. He became a director of the League in 1978, just one of the many leadership roles he played in League activities for more than 34 years. We will miss him.

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