

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Public Resource Series Number Ten
October 2007

2007 Texas ADR Legislative Report

Center for Public Policy Dispute Resolution

Public Resource Series Number Ten
October 2007

2007 Texas ADR Legislative Report

Center for Public Policy Dispute Resolution

The University of Texas School of Law

727 East Dean Keeton Street

Austin, Texas 78705

(512) 471-3507

(512) 232-1191 Fax

cppdr@law.utexas.edu

<http://www.utexas.edu/law/cppdr>

TABLE OF CONTENTS

ACKNOWLEDGMENTS	1
EXECUTIVE SUMMARY	2
FEATURED LEGISLATION: S.B. 3/H.B. 3 WATER MANAGEMENT AND CONSERVATION	3
UPDATE ON AGENCY ADR PROVISIONS THROUGH THE SUNSET PROCESS	6
NOTABLE ADR BILLS PASSED BY THE 80TH LEGISLATURE	8
<u>FAMILY & JUVENILES</u>	8
>> H.B. 555 by Rep. Phillips	8
>> H.B. 772 by Rep. Dutton	8
>> H.B. 2291 by Rep. Farias	9
<u>PENAL CODE/ CRIMINAL PROCEDURE</u>	9
>> S.B. 103 by Sen. Hinojosa	9
>> H.B. 1944 by Rep. Coleman	10
<u>STATE AFFAIRS</u>	11
>> S.B. 178 by Sen. Wentworth	11
>> H.B. 3273 by Rep. Crownover	11
SELECTED ADR LEGISLATION FILED IN BUT NOT PASSED BY THE 80TH LEGISLATURE	13
<u>VICTIM-OFFENDER MEDIATION</u>	13
>> H.B. 2437 by Rep. Escobar	13
>> H.B. 2750 by Rep. McClendon	13
<u>ARBITRATION</u>	13
>> S.B. 1782 by Sen. West	13
>> H.B. 3091 by Rep. Frost	14
>> H.B. 3569 by Rep. Rose / S.B. 1167 by Sen. Duncan (Identical)	15
>> H.B. 497 by Rep. Madden	15

<u>ELECTIONS</u>	16
>> S.B. 1647 by Sen. Duncan	16
<u>OMBUDS</u>	16
>> H.B. 3578 by Rep. Rose.....	16
<u>PROPERTY TAX</u>	17
>> H.B. 524 by Rep. Woolley	17
>> H.B. 3194 by Rep. Hill	17

ACKNOWLEDGMENTS

Tracking ADR bills during the legislative session and putting this Report together is a joint effort by the staff and student interns at the Center.

During the legislative session, Susan Schultz together with student interns, **Sarah Casterline** and **Brenner Brown**, tracked and analyzed over 100 pieces of legislation. Our summer interns, **Busi Mlambo**, **David Irwin**, and **Kathryn Freeman**, updated bill summaries and assisted in tracking down last minute changes. Under the direction of **Jan Summer**, Executive Director, **Susan Schultz** wrote and edited the Report with the assistance of **Suzanne Schwartz**, who summarized water-related bills. **Vicki Read**, Administrative Associate, and **Hannah Norton**, Administrative Assistant, prepared the final draft and ensured its publication.

The Center also extends its gratitude to its many friends and supporters for the tremendous, collaborative effort that it takes to stay informed during a legislative session.

EXECUTIVE SUMMARY

Overall, 6,190 House and Senate bills were filed during the regular session, 1,481 were passed, and 51 were vetoed. Around 24% of the filed bills became law. The start of the session was punctuated by a contest for Speaker of the House. The debates centered on a need for change, but the leadership did not change.

Interestingly, a few days before the start of the session, the Center held its first legislative training on collaboration. The two-day training entitled "A New Texas: How to Harness the Power of Collaboration" was co-sponsored by the Center, the National Conference of State Legislatures (NCSL), and the Policy Consensus Initiative, Inc. (PCI). Members of the Texas Legislature were invited to explore ways of improving collaboration when working together in challenging situations and bringing together constituents to address community issues. The program sought to enhance participants' abilities to build trust with colleagues, promote a civil legislative environment, and bring people together to find effective solutions. The contest for Speaker overshadowed some of the training but also highlighted the need for it.

Regarding ADR bills, heavily-debated water issues from last session reappeared, and two major water management and conservation bills that passed this session contain ADR provisions. These two bills are discussed in the Featured Legislation section. A few filed bills would have expanded victim-offender mediation programs for juveniles and in the pre-trial phase. Remaining after the dust settled is a directive for the Texas Juvenile Probation Commission to conduct a study of established victim-offender mediation programs for juvenile offenders in this state. The Commission is to submit its findings to each member of the Legislature no later than January 1, 2009. Also, to address some of the needs of juveniles already in the criminal justice system, an office of independent ombudsman is to be established at the Texas Youth Commission to investigate, evaluate, and secure the rights of children committed to the Commission.

Following the Featured Legislation section, we have compiled an updated list of state agencies that have or just acquired ADR provisions in their statute through the Sunset review process. The Texas Sunset Advisory Commission's recommendation encourages state agencies to use ADR processes where appropriate for internal and external conflicts, reinforcing the policy expressed in the Governmental Dispute Resolution Act.

The need to foster better understanding of ADR terms, processes and application persists. Confusion over concepts, such as confidentiality, qualifications for third party neutral, and ombuds functions, creates a particular challenge during a fast-paced legislative session. The Center looks forward to continued opportunities for training and education on collaboration and effective public input processes.

FEATURED LEGISLATION: S.B. 3/H.B. 3 WATER MANAGEMENT AND CONSERVATION

>> S.B. 3 by Sen. Averitt/ H.B. 3 by Rep. Puente

Texas Water Code, Chapter 11, Edwards Aquifer Act

Relating to the development, management and preservation of the water resources of the state; providing penalties.

Bill Summary: Water management and conservation issues were again the focus of much debate and deliberation this session. Among many water bills filed, S.B. 3 and H.B. 3 survived various permutations and include dispute resolution provisions. Generally, they create a process to determine environmental flow needs in Texas' rivers, estuaries and bays with the input of stakeholder committees and scientific panels, culminating in rulemaking at the Texas Commission on Environmental Quality. Provisions in both bills also provide revisions to the administration and operation of the Edwards Aquifer Authority, including changing the calculation used for determining withdrawal limits from the Edwards Aquifer, and establishing a collaborative process to develop a recovery implementation program for threatened or endangered species associated with the aquifer. Other provisions in S.B. 3 (and also H.B. 4 by Rep. Puente) address water conservation, including establishing a 23-member water conservation advisory council to monitor trends in the development and implementation of water conservation strategies. Provisions unique to S.B. 3 also encourage public participation in the groundwater management area process in areas not represented by a groundwater conservation district.

ADR Provisions:

Environmental flows: The bills create a detailed process to establish the environmental flow needs for Texas' rivers, estuaries and bays with stakeholder involvement. The process concludes with the Texas Commission on Environmental Quality (TCEQ) adopting rules to provide environmental flow standards, including set-asides or reservations for the environment in basins with un-appropriated water. Such reserved water would not be allocated in the state water rights appropriation system, and permits or amendments increasing a water right after September 1, 2007, will be issued with provisions allowing TCEQ to adjust conditions to provide for protection of environmental flows. The bill creates the Environmental Flows Advisory Group (Advisory Group) made up of three senators, three representatives, and one member each from the TCEQ, Texas Parks and Wildlife Department and Texas Water Development Board to oversee the process. The Advisory Group is required to conduct hearings and study public policy implications for balancing human and environmental needs. The Advisory Group appoints five to nine members to the Texas Environmental Flows Science Advisory Committee, to serve as an objective scientific body for the advisory group. The Science Advisory Committee also develops

recommendations on overall direction, coordination and consistency regarding work of regionally focused basin and bay expert science teams involved in this process (including providing a liaison for such teams). The Science Advisory Committee's work relates to methodologies for bay and estuary and instream flow studies and the environmental programs of the state agencies. The Advisory Group initiates regional stakeholder involvement in this process by appointing basin and bay area stakeholder committees. Organized geographically, these stakeholder committees are composed of at least 17 members to provide a "fair and equitable balance of interest groups concerned with the system" and including representatives of at least 11 specified interests and also of representatives of other appropriate stakeholders. These stakeholder committees appoint basin and bay expert science teams (B-BESTs) to develop environmental flow analyses and recommended environmental flow regimes through collaborative processes designed to achieve consensus. Based solely on science, these analyses and recommended environmental flows of the B-BESTs are submitted to the stakeholder committees, Advisory Group and TCEQ. Operating on a consensus basis to the maximum extent possible, the stakeholder committees consider the B-BEST's work in conjunction with other factors, including other present and future water needs, and develop recommendations for environmental flow standards and strategies to meet the standards. The stakeholder groups' recommendations are submitted to the Advisory Group and TCEQ. The Advisory Group, with input from its Science Advisory Committee, may submit comments on the B-BEST environmental flow analyses and environment flow regime recommendations. TCEQ is charged, by rule, to adopt appropriate environmental flow standards and establish the amount of unappropriated water, if available, to set aside to satisfy those standards to the maximum extent reasonable when considering human water needs, and to establish procedures to implement adjustment of conditions. Such a rulemaking process must provide for stakeholder participation.

Edwards Aquifer: The Edwards Aquifer Authority (EAA), with the assistance of Texas A&M University, is required to cooperatively develop a recovery implementation program (RIP) for species that are listed as threatened or endangered under federal law and associated with the aquifer. The cooperation is to be accomplished through a facilitated, consensus-based process that involves input from U.S. Fish and Wildlife Service, other appropriate federal and state agencies, and all interested stakeholders. The EAA is required to enter into a Memorandum of Agreement by December 31, 2007 and an implementing agreement by December 31, 2009 with specified federal and state agencies and other stakeholders, with both agreements designed to develop a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit. Texas A&M University is to assist in the creation of a steering committee, composed initially of 21 representatives of listed organizations or interests, to oversee and assist in the development of the implementing agreement. The steering committee, which is to be established by September 30, 2007, encourages public participation, holds hearings open to the

public, hires a program director, and appoints an expert science subcommittee. The science subcommittee analyzes species requirements in relation to the discharge from springs and aquifer levels. Through collaborative process designed to achieve consensus, the science subcommittee makes recommendations, based solely on the best science available, to the steering committee and to all other stakeholders in the RIP process, with initial recommendations to be made by the end of 2008. The steering committee, with assistance from the science subcommittee and stakeholders, makes recommendations to the EAA. The EAA, state and federal agencies and other stakeholders jointly prepare a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit. The program document is to include recommendations for withdrawal adjustments to ensure threatened and endangered species are protected and include provisions to pursue cooperative grant funding. The agreement must be approved by the EAA, specified state agencies and the U.S. Fish and Wildlife Service by September 1, 2012, to take effect December 31, 2012.

UPDATE ON AGENCY ADR PROVISIONS THROUGH THE SUNSET PROCESS

In 2002, the Texas Sunset Advisory Commission adopted an Across-the-Board recommendation (ATB) that encourages state agencies to use alternative dispute resolution (ADR) processes. This ATB reinforces on an individual state agency level the policy stated in the Governmental Dispute Resolution Act:

that disputes before governmental bodies be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the governmental body's operations and programs.

Tex. Gov't Code Ann., §2009.002. The ATB, among other things, directs an agency:

- (1) to develop and implement a policy to encourage the use of negotiated rulemaking and ADR procedures to assist in the resolution of internal and external disputes, and
- (2) to designate a coordinator to implement the policy and collect data.

Through the Sunset review process, this ATB, when applied, is included in each agency's Sunset bill and becomes part of that agency's statutory framework when the bill is passed and becomes law. The ATB was applied for the first time in the **2003 Sunset review process**. Since then, two other sets of state agencies have acquired the ADR provisions through the Sunset process. Below is the list of these agencies.

The **2003 Sunset agencies** that acquired all or part of the ATB:

Texas State Board of Public Accountancy
Texas Board of Architectural Examiners
State Board of Dental Examiners
Texas Board of Professional Engineers
Texas Council on Purchasing from People with Disabilities
Court Reporters Certification Board
Texas Ethics Commission
Texas Funeral Service Commission
Texas Higher Education Coordinating Board
Texas Department of Housing and Community Affairs
Texas Health and Human Services Commission
State Office of Administrative Hearings
Texas Board of Professional Land Surveying
Texas Department of Licensing and Regulation
Texas State Board of Plumbing Examiners

**Board of Tax Professional Examiners
Texas Workforce Commission**

The **2005 Sunset agencies** that acquired all or part of the ATB:

**Texas Board of Chiropractic Examiners
Texas State Board of Examiners of Dietitians
Texas State Board of Examiners of Marriage and Family Therapists
Texas State Board of Medical Examiners (including Physician
Assistant and Acupuncture)
Texas Midwifery Board
Texas Optometry Board
Texas State Board of Examiners of Perfusionists
Texas State Board of Podiatric Medical Examiners
Texas State Board of Examiners of Professional Counselors
Texas State Board of Examiners of Psychologists
Public Utility Commission of Texas
Office of Public Utility Counsel
Texas State Board of Social Worker Examiners
Texas State Board of Veterinary Medical Examiners**

The **2007 Sunset agencies** that acquired all or part of the ATB, along with corresponding bill numbers:

S.B. 904	Texas Alcoholic Beverage Commission
H.B. 2543	Texas Animal Health Commission
H.B. 2460	Texas Commission on the Arts
S.B. 909	Texas Board and Department of Criminal Justice
S.B. 909	Correctional Managed Health Care Committee
H.B. 12	Texas Historical Commission
S.B. 913	Texas State Library and Archives Commission
H.B. 2426	Board of Nurse Examiners
S.B. 909	Board of Pardons and Paroles
H.B. 2173	Prepaid Higher Education Tuition Board
S.B. 914	Texas Real Estate Commission
S.B. 908	State Office of Risk Management
H.B. 2542	Office of Rural Community Affairs
H.B. 2427	Teacher Retirement System of Texas
H.B. 3426	Texas Veterans Commission
H.B. 3140	Veterans' Land Board
H.B. 2024	Texas Veterinary Medical Diagnostic Laboratory

NOTABLE ADR BILLS PASSED BY THE 80th LEGISLATURE

FAMILY & JUVENILES

>>**H.B. 555** by Rep. Phillips

Family Code, Chapter 153

Relating to the use of parenting plans and parenting coordinators in suits affecting the parent-child relationship

Bill Summary:

In 2005, the Legislature enacted H.B. 252 whereby Texas joined other states in formalizing the use of parenting plans and authorizing the appointment of parenting coordinators in suits affecting the parent-child relationship. This bill amends several of the 2005 provisions dealing with parenting plans and parenting coordinators.

ADR Provisions:

Most notably, this bill extends the same confidentiality protections to “the work of a parenting coordinator,” as well as to the parties and any other person who participates in the parenting coordination as those afforded alternative dispute resolution processes under Chapter 154 of the Civil Practice and Remedies Code. Previously, only the parenting coordinator was shielded from certain disclosures. Another change is that the agreed parenting plan is no longer required to but may contain a dispute resolution procedure. Also, the parenting coordinator may not only be appointed by the court on its own motion but also by a motion or agreement of the parties. The court may only appoint a parenting coordinator after notice and hearing and a specific finding that: (1) the case is high-conflict; or (2) there is good cause shown for the appointment of a parenting coordinator and the appointment is in the best interest of any minor child in the suit.

>>**H.B. 772** by Rep. Dutton

Family Code, Chapters 107, 162 & 203

Relating to suits affecting the parent-child relationship, including the powers and duties of domestic relations offices and the conducting of social studies.

Bill Summary:

This bill in part amends the Family Code by defining social study and social study evaluator. Social study is defined in terms of an evaluative process through which information and recommendations regarding the adoption of a child or possession of or access to a child may be made to a court, the parties, and the parties’ attorneys. The new language also sets forth the minimum qualifications of a social study evaluator.

ADR Provision:

Section 203.004 broadens the functions of the domestic relations office so that it may provide an informal forum for alternative dispute resolution (instead of just mediation) to resolve disputes under this code (instead of the section). The domestic relations office may also provide parenting coordinator services under Chapter 153. The administering entity may then authorize a domestic relations office to assess and collect a reasonable fee for alternative dispute resolution and parenting coordinator services.

>>**H.B. 2291** by Rep. Farias

Human Resources Code, Chapter 141

Relating to a study of victim-offender mediation programs for juvenile offenders

Bill Summary:

This bill requires the Texas Juvenile Probation Commission to conduct a study of established victim-offender mediation programs for juvenile offenders in this state. The study will be used to consider the effect on the state's juvenile justice system of establishing guidelines for and expanding the implementation of victim-offender mediation programs for juvenile offenders. The bill lists elements that the study must cover, including the number of juvenile probation departments that have victim-offender mediation programs, the number of children involved in these programs, the number of mediation agreements established annually in these programs and the funding sources and costs of the programs. The Commission must provide its report no later than January 1, 2009 to each member of the Legislature and include estimated costs of expanding victim-offender mediation programs, a review of the benefits to participants, and recommended legislation for establishing guidelines to expand these programs.

The original version of the bill would have directed each juvenile board to implement and administer a victim-offender mediation program in accordance with guidelines adopted by the Commission.

PENAL CODE/ CRIMINAL PROCEDURE

>>**S.B. 103** by Sen. Hinojosa

Criminal Procedure, Articles 2.12 & 104.003

Human Resources Code, Chapter 61

Government Code, Chapter 411

Relating to the Texas Youth Commission and the prosecution of certain offenses and delinquent conduct in the Texas Youth Commission and certain other criminal justice agencies; providing penalties.

Bill Summary:

In light of complaints concerning the care of youths incarcerated with the Texas Youth Commission (TYC), the bill provides for various changes in the

management and operations of the Texas Youth Commission. Among other things, the commission is to establish an office of the inspector general to investigate crimes and fraud, and the Texas Rangers are to investigate the Texas Youth Commission on monthly unannounced visits and make reports to the Sunset commission.

ADR Provisions

The bill establishes an office of independent ombudsman at the commission. The office is to be a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to the commission, including a child released under supervision before final discharge. As soon as practicable, after the effective date of this section, the executive commissioner of the commission shall appoint the initial independent ombudsman for a term of office expiring February 1, 2009. For each subsequent term, the governor shall appoint the independent ombudsman with the advice and consent of the senate. The independent ombudsman's duties include: review the procedures established by the commission and evaluate the delivery of services to children to ensure that the rights of children are fully observed; review complaints filed with the independent ombudsman concerning the actions of the commission and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman; provide assistance to a child or family who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the child. The independent ombudsman shall also submit on a quarterly basis to the governor and members of the legislature a report that describes the work of the independent ombudsman and includes the results of any review or investigation and recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman.

>>H.B. 1944 by Rep. Coleman

Government Code, Chapter 501

Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.

Bill Summary:

This bill provides that the Texas Department of Criminal Justice must adopt a policy that provides, among other things: for a designated administrator at each correctional facility to post information throughout the facility describing how an inmate may confidentially contact the ombudsperson regarding a sexual assault; for the office of the inspector general, at the time the office is notified of the sexual assault, to arrange for a medical examination of the alleged victim; and for each correctional facility to collect statistics on all alleged sexual assaults against inmates confined in the facility and to report the statistics to the ombudsperson. It defines "correctional facility" as a facility operated by or under contract with the department.

ADR Provisions:

The Board of Criminal Justice shall appoint an ombudsperson, who is to coordinate the Texas Department of Criminal Justice's efforts to eliminate the occurrence of sexual assault in correctional facilities. The ombudsperson's duties include overseeing the administrative investigation of inmate complaints of sexual assault, ensure the impartial resolution of inmate complaints of sexual assault, and collect statistics regarding all allegations of sexual assault from each correctional facility in accordance with the standards established by the National Prison Rape Elimination Commission. While the ombudsperson may collect evidence and interview inmates or employees at correctional facilities in conducting an investigation of an inmate complaint of sexual assault, the ombudsperson may not require an inmate who reports a sexual assault to assist in the investigation or prosecution of the offense. The Department must adopt a policy that posts information on how inmates can contact the ombudsperson confidentially regarding sexual assault and write a confidential letter to the ombudsperson, as well as how the correctional facility is to report statistics to the ombudsperson.

STATE AFFAIRS

>>**S.B. 178** by Sen. Wentworth

Government Code, Chapter 552

Relating to working papers and electronic communications of State Office of Administrative Hearings administrative law judges

Bill Summary:

The bill lists working papers and electronic communications of administrative law judges at the State Office of Administrative Hearings that are excepted from public disclosure requirements of Section 552.021.

ADR Provision:

The bill excepts drafts of orders made in connection with conducting alternative dispute resolution procedures.

>>**H.B. 3273** by Rep. Crownover

Natural Resources Code, Chapter 81

Relating to the powers and duties of the Railroad Commission of Texas; providing an administrative penalty.

Bill Summary:

The bill provides in part that the Railroad Commission may impose administrative penalties for what it determines to be prohibited discrimination by entities in the natural gas industry. In particular, after notice and opportunity for hearing, the

Commission may impose an administrative penalty against a purchaser, transporter, or gatherer of natural gas if the commission determines that the person engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the commission against the person relating to the person's purchase, transportation, or gathering of the gas. Also, the Commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the commission to have: (1) failed to participate in the proceeding; or (2) failed to provide information requested by a mediator in the proceeding.

ADR Provision:

Under new Section 81.059, the Commission may appoint a Commission staff member as the mediator of an informal complaint filed with the commission, or the parties may agree to employ and pay for an independent mediator. If the mediation takes place somewhere other than the Commission's offices in Austin at the parties' request, then the parties will reimburse the Commission for travel costs to those other locations. The commission is not prohibited from requiring the parties to participate in a formal complaint resolution proceeding. Filing an informal complaint is not a prerequisite for filing a formal complaint. At least every year, the Commission shall notify oil and gas producers of any informal complaint resolution process provided by the Commission.

SELECTED ADR LEGISLATION FILED IN BUT NOT PASSED BY THE 80th LEGISLATURE

While the following bills were not enacted during this past session, we mention them knowing that they may resurface in sessions to come.

VICTIM-OFFENDER MEDIATION

>>**H.B. 2437** by Rep. Escobar

Code of Criminal Procedure, Chapter 56

Relating to the establishment, operation, and funding of pretrial victim-offender mediation programs.

This bill would have amended Chapter 56 of the Code of Criminal Procedure by adding a subchapter C governing victim-offender mediation programs. Under the bill, the commissioner's court of a county or governing body of a municipality would have had to establish pre-trial victim-mediation programs for persons arrested and charged with a misdemeanor or state jail felony under Title 7 of the Penal Code and not previously convicted of a felony or misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only. The attorney representing the state would determine which defendants were eligible to participate in the mediations and would obtain consent from both the victim and the defendant before proceeding with the mediation.

The bill stated that the mediation programs could be conducted by anyone appointed by the court who is not the state's attorney or the attorney of the defendant, whether or not the person were a trained mediator. If the defendant successfully fulfilled the terms of the mediation agreement, the court would have dismissed the indictment or information against the defendant

>>**H.B. 2750** by Rep. McClendon

Code of Criminal Procedure, Chapter 56

Relating to the establishment, operation, and funding of pretrial victim-offender mediation programs in certain counties.

The bill was very similar to **H.B. 2437** by Rep. Escobar, above, but with a narrower applicability. It required a pre-trial victim-offender mediation program only in counties with a population of one million or more but less than 1.4 million.

ARBITRATION

>>**S.B. 1782** by Sen. West

Civil Practice and Remedies Code, Chapters 171 & 181

Relating to arbitration proceedings.

As in past sessions, Senator West introduced a few arbitration bills. This one was filed a little later in the session, on March 9, and incorporated provisions from earlier bills. On the same day, Representative Gattis filed H.B 3885, which would have amended the Texas Arbitration Act in similar ways but less comprehensively.

The bill would have amended various sections of Chapter 171, the Texas Arbitration Act. To highlight a few: section 171.021 would have been amended by adding Subsection (d) to read: "An order compelling arbitration may not violate a right protected by the United States Constitution or the Texas Constitution. The provisions of Section 171.098(a) apply to an appeal on constitutional grounds from an order compelling arbitration." Section 171.041 would have been amended to provide that appointed arbitrators must satisfy objective qualifications and that a court may not appoint "unqualified" arbitrators. Section 171.088(a) would have been amended to add that, on application, the court could vacate an award if "the award clearly violates fundamental public policy." Section 171.092, concerning judgment on the award, would have been amended by adding that, notwithstanding stated limitations, "the court may vacate, modify, or correct an award as if the award were a judgment entered by a court sitting without a jury." The same standard of review would be applied by an appellate court. Section 171.098(a) would have been amended to allow for an appeal of a judgment granting (as well as denying) an application to compel arbitration.

The bill would also have added Chapter 181, whose stated purpose was to require the provision of information needed to evaluate whether the public policy supporting arbitration was being served and to establish a basic system for evaluating and ensuring the accountability of arbitrators and arbitration services providers. It was addressed mostly at consumer and employment arbitrations. The arbitrator or arbitration service provider would have been required to file an "arbitration disclosure" with the Office of Court Administration (OCA) within three months of signing the award. No party name would have been revealed, but information provided would have included fees and expenses charged by the arbitrator and arbitration service provider, which party prevailed, and the nature of the prevailing party (e.g. consumer, business). OCA would have had to make the information available on its website and would have been the enforcement authority.

>>H.B. 3091 by Rep. Frost
Civil Practice and Remedies Code, Chapters 3 & 174
Insurance Code, Chapter 565
Relating to dispute resolution

This bill would have added Chapters 3 and 174 to Title 7 of the Civil Practice and Remedies Code and Chapter 565 to the Insurance Code. The new Chapter 3 would have precluded written agreements entered into before a dispute arose from waiving parties' rights to a hearing or other dispute resolution forum; or

injunctive relief, class action relief or exemplary damages. Also, written agreements could not require parties to keep the resolution of a future dispute confidential unless the parties later agreed, after the dispute arose, to keep it confidential.

The new chapter 174 would have applied to consumer arbitration agreements that require disputes under the contract to be submitted to binding arbitration (including employment agreements). This chapter would have made such agreements void and unenforceable “except to the extent federal law provides for the agreement’s enforcement.” The chapter also would have required a person who drafts a consumer arbitration agreement to disclose certain information regarding any required arbitration, such as filing fee, average daily cost of an arbitrator, and the proportion of the costs each party may bear. Such information could have been considered in making a determination on whether the arbitration agreement was unconscionable or otherwise not enforceable under other law. The rest of the chapter related to “consumer arbitration companies” - not defined but also referred to as “private arbitration companies” – and their obligation to collect and publish (on their website, if one existed) certain information regarding each consumer arbitration, including name of company involved as party, type of dispute, whether the consumer prevailed, the amount of the award, the name of the arbitrator, and the arbitrator’s fee.

The proposed new chapter 565 under the Insurance Code would have prohibited an insurance policy or other listed coverage agreements from requiring the covered person to submit to arbitration a dispute related to the coverage that arises after the agreement is entered into.

>>H.B. 3569 by Rep. Rose / **S.B. 1167** by Sen. Duncan (Identical)
Civil Practices and Remedies Code, Chapter 51
Relating to appeals in cases arising under the Federal Arbitration Act.

The bill would have amended Subchapter B, Chapter 51 of the Civil Practice and Remedies Code, by adding Section 51.016, authorizing a person to take an appeal or writ of error to the court of appeals from the judgment or interlocutory order of a district court, county court at law, or county court under the same circumstances that an appeal from a federal district court’s order or decision would be permitted by 9 U.S.C. Section 16, in a matter subject to the Federal Arbitration Act (9 U.S.C. Section 1 et seq.)

>>H.B. 497 by Rep. Madden
Civil Practice and Remedies Code, Chapter 160
Relating to resolution of disputes arising under certain construction contracts.
This bill had also been filed in the 2005 session. It would have given statutory support to the existing practice of using dispute resolution boards to resolve disputes in construction contracts. It established requirements for submitting a dispute arising under a construction contract between a governmental entity or a

private real property owner and contractor for the construction, repair, or improvement of real property in this state the value of which is at least \$1 million, to a dispute board. The bill included provisions on the composition and selection of the members of the dispute board, specific qualifications for members of the dispute board, and the role of board recommendations in formal and informal proceedings.

ELECTIONS

>>S.B. 1647 by Sen. Duncan

Elections Code, Chapter 31

Relating to certain election practices and procedures, including provisions relating to the conduct of elections, voting systems, and recounts.

This bill would have allowed the secretary of state to refer disputes over election services contracts under section 31.092 or 31.093 to an alternative dispute resolution procedure. These contracts are between counties and political subdivisions or political parties. For any alternative dispute resolution process, the parties, or the secretary of state if the parties could not agree, would have selected an impartial third party whose qualifications met the requirements of Section 154.052, Civil Practice and Remedies Code. If the parties were not able to resolve their conflict through the alternative dispute resolution process, the bill would have allowed the secretary of state to prescribe the terms of the contract or instruct the parties not to enter into a contract.

OMBUDS

Two bills would have statutorily secured some level of confidentiality for ombuds. The first one was filed by Senator Wentworth: S.B. 160. Then, Representative Rose filed H.B. 3578 (he also had filed H.B. 2314, which was virtually identical to H. B. 3578). The difference between S.B. 160 and H. B. 3578 was largely in the scope. S.B. 160 excluded public entities by providing that the term “employer” did not include a state agency, political subdivision, or other public entity or instrumentality.

>>H.B. 3578 by Rep. Rose

Civil Practice and Remedies Code, Chapter 160

Relating to the confidentiality of certain communications involving an ombuds program established by an employer as an alternative dispute resolution service.

Under current law, ombuds programs have had only limited success in protecting the identities of parties and confidential information when ombuds are subpoenaed to testify in a formal proceeding (Bill Analysis, Senate Research Center). H.B. 3578 would have allowed the ombuds program to maintain the

confidentiality of communications with employees and provided the legal right of ombuds programs to withhold the identity of the complainant and to protect confidential information even in the face of a subpoena. This bill would have amended Title 7, Civil Practices and Remedies Code, by adding Chapter 160 to provide that employers may establish an ombuds program to provide alternative dispute resolution at the workplace to help employees resolve workplace and organizational disputes and to permit them to have confidential communications on issues of concern or conflict, including allegations of misconduct. The bill specified that this chapter would have applied only to ombuds programs where the employer had expressed in writing that this chapter was to apply to them. Employers were free to choose to form another ombuds program or alternative dispute resolution procedure that would not be subject to this chapter.

PROPERTY TAX

Two House Bills pertained to binding arbitration as an option to resolving property appraisal issues.

>>H.B. 524 by Rep. Woolley
Tax Code, Chapter 41

Relating to the determination through binding arbitration of certain ad valorem tax protests brought by property owners

The bill would have amended Chapter 41 of the Tax Code by allowing binding arbitration as an alternative to an *initial protest* brought by the property owner to an appraisal review board, if the appraised or market value of the property as determined by the appraisal district is at least 5% greater than the appraised or market value of the property for the preceding tax year. The bill provided specifics on notice requirements and filing of requests for binding arbitration. The comptroller would have been in charge of keeping a registry of qualified arbitrators from which the parties could jointly select an arbitrator or have one appointed for them.

>>H.B. 3194 by Rep. Hill
Tax Code, Chapter 41

Relating to binding arbitration of certain appraisal review board orders

This bill would have amended Section 41A of the Tax Code, which was added last session and allows a property owner to appeal an appraisal review board order through binding arbitration. The amendments, among other things, would have made the section apply to an owner's homestead regardless of the appraised or market value and would have expanded the criteria for arbitrators' qualifications.