

# Program Perspectives

A Guide to League Issues

2016-2018

*League of Women Voters of Texas*



League of Women Voters of Texas

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## LEAGUE PRINCIPLES

The Principles are concepts of government to which all Leagues subscribe. They are the beliefs shared by League members everywhere. Principles are the basis upon which national, state, and local program is adopted. The Principles themselves may be used to take action at any level of government. However, because they are broad statements, such action is usually taken in conjunction with current League positions. Additional information on their usage is found in *Impact on Issues* (LWVUS).

The League of Women Voters **believes:**

- in representative government and in the individual liberties established in the Constitution of the United States.
- that all powers of the U.S. government should be exercised within the constitutional framework of a balance among the three branches of government: legislative, executive, and judicial.
- that democratic government depends upon informed and active participation in government and requires that governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible.
- that every citizen should be protected in the right to vote; that every person should have access to free public education that provides equal opportunity for all; and that no person or group should suffer legal, economic, or administrative discrimination.
- that efficient and economical government requires competent personnel, the clear assignment of responsibility, adequate financing, and coordination among the different agencies and levels of government.
- that responsible government should be responsive to the will of the people; that government should maintain an equitable and flexible system of taxation, promote the conservation and development of natural resources in the public interest, share in the solution of economic and social problems that affect the general welfare, promote a sound economy, and adopt domestic policies that facilitate the solution of international problems.
- that cooperation with other nations is essential in the search for solutions to world problems, and that the development of international organization and international law is imperative in the promotion of world peace.

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## FOREWORD

*Program Perspectives* is a complete statement of all LWV-Texas program positions, including an explanation of the original study adoption, a history/summary of all state advocacy subsequent to the adoption of the position, and current publications on each position, if any. It is an essential guide for local presidents, program vice-presidents and study or action chairs, and it will help local League leaders understand and act on state League program.

*Program Perspectives 2016-2018* incorporates changes adopted by delegates to the LWV-TX Convention in March 2016, and action taken during the 84th Texas Legislature. *Program Perspectives 2016-2018* replaces all previous versions of this title. Outdated versions should be discarded or filed separately to avoid confusion about what is current state program.

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**What is program?** The word “program” has a special meaning in the League. It is not a meeting or a series of speakers. League program consists of the governmental issues selected by League members for study and—after consensus is reached—*action*.

*Program Perspectives* is a guide to the issues that League members across the state have studied and on which they have reached consensus at the state level. These are League of Women Voters of Texas (LWV-TX) program positions. LWV-TX may also take action at the state level using LWVUS positions. The LWV-TX and LWVUS positions are the **only** positions on which LWV-TX may take action. The LWVUS positions that we regularly use are listed at the end of this book, with a summary of our action.

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**What is Program Review?** In order to keep LWV-TX program positions current, certain positions are periodically updated. Reviews are recommended by members during state Program Planning, by Issue Chairs and/or the State Board. The review is carried out by the appropriate Issue Chair and/or a board-appointed committee. If any changes are recommended by the Board, they must be approved by members at the following statewide conference or convention. **All positions** are readopted at each biennial Convention with any changes approved by Convention delegates.

### A FEW USES FOR PROGRAM PERSPECTIVES:

- To educate local presidents, program/action vice-presidents, and other members about state positions
- To find state positions that may be used as a basis for action on local issues

- To find additional background when responding to Action Alerts or other calls for action
- To educate members about state program during the program planning process. During the year before convention, members will recommend state program positions they wish to have reviewed or amended by concurrence
- To answer members' questions about the kinds of change we advocate in state government.
- To help members with program language when they write letters, speeches, news releases, etc.

## TAKING ACTION: GUIDELINES FOR LOCAL LEAGUES

### **A definition of League action:**

Action is our League effort to bring about governmental change based on the positions we derive through member study and consensus. Because we are a multi-level organization with positions at each level, we must:

- Coordinate our action efforts in order to speak with one voice
- Choose issues for priority attention at all levels in order to allocate resources effectively and maximize political impact.

If you are unsure about what action to take, please contact the appropriate LWV-TX Issue Chair (listed in the *LWV-TX Handbook and Directory*), or call the state office at 512.472.1100.

### **These action guidelines apply to all Leagues:**

- Leagues only act when we have a local, state, or national position or are acting under League principles.
- Leagues never lobby in opposition to a League position.
- Elected officials respond best to their own constituents. Therefore, lobby only your own representatives unless otherwise directed.
- Local Leagues may use any local, state, or national position to lobby at the **local governmental level only** without asking for authorization from state or national.
- For guidance and background information read *Fundamentals for Local League Boards* (LWV-TX,) *Impact on Issues* (LWVUS,) and *Program Perspectives* (LWV-TX.)

### **Before taking action on an issue, ask yourself:**

- Under what position do you wish to act--local, state, national, or principles?
- What do you wish to accomplish?

- Who is authorized to act for your League? (Check your local policy guide.)
- Will state or national or other local Leagues be affected by this action?
- Is authorization needed from LWV-TX, LWVUS, or other local Leagues before you act? (See chart on next page.)
- Who must receive copies of your letter, testimony, etc? (See chart on next page.)
  - \*If you have adopted a local program that will require advocating state legislators and LWV-TX or LWVUS do **not** have positions on the issue, call LWV-TX Advocacy VP for authorization to lobby state legislators.

**When you receive action requests:**

There are three kinds of action requests: **Action Alerts** from LWVUS, LWV-TX or your local League. Action in response to these requests *is expected* and does not require authorization.

- An Action Alert means your League's help is critically needed. Local Leagues are expected to respond to LWVUS and LWV-TX Action Alerts or explain to the appropriate board (national or state) why they are not responding. Action Alerts provide specific instructions.
- LWV-TX Action Alerts are sent from the state office to all local League members by email. Action Alerts contain information on legislation or governmental action/s and suggestions for action/s to be taken. The President of the local League will answer the Alert in the name of the local League and return the Action Alert Response form to the state office. Indicate on the response form the action taken or why action was not taken.
- All other local League members are strongly requested to take action as private citizens on LWVUS and LWV-TX Action Alerts.

**When you initiate action:**

Action you initiate often requires contacting officials shared with other Leagues. Occasionally, you may wish to contact officials other than your own. For these reasons, authorization from other local Leagues is often necessary when you initiate action.

Examples:

- LWV- Houston wants to testify before a state legislative committee holding a hearing in Houston on land use and critical areas protection. Houston members believe this is a good opportunity to advocate the League's state land use positions. After authorization by LWV-TX, they are ready to act.
- LWV-Tarrant County wants to appear before the North Central Texas Council of Governments on a regional issue. After consulting other Leagues in the region they speak at the COG meeting.

*When your League wants to initiate action on its own behalf, use the following chart. If you do not find your needs addressed, call the appropriate program chair or the state office.*

***What to do when your League initiates action before a . . .***

|   |                |
|---|----------------|
| <p>local government or official in your League area only<br/>(Examples: city council, mayor, planning commission, school board, etc.)</p>   | <p>A</p>       |
| <p>regional agency or official which is shared with other local Leagues<br/>(Examples: common city government or special purpose district,<br/>council of governments, regional task force, etc.)</p> | <p>A, B, C</p> |
| <p>state government or official<br/>(Examples: state representatives, senator, governor, state agency, etc.)</p>  | <p>A, B</p>    |
| <p>federal government or official<br/>(Examples: Member of Congress, federal agency, the president, etc.)</p>   | <p>A, B, D</p> |

**A** - local board decision; copy to local League files; **B** - authorization from LWV-TX; copy to the state office; **C** - authorization by local Leagues affected by this action; copy to these local Leagues; **D** - authorization by LWVUS (sometimes LWV-TX can authorize); copy to national office

# **We Support 2016-2018**

## **League of Women Voters of Texas**

*We Support* summarizes League of Women Voters of Texas (LWV-TX) program positions reached by statewide member study and agreement. LWV-TX positions are detailed in *Program Perspectives*. LWV-TX also acts at the state level under positions taken by the League of Women Voters of the United States. Those positions are detailed in *Impact on Issues* (LWVUS). These positions are **not** in order by priority.

### **I. GOVERNMENT**

**ACTION TO ACHIEVE AN EFFICIENT, EFFECTIVE, AND RESPONSIVE STATE GOVERNMENTAL SYSTEM THROUGH CONSTITUTIONAL REVISION AND LEGISLATIVE ACTION, WHICH WOULD INCLUDE:**

#### **Constitutional Revision**

Support of revision of the Texas Constitution to make it a framework of basic law

#### **Election Laws and Voting Rights**

- Measures to ensure every citizen's right to vote and the right to a secret ballot
- Improved procedures for registration of voters
- Uniformly enforced election procedures, clearly stated election laws that facilitate citizen participation
- Election laws that facilitate citizen participation, voter convenience, and procedures to increase voter participation

#### **Executive, Legislative, Judicial**

- Measures to increase the effectiveness of the executive department and the efficiency of the legislature, including annual sessions and adequate compensation for legislators
- Selection of judges for the Texas Supreme Court, the Texas Court of Criminal Appeals, and the Appeals Courts with nomination by a diverse, representative, and nonpartisan commission and appointment for a specific term, or appointment by the Governor, followed by an unlimited number of periodic elections; selection of district court judges may be by non-partisan election or appointment/retention

#### **Financing State Government**

- Constitutional and statutory provisions for flexibility within a coordinated finance structure, equitable taxation, and increased accountability including
- removing from the constitution and making statutory the provisions for dedicated funds, ad valorem tax exemptions, and dollar amount of debt limitations
- an equitable system of taxation that assures adequate revenues and is easily administered budget execution as the joint responsibility of the executive and legislative branches

### **Homeowners Association Reform**

Protect against unreasonable foreclosure on homesteads, priority of payments, elections safeguards

### **Intestacy**

Maintenance of equitable state intestacy laws

### **Campaign Finance/Ethics**

Campaign finance laws and practices that eliminate excessive and/or inappropriate spending including

- limits on amounts of campaign contributions to a candidate from individuals and PACs and on total contributions a candidate may accept
- limits on the time during which a candidate may accept contributions
- limits on the amount a candidate may spend to get elected
- limits on the contributions that can be accepted by political parties and enforcement of regulations governing their use
- availability of public financing for state elected offices, if candidate limits private contributions and spending

### **Ethics**

Laws, practices, and policies governing political campaigns which protect citizens' right to know, strengthen accountability, combat corruption and undue influence, promote fairness and accuracy with full, timely disclosure through electronic filing, including

- strengthened financial disclosure and reporting requirements for candidates and lobbyists
- a fairness code governing the conduct of individuals and groups engaged in election campaigns
- media responsibility to encourage and accurately report candidate discussion of issues
- candidates' responsibility to articulate positions on issues and control the conduct of their campaigns
- voluntary limits on campaign spending

### **Public School Finance**

A public school finance system that provides an equitable distribution of funds and taxpayer equity including

- a sufficient level of state support to Texas public schools to ensure a high quality education
- state equalization aid to local districts, allowing some local enrichment; and state assistance for essential construction or rebuilding
- opposition to the voucher system approach, as well as choice options that do not promote racial integration and/or equal access to quality education

### **Public School Testing and Accountability**

Measures to achieve state-mandated standardized achievement tests that measure individual mastery and proficiency, are used as a diagnostic tool to measure growth and progress over time, and are developed by Texas educators who are experts in their fields. Also a curriculum that provides academic rigor and is developed with input from educators, the public, business groups and elected and appointed officials who represent the state's diverse population

- an accountability system that identifies academic achievement and gaps in performance in subgroups but is not used to establish school or district ratings or to close schools
- equitable opportunity for academic achievement for all students, and support for teachers in the mandated testing environment.

### **Redistricting**

Measures to achieve an effective method for drawing boundaries for congressional and state legislative districts through legislative and constitutional revision including

- creation of a commission with responsibility of formulating a redistricting plan, with the approval of the legislature
- creation of a special legislative session called for the sole purpose of redistricting if a commission is not initially responsible
- criteria for redistricting based on equal population and single member contiguous districts
- consideration given to ensuring that districts be compact, that they coincide with boundaries of local political subdivisions, and that they do not dilute the voting strength of minorities

### **State-Local Relations**

- More flexible structures and adequate legislative and financial powers for counties and municipalities
- Comprehensive regional state planning, including regional councils

## **II. ADMINISTRATION OF JUSTICE**

### **ACTION TO ACHIEVE AN EQUITABLE SYSTEM OF CRIMINAL JUSTICE IN TEXAS FOR ADULTS AND JUVENILES WHICH WOULD INCLUDE:**

#### **Criminal Justice**

- Expansion of pretrial diversion programs, institution of an adequately funded public defender system, and improvements in the bail bond system
- Improvement in minimum training requirements and in-service programs for law enforcement personnel
- Revision of the Penal Code to reduce disparity of sentences and to increase sentencing options
- Elimination of jury sentencing
- Adequately funded community corrections programs and facilities

- Provision of a secure environment for prison inmates; adequate educational opportunities; access to health care; programs to assist inmates in the transition to the free world; compensation to inmates for their labor
- Passage of state laws which prohibit wiretapping

**Reform of the capital punishment system in Texas with the following measures:**

- prohibit the execution of the mentally retarded, mentally ill, and juveniles under the age of 18 at the time the crime was committed
- observe the provisions of the Vienna Convention by providing foreign nationals access to consular officials from their native countries
- provide the option of life without parole, in addition to execution and life imprisonment, to juries in capital cases
- require the Board of Pardons and Paroles to hold open meetings and to give explanations for its decisions
- establish a moratorium on all executions in Texas while an official study of the capital punishment system is conducted

**Drug Laws and Policies**

Consideration of substance abuse and drug addiction as public health issues with the following preventive measures

- promote educational programs aimed at keeping children from using drugs
- provide public education programs directed to adults
- implement sterile needle and syringe exchange programs to prevent blood-borne diseases
- promote drug treatment programs as an alternative to incarceration
- remove criminal penalties for cannabis when recommended by a physician

**Juvenile Justice**

- Measures to ensure an effective state juvenile justice system in which the main goal is rehabilitation, providing access to adequate and appropriate rehabilitation services and programs to every juvenile offender
- Implementation of a comprehensive intervention strategy to deal effectively with juvenile violence and delinquency
- Implementation of programs and policies to prevent juvenile violence and crime
- An adequate level of funding to accomplish these goals, with highest priority given to prevention, followed by intervention, then corrections

**Spousal Rape**

Redefinition of rape to include spousal rape

**Human Trafficking**

Opposed to all forms of domestic and international human trafficking of adults and children, including sex trafficking and labor trafficking. We consider human trafficking to be a form of modern-day slavery and support measures to prevent the use of force, fraud or coercion to exploit a person for sexual or labor purposes, to prosecute traffickers and to protect victims.

- Federal, state and local governments should collaborate to fund and implement effective strategies for prosecution.
- Federal, state and local governments, in cooperation with non-governmental agencies, should fund and provide essential services to and remedies for victims and survivors.
- Federal, state and local governments, in cooperation with non-governmental agencies, should fund and provide education and awareness programs on human trafficking in our communities and schools.

### **Payday and Auto Title Loans in Texas**

The League of Women Voters of Texas supports policies, legislation, and programs that enable a small dollar loan market that maintains access to affordable credit while safeguarding consumers. Payday and auto title loan businesses should be regulated so that they function both as a consumer service and a successful business.

- Consumer credit regulations that increase restrictions on short-term loans and require lenders to offer affordable loans,
- Financial education measures that increase the ability of consumers to successfully use small dollar loan financial products, and
- State and private funding of measures to prevent long-term debt by borrowers in need of immediate cash.

## **III. SOCIAL POLICY/HUMAN RESOURCES**

**ACTION TO ACHIEVE EQUAL RIGHTS FOR ALL; TO COMBAT DISCRIMINATION AND POVERTY; AND TO PROVIDE EQUAL ACCESS TO HOUSING, EMPLOYMENT, QUALITY EDUCATION, AND HEALTH CARE IN TEXAS WHICH WOULD INCLUDE:**

### **Child Abuse and Neglect**

Legislation, policies, services, and programs to protect children from abuse and neglect including adequate funding and provisions for

- prevention programs
- investigative and reporting procedures
- appropriate correctional measures and counseling

### **Child Care**

Development and implementation of policies, legislation, and programs that address the needs of all Texas children and families for accessible, affordable, quality child care

### **Child Support Enforcement**

Equitable and efficient means of enforcing court orders for child support

### **Domestic Violence**

- Adequate funding for programs that work to eliminate the incidence of domestic violence and to alleviate its effects
- Appropriate penalties for offenders
- Easier access to protective orders
- Improved enforcement, administrative procedures, and training for criminal justice professionals
- Financial compensation to victims from their abusers
- Improved accessibility to support services

### **Equal Opportunity/Income Assistance**

- Removal of the ceiling on income assistance spending from the state constitution
- Provision by the state of supportive services, such as health care, child care, family planning, legal aid, and job training for income assistance recipients
- Development of an effective human relations commission

### **Health Care for Those of Lesser Means**

Access to basic health care services by persons at risk of medical indigency with special attention to children of low-income families, and persons of low income who are elderly, pregnant, or mentally ill

### **Health Care for Older Texans**

- Creation of a comprehensive health care system for older Texans that ensures a seamless continuum of quality of care
- Care that includes integration of healthcare service with individual healthcare plans and a continuum of services from screening to long-term and hospice care;
- Strict enforcement of high standards for all long-term care; programs to improve training, pay, benefits and retention of personnel

### **Immigration**

- Adequate funding for local, public and private programs that meet the special needs of immigrant populations
- Development and utilization of an immigration status verification system that protects privacy and ensures accuracy

### **Post-Divorce Payments**

Enable courts to award adequate post-divorce (spousal maintenance) payments when appropriate

### **Services for the Seriously Mentally Ill**

Access to services designed to help people who are seriously mentally ill reach and maintain an optimal level of functioning in the least restrictive environment

## **IV. NATURAL RESOURCES**

### **ACTION TO ACHIEVE CONSERVATION, PROTECTION, AND JUDICIOUS DEVELOPMENT OF THE STATE'S NATURAL RESOURCES WHICH WOULD INCLUDE:**

#### **Air and Climate Change**

State control of air pollution through

- power to set and enforce standards stricter than those required by the federal government and laws allowing local and regional governments to set and enforce standards stricter than those of the state
- adequate funding for research, planning, and enforcement
- citizen involvement in the rulemaking and enforcement process

#### **Land Use**

State comprehensive land use policy to provide for the orderly development of the state through

- use according to carrying capacity and development compatible with availability of essential natural resources
- preservation of agricultural lands, desirable open space, and desirable existing buildings and infrastructure with preferential tax treatment for each
- a coordinated system of land use management, including the establishment of a state land use agency
- identification and protection of areas of particular significance and rare or fragile ecosystems

#### **Transportation**

A transportation system to move people and goods in a variety of transportation modes through

- emphasis on increased public transportations services and other viable alternatives
- systems that are efficient, convenient, and cost effective
- services for all segments of the population and diverse geographic needs
- minimization of harmful effects to the environment and integration with land use
- expansion of existing routes to include added passenger rail service and freight rail lines

#### **Water**

- Management of water as a natural resource for the benefit of the people and the protection of the environment
- Mandatory water conservation, with adequate citizen education for effective water stewardship

Comprehensive long-range state water planning with emphasis on

- social, economic, environmental, and land use implications

- development of adequate supplies by ecologically and financially sound means
- conservation and reuse of land and fragile ecosystem protection

Protection, conservation, and development of groundwater as an integral part of the comprehensive state water plan for management that would

- maintain quality and protect against contamination
- assure long-term productivity and protect against subsidence and spring flow reduction
- include full public consideration of management options
- assure coordination and adequate funding

## **PROGRAM 2016 – 2018**

*(Adopted by Convention 2016)*

### **Program Review/Update – Redistricting**

Convention 2016 adopted a review of our position on Redistricting. A committee will be formed to study the position and to decide if revisions are necessary. They will bring any recommendations for amendments to the Board for approval so that these changes could be considered at the next statewide meeting or convention.

## **2016-2018 LWV-TX PROGRAM POSITIONS**

With complete wording, explanations, and history of our advocacy

### **I. GOVERNMENT**

#### **A. CONSTITUTIONAL REVISION - 1954, 1959, 1962, 1969, 1971, 1979, 1993**

*The League of Women Voters of Texas supports revision of the Texas Constitution. Principles for a good constitution include:*

- a bill of rights
- a framework of basic law
- clear separation of powers with responsibility definitely assigned
- qualifications for voter eligibility and guarantees of fair elections
- provisions for justice with a minimum of delay
- a coordinated finance structure capable of flexibility
- maximum home rule for municipal and county governments with coordination of overlapping functions
- provisions for support of public education
- provisions for support of public health and welfare services
- provision for amendment and revision
- basic policies regarding state employee selection, retention, and promotion.

### **Explanation: Texas Constitutional Revision**

Interest in Texas Constitutional Revision grew out of a 1948 League "Know Your State" survey. By 1954, the League had reached consensus supporting general revision of the constitution, to be preceded by thorough review and adequate research. By 1959, the League had adopted nine principles for a good constitution, adding a tenth in 1959, an eleventh in 1971, and a twelfth in 1979. The last was dropped after it was superseded by the 1981 position on Initiative and Referendum, which was dropped by delegates to Convention '93. In response to renewed interest in Texas constitutional revision, the 2003 Convention requested that LWV-TX develop a publication with up-to-date information on this position.

### **History: Texas Constitutional Revision**

**1962-1970:** League members agreed in 1962 that a constitutional convention position preceded by qualified research is the most desirable method for general revision of the constitution. A House resolution in 1967 established a 25-member Constitutional Revision Commission, and the governor appointed a League member to the commission. League members, fearing they would be unable to support the commission-revised constitution even if they wished to do so, added a new position in 1969: ". . . preferably by a constitutional convention although alternative methods can be supported."

The completed document, submitted to the legislature in 1969, failed to win the approval of two-thirds of both houses. The League supported this document because it was more logically arranged, shorter, and more understandable. Obsolete sections had been removed. Action in 1969-70 centered on supporting three proposed constitutional amendments. Voters approved the amendment to remove some obsolete, superfluous, and unnecessary sections of the constitution.

**1972-1975:** In 1972, the League supported a constitutional amendment calling for members of the legislature to sit as a constitutional convention beginning in January 1974. Voters approved this amendment, and a 37-member Constitutional Revision Commission was appointed to study the present constitution. A League member was appointed to this commission. At a series of statewide hearings held by the commission, members of both the state League board and many local Leagues testified regarding League positions. The League supported the recommendations of the commission.

As a result of an article and tear-off postcard in the *Texas VOTER*, the League added new details to its Texas Constitutional Revision position: "The question of calling a constitutional convention should be submitted to voters at least every 20 years; the legislature should provide for the election of delegates from each legislative district and should appropriate sufficient funds for the work of the commission and convention."

When the constitutional convention convened in January 1974, League members across the state worked hard to get League positions incorporated in the new constitution. The convention was unable to produce a document to submit to voters. In 1975, the 64th Legislature approved a new constitution to be voted on article by article. Once again the League worked tirelessly for passage of a revised constitution, but all eleven articles were defeated at the polls.

**1987-1989:** The League made constitutional revision an advocacy issue in 1987 when 25 proposed amendments were submitted to voters. The League neither endorsed nor opposed individual propositions, but widely publicized the view that many of the proposals dealt with matters that should not be in a state constitution, and that the large number and complexity of propositions demonstrated the need for constitutional reform. The League reiterated its arguments for reform again in the fall of 1989 when 21 proposed amendments were on the ballot.

At Council '88, League members heard a speech by Professor Terrell Blodgett of the LBJ School of Public Affairs at the University of Texas at Austin in which he encouraged the League once again to look at constitutional revision. He also presented the League with a check from a disbanded coalition account dating to the time of the 1974 constitutional revision efforts. League directors talked to legislators about the possibility of another revision attempt. Legislators and other state officials advised that it would probably be better to wait until after the 1991 session when redistricting had been completed.

**1990's:** Unfortunately, legislators have shown little interest in constitutional revision in the 1991, 1993, 1995, and 1997 sessions. However, the League continues to call attention to the need for a new constitution in conjunction with the inordinate number of proposed amendments that appear on the ballot after each legislative session.

**1999:** Leaders in the House and Senate introduced companion bills to attempt constitutional revision through a legislative process, thus reopening an official discussion after many years of silence. While LWV-TX was not able to support the specific proposals in the legislation, we were able to issue a press release supporting the concept of constitutional revision.

**2005:** LWV-TX provided updated written information to local Leagues about the history of constitutional revision in Texas and the current state of constitutional reform. LWV-TX worked with KLRN in San Antonio to produce and televise a successful program, *Conversations on the Texas Constitution*.

**Reference Available: (Member Update) *Texas Constitutional Revision and the League of Women Voters: What Are Good Citizens to Do?*, 2005**

## **B. ELECTION LAWS VOTING RIGHTS, 1999 (revised), 2010**

*The League of Women Voters of Texas supports every citizen's right to vote, improvement in voter registration procedures, uniformly enforced election procedures, clearly stated election laws that facilitate citizen participation, and the right to a secret ballot. Specific measures include:*

- adequate safeguards against fraud (voter's personal signature on the registration application as well as on the registration card; signature identification at the polls; and accurate and current registration lists periodically revised)

- convenience to the voters
- impartiality of treatment for all voters
- no declaration of party affiliation when registering
- revision of election laws to ensure enforcement
- supervision of all local elections by a single county election authority responsible to a central state authority
- mandatory uniform training for all election personnel
- provision for jointly conducted primaries

Criteria for election administration should include

- reasonable costs for conducting elections
- election laws and procedures that uniformly and regularly produce honest and accurate results.

***The League of Women Voters of Texas supports election laws that facilitate citizen participation and voter convenience, as well as voting procedures that may increase voter participation. Our support includes, but is not limited to, the following:***

- the use of uniform election dates for local and state elections whenever possible
- consolidation of polling places when several governmental entities conduct elections simultaneously
- reduction of the number of days between the primary and general elections
- unlimited access to vote-by-mail with no restrictions
- a permanent vote-by-mail list on which any voter may request to be placed
- the establishment of guidelines which would allow jurisdictions to conduct all vote-by-mail elections
- election day registration
- election day centralized voting, with applicable safeguards
- poll-site Internet voting for military/overseas voters.

### **Explanation: Voting Rights**

The right of every citizen to vote is a principle of the League of Women Voters. The 1976 national Convention delegates adopted voting rights as an integral part of the national program. This added impetus to the Texas state position and provided additional ways for Leagues to take action through vertical programming.

In 1991 the board of directors of LWVUS launched the campaign to "Take Back the System" as the top priority of the League. Included in this campaign was a major grassroots effort to pass the National Voter Registration Act (NVRA), finally passed by Congress in 1993. The League of Women Voters believes the legislature should be given the responsibility and the necessary authority to build a statutory framework essential for a proper electoral system. The specific details of election administration are thus left to legislation.

During Periodic Program Review, 1998-99, positions dealing with election laws which had been part of "Political Campaign Process" were moved to be part of "Election Laws and

Voting Rights," where they seemed to fit more logically.

At Convention 2008, a study of "Voting Procedures to Increase Voter Participation" was adopted. A *Facts and Issues*, consisting of five separate papers, was distributed to members electronically. Consensus on several issues was achieved and were added to our position in 2010.

### **History: Voting Rights**

**1985-1986:** A bill re-codifying the election code was passed by the 1985 Legislature; it became effective January 1, 1986. The re-codification was a result of more than a year's work by the Joint House-Senate Select Committee on Election Code Revision and its advisory committee. LWV-TX was represented on the advisory committee and actively supported the re-codification bill during the session. With passage of this legislation, the LWV-TX position on re-codification was achieved after many years of advocacy. Therefore, delegates to the 1987 League Convention voted to drop the position.

In addition to eliminating obsolete matter and clarifying some ambiguous provisions, the re-codification addressed several of our other positions including: mandatory uniform training for all election personnel; supervision of all local elections by a single county election official responsible to a single state authority; protection of secrecy of the ballot; and restoration of voting rights to ex-felons two years after completion of probation, parole, or mandatory supervision.

**1987-1989:** During the 1987 legislative session, the League supported a bill providing for conjointly operated primaries, which failed to pass. A bill requiring agency-based voter registration passed the legislature but was vetoed by the governor. In 1989 the League supported an omnibus voter registration bill that included voter registration when a person applies for a driver's license or personal identification ("motor voter"), a change in the purge date, and changes in the method of verification by computer. This legislation passed the Senate but died in the House.

**1991:** The 1991 session was a productive one for voting rights issues. A motor voter bill was introduced and strongly supported by the League. Although it appeared to be progressing well, in the waning hours of the session the bill was withdrawn from House consideration by its sponsor when it appeared that strong opposition to the method of funding was certain to kill the bill. However, a similar bill passed quietly through the first special session as a small addendum to the weighty bill reorganizing the Texas Highway Department and the Department of Aviation into the new Texas Department of Transportation. Thus, without fanfare, Texas joined the vanguard of states with motor voter legislation in place.

Additionally, the League supported legislation to extend hours of early (formerly "absentee") voting in person in counties with a population of 100,000 or more, and in counties of 400,000 or more to provide additional places for early voting. This bill eventually passed. Other successful bills supported by the League included one that amends the voter application form by identifying

the "county in which applicant resides and intends to vote." Another bill broadens the jury source to include all those who have a valid driver's license or personal identification card issued by the Department of Public Safety.

**1993:** In 1993, two bills were introduced which would have facilitated voter accessibility to the electoral process by permitting voter registration at all state agencies dealing directly with the public and allowing election day registration at polling places. The League supported these measures and countered opponents' arguments with evidence that similar laws in other states do not encourage fraudulent practices. The bills died in committee.

In the study of the Political Campaign Process in Texas (1991-1993), League members reached consensus in support of changes in election laws to shorten the election cycle. The League believes that a shorter cycle would reduce the cost of campaigning and lessen the pressure on candidates to raise enormous amounts of money. A shorter election cycle was also one of the Texas Ethics Commission's recommendations to the 73rd Legislature. There was some discussion of this recommendation in committee hearings during the 1993 session, but the topic did not gain sufficient momentum for serious consideration.

**1994-1995:** LWV-TX Voting Rights efforts during this period focused on assuring full implementation of the National Voting Rights Act (NVRA) in this state. This national "motor voter" law, which went into effect in January 1995, extends Texas' previously enacted motor voter by providing for voter registration at additional government agencies, including those that serve people with disabilities or provide public assistance. Bills enacted in the 1995 legislative session established implementation procedures that have brought Texas into full compliance with the federal statute.

A League representative served on the state's NVRA Task Force, appointed by the Secretary of State, charged with assisting Texas to achieve the NVRA's goals. The League continued to monitor agencies to ensure that the process is fully implemented and that it works. As we monitor agencies, we hope to learn: Are individuals asked about voter registration? Are voter registration applications readily available? Is assistance offered in completing voter registration applications?

Our position on voting rights is an important way of helping to achieve the purpose of the League of Women Voters to encourage citizens to participate in their government. The League will continue to take action to support the right of every eligible citizen to vote. Though many of the improvements called for in our positions have been implemented, we retain some positions to enable us to act should these rights be threatened, as the following two examples illustrate. In one case, many counties have central election authorities, but many legislators are not comfortable with this arrangement. In the second case, the League believes that a declaration of party affiliation is detrimental to the establishment of a strong two-party system in Texas. Year-round registration with no fee and no party declaration has been in effect for some time in Texas. However, there remain those who would like to see this undone, so we retain our position. In summary, much work for secure voting rights remains, though progress is being made.

**2001:** After disappointments in several past sessions, both houses of the legislature passed, and the governor signed into law a bill which removed at least three of the ten exemptions from the Election Code that provides for four uniform election dates. “This is a bill whose time has come” was the focus of League testimony and work with a special statewide Uniform Election Dates coalition. This reform has been long in coming. A major exemption, and one that created the most controversy, that of school bond elections, has been curtailed. Two of the dates have also been changed to the first Saturday in February and the second Saturday in September. A bill that would have consolidated polling places when several governmental entities conduct elections simultaneously failed to pass.

**2003:** The legislature passed and the Governor signed a bill that implements the Help American Vote Act (HAVA). LWVUS and LWV-TX have been actively involved in HAVA since its inception. Following federal guidelines, the state HAVA bill requires the state to expand the size of its voter registration application to include space for additional requirements and additional voter instructions. It also requires the state to create a statewide, computerized voter registration system that will be the official database for all voter registration purposes. It sets up an administrative complaint process; develops and implements a provisional voter program; places a Direct Recording Electronic (DRE) device in each polling place for disabled voters; creates additional instructional information for voters, including a voter’s bill of rights; and launches a voter education program. The state HAVA legislation includes no state funds, but provides the legal basis for the state to appropriate funds that will be provided by the federal government. Much of the funding will be transferred to county governments to enable them to satisfy new federal mandates.

The most significant change in this legislation for Texas is going from the current system of challenge ballots to one of provisional ballots. This means that any ballot cast by voters who can’t prove (by affidavit) that they are registered, would go to a board that would determine if the ballot should be counted. The bill contains detailed procedures for determining eligibility, how the ballots are handled, how they are counted, disposition, etc. Because of the additional time required for this review, the time period for holding runoff elections will be extended from 3 to 4 weeks.

The legislature also dealt with other election issues such as uniform election dates, tightening loopholes and developing methods for electronic filing and transfer of campaign data, posting and publicizing a list of voter’s rights, and removing the postage paid from the voter registration card. Legislation giving all persons completing a felony sentence voter information at the completion of their sentence, when they in fact become eligible to register to vote, did not pass.

**2005:** Many election law changes were proposed in the 79<sup>th</sup> session. Five of the bills signed into law related to our positions. HB57 reduced the number of election dates elections from four to two. Reducing the number of election dates is a long-held LWV-TX position. The bill eliminated the February and September election, and changed the May election to the second Saturday. The November election date remains the first Tuesday after the first Monday in

November. The bill laid out the procedures for early voting in May and for making the transition to the May and November election.

The issue of a re-countable voting system did not have support. (See *Impact on Issues 2006-2008*, LWVUS for the position on electronic voting adopted by the 2006 LWVUS Convention.) The closest Texas came to addressing electronic voting machines (DRE's) was making tampering with DRE's a 3<sup>rd</sup> degree felony.

HB 2465 dealt with public hearings on approval of electronic voting machines. LWV-TX strongly supported an amendment to this bill that would have strengthened the bill by requiring testing methods such as electronic hash code testing before and after the election, parallel testing of programming and equipment during the early voting and post election, and verification counts from each redundant electronic source provided by the voting system. The amendment failed and Texas was left with weak protection from fraud in connection with DRE's.

Two other bills that addressed ease of voting issues: HB 120 related to using regular polling places even if the regular polling place of the election precinct is not located wholly in the political subdivision holding the election; and HB 2454 would allow a registered voter who has resided in a new county for less than 90 days to vote a limited ballot.

There was a strong push for legislation to require a photo ID at the polls (LWV-TX was part of a coalition that worked against this bill, and it died in committee), and there will be a strong push in 2007 to adopt a photo ID bill. During the interim there will be a focus by the attorney-general's office on potential voter fraud.

HAVA implementation proceeded on schedule. LWV-TX continued to meet with the Secretary of State to keep up to date on HAVA progress in Texas while offering assistance that would be needed to implement the reforms.

**2007:** Five bills regarding the ballot and elections supported by the LWV-TX passed and were signed by the Governor. They are: SB 90 related to establishment of a pilot program to provide a ballot by electronic mail to military personnel serving overseas; HB 629 related to the consolidation of elections; HB 2823 related to voting by a person who applied for a ballot by mail. A voter can request a provisional ballot if they did not receive their ballot by mail; HB 3105 related to a program allowing for countywide voting locations for elections.

HB 770 requiring the Texas Department of criminal justice to give notice to certain persons for their right to vote, supported by the LWV-TX, was passed by the legislature, but was vetoed by the governor.

HB 218 the Voter ID bill, opposed by LWV-TX, was narrowly defeated when Senator Mario Gallegos, recovering from a liver transplant, brought a hospital bed to the Capitol to vote against the bill.

**2009:** After the 81<sup>st</sup> Legislature convened, the Senate changed the rules for passing a Voter ID bill (requiring a photo ID at the polls) from 2/3rds to 3/5ths. (The last time that the 2/3rds rule was ignored was in 2003 when the Senate forced thru the Redistricting plan engineered by Tom DeLay.) This action signaled the start of the push to pass a Photo Voter ID Bill, SB 362, vigorously opposed by LWV-TX. LWV-TX sponsored two press conferences on this issue and participated in a third. At the last Press Conference we presented a two-page statement of Principles for Non-Partisan Voter Reform, a paper developed by the election reform coalition of which LWV-TX is a member. The paper asked others to join with the coalition as we move forward using these Principles to increase voter turnout. (This paper is available in the LWV-TX files and on our website) The Voter ID bill ultimately failed to pass. Toward the end of the session we watched legislative procedural moves aimed at stopping it, among these “chubbing,” or the putting intended obstacles in the way of voting for a bill. There was a Special Session called and Voter ID was not included on that agenda.

Issues that never made it out of committee included: rules regarding electronic voting machines, same-day registration and procedures for voting. SB 310, supported by LWV-TX, allowing counties to have super precincts on election day, was added as an amendment to another bill and passed. It authorizes five counties to apply for a trial of super Precincts.

The Governor vetoed one election bill supported by LWV-TX that would have required the Secretary of State to develop a system for accepting voter registration applications when the information provided by the voter does not match the identifying information for that individual in the records of the Department of Public Safety.

2009 was also the year that Texas finally ratified the 24<sup>th</sup> Amendment. Most states passed this 45 years ago. This was a symbolic stand against the poll tax.

**2011:** LWV-Texas and the election reform coalition with which we work were active in holding off voter photo ID legislation in previous sessions but were not successful in 2011 when photo ID was included in the emergency items designated by Governor Perry. LWV-TX participated in a press conference and testified against the bill at both House and Senate hearings. Nonetheless, the bill was signed into law on May 27. The Secretary of State was given responsibilities to educate election workers and voters on the new requirements beginning Sept. 2011, and voters must show one of a limited set of photo IDs to vote a regular ballot after January 1, 2012. As of the publication of this document this law is still pending. See note at the bottom of this section.

LWV-TX testified against requiring documentary proof of citizenship to register to vote, and this bill was not considered by the full House. While Texans will still be able to register to vote without providing proof of citizenship, most voters will need to provide documentary proof of citizenship to obtain or renew the forms of photo ID required to cast a regular ballot as of 2012.

LWV-TX supported the bill to bring Texas into compliance with the federal requirements for military and overseas voters. The bill was passed and signed by Gov. Perry. Email

transmission of ballot materials to military/overseas voters is allowed, but not electronic return. To provide the time required for preparation and return of ballot materials, candidate filing and runoff dates for spring primaries were changed. Because some county election officials would be unable to meet requirements for a May primary runoff in addition to local elections on the May uniform election date, the law allowed for changing local elections to the November uniform date.

A number of bills on which LWV-TX took positions failed either to make it out of committee or to pass both chambers. **Bills LWV-TX supported that did not pass** include those on election day voter registration, voter suspense list procedures, allowing electronic voter registration for those with a valid DPS driver's license or ID, and adding Texas to the National Popular Vote Compact. **Bills which LWV-TX opposed that did not pass** include those limiting the number of voters an individual could assist, allowing poll watchers to record images and sound, increasing penalties for untimely volunteer deputy registrars, and limiting volunteer deputy registrars to registered voters with 6 months of continuous state residence.

Two bills, HB 2194 and HB 2817, became more complex as they progressed through the legislature and, as passed, included both positive and negative provisions. They contain unnecessary restrictions on volunteer deputy registrars; also performance-based compensation and employment decisions are prohibited in voter registration efforts. On the positive side, the Secretary of State was given authority to increase the number of counties participating in trials of countywide polling locations.

Under the 1965 Voting Rights Act, Texas is among the states required to obtain preclearance from the US Department of Justice (DOJ) or courts before putting election law changes into effect. Texas sought preclearance of election law changes from DOJ. LWV-TX submitted written comments to DOJ raising questions about preclearance for voter photo ID and for the prohibition against performance-based decisions in voter registration efforts. The state of Texas has sued and LWV-TX joined has intervened against the state's position. This case is expected to go to the Supreme Court as a challenge of the Voting Rights Act. As of June 2012 we don't know if Voter ID will go into effect for the November 2012 election.

**2013:** As the League's 2012-2014 biennium began, LWV-TX was involved in litigation over preclearance of the photo ID requirement passed by the 2011 Legislature, SB 14 (Fraser), which LWV-TX opposed. LWV-TX lobbied the U.S. Department of Justice (DOJ) to deny preclearance and intervened supporting DOJ's decision to deny preclearance when Texas sued for preclearance. The DC court denied preclearance in late August 2012 so the requirement was not in effect for the November 2012 general election. The State of Texas appeal of the denial was put on hold while the Supreme Court considered the Shelby County, Alabama, challenge to preclearance.

A number of positive bills on voter registration passed during the 2013 regular legislative session and were signed by Gov. Perry: SB 910 (Duncan) faxed voter registrations; HB 2465 (Farias) suspense status information online; and HB 3593 (Burnam) determining a voter is deceased.

Positive election bills that passed and were signed include: SB 160 (Huffman) poll watcher identification; SB 553 (Uresti) high school students as early voting clerks; and SB 578 (Duncan) countywide polling locations for primaries and runoffs.

Several positive bills LWV-TX supported did not pass: HB 465 (Johnson) repeal of photo ID; SB 315 (Uresti) and HB 313 (Strama) online voter registration; HB 331 (Guillen) accepting voter registration from any eligible Texan; HB 2728 (Gutierrez) volunteer deputy voter registrar online training; HB 3081 (Wu) voting in a precinct of former residence; HB 1958 (S. Turner) curbside voting; and HB 2306 (S. Thompson) permanent mail ballots for some voters.

Significant bills LWV-TX opposed that did not pass include: HB 2093 (Harless) limiting early voting; HB 3049 (Springer) eliminating the May uniform election date; HB 966 (Murphy) voter registration residence address; and HB 3074 (R. Miller) proof of citizenship to register. HB 148 (Burkett) limiting assistance with mail ballots has become law but in its final form only limits payment for ballots mailed and does not otherwise limit assistance with mail ballots.

Election law bills were filed in special sessions, but none were heard in committee.

In late June 2013, after the regular session, the Supreme Court announced the Shelby County decision striking down the Voting Rights Act (VRA) criteria for determining jurisdictions subject to preclearance. Texas immediately implemented the photo ID requirement passed in 2011. U.S. Representative Marc Veasey and others quickly filed a VRA Section 2 challenge to photo ID in the Corpus Christi federal court. Others, including DOJ, have filed challenges raising constitutional and other legal issues in Corpus Christi and asked that Texas be bailed-in to preclearance under Section 3 of the VRA. Trial is scheduled for early September 2014 with the possibility of a decision prior to the November 2014 general election. In the meantime, the photo ID requirement remains in effect.

**2015:** As the League's 2015-2016 biennium began, the photo identification requirement lawsuit remained under consideration. The Corpus Christi federal court ruled in favor of U.S.

Representative Veasey, yet there was no stay of the voter ID law during the State's appeal to the Fifth Circuit Court. A Fifth Circuit Court three-judge panel met during the Session on the case with no final outcome. Although, arguments included judicial questions asking why the Legislature has not broadened the types of accepted photo IDs.

During the 84<sup>th</sup> Session of the Texas Legislature, eight bills were introduced to add acceptable IDs to the list acceptable for voting that died in Committees without any hearing. Other IDs proposed included the addition of student photo IDs from public and private higher education institutions, Texas and federal government-issued photo IDs, expired Texas driver licenses, Veteran's Administration health photo IDs, and any form of photo ID. The House Elections Committee allowed a hearing on only one bill that would allow tribal photo IDs, but it also died in Committee without a vote.

Only one voter ID related bill, SB 982 (Bettencourt), passed into law. It provides a cost-free birth certificate for anyone in need of that document when applying for a Department of Public Safety photo ID.

The only other voting/elections bill supported by LWV-TX that passed during the 84<sup>th</sup> Session and was signed by Governor Abbott, made a variety of minor improvements all related to voting by mail. HB 1927 (Bonnen, Greg) requires vote by mail (VBM) be made available for all elections, regardless of the election's administration (special districts, ISDs, etc.) and includes run-off elections; allows VBM applications to be submitted any time in the preceding year prior to an election and allows VBM applications to be emailed.

LWV-TX supported a number of other positive bills that did not pass: providing online voter registration – HB 76 (Israel), HB 953 (Alvarado), both garnering one late session public hearing but no action; HB312 (Harless), HB 444 (Johnson), HB 446 (Johnson), and SB 385 (Uresti); broadening acceptable photo IDs – HB 535 (Nevárez), HB 295 (Canales), HB 447 (Johnson), SB 170 (Uresti), SB 230 (Watson), HB 534 (Nevárez), HB 536 (Nevárez), HB 733 (Israel), and HB 1117 (Martinez, “Mando”); improving the vote by mail process – HB 1198 (Israel), HB1540 (Thompson, Senfronia), HB 913 (Israel), HB 954 (Alvarado), and SB 86 (Ellis).

The most significant bill LWV-TX opposed that did not pass was HB 1096 (Murphy) and its companion SB 984 (Bettencourt) calling for identical residential addresses on photo IDs and voter registration cards. HB 1096 was left languishing on the full Senate bill intent list on the final day it could be considered.

**References Available: (Advocacy Paper) *Helping Texans Vote: Implementing the Help America Vote Act in Texas, 2005. Principles for Non-Partisan Voter Reform, 2009. (Facts and Issues) Voting Procedures to Increase Voter Participation, 2009.***

## **C. EXECUTIVE, LEGISLATIVE, AND JUDICIAL**

### **EXECUTIVE - 1968, 1969, 1970**

*The League of Women Voters of Texas supports measures to increase the effectiveness of the executive department of the state government including:*

- governor limited to two terms which may or may not be successive
- constitutional provision for the succession to the office of the governor should the governor become unable to perform the duties of the office
- cabinet-type executive department, with only the governor, lieutenant governor, and the attorney general elected
- the governor having the power, with safeguards prescribed by law, to remove appointive officers of the executive department and citizen appointees to boards and commissions
- reorganization of state boards and commissions along functional lines by grouping them in areas of responsibility

#### **Explanation: Executive**

In 1968, LWV-TX decided to evaluate the organization and functioning of the state's executive

department as a continuation of its studies of the constitution and the legislature. In the first year, the study concentrated on the office of the governor. In the second year, the League examined the total administrative organization, discussing other officers in the executive branch. In 1970, the League focused on the various executive boards and commissions, concentrating on those concerned with natural resources.

### **History: Executive**

**1974:** During the Texas Constitutional Convention, the League actively supported changes in the executive article.

**1979-1981:** In 1979 and again in 1981, the League successfully opposed passage of a constitutional amendment providing for legislative review of the process of rule making by executive agencies. We believe this amendment to be a violation of the separation of powers of the executive and legislative branches of government. In 1980, LWV-TX supported a constitutional amendment, approved by voters, allowing governors to remove public officials they appoint.

**1985:** Over League opposition, a vague and deceptive amendment that also violated the principle of separation of powers was passed by voters. The amendment requires that an undesignated group, to be named by the legislature, approve expenditure of appropriated funds.

**1991:** Major reorganizations of state agencies were carried out during the 72nd Legislature as a result of recommendations made by the Performance Review Panel. Legislation implementing these recommendations provided for appointment of agency heads by the governor rather than by the legislature. LWV-TX supported these measures in keeping with its position in support of a cabinet-style executive branch. As a result of these changes the governor now has significantly more accountability for the actions of agency heads.

### **LEGISLATIVE - 1967, 1968, 1969**

*The League of Women Voters of Texas supports measures to increase the efficiency and responsiveness of the legislature including*

- annual sessions of sufficient length and scope to permit efficient handling of legislative business
- adequate compensation for legislators and elimination of salary amounts from the constitution
- increased power of the legislators in relation to the power of their presiding officers to include (a) greater voice in determining committee membership, and (b) bills referred to committees of appropriate jurisdiction.

### **Explanation: Legislative**

League members decided in 1966 to evaluate the organization and functioning of the Texas Legislature and over the next three years reached consensus on a number of areas. Through the years, some goals were achieved, and positions have therefore been dropped. For example, conference committees are now limited to reconciling differences between Senate and House

bills and are not permitted to add new provisions. Thus, the position advocating this practice was dropped at the 1985 Convention.

### **History: Legislative**

**1969:** During the legislative session, the League worked for a code of ethics, annual sessions, and realistic pay for legislators.

**1974:** During the Constitutional Convention, the League was active in support of revision of the legislative article. Bills pertaining to legislative salaries and/or annual sessions have been introduced in a number of sessions; none have passed.

### **JUDICIAL - 1960, 1965, 1983, 2001, 2003, 2006, 2009**

*The League of Women Voters of Texas supports an effective, independent, qualified, and inclusive judiciary for Texas, which includes:*

- a uniform fiscal policy as part of a single system of centrally administered statewide courts
- a single system of centrally administered statewide courts with a uniform fiscal policy
- assignment of judges according to special training and docket needs.

*The League supports the selection of judges in the following manner:*

- nomination by a diverse, representative, nonpartisan commission, with appointment for a specific term or appointment by the governor for a specific term
- judges are subject to retention or rejection in an unlimited number of periodic nonpartisan elections
- this should apply to Texas Supreme Court, the Court of Criminal Appeals, and Courts of Appeals
- selection of state district court judges may be by non-partisan election or by appointment/retention
- judicial campaigns should be funded with public money.

### **Explanation: Judicial**

In 1958, the League adopted nine principles for a good constitution, one of which was "Provisions for justice with a minimum of delay," and in 1959 undertook the initial study of the judicial article as part of its work for general constitutional revision. Consensus was reached in the areas of court structure, court administration, and court financing.

In early 1965, the position on the selection and tenure of appellate judges was adopted. Members again looked at selection of judges in 1982 and, by February 1983, included district judges in the position on judicial selection. Every regular session of the legislature in recent years has produced bills regarding the selection of judges. None has passed.

Following delegate debate at Convention 1999, the Periodic Program Review (PPR) Committee was assigned review of the Judicial position, especially regarding judicial selection, and the

following recommendations were adopted at Convention 2001. Since centrally administered statewide courts have been in effect since 1985, the wording in the first bullet was reversed to reflect emphasis on the need for a uniform fiscal policy. (There is still disparity of funding levels among various appellate and district courts.) The PPR committee had suggested dropping the position regarding assignment of judges according to special training and docket needs, but during the Program Planning process, local Leagues recommended retaining the position since it is used for advocacy at the local level for specially trained judges, such as in family courts.

Delegates at the 2001 Convention, at the PPR committee's recommendation, also voted to drop the position regarding effective removal procedures for judges. The state constitution provides for removal procedures through a State Commission on Judicial Conduct. This provision was added to the constitution in 1965, after the League's initial study/consensus in 1959-60. Thus this bullet has been achieved. Although it is conceivable that the removal process could be thwarted by a legislative effort to cut off funds to the Commission, LWV-TX does not need to retain the position in order to address such a situation. The overarching statement of the Judicial position and/or the League principle that "efficient government requires competent personnel" could be used to advocate effective judicial removal procedures.

### **Judicial Selection:**

The 2001 convention approved a restudy of judicial selection. A committee restudied the issue producing a *Facts and Issues* entitled *JUDICIAL SELECTION IN TEXAS: Nothing's Perfect*. Limited consensus was reached in the fall of 2002 and approved by the LWV-TX Board in January 2003. That consensus continued to support the appointment of Texas Supreme Court and appeal judges, but for local judges Leagues only agreed that if judges are to be selected by an election, it should be nonpartisan.

At Statewide Conference, March 2009, a bullet was added to clarify our position on district judges in order to lobby more effectively and to provide flexibility to work with legislators to reform the way judicial offices are selected in Texas.

At Convention 2010, delegates voted to add the provision that judicial elections should be funded with public money, although this is covered in our position on Political Campaign Process.

### **History: Judicial**

**1985:** The legislature passed a constitutional amendment that addressed the League position of centrally administered statewide courts. The League supported this amendment, and it was adopted by voters.

**1989-1995:** Merit selection (or election, as some call it) has been an active issue for LWV-TX during this period. Reform efforts have been spurred and complicated by federal lawsuits challenging the at-large election of district and appellate judges as a violation of the Voting Rights Act because the system dilutes minority votes. The most recent development in this lengthy litigation is Texas' appeal from a U.S. Justice Department finding that countywide partisan election of judges in the major urban areas infringes minority lawyers' right to win seats

on the bench under the Voting Rights Act. Using the League of Women Voters of the United States (LWVUS) position supporting the Voting Rights Act, LWV-TX has supported single-member judicial districts as part of a merit system plan.

In the 1995 legislative session, the League lobbied in support of Senate-passed measures that called for appellate judges to be appointed by the governor with approval by the Senate and subject to retention/rejection elections on a nonpartisan ballot; and for district judges to first run on a nonpartisan ballot and then face retention/rejection elections for the next two terms. The House, however, failed to pass the Senate's reform initiative, instead reporting out of committee a version that included partisan elections. This version did not reach the House floor.

During the 1995-1997 interim, the League was represented on the newly created Commission on Judicial Efficiency. The Commission, appointed and chaired by Texas Supreme Court Justice Tom Phillips, was charged by the legislature with studying various issues related to the state judiciary, including judicial selection. The commission made several recommendations but their most significant success was their recommendation for the creation of a Judicial Committee on Information Technology, which passed the legislature with funding. The 15-member committee, made up of judges, court personnel, legislators, attorneys, and citizens will gather information for a statewide network and justice information system.

**1997:** The House passed a bill changing appellate judicial selection to nonpartisan elections, an attempt to move the procedure at least one step away from the current partisan election system. The Senate companion bill differed, proposing an appoint/elect/retain system for appellate judges. This bill failed and time did not permit the Senate to take up the House bill.

**2001:** Legislation was introduced, supported by the League, which offered a viable, nonpartisan approach that would have reformed the electoral process for the selection of the chief justice and justices of the Texas Supreme Court, and the judges of the Court of Criminal Appeals. The bills would have required nonpartisan judicial elections of the highest courts in the state. Candidates would have sought certification from the Secretary of State to be put on the ballot and would have been required to submit a petition signed by 1,000 registered voters in connection with a request for public financing. Testimony given during the hearings on the legislation raised many issues of concern that surround judicial elections: the necessity for judges to become involved in party politics, to raise large sums of money in order to run, and the perceived influence on the system as a result. Many supported the certification process as opening the doors for increased minority participation, but testified that a selection commission could act as a barrier. The League restudied this issue in 2001-03.

**2003:** Following the adoption of the new judicial selection consensus, LWV-TX supported a number of bills during the 78<sup>th</sup> session. None of these bills passed, and the lack of legislative support for these bills during the session was a real disappointment. Some bills and joint resolutions (possible constitutional amendments) focused on all of the judiciary, others only on appellate judges. Both appointments, followed by nonpartisan retention elections at the end of their terms, and nonpartisan elections were considered along with terms of office and for public

financing of such elections.

In line with the League's new position, there is a great deal of support in Texas for the nonpartisan selection of appellate judges, but less for the selection or appointment of district judges. Opposition to the appointment of district judges was one factor leading to the defeat of introduced bills.

**2005:** Companion bills were introduced in the 79<sup>th</sup> regular legislative session that would provide for the appointment and a nonpartisan election for the retention or rejection of justices and judges. The bill included all appellate courts and all types of district court judges, with appointments made by the governor as currently provided for in the Texas Constitution. No hearing was held for the Senate bill, but the House bill was heard in the House Judiciary Committee. The League presented written testimony to explain the League position that supports nonpartisan election of appellate court judges nominated by a nonpartisan diverse commission. The bill was left pending in committee. The House leadership was not supportive of the issue.

We supported and testified for Sen. Duncan's bill that would increase salaries for state and county judges who had not had a salary increase since 1998. This issue had widespread support. However, after passing out of the conference committee, the bill was scuttled in the House over a dispute with an amendment that included increases for indigent defense. Although this item was not on the agenda, Sen. Duncan introduced a similar bill in the Special Session without the indigent defense provision. The League presented written and oral testimony at the Senate State Affairs Committee in favor of the bill. The committee voted in favor of the bill. It was hoped that the issue would be included in the Special Session.

**2007:** As in the 79<sup>th</sup> legislative session, Senator Duncan filed SB 806 with its companion SJR 32 for a constitutional amendment. The enabling bill would provide for a nonpartisan merit selection system of appointment of judges followed by a retention or rejection election of judges after a specified period of time of service. Identical bills were filed in the House. None of the bills were heard by their respective committees. However both bills contained a position the League cannot support at this time, the inclusion of state district courts judges. The bills would provide for initial appointments that would be made by the governor as provided in the Texas Constitution during the interim in 2008. The League spoke with the general counsel for Senator Duncan to ask for a filing of a bill in 2009 session with modifications that can meet the League position.

In April 2007 the LWV-TX through the assistance of KLRN produced and televised a program Conversation on Judicial Independence.

**2009:** In the 81<sup>st</sup> Legislative session, Sen. Duncan, supported by the League, filed an enabling bill and constitutional amendment that would provide for a nonpartisan appointment/retention system to select appellate judges. This was slightly different from previous sessions. Not included were state district judges. However, the bills were withdrawn. Subsequently, the

Senator filed SB 2226 and SJR 44 to provide for partisan judicial elections in the primary followed by a nonpartisan appointment/retention election. The League remained neutral as our position for judicial selection clearly states it be nonpartisan. The bills were not placed on the Senate calendar. In the House, HB 3995 provided for a nonpartisan appointment/retention system. The League presented oral and written testimony. Although the bill was voted out of the House Civil and Jurisprudence Committee it did not pass out of the Consent Calendars Committee.

Early in the session Chief Justice Wallace Jefferson of the Texas Supreme Court made a strong case for the adoption of an appointment/retention system for judicial selection during his State of the Judiciary speech to the Legislature. Early in the same day, the League participated in a press conference with several other organizations in anticipation of the Chief Justice's speech.

A group to which the League is a collaborator, Clean Elections Texas, supported a bill that would provide for public financing for judicial candidates. Although the League supports public financing of campaigns this measure was not nonpartisan as required by our judicial position. As a result, the League did not support it.

**2011:** In the 82<sup>nd</sup> Legislative session, Sen. Duncan filed SB 1718, which proposed filling vacancies in appellate judicial offices by appointment, **partisan** elections for all judicial offices, and nonpartisan elections for retention or rejection of all judicial offices. The League remained neutral as our position for judicial selection clearly states election be nonpartisan. There was a hearing on this bill in State Affairs, testimony was taken but the bill was left pending in committee.

In February 2011, Chief Justice Wallace Jefferson of the Texas Supreme Court urged the Legislature to “send the people a constitutional amendment that would allow judges to be selected on their merit.” He also urged “common-sense solutions to the problems that plague partisan election of judges.”

**References Available: (Advocacy Paper) *Selection of Judges in Texas: Is Justice for Sale?* February 2005. (Brochure) *The Texas Judicial System*, 2003.**

#### **D. FINANCING STATE GOVERNMENT – 1975, 2003**

***The League of Women Voters of Texas supports constitutional and statutory provisions for flexibility within a coordinated finance structure; equitable taxation system that assures adequate revenue; and increased accountability including the following:***

- removal of provisions relating to dedicated funds, ad valorem tax exemptions, dollar amounts of debt limitations, and other such specific wording from the constitution and making them statutory
- budget execution to be a joint responsibility of the executive and legislative branches of state government
- application of appropriate fiscal management and business practices to conduct

state business

- an equitable system of taxation which assures an adequate revenue; is easily administered; and is consistent with economic, social, and environmental goals
- appraisal of taxable property at full market value; state supervision to ensure equitable and uniform appraisal and taxing procedures

### **Explanation: Financing State Government**

The League studied state financing as part of its multi-year study of Texas Constitutional Revision, adopting in 1973 a two-year study titled Financing State Government. The League study first focused on constitutional provisions relating to state finances. League members found that the state's elaborate restrictions on taxing, spending, and borrowing, intended to ensure fiscal prudence, often had quite the opposite effect. Instead they created obstacles to sound fiscal planning, management, and organization and failed to limit the financial practices they were intended to restrict. An example is the flat prohibition of state debt. Texas' outstanding debt not only exists but has been on the rise, just as total state spending has risen in recent years. The prohibition has served at times to increase the debt load by forcing the state to resort to more expensive methods of borrowing, such as the issuance of revenue bonds, rather than lower-interest-rate general obligation bonds.

The League agreed that the Constitution should permit the Legislature and Governor the freedom to develop fiscal policies for the state to meet current needs. Next, League study centered on the taxes imposed by the state government. The ability-to-pay approach for new or expanded taxes is preferred, although, in some cases, a tax levied according to the benefit theory would be acceptable as long as it was equitable and certain to be collected. A graduated personal or corporate income tax meets League criteria for a new tax, but a general sales tax does not. An equitable system of taxation also requires that tax laws be rewritten and enforced so there is certainty of collection at a relatively low cost.

### **History: Financing State Government**

**Late 1970's-early 1980's:** League members agreed that taxation to encourage desirable economic and social goals (such as preservation of agricultural lands and open space by preferential tax treatment-see Land Use position) is valid provided that there are sufficient safeguards to ensure that the goal sought actually is met by the preferential tax-treatment, and that the cost of meeting the desired goal be accurately and truly known so responsible cost-benefit evaluations can be made.

The League worked for major changes in property tax administration to make this tax more equitable and more easily and uniformly enforced. League-supported legislation requiring the establishment of single appraisal districts, appraisal of property at full market value, state supervised reports of taxable values, and training for tax appraisers was enacted in 1979.

**1980's:** Progress toward LWV-TX positions on tax reform has come largely as a result of continuing economic crisis in the 1980's and early 1990's. Declining state revenues have led successive legislatures to look for new sources of funds while some legislators sought to ban

constitutionally the enactment of a state income tax. The League has urged restructuring of the state's revenue sources, while opposing a constitutional ban on the income tax. In 1987, the enactment of the largest tax increase in Texas history led to the creation of a Select Committee on Tax Equity charged with recommending changes to the state's financial system. The League supported many of the committee's recommendations, including efforts to broaden the tax base by use of expanded business taxes and exploring the eventual necessity for personal and corporate income taxes; however, reforms in the 1989 session were limited in scope and did not address the need for thorough reform.

**1991:** Reform of the state's finance structure was given priority by LWV-TX in 1991 because the projected \$5 billion gap between estimated revenues and needed expenditures indicated that funding would be a major issue. State leaders, in an unusual move, postponed action on funding and budget issues until the first special session in order to await the results of thorough reviews of both expenditures and revenue sources. A Performance Review Panel appointed by the state comptroller carried out an audit of state agencies and held public hearings on how to cut costs of state government, while the Governor's Task Force on Revenue heard from experts and the public on ways to improve the state's revenue position. LWV-TX monitored both proceedings and presented the League's positions to the Governor's Task Force on Revenue.

The solutions ultimately adopted in 1991 for the state's fiscal crisis represented, from the League's point of view, partial progress in some areas while pitfalls were avoided in other areas. There was no movement on a personal income tax, but efforts to pass a constitutional amendment prohibiting it failed, and the sales tax rate was not increased. The corporate franchise tax, while not expanded to include other forms of business organization, was revised to include a tax on earned surplus (similar to an income tax).

The special session also produced the state lottery proposition that was approved by voters. LWV-TX took no position on the lottery as such, but opposed constitutional dedication of lottery revenues and also warned against making any essential state service dependent upon a lottery because such services require revenue sources that are both stable and adequate. The version ultimately approved contained no dedication of revenues.

**1993:** State leaders, facing another fiscal crisis in 1993, took a no-new-taxes stance on the budget. The League, speaking out on the proposed appropriations bill, called for increased funding for public schools and health and human services and reiterated that the state's fiscal crisis can only be resolved by restructuring Texas' tax system. The 73rd Legislature was able to adopt a balanced budget by cutting the level of services, by mandating better fiscal management, and by further shifting of tax burdens to the local level, particularly the burden of public school finance.

Implementation of suggestions set forth in the state comptroller's second performance review helped balance the budget, and some of the adopted recommendations are in accord with LWV-TX positions favoring increased accountability in the state's financial system. Of particular note was the adoption for the first time of a performance-based budget, a format advocated by the

League since 1975.

LWV-TX was one of the few groups to testify against the proposed constitutional amendment adopted by voters in November 1993 that prohibits legislative enactment of a personal income tax without a majority vote of the people. This amendment also dedicates at least two-thirds of income tax revenues to local school property tax relief and the remaining revenues to education. League opposition was based on our positions that call for a flexible state finance structure and for removal of provisions relating to dedicated funds.

**1995:** Once again, legislators avoided a tax increase. The 6.2 percent spending increase over the previous state budget is to be financed by growth in state revenue. Yet the need for changes in Texas' tax structure is apparent to the League and to the state's political leaders as well. Governor Bush has pledged an interim study, with special attention to reducing reliance on property taxes.

**1997:** A tax relief bill dominated the session, but the final version bore little resemblance to that introduced by the governor's office, which had placed a high priority on the issue of reliance on property taxes. Reluctant to tackle the complicated problem of public school finance, legislators produced a last minute compromise bill that used the state's \$1 billion surplus to fund property tax relief. A business tax provision in the original version held promise of broadening the tax base and developing a more equitable system of taxation, a longtime League goal. The League testified before both Senate and House committees, advocating the need for a state income tax in the long run, and a reform of the state sales tax and greater equity in taxes levied on businesses in the short term. Proponents of a state income tax were encouraged by the frequency with which the words "income tax" came up during this session.

The bill that was signed into law also dedicated lottery proceeds to fund education. The League opposes dedicated revenue funds of this type, which tend to make government less flexible and efficient. The League also has concerns about making a state service such as education dependent on a revenue source such as a state surplus, which is neither adequate nor reliable.

**1999:** Due to sizeable income from a tobacco suit settlement and a booming economy, debates regarding financing state government dealt with how and where to appropriate the income. League advocates were present and vocal during specific appropriations discussions. See sections regarding Health Care and Natural Resources.

**2001:** As in 1999, League advocates focused on the appropriations process. During this session, LWV-TX promoted funding for comprehensive health care services for women and children, increased child care subsidies, Medicaid simplification (which became a large budget issue as the session progressed), implementation of the SB 1 regional water planning process, and public participation in environmental decision-making. The League distributed a fact sheet to legislators with information on League budget priorities. State Government financing and the financing of public education will be two of the most important issues that will be examined during the interim.

**2003:** LWV-TX included both Financing State Government and Public School Finance in its periodic program review during the 2001-2003 biennium. Minor editorial changes were made to our Financing State Government position but no substantive changes were made.

Knowing that the state was facing large deficits and there was a likelihood of significant cuts in state spending, LWV-TX joined with other organizations concerned about adequate funding of state services in the Fair Taxation Coalition under the umbrella of ProTex, a grassroots organizing group. One of the results of the coalition's work is a Fair Taxation Workshop, which can be given to community groups. It received high marks when it was presented at State Convention in April and in other venues. The League expects to be giving the workshop throughout the next year.

Although much of the focus of the legislature and LWV-TX was on public finance issues as the state was faced with a \$10 billion deficit for the biennium, lack of agreement or time left most bills relating to public finance neither passed nor considered by the end of the session. The League testified for several bills which would have increased state revenues, and against several which would have further hampered the ability of the legislature to increase state revenues through taxation. The League and a few other members of the Fair Taxation Coalition were frequently the only advocates for increased funding in order to assure adequate state services.

Almost all of the bills we followed, good and bad, did not pass. Only one bill, which affects local property taxes, passed. This law puts teeth into the requirement that businesses render their property for ad valorem tax purposes; it is estimated that it will increase local property taxes significantly.

Two Constitutional amendments voted on in September 2004 will impact local property taxes. One freezes school taxes for disabled homeowners, and the other allows counties, cities, towns and junior college districts to freeze other property taxes for persons over 65 and for persons with disabilities.

Governor Perry signed a \$117 billion state budget on June 22. Keeping campaign promises by many legislators, the budget contained no new taxes although it does include some increases in fees. Although higher in total than the appropriations for last biennium due to anticipated increased federal spending, general revenue spending was reduced by \$2.6 billion.

The new budget will result in decreased services and/or demands for increased funding of many services at the local level. Tuition increases are expected at some public universities and colleges since public institutions were given the power to set their own tuitions. While the eligibility levels for Children's Health Insurance, Medicaid, and TANF were maintained, procedural changes in these programs are expected to reduce or at least not significantly increase caseloads. In addition, for CHIP, a number of previously provided benefits, including dental and most mental health benefits, were eliminated. Services to the elderly and mentally ill were also eliminated or reduced in scope, and cuts were made in criminal justice programs including all state funding for

the highly respected Criminal Justice Policy Council.

**2005:** Of the 59 bills related to public finance that the League followed, only one (HB 1, the General Appropriations Bill) actually passed, and this was the bill from which the governor line item vetoed all funds related to public education. Bills such as a statewide property tax and indexing of gasoline taxes didn't pass; a lot of bad bills, like greatly increased sales taxes, caps on tax rates and appraisals for example, also didn't pass. However, once the governor called a special session to consider school finance, it appeared that some of the same battles would be fought all over again.

The governor put caps on property tax rates, school funding, and education reform in the call for the special session. He also issued his proposed solution to the school funding situation. Major provisions included making partnerships owned by corporations subject to the corporate franchise tax; increasing the sales tax by 7/10 of a percent; adding certain services to the sales tax base; and increasing the cigarette tax by \$1.00/pack. Presumably to offset the increase in the sales tax that would fall most heavily on the poor, the governor proposed to increase the homestead exemption by \$7,500 to \$22,500 in 2007. When added to vetoed funds from other bills, the governor said that there would be a \$1.9 net increase in school funding for the biennium, significantly lower than the \$3 billion the House was aiming for and the up-to- \$7 billion cited as necessary by public school support groups. Property taxes would be reduced by 30 cents/\$100 valuation in 2006 and 35 cents/\$100 in 2007. None of these passed the special session.

HB 3 did not pass. It was revenue neutral, and its sole purpose was to replace the property tax with other taxes. HB 4 would reduce the increase in tax rates from 8% to 5% to trigger a rollback election if 10% of the voters petition for one.

**2011:** For the decades since League started recording, Texas state leadership has struggled to finance the government of a growing population while refusing to raise revenue. The attempt to reconcile the two opposing goals has continued through feast and famine, which this year involved an estimated \$27 billion shortfall. That is, for this biennium, the legislature was short one-fourth of the money it needed to simply keep the same level and amount of services it provided in 2010.

The shortfall is the result of the protracted national recession that started in 2007, and of an institutional deficit created in 2006 when property taxes were reduced by one-third, and an inadequate business margins tax established to balance the loss of funds. The permanent deficit leaves Texas government \$10 billion per biennium short in needed revenue.

Instead of dealing with the problem, state leaders couched the fiscal crisis in terms of towing the financial line. Before the session both the governor and members of the legislature vowed there would be no new taxes. In addition, they decided not to tap the majority of the Rainy Day Fund, a renewable pot of money – estimated to be \$6 billion by the end of this biennium – that was created for just this type of fiscal emergency.

By the end of the special session, the only viable finance bill, SB 1/HB 1, had cut total spending by \$15 billion. To do that, the legislature cut some waste, employed a combination of fiscal tricks involving delayed payment, under-estimated future obligations to Medicare and Medicaid and raised some user fees. The final legislation was \$4.8 billion short of covering projected Medicaid costs and had stripped \$4 billion from public education. This amounts to about \$500 per pupil across the state.

The most ominous move during this session, however, was the breaking of an almost 60-year promise Texas lawmakers have kept, until now, to provide each student in the state an adequate basic education through the Foundation School Program. It remains for the 2013 legislative session to do the hard work of fiscal reform this session shirked.

## **2015:**

### State Budget Bills:

We submitted detailed remarks to both the House and Senate regarding our views on the proposed budgets—both that of the Senate and that of the House. All budget bills must originate in the House, and the Senate proposes a substitute HB 1.

Additionally, several bills were introduced which we responded to: We opposed HB 31, which decreased the state sales and use tax rate. We opposed this bill because our position states that we support “an equitable taxation system that assures adequate revenue.” As we currently do not have the revenue to cover our essential needs for education, health care, transportation and infrastructure, it is illogical to cut taxes for the future. The bill died in the Finance committee. SB 1 reduced the ad valorem taxes by increasing the exemption of \$15,000 for a homestead to \$25,000. We presented testimony on this bill before the House Ways & Means Committee. It passed both Houses and was signed by the governor.

SB 9 limited the rate of growth of appropriations for future years. In our letter to the Budget Conference Committee, not only did we speak to issues which we support, but we also opposed any cap on future budgets, saying “But the most egregious budgetary action would be to put a cap on future budgets which would **lower** our ability to meet growing needs, much less address needs from past years. We strongly **OPPOSE** such an action.” Fortunately no budget caps passed.

**References Available: (Advocacy Paper) *Financing Texas Government: Not Just Trimming the Fat, but Scraping the Bone*, March 2011.**

## **E. HOMEOWNERS ASSOCIATION REFORM (2012)**

***The League of Women Voters of Texas supports changes in Texas law governing mandatory homeowner associations which would:***

1. Protect against unreasonable foreclosure on homesteads
2. Assure priority of payments so that assessment payments apply first to delinquent dues and

- then to non-assessment items, such as interest and penalties
3. Reform HOA elections to ensure secret ballots in homeowner elections and safeguards against fraud to assure uniform, honest, and accurate election results
  4. Assure that homeowners have access to meetings and records of the homeowner associations.

**History:** This issue was first proposed as a not-recommended concurrence at Convention 2010 by LWV-Houston Area. Delegates voted to defer the issue to Convention 2012 pending further consideration by a committee to study the Houston materials, consider bills pertaining to HOA reform filed in the 2011 legislature and the need for statewide advocacy. The board recommended the concurrence in 2012.

**2013:** The positions of LWV-TX on homeowners associations limited which bills could be analyzed or supported.

HB 35 (Menéndez) was passed. It amended the property code to provide that when an owner owns a lot adjacent to the lot on which his residence is located, the adjacent lot can be sold separately only in its original condition as to be suitable for construction as originally platted. HB 2928 (Sheets) OPPOSED would have circumvented a homeowner's right to a judicial foreclosure as established in the 82<sup>nd</sup> Legislature. It died in committee.

The 82<sup>nd</sup> Legislature in 2011 passed HB 2761, which provided that any vote cast in an election or vote by a property owners' association must be in writing and signed by the member. Immediately thereafter provision was made that electronic votes cast constitute written and signed ballots. The League position argues there is weak protection from fraud with electronic balloting. In 2013 HB 818 (White) OPPOSED would have specifically eliminated the requirement that a ballot must be in writing, signed by the member or that identity of the property owner be confirmed, greatly raising risk of fraud. It did not pass out of the Calendars Committee.

## **F. INTESTACY (Dying Without a Will) – 1985, 1997**

*The League of Women Voters of Texas supports equitable intestacy laws including the following provisions:*

- the surviving spouse should inherit all of the community property when the decedent had no children or when the surviving spouse is the parent of all the children of the decedent
- the surviving spouse should not inherit all of the community property when the decedent is survived by minor children not of the surviving spouse
- the surviving parent of a minor child should be required to obtain court permission to dispose of the child's property when it is valued at more than \$50,000.

### **Explanation and History: Intestacy**

Delegates to the 1983 state Convention identified intestacy as needing study. It has not been a legislative priority in recent years. Intestacy was studied as part of the 1995-97 Periodic Program Review. The position reflects current law but was retained and clarified to allow the

League to advocate for equitable intestacy laws in the event of a backlash.

## **G. CAMPAIGN FINANCE/ETHICS – 1992, 1999**

***The League of Women Voters of Texas supports laws and practices relating to political campaign finance that eliminate excessive and/or inappropriate spending and promote equitable competition among candidates. Appropriate measures include:***

- a limit on the total amount of campaign contributions a candidate may accept from a person or an individual political action committee or PAC
- a limit on the total amount a candidate may accept from PAC's, individuals, and out-of-state contributors
- a limit on the total amount of contributions a candidate may accept
- a limit on the time during which a candidate may accept contributions
- a limit on what a candidate may spend to get elected
- comparable media public service time and/or space made available to candidates who agree to limit their campaign expenditures
- requirements that campaign contributions be used only for campaign expenses.

Responsibility of the media to

- encourage candidates to discuss issues
- report inconsistencies in public statements by candidates
- assign reporters with appropriate expertise to cover campaigns
- seek independent verification of candidate allegations.

Responsibility of candidates to

- articulate their positions on issues
- verify allegations prior to their release
- control the conduct of their campaigns by staff and consultants
- be accountable for advertising decisions
- voluntarily limit campaign spending.

## **ETHICS**

***The League of Women Voters of Texas supports limits on the contributions that can be accepted by political parties in Texas and supports enforcement of regulations governing their use.***

***The League of Women Voters supports public financing for state elected offices in Texas. In order to receive public funding, candidates would agree to limits on private contributions and campaign spending.***

***The League of Women Voters of Texas supports changes in laws, practices, and policies governing political campaigns in order to protect citizens' right to know; strengthen accountability in financial reporting; combat corruption and undue influence; and promote***

*fairness and accuracy on the part of candidates, public officials, former officeholders, lobbyists, and the media.*

*The League of Women Voters of Texas supports full, timely disclosure through electronic filing of required finance reports. Specifically, the League supports:*

Requirements that candidates report or disclose

- the total amount of contributions during a year
- in-kind contributions
- personal finances, income distributions, and assets/liabilities
- any funds deposited in a political account.

Ethical standards that include

- a minimum time before a former elected official can become a paid lobbyist
- a requirement that lobbyists disclose gifts to candidates
- a fairness code governing the conduct of individuals and groups engaged in election campaign.

### **Explanation: Political Campaign Process**

The League of Women Voters of Texas was founded in 1919 to carry on the work of the Texas Equal Suffrage Association after the ratification of what was then called the Susan B. Anthony amendment, giving women the right to vote in Texas. Many early activists felt that efforts to promote informed and active citizenship were a necessary and logical next step for those involved in the suffrage movement. (Source: *A Texas Suffragist*, by Janet G. Humphrey, 1988.) These efforts are still part of the League's mission.

In recent years, the breakdown of confidence in the integrity of the electoral process in Texas and nationwide sparked an interest among League members in examining the political campaign process and its effect on voter disillusionment and apathy. These considerations led delegates to the 1991 LWV-TX Convention to adopt a study of the Political Campaign Process in Texas, which would evaluate political campaign laws, practices, and finances, and their ethical implications. A *Facts & Issues, See How They Run: The Political Campaign Process in Texas*, was produced by the study committee and circulated to members, public officials, and other interested persons. Consensus was reached in the fall of 1992, and the state board announced the position in November of that year.

During the Periodic Program Review (PPR) process of 1997-98, the committee suggested additions to the 1992 position which would allow the League to advocate for public financing of campaigns and for better disclosure procedures of campaign funding. The additional positions were adopted at Convention 1999.

### **History: Campaign Finance/Ethics**

**1991-1992:** Based on the LWVUS position calling for an independent body to monitor and enforce election laws, LWV-TX supported the establishment of a state ethics commission in 1991. The League believes, however, the process for appointing members to the commission that

was created by constitutional amendment in 1991 is flawed. The League closely monitored the proceedings of the Ethics Commission during its first two years of existence, 1992-93.

**1993-1994:** During the 1993 legislative session, Political Campaign Process (PCP) was one of the League's priority issues, and an Advocacy Paper, *Take Back the System*, was published. LWV-TX supported bills that would have imposed limits on campaign contributions and expenditures, working in coalition with groups such as Common Cause and Public Citizen. These bills did not pass.

Several bills were introduced which would have modified the commission's regulation of lobbyists. These proposals were a mixed bag, from the League's point of view; none were enacted. After the session ended, a League representative was asked to serve on a Rules Advisory Task Force to evaluate the rule-making authority of the Ethics Commission, including that of regulating lobbyists' activities.

The League also joined a coalition of public interest groups that asked candidates running for the Texas Supreme Court, Court of Criminal Appeals, and Courts of Civil Appeals to sign a Fair Campaign Practices Pledge. This initiative was undertaken in response to concerns expressed by citizens, attorneys, and judges about special interest contributions to judicial campaigns and the possible effects of such gifts on judicial decisions.

**1995:** The notion that justice was for sale came to a head in the 1994 general election and helped create a climate in which campaign finance reform had the attention of the 74th Legislature. A law was passed that limits the period of time in which judicial candidates can accept contributions and the amount of money they can accept from specific sources, including law firms and political action committees (PACs). The measure also provides for voluntary limits on candidates' expenditures. LWV-TX supported the Judicial Campaign Fairness Act and looks to it as a step toward more comprehensive reform in the next session.

Campaign finance reform and other aspects of the political campaign process in Texas will continue to be active issues in the foreseeable future, and LWV-TX will maintain an active role in advocating its positions.

**1997:** Although many bills relating to election laws/campaign finance were filed during this session, few met with success. The League published an Advocacy Paper, *Take Back the System: Campaign Finance Reform in Texas*, and also actively supported a bipartisan bill to move primary elections from March to May. Utilizing testimony presented to the House Elections Committee, the League distributed information to each member of the House prior to floor debate. The bill passed the House, but failed in the Senate.

**1999:** Disclosure of campaign funding through the filing of campaign finance reports became the focus of League efforts during the legislative session. The League was successful in achieving passage of a measure that mandates that campaign finance reports be filed electronically and published by the Ethics Commission on the internet. A new advocacy paper was produced for this session, and is listed below.

**2001:** Limits on campaign contributions and expenditures continue to elude us. Very few bills were filed in the 77<sup>th</sup> legislative session that would provide for limits, and those that were, did not get hearings. Both political parties continued to support closing loopholes in existing disclosure laws. Comprehensive bills were filed in the House and the Senate, but differences over including identification of contributors' occupations and employers (and other issues) sent the bill to a conference committee. No agreement was reached and the bill died in committee. The League was active throughout the process providing testimony in favor of the House version, and urging passage out of the conference committee.

**2003:** The Ethics Commission was due its first review by the Sunset Review Commission since its establishment in 1991. In anticipation of legislation to be presented in the 78<sup>th</sup> session of the Texas Legislature, the League joined a coalition, "Show Me the Money," composed of 60 diverse organizations throughout the state. Of these, six organizations, LWV-TX, Common Cause, Campaigns for People, Public Citizen, The Baptist Christian Life Commission, and Texans for Public Justice, developed strategies during the interim to prepare for legislation in the upcoming legislative session.

House speaker Craddick appointed a Select Committee on Ethics, which introduced a comprehensive bill that outlined reforms to make the Ethics Commission more effective and included strengthening disclosure laws. The League testified in favor of the bill although it did not include all the reforms we and the coalition would have liked. The bill passed the committee unanimously, and subsequently passed the House. However, the Senate Government Organization Committee produced and passed a watered down bill, despite testimony presented by the League and other coalition members. The watered down bill passed the full Senate. As a result, the bill was referred to a Conference Committee to settle House and Senate differences. Fortunately, the Conference Committee restored the provisions that had been deleted by the Senate.

The Governor signed the bill. These provisions will:

- restrict contributions until after the deadline for the governor to veto bills
- require disclosure of cash balances
- require reporting of occupation and employer of large donors
- require filing of campaign reports electronically
- prohibit lawyers to represent paying clients before state agencies
- disclosure by lawyers of trial delays during the legislative session.

During the 79<sup>th</sup> Legislative session a coalition of diverse, statewide organizations concerned about the unlimited amounts of money used to finance our state's elections will focus on:

- closing corporate and union money loopholes
- setting reasonable individual and aggregate contribution limits
- improving the effectiveness and independence of the Texas Ethics Commission
- opening the legislative process and recording legislative votes.

**2005:** In preparation for the 79<sup>th</sup> Legislative session LWV-TX collaborated with a coalition of over 60 diverse, statewide organizations, including both political parties. There was great concern about the unlimited amounts of money used to finance campaigns, and concern about unnamed corporations that contributed undisclosed millions of dollars to defeat candidates with mass mailings, negative issue ads, flyers, and phone banks. This appeared to circumvent the century-old Texas state law prohibiting corporations and unions from contributing funds for administrative costs to engage in political activity. The fund raisers claimed that the issue ads were educational because they did not use the words “for” or “against” the candidates they were targeting. These activities were concentrated in the last 60 days before the primary election of 2002. The proponents also claimed that the definition of administrative costs in the Texas Election Code was unclear. As a result, the coalition agreed to focus on:

- closing the cooperate and union money loopholes
- setting reasonable individual and aggregate corporate contribution limits
- improving the effectiveness and independence of the Texas Ethics Commission
- opening the legislative process and recording non-ceremonial votes.

During the session, the group prioritized its focus primarily on closing the corporate and union money loopholes. Working with Representative Craig Eiland (D. Galveston) and Rep. Todd Smith (R. Euless) that ensured bipartisan support, a bill was filed, HB 1348, that would specifically define administrative costs as those incurred in the normal course of business, would prohibit acceptance of contributions and make expenditures 60 days before a primary election, ban sham issue ads 60 days before the primary election, and would prohibit expenditures from PACs not connected to unions and corporation. Over 90 bipartisan House members signed on as co-sponsors.

A subcommittee of the Elections Committee held a public hearing in which the League presented testimony and was left pending with a substitute. The Elections Committee did not hold a hearing. Consequently, a bold maneuver to bypass the Elections Committee and debate the bill on the House floor was attempted but was defeated when Rep. Terry Keel, one of the co-sponsors, scuttled the bill on the basis that it bypassed the legislative process. Subsequently, the Elections Committee held a formal hearing and defeated the bill 4-3. The bottom line is that the bill did not have the support of the House leadership, most of whom benefited from the unreported funds given by the unnamed corporations. It is very likely that the issue will be revisited in the 80<sup>th</sup> Legislative session.

**2006 (Legislative Interim):** LWV-TX joined with Common Cause Texas and Texans for Public Justice in efforts to make the state government more transparent and accountable. The groups, acknowledging that reforms are needed to strengthen Texas’ campaign finance laws and insure open and independent government, free from the influence and dominance of special interests, developed a list of five, non-partisan reforms:

- Place a \$100,000 aggregate limit on individual contributions
- Close the revolving door between the Legislature and the Lobby
- Keep judges independent by appointment and retention election
- Record all non-ceremonial legislative votes

- Create an independent redistricting commission

**2007:** In the 80<sup>th</sup> Legislative session, the League in collaboration with Common Cause, Texas for Public Justice, Public Citizen, Baptist Christian Life Commission, and Gray Panthers, focused on two of the five campaign finance issues agreed to in the 2006 interim. The group advocated and provided testimony for three bills limiting individual contributions. HB 110 (Strama) broke down in categories the amount the limits would impose on candidates for the executive branch, state senator, state representatives, and state board of education. HB 111 (Villereal) would impose limits of \$ 100,000 on the total amount an individual could contribute to a candidate in an election cycle. HB 1085 (T. Smith) prohibited the use of corporate or union funds to pay for Phony “issue” ads. Closing the revolving door HB 602 (D. Howard) required legislators who leave office to wait two years before becoming lobbyist. None of these bills made it out of the Elections Committee.

Two disclosure bills supported did pass although without the governor’s signature. These bills provided some measure of success in the session. The Texas Ethics Commission ruled it had no authority to report the value of cash gifts given to elected officials unless the legislature passed required legislation. To correct this, HB 158 (Naishtat) would require the reporting the value of cash gifts. It was passed by both houses of the legislature. SB 64 (Zaffirini), passed by both houses, requires a general purpose committee to file additional reports nine days before an election until noon on election day. This would curtail the “late train” donations before an election in which the public was not previously informed.

**2009:** In the 81<sup>st</sup> legislative session, not much progress was made to reform the way political campaigns are financed. Four minor bills supported by the League were passed by both Houses and signed by the Governor. Two of the bills were related to the Texas Ethics Commission: HB 3216 provides for immediate notification to respondents of complaints either electronically or by telephone and by written notice after five days. HB 3218 requires that a sworn complaint must include the person’s name, address, telephone number, email address if known, be a resident of the State of Texas, and include other pertinent information. These reforms standardize the complaint process.

SB 1152 prohibits accepting political contributions in state buildings. HB 4060 limits the time when judicial candidates can accept contributions even if the candidate is unopposed. While these four bills could be called piece meal legislation they do tighten up the some loose ends of the political campaign process. More comprehensive legislation such as HB 105, the Texas Fair Campaign Act, HB 391 and SB 246, The Clean Elections Act, would impose limits on individual campaign contributions for elected state offices. The League supported these measures.

**2011:** In the wake of the most expensive election in the state’s history, it should come as no surprise that campaign finance reform was a low priority this session. Only one League-supported campaign finance bill (HB 336) passed. It requires school boards to post candidate financial information on their websites, beginning Sept. 1, 2011. Strangely, a very similar bill that focused on city and county elections failed to get out of committee.

**2013:** On May 1, 2014, the House State Affairs Committee held an interim hearing on campaign finance disclosure. This hearing was to revisit the issue that was addressed in the 2013 session by SB 346 (Seliger), a bill that was passed by both legislative chambers but was vetoed by the governor after adjournment.

Currently, names of contributors who give directly to candidates and officeholders must be disclosed, but certain types of political PACS are not required to disclose the names of their contributors. The League believes that voters have the right to know the names of any person or entity that spends money to influence elections.

At the hearing, a Utah legislator testified about a political scandal in his state in which the Utah Attorney General was forced to step down after an investigation conducted by members of his own political party. The investigation revealed that much of his campaign money, although “laundered” four times, came from the payday loan industry after he had made promises to rule in their favor. The Utah legislator urged the Texas Legislature to pass stringent disclosure measures.

While LWV does not believe that disclosure is the only remedy to a government answerable to the people and not just big donors, we see it as an essential part of democracy. We expect to work with the legislature in the next session to get this measure passed.

**2015** The Governor stated that one of his five priorities for the 84th legislature was to address ethics reform. LWV-TX worked with the Texas Anti-Corruption Campaign (TACC), a partnership of several organizations, including Common Cause, Public Citizen, and Clean Elections Texas, to track and support serious ethics reform bills.

More than 100 bills were filed relating to government ethics. Just fifteen passed the House and Senate. Two were vetoed. The bills passed were, by and large, limited efforts to curb specific abuses in a piecemeal manner. For example, SB 20 (Nelson), which LWV watched carefully, did pass and, while it has some loopholes, it has the potential to prevent some contracting abuses. Another bill, HB 23 (Davis, Sarah), which LWV supported, will extend contracting disclosure requirements to immediate family members.

SB 19 (Taylor, Van), the most comprehensive bill, which LWV testified on, passed both the House and the Senate. Although it was not perfect, following testimony by LWV and other organizations it was improved to include a number of provisions that, if enforced, would have strengthened the Texas Ethics Commission and established meaningful guidelines and criminal offenses for serious official misconduct. Unfortunately, it did not pass out of conference committee, apparently due to disagreements regarding whether to include curbs on "dark money" (undisclosed campaign contributions). The last-minute loss of this bill means serious reforms to rein in egregious campaign practices and almost unimaginable spending once again have eluded us.

Most significant, HB 1690 (King, Phil), which LWV strongly opposed, passed and was signed

by the Governor. Its primary purpose was to dissolve the Public Integrity Unit based in the Austin DA's office. Instead, the Texas Rangers are to investigate complaints and refer them to the alleged offender's home county prosecutor. LWV's concern is that this bill creates a separate and unique legal system for politicians and government officials. In addition, a strong non-disclosure provision will prevent public scrutiny. We are left to conclude that the political will to root out and prevent corruption just wasn't there, despite the Governor's professed concerns.

**Reference Available: (Advocacy Paper) *MONEY, POLITICS AND ETHICS: What's at Stake? Making Democracy Work Through Effective Reform*, February 2005.**

## **H. PUBLIC SCHOOL FINANCE - 1973, 1981, 1993, 2003**

*The League of Women Voters of Texas supports a school finance system that would provide taxpayer equity and an equitable distribution of funds to ensure that all Texas school children receive a high quality education. Specific measures that we support include*

- a sufficient level of state support to Texas public schools to ensure that all Texas school children receive a high quality education
- a guaranteed tax base yield approach for part of the local enrichment, to mitigate spending disparities resulting from differences in wealth among school districts in Texas; however, the League believes some unequalized local enrichment should be allowed within a substantially equalized system
- equalized state assistance to districts for essential capital outlays
- taxpayer equity in the form of state equalization aid to local districts allotted in direct proportion to local tax effort
- state established minimum local expenditure levels with joint state-local financing (known as the foundation school approach) that includes:
  - adequate salaries to attract and retain qualified teachers and/or teaching personnel
  - adequate funding of the basic allotment, which provides for operations and programs for special categories of students, specifically vocational education, compensatory education, special education, kindergarten, and gifted and talented
  - maintenance of a weighted approach to distribution of state school finance money to meet individual student needs.

*The League of Women Voters of Texas opposes:*

- the voucher system as well as choice options that do not promote racial integration and/or equal access to quality education
- any state requirement that local districts use state school finance monies to provide local tax relief.

### **Explanation: Public School Finance**

Our school finance positions are the products of two separate studies undertaken by LWV-TX and two subsequent periodic program reviews. The first study was adopted in 1972, and the resulting consensus led to active League involvement in school finance legislation during regular and special sessions from 1973-1979.

Because new issues were raised during these sessions and because League members wished to clarify some positions reached earlier, delegates to the 1979 Convention adopted a restudy of the Texas school finance system. The restudy was completed in 1981. In 1992, the LWV-TX Periodic Program Review committee reviewed the PSF positions and recommended extensive revision. Most of the recommendations involved updating terminology, but the review committee suggested substantive changes in the positions concerning equalization of facilities funding and caps on local enrichment. All of the recommendations were approved at the 1993 state Convention. In 2003, the LWV-TX Periodic Program Review committee again recommended changes in the position most notably by adding a section on accountability of charter schools. The recommendations were approved at the 2003 state Convention.

### **History: Public School Finance**

**1979:** The system of property tax administration, which had been contributing to inequities among school districts, was made more rational by passage of League-supported bills in 1979 requiring one appraisal district per county and by the establishment of the State Property Tax Board. The tax board is responsible for determining the market value of taxable property in each school district, an essential factor in calculating school finance formulas.

**1983-1984:** Much attention was focused on school finance and teacher salaries during the 1983 legislative session. Because of a tight budget and the unwillingness of some legislators to raise taxes, no substantive changes were made. Following the session, the Select Committee on Public Education (SCOPE), chaired by Ross Perot, was appointed to investigate the financing of education in Texas with a view toward reform of the system in a special legislative session.

The Texas Legislature met in special session during the summer of 1984 to enact many of the recommendations of SCOPE, including a complete overhaul of the foundation program. HB 72 changed the foundation program from one based on objects of expenditure (teacher salaries, transportation, operating expenses) to a weighted approach based on various educational programs (regular education, special, vocational, compensatory, and bilingual education). Three significant new programs were mandated: pre-kindergarten for disadvantaged four-year-olds, summer bilingual education for four- and five-year-olds with limited English, and a class enrollment cap of 22 in grades K-4. HB 72 expanded the foundation program level to absorb a greater share of local enrichment. For 1985, \$900 million in state funds were added and the local share was raised by \$1.1 billion, thereby diverting local tax revenue from enrichment to the local share of the foundation program.

While the legislature enacted the largest tax bill in the state's history, local school board trustees enacted the largest school property tax increase ever, raising property tax levies by \$519 million. Increased local tax levies substantially negated the equalization improvement that the legislature tried to achieve.

**1985:** School funding in the lean budget of the 1985 legislative session fared comparatively well in the face of gloomy revenue projections. Little significant education legislation passed as the state leadership remained firm in its resolve to avoid a major overhaul of the recent education

reforms. The gifted and talented were added as a special population to the foundation program, and the jeopardized optional full-day, full-state-funded kindergarten was retained.

**1987:** During the 1987 legislative session, several attempts were made to cut the public school budget because of the revenue shortfall. The League testified in favor of an increase in the level of state aid to ensure that all Texas school children would receive quality education. By the time the final 1988-89 budget was adopted, public education was not trimmed substantially.

We also testified against a bill that would have mandated the adjustment of public school funding formulas through the appropriations process since a League position speaks to the clear assignment of responsibility in state government, and we believed school funding formulas were the primary concern of the Texas Education Agency and the House Education Committee, not the House Appropriations Committee.

**1989:** In the spring of 1987 Judge Harley Clark declared Texas' school finance system unconstitutional. This decision was overturned by the court of appeals and was then appealed to the Texas Supreme Court.

In the meantime, during the 1989 legislative session, several attempts were made to add substantial amounts of money to the Foundation School Program in order to offset the Clark decision. However, because there was great reluctance to raise taxes again, only \$450 million in new state money was provided to the public schools although \$360 million was in the form of a guaranteed tax yield system.

Most observers agreed the legislative action was insufficient to rectify any inequities in funding between rich and poor districts. Indeed, in October 1989, the Texas Supreme Court, in Edgewood I, threw out the school finance system.

**1990-1991:** In response to the Texas Supreme Court ruling that the school finance system was unconstitutional, the legislature passed SB 1, which was also declared unconstitutional by the high court in the Edgewood II decision in January 1991. The court set a deadline of April 1, 1991 for the legislature to adopt a constitutional system. Thus, the search for an equitable school funding system and the means to fund it dominated the regular session of the 72nd Legislature. LWV-TX adopted Public School Finance as a priority and consistently affirmed the need for adequate as well as equitable funding for the public schools.

The plan ultimately adopted created 188 new taxing districts known as County Education Districts (CEDs.) Funds raised within the CEDs were redistributed among school districts within the CEDs on the basis of property tax wealth and tax effort.

**1992:** In January, the state Supreme Court in Edgewood III struck down the CED tax system as unconstitutional, holding that this system was in effect an unconstitutional state property tax, and furthermore that the CED tax was not a valid local tax since it had not been approved by the voters in each CED. The high court set a firm deadline of June 1, 1993 for the legislature to come up with an equitable system that did not violate other sections of the state constitution.

The League was active in the November 1992 special session which was called to find a solution to the school finance dilemma. A proposed plan to switch from the CED county-wide system to statewide recapture of property taxes, redistributing certain property tax revenues from the wealthiest districts statewide, failed to win the necessary legislative approval to put it on the ballot as a proposed constitutional amendment.

**1993:** With the court-imposed June 1993, deadline looming, the League chose to dedicate significant resources to following and shaping the school finance bill as the 73rd Legislature convened in January. The League lobbyist stayed on top of the ever-evolving bill as the state struggled to find a formulation that the court would find constitutional, that the legislature would approve, and that met the state leadership promise to voters of no new taxes.

Voters rejected the constitutional amendment that the legislature, with League support, put on the May 1993 ballot. This proposition, known to some as a “Robin Hood” or “share-the-wealth” plan, would have required a limited redistribution of local property taxes from the wealthiest districts to the neediest districts statewide.

With the defeat of the May 1 proposition and with one month before the court-imposed deadline, the legislature passed a school finance plan that gave wealthy districts five choices for sharing property tax revenues with property-poor districts in the state.

In the summer following the 1993 regular session, many of the wealthy districts chose, with overwhelming voter approval, the option of transferring funds to the state for redistribution statewide in lieu of risking forced consolidation. At the same time, however, these districts were challenging the new school finance plan in court. The needier districts were also challenging the plan, contending they would have to raise taxes just to stay even financially.

While the League was actively supporting the equitable, limited redistribution of local school taxes to property-poor districts in the 73rd Legislature, the League called again for a restructuring of the state tax system. The League noted that the share of school funding continues to decrease while the burden on the local school property tax increases each session. What the League has long advocated to reverse the trend is adequate state revenue from a broad-based, statewide tax, such as the income tax.

**1995:** As the 74th Legislature convened, the Supreme Court affirmed the constitutionality of the 1993 school finance plan. Thus, for the first time in several sessions, public school finance was not a priority issue for legislators or the League.

Although the League was not active in this area, the legislature enacted and the governor signed Senate Bill 1, a rewrite of all of the state’s public education laws. Some highlights of the new law include:

- individual districts are given the option of more local control if they adopt rule charters

- minimum teacher salaries were increased
- schools will now have “foundation” and “enrichment” curricula
- in the area of school finance, the basic allotment per student was raised. \$170 million was appropriated for assistance for instructional facilities. Low-wealth districts with acceptable tax efforts may apply for state assistance for construction/improvement of instructional facilities.

(Note that, in affirming the 1993 school finance plan, the Supreme Court emphasized the state’s duty to provide all districts with substantially equal access to operations and facilities funding. The court stated that there was no requirement for a separate facilities component in the plan as long as districts are able to meet their operations and facilities needs from available funding. The court warned, however, that the point at which some districts will be unable to meet these needs under the plan is near.)

**1997:** As noted in the Financing State Government section, a tax relief bill dominated the session, but the legislature was unwilling to tackle real reform of the state’s taxation system, particularly the thorny issue of public school finance. The tax bill finally passed by the legislature funded property tax relief for homeowners with the state’s \$1 billion “surplus.” The League expressed concern about this type of funding, taking money away from important services such as public education. In addition, there may be no surplus in the next biennium to compensate for the reduced property tax, imposing an added burden on local school districts. The only significant change in public school finance to come out of this legislature was the dedication of lottery funds for education, a move which the League strongly opposes.

Once again during this session, legislation that would have allocated funds for public education to private schools, via vouchers, was defeated. The League presented testimony and wrote to legislators expressing opposition to such measures.

**1999:** Once again, the issue of private school vouchers took center stage in the arena of public school finance. LWV-TX was a part of the Coalition for Public Schools. We used our grassroots network not only to contact legislators telling why using public funds for private education is bad public policy, but also to contact targeted legislators at crucial times during the session. No-voucher-legislation is one of the successes of this session.

**2001:** LWV-TX again worked with the Coalition for Public Schools. This session the issue was charter schools, not vouchers. The Coalition supported an excellent charter schools bill based on an interim study that passed the house. A less desirable bill passed the Senate. However, the compromise bill addressed the issues identified during the interim. These issues include a cap of 215 on open-enrollment charter schools and elimination of the category "at-risk" charter schools; the designation of funds received by charter schools as public funds held in trust for children; increased powers for the commissioner of education over licensing of charter schools; a requirement of at least a high school diploma for all teachers in charter schools; and a requirement for notification of parents about the qualifications of all teachers.

A teachers' health insurance bill also passed. Because there were many advocates on this issue, LWV-TX monitored but was not heavily involved in its passage. Funds in the amount of \$1.24 million were earmarked for health benefits for teachers. Small districts (fewer than 500 workers) are required to join a statewide insurance pool that is also optional with districts up to 1,000 workers. Larger districts must wait until 2005 to join unless the state is ready sooner.

**2003:** Legislators vowed to revamp the way Texas public schools were funded, but the House and Senate couldn't agree on a plan. The House plan would have put a sunset date on Robin Hood and allowed lawmakers to come back during a special session to study the issue. The Senate plan, backed by Lt. Gov. Dewhurst, would have cut property taxes while expanding sales taxes and would have repaired the system during the regular session. Neither plan passed during the regular session, but legislators did extend an additional \$1.2 billion to public education using per-student formulas to keep school districts alive until a new system is found. To complicate matters, during the session the courts ruled that the case from property rich schools calling for an end to Robin Hood could be heard. Governor Perry vowed to call a special session, but did not set a date.

House Speaker Craddick appointed a House Select Committee on School Finance, divided into eight subcommittees, which is charged with looking at school finance and the state tax system. While the focus will be primarily on school finance, there could be repercussions across the entire Texas public finance spectrum. A special session of the legislature is expected in late winter or spring, 2004.

In the area of vouchers, which were very much a part of the session, 'organized people defeated organized money', according to the Coalition for Public Schools (CPS) comprised of 38 organizations, including the League of Women Voters of Texas. For the first time, the Governor, Lt. Governor, Speaker of the House and the Chairs of the Public Education Committees in both the House and Senate supported private school vouchers. In addition, prominent state and national individual and organizational proponents testified before legislative committees and/or took leadership roles in the voucher fight.

The voucher and virtual charter school battles started with straight-up bills discussed in public settings. But when those bills failed to pass, skirmishes continued until the final hours of the regular session in less visible negotiations in conference committees and via last-minute floor amendments to other bills. Lawmakers realized it would be fiscally irresponsible to take away funding from cash-strapped public schools to set up a new program to subsidize private and religious schools and home schools. The message from the CPS members was that Texas taxpayers cannot afford private school vouchers, and that every available dollar must be used to ensure that every public school in every neighborhood is adequately funded so all Texas children can succeed.

**2004:** The Governor called a special session on public financing in the spring. LWV-TX partnered with Common Cause, Public Citizen, the Grey Panthers, the Christian Life Commission, Texas Impact, and the Texas Education Crisis Coalition to write and release a

joint statement on school finance reform addressed to the legislature and sent to the governor. Through work with other groups and League statements to the Joint Committee on Financing Education and to the Senate Finance Committee, LWV-TX supported the message that reform provided taxpayer equity and adequate funding to ensure that all Texas school children receive a high quality education and recognize that equity and quality are inseparable. (See Spring 2004 *Texas Voter*.) The session expired without completion of legislation or constitutional amendments.

**2005:** During the regular session, the legislature did not accomplish their #1 goal: to reform and improve the state's school finance system. By failing to pass a school finance reform bill, the legislature once again let politics shortchange the school children of Texas. Cuts were made during the last session, and the special session which followed failed to provide a solution. This session is the 3rd failure to provide meaningful support for the public schools. The leadership team of Gov. Perry, Lt. Gov. Dewhurst, and Speaker Craddick was unable to reach a compromise on the public school finance/education reform/property tax relief package that was the centerpiece of the 79th session of the legislature.

It appeared that the emphasis was more on lowering property taxes than on solving public school finance problems. In addition, state leaders were determined not to raise taxes overall, which limited the money available for schools and cost them support among education groups. During the late days of the session, Senate negotiators put emphasis on seeing that every school district in the state had nearly the same amount of money per student. They were also particularly critical of House efforts to raise the sales tax, saying they hurt low- and middle-income families.

The one success was that again, no voucher legislation was passed. There were several attempts to pass vouchers, both in specific bills about vouchers and as amendments to other bills. One session on the House floor was especially dramatic with close votes and parliamentary maneuvering.

**2005: (Special sessions #1 and #2)** Perry called a special session following the regular session. Public school finance was also back in the courts. The Supreme Court will rule on a district court judge's decision that the state school finance system is unconstitutional in both equity and adequacy.

During Special Session #1 LWV-TX issued two Action Alerts asking local Leagues to contact first their house members, then both their senators and representatives, urging them to oppose HB3 (See Financing State Government). LWV-TX sent a letter to all members of the Legislature asking them to vote against the bill when it came out of the conference committee. LWV-TX believed that the bill did not fund the schools *more adequately or equitably* AND believed that the property tax relief and sales tax increases were not equitable to those taxpayers with incomes of \$100,000 and below. Again the Legislature had clearly NOT addressed the dual issues of funding public education and reforming the tax system to pay for that education.

**2006:** Public school finance and education reform was the agenda for the Senate Select Committee on Education Reform & Public School Finance that met biweekly in anticipation of a special session. A special legislative session on public school finance was called early in the spring following the March primaries. The session had to address the subject of the Supreme Court's June 1 deadline on school finance which regarded as unconstitutional the current (statewide) property tax structure. State tax reform was the subject of the Governor's Advisory Committee on Tax Reform, chaired by John Sharp. The report and recommendations of the Committee formed the basis for a broad-based business tax reform (supported by LWV-TX) that was adopted by the special session and which served to answer the Supreme Court decision. Schools were able to open on time. It remains to be seen if the business tax and the actions taken by the Legislature (much of which concerned lowering the property tax) will form an adequate, dependable source of revenue for the public schools.

**2009:** The surviving public school finance bill, HB 3646, provides \$1.9 billion in new money—largely from federal stimulus dollars. It was allocated in SB 1, the state's biennial budget bill. HB 3646 makes changes that improve the way schools are funded and provide teachers with a minimum of an \$800 pay raise. However, comprehensive reform of public school finance in Texas looms large. Schools face rising costs and a state funding freeze at 2006 levels. In addition, local revenues are capped at a rate that can be increased only through local elections. The need to change public school funding formulas remains a critical issue for the next session.

**2011:** Public school finance was a critical issue during this session, when legislators faced a \$27 billion shortfall. Impasses over funding for education and health prompted the special session, though other issues were added later. Once again, the legislature failed to address systemic problems with the state's school finance system that is both inequitable and inadequately funded.

SB 1, the fiscal matters bill that passed during the special session, underfunds schools by \$4 billion in the Foundation School Program and by \$1.5 billion in state grants for such programs as full-day prekindergarten, science labs, Student Success Initiative funding for extra help for students at risk of failing state high-stakes tests, educator bonuses, the Communities in Schools dropout prevention program, and advanced-placement incentives. This is the first budget bill in more than 60 years that does not fund new enrollment in Texas public schools, estimated at 80,000 to 90,000 more students each year.

After using \$3.2 billion of the state's Rainy Day Fund to address the budget deficit, the legislature refused to spend any the remaining \$6 billion in the fund for schools. Nor would the legislature tackle the root cause of the school budget crisis, the 2006 tax swap that replaced property tax support for public education with a tax on small and medium business, called the margins tax. It has never resulted in expected revenues.

SB 1 does begin to phase out the target revenue funding model that was created in 2006 in connection with the margins tax. This model created inequities in how funding is distributed to local districts. While SB 1 repeals target revenue in 2017, it is unclear how it will be further reduced and what future legislatures might do. Another provision of SB 1 allows certain

charter schools that qualify to access the Permanent School Fund to guarantee bonds for facilities—a privilege previously authorized only for school districts. Many believe the new provision will put the PSF at risk, since charter schools do not have a tax base.

SB 2, special session, appropriates money for the support of government from Sept. 1, 2011, to Aug. 31, 2013. It is a technical bill that avoids having deficits in both public education spending and Medicaid at the same time. It is related to House Joint Resolution 109, a proposed constitutional amendment, which appeared on the November 2011 ballot as Proposition 6 and passed. It allows SB 2 to appropriate \$150 million each of the next two school years from the Available School Fund to public education. However, these additional funds will be offset by a matching reduction in state general revenue funding. Thus, passage of this amendment will not result in any additional funding for public education.

SB 8, special session, was designed to provide flexibility to school districts to deal with shrinking budgets and personnel cuts. The bill allows districts to cut teacher pay in several ways, repeals the salary floor established in 2009, and changes the 45-day deadline to notify contract staff of nonrenewal to 10 days before the end of the school year. These changes were vigorously opposed by organizations representing teachers, who have been rocked by job cuts and expectations to do more with less.

SB 6, special session, creates a new Instructional Materials Allotment (IMA) that merges funds for textbooks, electronic textbooks, and technology into one fund. The IMA creates a new funding formula that requires the State Board of Education to set an annual distribution from the Permanent School Fund to the Available School Fund to the IMA. School districts will have greater flexibility over use of the dollars.

Successfully stopped were a number of proposals including: a provision in SB 8 that would have increased the 22-1 class-size cap in kindergarten through grade 4; proposals that would have raised or eliminated the current 215 cap on the number of open-enrollment charter schools that may be granted by the State Board of Education; and several voucher schemes that would have drained tax dollars from public schools.

**2013:** After the dramatic cuts to education funding by the 82<sup>nd</sup> Legislature in 2011, the 83<sup>rd</sup> Legislature was under pressure to restore the money. The 2011 cuts had resulted in the elimination of 25,000 faculty and staff jobs, including 11,487 teaching positions. The \$5.4 billion cut amounted to a loss of more than \$500 per pupil. The 83<sup>rd</sup> Legislature responded with HB 10 (Pitts) SUPPORT, a supplemental appropriations bill that funded various agencies through August 31, 2013, and included \$317 million from general revenue and \$313 in “recaptured” property tax revenue to the Foundation School Program. This bill passed both houses and went into effect March 10.

Then they got to work on the budget for fiscal 2013-15. The final budget included \$3.4 billion in education funding, but that was only 85% of what was cut in 2011, and still left the per-pupil funding more than \$500 short of the level reached before the recession. It also did not restore

the massive cuts to programs such as full-day pre-kindergarten and the Student Success Initiative, which offered help to students struggling to pass the state exams. Another supplemental budget bill, HB 1025 (Pitts) SUPPORT would have added \$500 million more for education. It passed both houses, was included in the budget, but was subject to a line-item veto by Governor Perry.

In early 2013, the lawsuit by coalitions of Texas school districts against the state resulted in a ruling that the public school finance system was inadequate and inefficient. However the judge agreed to have a new trial after the legislative session, to take into account changes made by the 83<sup>rd</sup> Legislature. The new trial is scheduled for January 2014.

The cap on charter schools was reset from 215 to 305 (by 2019) in SB 2 (Patrick) OPPOSE. It passed both houses and was signed by the governor. This bill exempts dropout recovery charters from the cap. On the positive side, the bill gives the Texas Education Agency (TEA) more authority to close poor performing charter schools.

Vouchers reappeared in the 83<sup>rd</sup> Legislature as “scholarships” for poor and at-risk students, with the funding to come from “donations” of part of an entity’s state insurance premium tax or franchise tax. We opposed at least five Senate bills and two House bills, and all failed to pass their respective houses. The bills were by Senators Patrick, Paxton, Williams, and Campbell. The House bills were by Representatives Capriglione and Callegari.

**2015:** This was not the year to consider revamping public school finance. The push in the Legislature was to lower taxes, especially property taxes, which mainly fund public schools at the local level. The House wanted to lower the sales tax instead, but the conference committee on the budget decided on the property tax reduction, as well as franchise tax reduction. However the state promises to reimburse districts for lost revenue. The reduction is formed by raising the exemption on the value of the property from \$15,000 to \$25,000. All this will require the passage of a constitutional amendment this fall.

The final budget did give \$1.5 billion to public schools above the \$2.3 billion needed for enrollment growth. This includes \$41 million for math and reading academies, and \$118 million for high-quality pre-kindergarten programs.

Meanwhile, for the second time in two years, State District Judge John Dietz ruled that the Texas school finance system is unconstitutional. His ruling states that Texas fails to provide its schools with sufficient funding and that it distributes its funds among districts unfairly. Even though the 83<sup>rd</sup> Legislature restored 65% of its 2011 cuts, it wasn’t enough and Texas now spends \$600 less per student than it did in 2009 (adjusted for inflation). The state appealed his ruling to the Texas Supreme Court, which will not decide it until next year. House Public Education Chair Jimmie Don Aycock offered a bill that would have addressed the problems (HB 1759 SUPPORT), but it was pulled after 2<sup>nd</sup> reading so that a long debate would not kill other bills at the midnight deadline.

A few bills addressed vouchers, this time called Education Tuition Grants, which would have allowed businesses to donate part of their taxes to “educational assistance organizations.” They would then award the money to students to attend private schools. Only one of these passed the Senate (SB 4 OPPOSE) but died in House Ways and Means. This year vouchers went nowhere.

**Reference Available:** (Advocacy Paper) *Public Education in Texas: Teetering on the Brink?*, February 2013. (Advocacy Paper) *Financing State Government and the Public Schools*, January 2005.

## **I. PUBLIC SCHOOL TESTING and ACCOUNTABILITY - (2008)**

*The League of Women Voters of Texas supports state-mandated STANDARDIZED ACHIEVEMENT TESTS that are used with a state-mandated curriculum as a method to measure individual mastery and proficiency in a subject, and as a diagnostic tool to measure student growth in progress from one year to the next. In addition, the League supports state-mandated tests that are:*

- developed and reviewed by a broad spectrum of Texas educators who are acknowledged experts in their fields
- written with sensitivity to the diversity of the state’s population
- not** used as the sole determination for grade-level advancement or graduation from high school
- used to measure end-of-course proficiency for graduation from high school
- developed to measure higher-level thinking skills
- limited in frequency of test administration, which would also apply to benchmark tests, practice tests, and field tests

*The League of Women Voters of Texas supports a state-mandated, STANDARDIZED CURRICULUM that is developed with broad input from Texas educators, the public, business groups, and elected and appointed officials. In addition, the League supports a state-mandated curriculum that:*

- reflects the diversity of the state’s population
- covers subjects that are included on the standardized tests, as well as those that are not included, to ensure richness and variety
- provides the academic rigor necessary for success in postsecondary education and careers

*The League of Women Voters of Texas supports a state-mandated ACCOUNTABILITY SYSTEM to ensure that districts are teaching the standardized curriculum. In addition, the League supports an accountability system that:*

- aligns with any federal accountability system to avoid conflicting results
- identifies academic achievement and gaps in performance among subgroups of students, based on standardized tests and other indicators (for example, dropout, attendance, and high school completion rates)

- is used as a diagnostic method to evaluate the strengths and weaknesses of schools and school districts, but NOT to establish school or school district ratings; NOT to sanction, reconstitute, or close schools; and NOT as a primary factor to appraise and terminate educators
- measures a school's growth in academic achievement from one year to the next, rather than as a single-year assessment
- places less emphasis on the standardized test and includes additional measurements, such as other types of tests, performance in coursework, and portfolios
- directs resources to *improve* performance, but not to reward schools.

***The League of Women Voters of Texas supports EQUITABLE OPPORTUNITY for academic achievement for all students. Specifically, the League supports:***

- universal but not mandatory prekindergarten programs
- universal but not mandatory full-day kindergarten programs
- early intervention for academically at-risk students
- research-based instruction for English learners and other targeted subgroups of students
- tutoring and/or remedial classes for students who fail a section or sections of the standardized test
- availability of extended school day, Saturday classes, summer school, extended school year, and night courses at various school levels.

***The League of Women Voters of Texas endorses SUPPORT FOR TEACHERS in the mandated testing environment. Specifically, the League supports:***

- adequate planning time or class-release time for improving student performance
- professional development that is relevant and is supported by research demonstrating improvement in student achievement
- reduction in class size, especially for low-performing students, at all grade levels.
- qualified teacher aides for low-performing campuses
- incentives to attract experienced and qualified teachers to low-performing campuses and to subject areas where shortages exist, but **not** to reward teachers or campuses for improvement in the performance of their students on the standardized test
- mentoring for new teachers, with compensation for mentors.

### **Explanation: Public School Testing and Accountability**

This study was adopted as a not-recommended item at Convention, 2006. Titled Testing K-12 in the Public Schools of Texas, it was intended to educate members on the current uses and demands of the state mandated achievement testing system in Texas. The scope was expanded to include how the testing system and the accountability system are interrelated. A Facts and Issues: *Mandated Achievement Testing in the Public Schools of Texas*, was published in the fall of 2007, and the new position was approved by the board in January, 2008.

### **History: Public School Testing and Accountability**

**2007:** The legislature addressed testing and accountability issues in SB 1031. It replaced the state's mandated, standardized test—the Texas Assessment of Knowledge and Skills, or TAKS--

with end-of-course testing as a requirement for graduation from high school. The change starts with students entering grade 9 in the 2011-2012 school year. TAKS is still to be used in grades 3-8. In addition to other changes that were designed to relieve the pressure from testing and provide better preparation for college, the bill created a Joint Select Committee on Public School Accountability. This committee was directed to consider changes in the test-driven accountability system before the 2009 session, with implementation of any proposed changes scheduled for 2011-2012.

**2008:** The League filed testimony in March and May with the State Board of Education (SBOE) concerning revisions to the state’s curriculum in English/Language Arts and Reading (ELAR) for kindergarten through 12<sup>th</sup> grade. The League urged support of a state standardized curriculum that is developed with broad input from Texas educators and that addresses the needs of the state’s diverse student population. The League supported the draft curriculum from teacher writing teams, but the SBOE voted 9-6 to approve their own revisions to a late-hour version.

The SBOE began considering revisions to the K-12 science curriculum in the fall of 2008. The League filed testimony in November, urging support for the draft from the teacher writing teams, which embraced the scientific concept of evolution that is widely endorsed by scientists throughout the world; and a standardized curriculum that provides the academic rigor students need to succeed in college and careers throughout the nation and the world.

In June, the League filed testimony before the Joint Select Committee on Public School Accountability—one of many such hearings held throughout the state. The League called for a fairer and more just system, free of punitive ratings and sanctions, citing positions the League had adopted in the spring of 2008.

**2009:** The League filed testimony with the SBOE in January and March concerning proposed revisions to the K-12 science curriculum. Once again, the League supported drafts prepared by educator writing teams. The League opposed language that would weaken instruction in the scientific concept of evolution, as well as the ability of Texas students to compete in a global market. A March 2009 Action Alert urged members to support these positions in individual contacts with the SBOE. While the SBOE did not adopt “strengths and weaknesses” language concerning the study of evolution, the board approved amendments to require high school students in biology to “analyze and evaluate the sufficiency and insufficiency of common ancestry”; and in earth and space science, to “assess the arguments for and against universal common descent.” As the SBOE takes up revisions to the social studies curriculum in the fall of 2009, the League is continuing advocacy supported by previously invoked positions.

The 81<sup>st</sup> Legislature enacted broad changes to the state’s accountability system in HB 3. Some of the modifications are consistent with League positions: allowing the use of growth models, rather than a single-year assessment, to measure a school’s achievement; improving preparation for college and careers; reducing the focus on student achievement as the prime criterion for promotion in grade 3; providing some relief on the definition of dropouts, which affects ratings;

and giving the commissioner of education the option to grant improving schools to be rated as Unacceptable an additional fifth year before they are closed or put under alternative management. However, the League believes that HB 3 did not do enough to relieve punitive sanctions, ratings, personnel changes, and closures, which disproportionately affect urban schools with high populations of low-income students and English learners. The League prefers an accountability system that is used for diagnostic, rather than punitive purposes. Another concern is that the test-driven accountability system has become even more complex and reliant on achievement ratings since HB 3 added 10 new indicators on college readiness.

**2011:** Education issues associated with testing, accountability, and achievement took a back seat to school finance this session. Many changes concerning these issues resulted from HB 3 last session, with some scheduled to be phased in through 2013. The consensus this session seemed to be that the new system should be allowed to become fully operational before other changes should be made.

HB 2135 is one change that will cut back on assessments for students in grades 3 and 5 who meet certain requirements. Another change, which was requested by some legislators in the 2011 session, involves the way accountability ratings are determined by the Texas Education Agency. Based on a 2006 legislative directive, the agency had developed and adopted in 2009 the Texas Projection Measure (TPM). It estimates whether a student who failed the standardized test during the current school year is likely to pass the test in the next grade level. If so, the student is counted as passing for purposes of the current year's accountability rating.

This session, legislators argued that the TPM artificially increased ratings and gave the public a misleading message about the performance of their school and district. In response, the commissioner of education reverted to the actual passing rates for calculation of the 2010-2011 accountability ratings. This system will remain in effect while the state transitions from the TAKS to new, more rigorous assessments--the STAAR, along with end-of-course tests in high school.

**2013:** HB 5 (Aycock) SUPPORT was the major piece of legislation to deal with testing at the high school level. It was passed unanimously by both the House and the Senate. It reduces the end-of-course tests from 15 to five, including English I and II (reading and writing combined), Algebra I, biology and U.S. History. English III and Algebra II may be used by districts for diagnostic purposes but will not be required for graduation. The new testing regimen will begin in 2013. Schools will also be prohibited from administering more than two benchmark tests per student per subject. We supported this bill based on our position that tests should be limited in frequency of test administration, including benchmark tests, practice tests and field tests.

**Reference Available:** (Facts and Issues) *Mandated Testing In the Public Schools of Texas, 2007.*

## **J. REDISTRICTING – 1984, 1999**

***The League of Women Voters of Texas supports action to achieve an effective method for drawing boundaries for congressional and state legislative districts through legislative action and constitutional revision:***

The League supports the formation of a redistricting commission following the decennial census with the initial responsibility of formulating a redistricting plan designating boundaries for the congressional districts and the state House and Senate districts, with the following provisions:

- if a commission is not initially responsible, the legislature should conduct the work of redistricting during a special session called for the sole purpose of redistricting; the special session should operate within a short, strict time frame
- the state legislature should be responsible for the final approval of the redistricting plan
- specific provisions should be made for automatic court review of redistricting measures, preferably giving the Texas Supreme Court original jurisdiction
- definite time limits should be set for when the commission begins its work, when the legislature gives final approval, and when court action must be initiated.

Criteria for drawing district boundaries include the following:

- districts should be apportioned on the basis of equal population
- districts should be single member and contiguous
- consideration should be given to ensuring that the districts be compact, that district lines coincide with boundaries of local political subdivisions, and that districts not be drawn to dilute the voting strength of minority populations
- consideration should not be given to retention of incumbents or political party strength
- districts should not be apportioned on the basis of numbers of electors, but on total population (a qualified elector is any person eligible to vote in a state election in Texas; federal apportionment law is based on total population.)

**Explanation: Redistricting**

In 1983 the League adopted a "study of the congressional and legislative redistricting process in Texas, including assessment of current criteria and evaluation of possible alternatives." The study grew out of a concern for the way redistricting had been accomplished during the 1970's and 1980's when legislative redistricting problems had resulted in prolonged wrangling over district lines. League members asked for the study in order to have a position from which to work before the 1990 census and the next round of redistricting. The position was adopted in the fall of 1984.

League members strongly support the initial use of a commission. But members also provided for an alternative method in the event that the legislature is not willing to use a commission. If a commission is not initially responsible, the legislature should conduct the work of redistricting during a special session of the legislature called for the sole purpose of redistricting. The special session should operate within a short, strict time frame.

During 1997-98 Periodic Program Review, the committee clarified the League position opposing consideration of "communities of interest" as criteria for drawing district boundaries. Communities of interest can include common occupations, industries, and ethnic or religious cultures. Most redistricting authorities agree that this criterion is so broad that it invites problems. Communities of interest are difficult to define and often extend beyond political subdivisions and geographical boundaries. Racial and language minorities can constitute a community of interest that is already protected under the Voting Rights Act. At a statewide convention in 2013, delegates voted to remove the term "communities of interest" from the position.

### **History: Redistricting**

Action on this study has focused on trying to get legislators interested in reforming the redistricting system during a session in which redistricting is not being done. Efforts thus far have been futile. Reform measures have been introduced in each regular session since 1985 but have not been reported out of committee.

**1990's:** The League testified at redistricting hearings about the criteria we consider essential to a good redistricting plan. LWV-TX monitored redistricting legislation in the 1991 legislative session that redrew boundaries based on the new census. Forty-three bills on redistricting were introduced in the 73rd Legislature (1993). The League testified in favor of a measure that would have established a commission with initial authority over redistricting. Although none of the bills passed, the number introduced and the interest generated gave hope for progress in the future.

**2001:** None of the redistricting bills passed in the 77<sup>th</sup> session. The redistricting process remained unchanged. The Legislative Redistricting Board drew up the senate and house districts, and congressional redistricting was assigned to the courts when the governor did not call a special session. A large number of court suits resulted from redistricting plans after the 1990 census. Districts were not completely finalized until 1997. At this time it is not known whether or not the new plans drawn following the 2000 census will be in place in time for the 2002 election.

The League's major redistricting efforts in the 77<sup>th</sup> session were directed toward changing the redistricting process. After bills to establish a citizen's commission to draw the initial redistricting plan failed, the League lobbied in favor of SJR35 (Wentworth et al) to establish a special session devoted exclusively to redistricting. The "League bill" passed the Senate Redistricting Committee unanimously, passed the full senate with 29 coauthors, but was not successful in the house. Grassroots support provided by local Leagues and League members was a factor in getting the issue of redistricting process reform before the legislators and raising the interest in, and profile of, this important issue.

The League worked to educate members of the legislature on the use of the most accurate census figures available, and endorsed the use of statistical sampling as a proven scientific technique that, when properly used, can improve the accuracy and lower the costs of ascertaining the population count. However the legislature chose not to use this method.

**2003:** The League-supported bill establishing a commission with initial authority over redistricting did not receive a committee hearing in the regular session. The League opposed, on the grounds that a valid plan was in place, a House bill that would have redrawn the Congressional districts. Over fifty representatives left the state to deny a House quorum and the bill died.

The governor called a special session for the purpose of redrawing congressional districts. Again, the League opposed redrawing the districts and called for a change in the process to establish a commission with initial authority over redistricting. LWV-TX testified at House hearings in Houston, Lubbock and Dallas, and at Senate hearings in Houston and Dallas. Local Leagues testified in San Antonio and Waco.

A 2<sup>nd</sup> special session was called in July with 11 of the 12 Democratic senators leaving the state just before the session was convened. The new redistricting plan was adopted in the second session and withstood court challenges. The new plan was in effect for the March primary and for the general election in the fall of 2004.

**2005:** Sen. Wentworth again introduced a bill, SB 1404, that would establish a commission with initial authority over redistricting, but this time addressing only congressional districts. While supporting a commission with authority over legislative as well as congressional districts, the League chose to support this bill with testimony, Action Alerts, and other advocacy. The bill passed the Senate 30:1, but died in the House without a committee hearing.

**2006: LEAGUE TAKES AIM AT PARTISAN REDISTRICTING** (what follows is from a LWVUS press release). As a part of its Democracy Agenda, the League of Women Voters has called on the U.S. Supreme Court to overturn the partisan gerrymander imposed on the citizens of Texas in 2003.

In an amicus curiae, or “friend of the court” brief the League of Women Voters of the United States and the League of Women Voters of Texas argue that the Texas legislature’s mid-census redistricting was unconstitutional because it was carried out solely to achieve partisan advantage. The law firm of Wilmer, Cutler, Pickering, Hale and Dorr LLP prepared the brief on behalf of the League. The Court will hear arguments in the case, *LULAC v. Perry*, on March 1, 2006.

“Partisan gerrymandering undermines the basic principles of representative government,” according to Kay J. Maxwell, president of the national League. “The Texas League fought this plan when it was presented, and we are proud to join with them in asking the Court to overturn it. Partisan gerrymandering subverts the democratic system because it allows politicians to choose their voters, rather than vice versa. This turns representative government upside-down,” Maxwell said.

The Texas mid-census redistricting case involves the threshold decision of whether to redistrict *at all* and not just a decision about how to draw the lines in a redistricting plan. While

acknowledging that redistricting policy necessarily has an effect on election outcomes, the League in its brief urges the Court to decide that “there is a stark difference in kind between, on the one hand, relying on neutral considerations that incidentally affect partisan outcomes and, on the other, adopting exclusively partisan criteria for which specific partisan outcomes are the *goal*.”

By filing this brief the League of Women Voters continues its long history of fighting against attacks on the basic constitutional right to fair and equal representation guaranteed to all citizens by the Constitution. Leagues have worked vigorously across the country to secure representative redistricting plans in their states after each census and are seeking reforms to assure that the redistricting process is nonpartisan, equitable and open. These are core rights for citizens of a free and democratic nation.

The League’s Democracy Agenda is an advocacy and public education program to strengthen and renew the basic tenets of American democracy. This effort seeks to protect our electoral processes through election reform and campaign finance reform, to advance our representative government through nonpartisan redistricting, and preserve our constitutional rights by safeguarding civil liberty.

The Court did not decide in favor of the League position, which was to overturn the plan. It did however decide that the plan had a deleterious affect on Hispanic minority districts, and these had to be redrawn. The new districts were in place for the November election.

**2007:** At the beginning of the session Senator Wentworth, a longtime champion of fair redistricting and author of numerous bills supporting the formation of a redistricting committee, spoke. For over three decades LWV-TX has worked in support of an independent Redistricting Commission to formulate a redistricting plan to draw boundaries for Congressional and Texas House and Senate districts. A major hurdle in getting redistricting legislation passed in the 80<sup>th</sup> session was to get the House Redistricting committee to schedule hearings on the redistricting bills and pass them out of committee. Action alerts were sent to League members to urge early hearings and voting on the bills. The League did receive one of the rare invitations to present testimony to the House Committee on redistricting. The League expects to continue to support efforts to change the redistricting process. The issue needs to be addressed at a time when redistricting is not being done.

**2009:** The LWV-TX board voted to authorize a Redistricting Advocacy Campaign in advance of the Legislative session, mobilizing local Leagues to work for grassroots support of Senator Wentworth’s bill. However the bill did not reach the floor for a vote.

**2011:** The Texas Legislature passed redistricting bills for the US Congress, Texas Senate, Texas House and the State Board of Education. While these bills have become Texas law, federal law still requires that they be pre-cleared by either the Dept. of Justice or the DC Federal Court. The SBOE map was pre-cleared but the other maps are now before the Federal Courts. Temporary maps were put in place for 2012 while the courts hear the cases before making a final

determination. These maps were drawn to maximize the number of seats held by the majority party while skirting the Voting Rights Act. Competitiveness has been significantly reduced in these maps, but of course there is no legal requirement for districts to be competitive. The opportunity for minorities to elect the candidate of their choice even in previously majority-minority districts has been reduced.

Bills, including one by Senator Wentworth to improve the way redistricting is done were once again considered but not passed.

**2013:** As the League's 2012-14 biennium began, the federal court in San Antonio hearing challenges to redistricting plans passed by the 2011 Texas Legislature had drawn interim maps so 2012 elections could proceed and was awaiting the DC court decision on whether to pre-clear the legislature's maps. In late August 2012, the DC court declined to pre-clear the maps. The State of Texas appeal to the Supreme Court was put on hold until the Court decided the Shelby County Alabama, challenge to the preclearance requirement.

During the regular 2013 legislative session, a handful of redistricting bills were filed. Bills filed in both chambers, HB 145 (Strama) and SB 104 (West), would have established a redistricting commission, which LWV-TX has long supported, but were never heard in committee. Senate State Affairs Committee hearings on SB 1524 (Seliger) to adopt as permanent the interim maps drawn by the San Antonio court for 2012 elections revealed strong Democratic opposition, and the bill was left pending in committee. The regular session ended without significant action on redistricting.

Immediately on adjournment of the regular session, Gov. Perry called a special session to adopt the court-drawn interim maps as permanent. The Senate's traditional rule requiring 2/3 support for bills to be brought to the floor was not followed during this and subsequent special sessions, which meant bipartisan support was not needed for bills to reach the floor. Both chambers established select redistricting committees to consider adoption of the court's interim maps for both state Senate and House as well as congressional districts.

House and Senate select committees held hearing on the bills in Austin and several field locations. LWV-TX testified in Austin, and local Leagues testified at hearings in Corpus Christi, Dallas, Houston, and San Antonio emphasizing the importance of redistricting that is responsive to constituent concerns, reflects diversity, and grants all voters the opportunity for meaningful participation in their democracy.

Both chambers passed bills adopting as permanent the interim maps for congressional and Texas Senate districts as drawn by the court and the interim map for Texas House districts with minor changes to the court-drawn maps (SB 2 (Seliger), SB 4 (Seliger), and SB 3 (Seliger), respectively). Before Gov. Perry acted on this legislation, the Supreme Court announced the Shelby County decision striking down criteria for determining jurisdictions subject to preclearance. With the Supreme Court decision Texas could have gone back to the Legislature's 2011 maps, but instead Gov. Perry signed the three bills passed by the 2013 1<sup>st</sup> Special Session

permanently adopting the 2012 interim maps drawn by the San Antonio court with minor modifications to the state House map.

Adopting the court-drawn map for state Senate districts resolved the legal challenges to redistricting for that chamber in the San Antonio court. However, challenges under the Constitution and Section 2 of the Voting Rights Act to the state House and congressional maps continue in San Antonio, and the U.S. Department of Justice has joined the proceedings. Plaintiffs have asked that Texas be bailed-in to preclearance under Section 3. Parties are preparing for a trial scheduled for summer 2014 on issues regarding the 2011 maps drawn by the legislature, the court-drawn interim maps for 2012 now adopted by the State of Texas, and the tweaks to the court-drawn House map made by the 2013 special session.

A new challenge to state Senate redistricting was filed April 21, 2014 in Austin arguing that districts should be drawn based on eligible voters not on overall population, and a three-judge panel has been appointed to hear that case.

**Reference Available: (Advocacy Paper) *Redistricting*, January 2007.**

## **K. STATE-LOCAL RELATIONS - 1963, 1965, 1971, 1999**

*The League of Women Voters of Texas supports more flexible structures and adequate powers at the local level; comprehensive regional state planning, including regional planning councils with the following provisions:*

- state financial and technical assistance to regional councils
- flexible government structures for counties and municipalities, together with legislative and financial powers adequate to provide local services
- authorization for cities and counties to combine efforts on regional problems enabling performance of services without overlapping costs and taxation, in preference to single-purpose districts (i.e. transportation districts, municipal utility districts, etc.)
- regulation of single-purpose districts by the state with provisions for greater accountability.

### **Explanation and History: State-Local Relations**

The study of state-local relations, which was begun in 1962, was a logical continuation of the League's study of the Texas Constitution. League members had found many governmental problems that did not conform to an established political jurisdiction. This study included research into constitutional and statutory provisions governing general law cities, home rule cities, and other forms of city government. The League learned in detail about county governments; special districts; how the state administered its services in public education, public health, and water resources; and sources of revenue.

In 1964, comprehensive and regional planning were studied in depth, and the League became interested in councils of government and regional planning councils. In 1971, a reevaluation of councils of government was made with one League from each area doing an evaluation of its

own council. The result being that the League continued to support councils of government.

### **History: State/Local Relations**

During the 1974 Constitutional Convention, the League worked for constitutional revisions that would allow more flexible structures for county and municipal governments.

The League continues to support expanding the authority of county government to carry out urban activities and giving it the option to assume a larger role in meeting county-wide needs and problems. Legislation granting counties some form of ordinance-making power has been introduced in several sessions, and the League has supported efforts which meet our positions.

At the 1985 state League Convention, delegates asked for an explanation of the part of this position dealing with single-purpose districts. Though the recommendation resulted from an interest in municipal utility districts, preliminary research shows that there has been a proliferation of both single and multi-purpose districts since the position was adopted.

The Periodic Program Review Committee recommended to the 1989 state Convention delegates that the State/Local Relations position be dropped. Delegates voted to retain the position. Some local Leagues have used the position extensively in lobbying for combining certain city and county governmental functions and against overlapping services.

In 1999, the Periodic Program Review Committee recommended retention of this position, and added an explanation of "single-purpose districts."

**2009:** The primary focus of the 81<sup>st</sup> session related to County Authority, often referred to as Ordinance Authority or Land-Use Management. The League of Women Voters concurred with county officials and with many property owners that common-sense regulation is overdue. Because Texas counties have no authority to manage growth and development in unincorporated areas, scarce water supplies are endangered and homeowners sometimes discover that a rock crushing plant is planned just over the property line. The League supported bills which called for one or more of the following: *buffer zones* between designated areas for residential, commercial, industrial, and agricultural use; *density limits* which take into account the available natural resources and local infrastructure; and *impact fees* to be paid by developers to offset the increased cost of building additional infrastructure and providing services. At the beginning of the session, LWV published an advocacy paper setting forth and explaining its support for these measures.

In the Hill Country, officials of fifteen county governments (Bandera, Blanco, Burnett, Comal, Edwards, Gillespie, Hays, Kendall, Kerr, Kimble, Llano, Mason, Medina, Real, and Uvalde) began working with other interested local groups (including the League of Women Voters) and Representative Patrick Rose far in advance of the session to gain consensus regarding the need for more authority in these fast-growing, but ecologically fragile areas. HB 3265 provided for a local option vote before authorizing county authority regulations, including setting density limits, establishing set-back lines, and assessing impact fees. A large contingent of county officials from many of these counties came to the Capitol to sign in and/or testify when the bill

was presented to the County Affairs committee, as did the League of Women Voters and other interested groups and individuals. Rep. Rose's bill was approved by the committee, other Hill Country legislators signed on, and it was sent to Calendars, where it died.

The Land and Resource Management Committee heard Representative Valinda Bolton's bill, HB 4175, which would have allowed counties with population between 800,000 and 1.3 million to adopt comprehensive land development plans including buffer zones. The bill had broad support from Travis County officials, LWV, and even the local builders association. Because it would apply to unincorporated areas of the most populous counties, it also had the support of several other legislators representing those areas. After stalling for some time in committee, it was sent to Calendars, where it died.

In the Senate, Senator Jeff Wentworth submitted several bills, but didn't present them to committee. Although most activity on this issue addressed regulating growth in the Hill Country and Travis County, some legislation included other areas and issues as well. The only bill which was passed and signed this session was HB 2275 (Raymond) which tweaked the existing regulations in the international border areas.

A bill to regulate billboards along SH 71 by Rep. Bolton made it to the Governor's desk, but was vetoed there. Several other bills by other legislators which would have expanded county government authority, especially in Central Texas, died in committee. Bills which would have regulated noise in unincorporated county areas, bills relating to county authority in specific geographic areas, and bills which related to county authority near military facilities all died in committee.

The ingrained attitude in Texas toward property rights continues to be defined by developers. The realities of water shortages, a county's need to plan for growth, and the rights of the individual homeowner to be protected from incompatible developments continue to be subordinate to business interests and growth. It is difficult to see that changing in the near future.

**2011:** County land use authority saw no bills voted out of committee. After last session, when a bill made it to the Calendars Committee, the two representatives who most actively supported giving counties the right to regulate growth in unincorporated areas were defeated. Also failing to garner support were bills regulating new signs and noise in unincorporated areas. (See also **Land Use report.**)

**Reference Available: *County Regulatory Authority in Texas, LWV-TEF and Wray Trust Funds, 2001.***

## **II. ADMINISTRATION OF JUSTICE - 1960's, 1976, 1977, 1978, 1979, 1980, 1987, 2003, 2010**

### **A. CRIMINAL JUSTICE AND CAPITAL PUNISHMENT REFORM**

***The League of Women Voters of Texas supports an equitable system of criminal justice in Texas with the following provisions:***

- improvements in pretrial justice programs and an adequately state funded public defender system including:
  - availability of night and weekend magistrates
  - improvements in the training and requirements of law enforcement personnel
  - revision of the bail bond system to permit counties to serve as bonding agencies and to provide regulation of all commercial bail bond agencies and guidelines for more uniform bail amounts
- elimination of jury sentencing, and revision of the penal code to reduce the disparity of sentences
- state laws to prohibit wiretapping
- a state correctional system which would assign highest priority to provision of a broad range of community-based programs and facilities as well as provide technical assistance and funding for locally administered programs
- improvements in the parole system
- a prison system which would provide humane care for all inmates in a secure environment with maximum educational opportunities, adequate health care services, adequate programs to assist all inmates in making the transition from prison to the free world, and compensation to inmates for their labor.

***For as long as the death penalty is an applicable punishment in Texas, the LWV supports reform of the capital punishment system in Texas with the following measures:***

- establish a moratorium on all executions in Texas while an official study of the capital punishment system is conducted
- prohibit the execution of persons with intellectual/developmental disability, the mentally ill, and juveniles under the age of 18 at the time the crime was committed, establishing clear, uniform and clinical standards consistent with accepted professional practice to determine intellectual/developmental disability and mental illness
- observe the provisions of the Vienna Convention of 1848 by providing foreign nationals access to consular officials from their native country
- provide the options of life imprisonment and life without parole to juries in capital cases
- require the Board of Pardons and Paroles to adopt guidelines and substantive criteria upon which to base its clemency recommendations, to hold open meetings and to give explanations for its decisions

**Explanation: Criminal Justice**

League concern with aspects of the justice system in Texas began in 1923 when the League joined other organizations to tackle conditions in the primitive prison system. Results of the committee's work have been lost in the mists of time. During the 1940's and 1950's the League studied and lobbied for the establishment of a family court system for Texas, which was established in 1959. In the early 1960's, several positions supporting an effective judicial

structure were included in the League's Texas Constitutional Revision position. These can now be found in the Government section of *Program Perspectives*.

The 1975 LWV-TX Convention adopted a study of both the adult and juvenile justice systems. Divided into five parts, the study took five years. Each of these studies resulted in numerous positions from which action at both the state and local levels occurred. Many of our goals have been achieved.

In 1986, Administration of Justice positions underwent Periodic Program Review. Proposals to drop positions that had been achieved and to consolidate others were approved by the state Convention in 1987.

Under the position "Improvements in pretrial justice programs" local Leagues can continue to support a wide variety of specific programs such as pretrial release and pretrial diversion. The bail bond position allows counties to serve as bonding agencies, to regulate commercial bonding agencies, and to establish guidelines for more uniform bail amounts.

Holding county jails to standards set by the State Commission on Jail Standards in the face of potential opposition by county officials or voters is still permissible even though specific support for the state commission has been removed from our position because the commission has been in existence long enough and with adequate funding to operate successfully.

LWV-TX can also take state and local action on further law enforcement personnel training should the need arise in a specific area (see the Domestic Violence position). Convention delegates also agreed to consolidation of the language relating to community corrections programs and probation.

The final settlement of the lawsuit against the Texas Department of Corrections (*Ruiz vs. Estelle*) will continue to have an impact on the criminal justice system in Texas for many years to come.

We maintain our position in opposition to wiretapping that is still allowed in Texas. The next legislative review will be in 2005.

### **History: Criminal Justice**

**1991-1993:** The 1991 Legislature prepared for a massive revision of the Texas Penal Code by establishing a Punishment Standards Commission. The commission report was issued just before the 1993 Legislature convened. League testimony before the commission related to our position on reducing disparity of sentences. The commission's recommendations addressed this concern by reducing somewhat the range of punishments for first-, second-, and third degree felonies, but the legislature chose to retain the existing ranges.

One recommendation of the commission—the creation of a fourth-degree felony for certain non-violent offenses including possession of small amounts of drugs—was adopted by the legislature. These felonies, now called "state jail" felonies, are to be served in new incarceration facilities

called state jails. This new felony category is in accord with the League position advocating less disparity in sentences. A two-year limit was placed on incarceration in a state jail, with the remainder of the sentence, if any, to be served under community supervision.

Although recommended for deletion by the Punishment Standards Commission, the section of the Penal Code making homosexual conduct a Class C misdemeanor was retained in the new code.

Because the state had spent nearly \$2 billion of bond funds approved by voters since 1987, primarily for more prisons, the November 1993 ballot asked voters for another \$1 billion, mostly to construct state jails and transfer facilities for relief of the backlog of state prisoners still awaiting transfer in county jails. Small amounts of these bonds are allocated for state juvenile and mental health/mental retardation (MH/MR) facilities. The ballot issue passed. Appropriations for community-based corrections increased dramatically between 1989 and 1993 but only modestly for 1994-1995. The 1993 Legislature made permanent the treatment of batterers on probation and substantially increased funding for these treatment programs.

**1995:** The legislature lengthened the time that non-violent “state jail” felons can be incarcerated.

**2001:** The governor signed *the Fair Defense Act*. The act, a result of the findings of two studies released during the past year, including one by the Appleseed Project, established the Texas Indigent Defense Council, and authorized the development of standards governing the provision of services at trial, on appeal, and in the post-conviction process. The bill also set deadlines for appointment of counsel following arrest. This balanced set of reforms should help bring order and change to the Texas system that has more than 800 different indigent defense systems in more than 800 different criminal courts in its 254 counties. The League presented testimony in support and worked as a member of a fair justice coalition in support of this bill.

**2003:** The Texas Indigent Defense Reform Act (2001) managed to survive the session intact. Serious threats to roll back the progress made in 2001 did not materialize, and there was a significant boost in state funding for indigent defense. One such effort to repeal certain reforms would have delayed the appointment of counsel. This was turned aside. Another challenge, a bill that would have restored to judges the power to conscript attorneys, was also defeated. One disappointment was the failure of a bill directed at improving the competence of attorneys to represent death penalty defendants in *habeas corpus* proceedings.

**2011:** There are numerous programs in the Criminal Justice system which provide cost-effective mental health and substance abuse treatment services that avoid the significantly higher costs of incarceration and recidivism. While there were some gains in specific programs, there were also cuts in Basic Supervision, Prison Diversion Programs, Community Corrections, Treatment Alternatives to Incarceration, and Special Needs Offenders.

### **Explanation and History: Capital Punishment**

The issue of capital punishment has been in the foreground of debate in Texas for many years.

The availability of DNA testing, the rising number of inmates found innocent and released from other states' death rows, as well as an increasing number of Texas executions, have made many in Texas question the death penalty and its effectiveness.

A study of Capital Punishment Reform was adopted at Convention 2001. The study compared (1) outcomes for defendants with court-appointed lawyers to those who hire their own attorneys, (2) costs of execution to the costs of life imprisonment, (3) the potential of wrongful executions and the impact of new technology, and (4) possible sentencing alternatives. A study committee produced a Facts & Issues, *CRIMINAL JUSTICE: Capital Punishment in 2002* that was distributed to League members, public officials, agencies, and other interested groups and individuals. A limited consensus was reached in the fall of 2002 and the state board approved the new position in January 2003.

At the LWVUS Convention in 2006, delegates voted include support for the abolition of the death penalty in their positions. LWV-Texas Convention 2010 voted to remove references to capital punishment sentencing from our position in order to bring our position in line with LWVUS.

A program review committee formed in 2012 recommended that several changes be made to Capital Punishment Reform position. The committee produced a background paper supporting the changes that was distributed to local Leagues, and the changes were approved by concurrence at a statewide convention in 2013. The changes included wording changes and reordering of bullet items to clarify that the LWV-TX position to support reforms to the capital punishment system does not conflict with the LWVUS position to support abolition of the death penalty, to change the term "mental retardation" to "intellectual/developmental disability" and include a statutory of intellectual/developmental disability for purposes of screening accused murderers, to include both life imprisonment and life without parole as sentencing options, and to require the Board of Pardons and Paroles to adopt guidelines and criteria for its recommendations.

**2003:** The beginning of the 78<sup>th</sup> Legislative session looked very promising as legislators introduced bills that would reform the capital punishment system. LWV-TX supported many of the bills, including those that called for an official study and moratorium, prohibited the execution of the mentally retarded and juveniles, and required foreign nationals to be informed of their consular rights. As the session progressed, it soon became evident that most of these bills would not make it out of committee and none made it to the floor for a vote. The promising beginning of the session proved to be disappointing, even leaving Texas law in noncompliance with the recent U.S. Supreme Court ruling that prohibits the execution of the mentally retarded.

**2005:** The 79<sup>th</sup> session of the Texas Legislature ended without achieving any real reform to the criminal justice-death penalty system. While bills were introduced that would have achieved reform most sat out the session in committee. The Life without Parole bill signed by the governor had changed so dramatically from the original bill that its whole intent changed. The substituted bill added the sentencing option of Life without Parole, but removed life

imprisonment as another option for capital cases, leaving juries with still only two sentencing options. Bills that would have brought Texas into compliance with the Supreme Court ruling that prohibits the execution of the mentally retard were shelved. Another bill, which sought to protect the consular rights of foreign nationals, was also shelved. All in all the session was a disappointing one.

**2007:** HJR 23 (Naishat), supported by LWV-TX, calling for moratorium on the execution of persons convicted of capital offenses. The bill would grant the governor the power to issue an order to prohibit the Department of Criminal Justice from performing executions on or after the effective date until the order is revoked. The bill did not pass.

**2011:** Capital punishment has a mix of wins and losses. With the loss of a life, it is important for the criminal justice system to get it right. For the first time ever, the House Criminal Jurisprudence had a hearing on capital punishment issues. LWV gave testimony in support of a moratorium.

The Legislature did well in adopting safeguards against wrongful convictions. HB 215, (Ellis, Gallego) sets standards for police agencies in conducting eyewitness lineups. SB 122 (Ellis) allows defendants new post-conviction access to DNA evidence. HB 417, (Anchia, Ellis) extends compensation eligibility to Anthony Graves, a death-row inmate who was exonerated, but denied his compensation for wrongful conviction.

Lawmakers left important unfinished business, including reforms to record confessions of felony suspects and to ban the offer of leniency in exchange for accomplice testimony in a death penalty case. Lawmakers did not create a special commission to study wrongful convictions and capital punishment.

**2015:** The League of Women Voters of Texas called for a moratorium on all Texas executions while the United States Supreme Court considered [\*Glossip v. Gross\*](#), a case involving Oklahoma's lethal injection procedure. In addition, the League called for an interim study committee comprised of members from the Texas House of Representatives and the Texas Senate to study the issues involving the death penalty, such as: state secrecy in lethal injections; execution of the innocent; the cost of executions; the different standards being applied from one county to another resulting in the death penalty in some cases and not others for the same offense; unfair application of the death penalty to minorities; guarantees to avoid racial prejudice and economically disadvantaged as compared to other people in the population; prosecutors' roll in representing society; victims' family members' assistance; qualified defense attorneys; systems to prevent murders by mentally ill persons and those with intellectual and developmental differences; other solutions to keep society safe; and that reflect the magnificence of the State of Texas.

The proposed interim committee could have brought recommendations for potential reforms to fix the death penalty system before the 2017 legislative session and encourage all Texans to engage in a long overdue debate that the Texas death penalty deserves and to ensure that Texas has the best judicial system in the world. The study committee would move closer to ensuring

that mistakes will not be made. There is no ability to correct a mistake when somebody has, in fact, been executed while being innocent, the ultimate injustice. In addition, U.S. Department of Justice's review of the death penalty, which was ordered after the botched Oklahoma execution of Clayton Lockett, was still underway.

However, **SB 1697 (Huffman)** which relates to the confidentiality of certain information regarding procedures and substances used in executions passed into law and was signed by the Governor. The League opposed this bill.

No matter what one thinks of the death penalty, League members care about open and transparent government and accountability of government to the citizens of Texas. Legislation should not promote government actions to be hidden, but because of SB 1697 now Texas executions can be without the public being fully informed.

Removing death penalty information about chemicals used in the execution process and procedures from public view undermines open government and creates secrecy in executions. The public has a right to obtain public information and a responsibility to oversee government actions. Transactions affecting the death penalty involve the State paying a private entity for an item or service using taxpayer money to perform executions; yet, the Legislature approved withholding the procedure and substances names and provider from the taxpayers. This law allows confidentiality of any person who participates in an execution procedure, including a person who uses supplies or administers a substance during the execution and any person or entity that manufactures, compounds, prescribes, dispenses, or provides a substance or supplies used in an execution.

Transparency is a basic principle of democracy, but the law restricts transparency and access to public information. Since the State of Texas is going to continue to administer the death penalty, it is essential that the public have confidence that the State is performing state killing openly. The League's position is abolition of the death penalty. Cutting the public's access to information will only inhibit public confidence as state killings are carried out.

There is an ongoing lawsuit on "credible threats to the supplier," but several sources and one court have questioned the existence of these threats. In addition, the U.S. Supreme Court ruled on June 29 against three death row inmates who had sought to bar the use of an execution drug they said risked causing excruciating pain. The majority of U.S. justices, in a 5-4 vote, concluded that a disputed drug used to render condemned prisoners unconscious as the first stage in the lethal injection process works sufficiently well that it does not violate the Eighth Amendment prohibition on cruel and unusual punishment. The court challenge failed, because an alternative means of execution was not identified by the plaintiffs.

The U.S. has seen a number of botched executions lasting between 20 minutes to one hour and fifty-seven minutes with prisoners being seen gasping for air, grimacing and convulsing during executions. Justice Sonia Sotomayor argued that the lethal injection protocol cannot "be trusted to render and keep a condemned inmate unconscious, leaving him open to pain at the later stages." With the passage of SB 1697, the public may not be informed of the drug and the procedure used in Texas executions.

Public oversight is a part of the checks and balances to ensure good government. A 2012 study published by the British Journal of American Legal Studies examined 9,000 executions that had taken place in the United States from 1900 to 2010 and found that 270 executions had involved “departures from the protocol of killing someone sentenced to death” and were therefore botched. The researchers found that the lethal injection method of executing Clayton Lockett had a higher botched rate than any other method.

Numerous other bills were filed relating to the death penalty which included abolition, but they did not get out of committee. HB 1527 did have a hearing. The League supported HB 53 (McClendon) which relates to the age of criminal responsibility and to certain substantive and procedural matters related to that age. The U.S. Supreme Court has ruled that children under the age of 18 cannot be executed. This bill would have codified that ruling in Texas. The bill was left in Juvenile Justice and Family Issues Committee.

The League supported HB 267 (Miles) which relates to the joint or separate prosecution of a capital felony charged against two or more defendants for a capital felony for which the state seeks the death penalty, and the court shall order severance as to any two or more defendants who are jointly indicted or complained against for a capital felony if the state seeks the death penalty for any one of those defendants. HB 267 addresses the law of parties in criminal cases. The law of parties is a variation of the common law felony murder rule and states that a person can be criminally responsible for the actions of another if he or she aids and abets or conspires with the principal. The bill was left in Criminal Jurisprudence Committee.

The "law of parties" is clearly about conspiracy and organized crime. Four states other than Texas have "law of parties" statutes, but Texas is the only state that applies it in capital cases, making it the only place in the country where people can face the death penalty even though they did not actually kill the victim.

**Other bills that were submitted were:**

**HB 341 (Dutton)** The League supported this bill as it relates to the extent of a defendant’s criminal responsibility for the conduct of a coconspirator in certain felony cases;

**HB 564 (Dutton)** This bill relates to the admissibility of certain evidence in capital cases in which the state seeks the death penalty. The bill states that testimony of an informant or of an alleged accomplice of the defendant is not admissible if the testimony is given in exchange for a grant or promise by the attorney representing the state or by another of immunity from prosecution, reduction of sentence or any other form of lenience or special treatment. This bill was left pending in Criminal Jurisprudence Committee.

**HB 1240 (Walle)** The League watched this bill after it was filed as it relates to the age of criminal responsibility and to certain substantive and procedural matters related to age. “Child” means a person who is 10 years of age or older and under 18 (not 17) years old. No person may, in any case, be punished by death for an offense committed while the person was younger than 19 years old. An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life without

parole or by death. This bill was referred to Juvenile Justice and Family Issues Committee.

**HJR 90 (Raymond)** This Joint Resolution proposes a constitutional amendment to abolish the court of criminal appeals and establish one supreme court with civil and criminal appellate jurisdiction. This resolution was left in the Judiciary and Civil Jurisprudence Committee.

**SB 226 (Ellis)** The League supported this bill which relates to the applicability of the death penalty to a capital offense committed by a person with intellectual disability. The U.S. Supreme Court has ruled that a person with a disability cannot be executed.

**SB 260 (Ellis)** This bill relates to the caseload for attorneys who are appointed to defend the indigent defendants in criminal cases.

**Publications Available: (Facts & Issues) *Criminal Justice: Capital Punishment, 2002.***

## **B. DRUG LAWS AND POLICIES - 2006**

*The League of Women Voters of Texas supports education for drug abuse prevention. We support drug education and drug treatment programs as an alternative to incarceration.*

LWV considers substance abuse and drug addiction public health issues. We support the following preventive measures which should be funded by all levels of government plus the private sector:

- educational programs aimed at keeping children from using drugs
- public education programs directed to adults
- sterile needle and syringe programs to prevent blood-borne diseases.

Laws regarding drug abuse and drug addiction should include drug treatment programs as an alternative to incarceration, and would include no criminal penalties for cannabis (marihuana) possession when recommended by a physician.

### **Explanation and History: Drug Laws and Policies**

This study was adopted at Convention 2004 as a non-recommended item. The focus was to research the history of drug laws in Texas, and to evaluate current laws and policies governing the sale and use of illegal drugs, including their effects on young people, communities of color, and medical care and public health. Additionally, the League evaluated the social and economic costs of relying on prohibition, law enforcement, and imprisonment to solve problems related to drugs, and considered possible alternatives to current policies. Consensus was completed and adopted by the Board in January, 2006.

**2011:** Changes in policies related to substance abuse and drug addiction were not a priority during the 82<sup>nd</sup> legislative session. Although bills were supported by LWV-TX and other advocates, the proposed legislation never made it out of committee. HB 117 (Jones-McClendon) contained provisions for prevention and treatment of drug addiction as a public health issue. The bill would have allowed certified community health clinics to offer, along with treatment, needle exchange programs for intravenous drug users to prevent blood-borne diseases.

HB 1491 (Naishtat) offered a bill to decriminalize the possession and use of marihuana for medical use when prescribed by a licensed physician.

**2013:** Changes in policies related to possession and use of illegal drugs continue to be a low priority for the state legislature, as proposed bills never made it out of committee. HB 184 (Dutton) would have changed possession of one ounce or less of marihuana or synthetic cannabinoid to a class C misdemeanor. This would have allowed a judge to defer penalties for the defendant who successfully completed drug awareness and education program approved by the Department of State Health Services. The bill was voted favorably by the Criminal Jurisprudence Committee, but was left pending at the close of the legislative session. SB 90 (Ellis) would have allowed for suspension of the defendant not convicted of a previous similar felony or other felonies to be placed under community supervision that included education and drug treatment. HB 117 (McClendon) introduced in 2013 is similar to a bill filed as far back as 2007. The bill did make it out of committee and was sent to Calendars April 13, 2013. The aim of the bill was to prevent and reduce the risk of blood-borne disease. The bill would have allowed for a pilot program for anonymous exchange of needles and syringes and offer education on transmission of blood-borne diseases assist in obtaining substance treatment services, and blood-borne testing services.

**2015:** There was more support by the 84<sup>th</sup> Legislature for medical use of marihuana when prescribed by a licensed physician than in previous legislative sessions. SB339 (Eltife) passed and was signed by the governor, allowing for the dispensing of low-THC cannabis by a licensed organization. Though this is a limited victory for allowing the use of marihuana for medical purposes, it will benefit children with intractable epilepsy. Three other bills supported by LWV-TX introduced failed relating to the use of marihuana for medical purposes when prescribed by a licensed physician. One bill HB 892 (Klick/ Zerwas/ Zedler) was voted favorably out of committee and made it to the general calendar, but did not come up for a floor vote. Bills HB 3785 (Marquez), HB 837 (Naishtat) SB 1839 (Menendez) were left pending in committee. Testimony supporting HB 837 and HB 3785 was given in a hearing by the House Public Health Committee by LWV-TX.

Two bill introduced did address lowering the civil penalty for certain amounts of marihuana. Bill HB 507 (Moody) related to reducing civil penalty for possession of certain amounts of marihuana and gained some traction as it was voted favorably out of committee. The bill allowed the court to waive or reduce civil penalty if the person attends a program that provides education for substance abuse. LWV-TX gave testimony at a hearing by the House Criminal Jurisprudence Committee supporting HB 507. The bill was placed on the general calendar, but did not come up for a vote. A companion bill SB 1417(Ellis) failed to make out of committee for consideration.

**Reference Available: (Facts and Issues) *Drug Laws and Policies, 2005.***

## **C. IMMIGRATION, 1996**

***The League of Women Voters of Texas recognizes that cultural diversity is a source of strength.***

***The League of Women Voters of Texas supports economic assistance to those areas of the state disproportionately impacted by immigration. This funding should come primarily from federal, state, and private sources such as corporations, churches, businesses, and foundations. Local assistance is also appropriate.***

The League believes that the state should:

- encourage and fund English as a second language and other assimilation subjects for adult immigrants
- encourage bilingual information signs in public places where needed
- require and fund international symbols for all traffic signs.

The League believes the state should support local agencies and groups working with the immigrant population. State support is absolutely necessary for:

- language fluency for children
- emergency health care (including obstetrical delivery.)

Additionally, the state should support:

- language fluency education for adults
- administration of criminal justice programs
- assimilation programs
- housing programs
- job training and placement for immigrants.

The League believes that the state should provide additional assistance to school districts heavily impacted by immigration for:

- staff training
- instructional materials
- salaries for special skills teachers and aides
- facility construction
- curriculum development.

The League supports the establishment and utilization of an electronic system to verify immigration status. This system should include measures that will protect privacy and ensure accuracy. The system should be made available to:

- employers
- social service providers
- housing agencies
- criminal justice system.

The League supports the mandated compilation of statistics regarding immigrants' use of state

services.

### **Explanation: Immigration**

Reflecting a widespread interest in the subject, the LWV-TX board recommended and delegates to the 1995 LWV-TX Convention voted to study immigration issues in Texas. A study committee produced a Facts & Issues, *Immigration: An American Paradox*, which was distributed to League members, government officials and agencies, and other interested groups and individuals. Consensus was reached in the fall of 1996, and the state board approved the new position in November of that year. See the LWVUS Immigration Update 2008 at the end of this publication.

### **History: Immigration**

**1997:** Because immigration is largely regulated by federal law, few bills relating to immigration were introduced during the 75th Legislature and no League action was taken. However, one of the League's legislative priorities in 1997, fair and adequate funding and delivery of vital state services in the era of block grants, encompassed needs of all low income persons, immigrants as well as non immigrants.

**2001:** The League supported legislation to require the Texas Department of Human Services to develop and implement a food assistance program.

**2007:** The immigration issue generated much sound and fury during the 80<sup>th</sup> Legislative session, but none of three bills supported by LWV-TX passed. HB 28 (Berman) would have excluded state services to children born in this state to parents who are not citizens or nationals of the U.S., and who have entered the U.S. without inspection and authorization of an immigration officer. The bill died in committee. HRC 11 (Solomon) would have directed the office of the attorney General of Texas to pursue all available remedies to demand the enforcement of all existing federal immigration laws and to recover any money owed Texas by the federal government for costs incurred by the state in dealing with illegal immigration. SB 151 (Shapleigh) would have prohibited discrimination relating to immigration status or nationality of a person needing or receiving emergency medical care.

**2011:** The 82<sup>nd</sup> session saw several proposed bills regarding immigration. The main thrust behind each was to implement the governor's objective to enable all law enforcement agencies across the state to verify the legal status of anyone legally detained. This included increased use of the federal electronic verification system. LWV-TX opposed all of the proposed immigration bills, basically because immigration is a federal issue. The LWV supports federal law providing an efficient, expeditious system for legal entry into the U.S. None of the proposed bills were successful in the regular session.

**Reference Available: (Facts and Issues) *Immigration: An American Paradox, 1996.***

## **D. JUVENILE JUSTICE - 1994**

***The League of Women Voters of Texas supports an effective state juvenile justice system and programs and policies to prevent juvenile violence and crime. We support the following:***

- an adequate level of state funding for the juvenile justice system and for addressing the problem of juvenile crime; in allocating state funds for these purposes, highest priority should be given to prevention, followed by intervention and then corrections; funding responsibility should be shared by city and county governments, school districts, and private sources
- rehabilitation as the main goal of the juvenile justice system, with every juvenile committed to the Texas Youth Commission having access to adequate and appropriate rehabilitation services and programs
- coordination of information and services between social service agencies and the juvenile justice system
- adequate access to juvenile records by law enforcement agencies
- provision that juvenile offenders under age ten may be referred to the juvenile justice system; the minimum age for adult certification of juvenile offenders should not be lower than fifteen
- strict regulation of possession of firearms by juveniles; adults who furnish illegal firearms to juveniles should be held criminally liable

If boot camps are used as a correctional measure, they should:

- feature careful pre-placement screening
- be limited to non-violent offenders
- provide for parental involvement when appropriate
- include programs that build self-esteem
- be non-abusive
- emphasize rehabilitation
- provide meaningful tasks for the juveniles
- provide for follow-up.

Cultural bias in the juvenile justice system should be addressed through:

- review and revision of juvenile justice system policies and practices that may have a discriminatory effect
- increased access to competent legal counsel
- early access to prevention/intervention programs
- cultural awareness training for juvenile justice professionals.

A comprehensive juvenile violence and delinquency prevention strategy should include, but not be limited to:

- self esteem enhancement/development
- classes in parenting skills/family relations
- quality child care programs
- opportunities for healthy bonding with an individual or group
- classes in alternatives to violence as a means of resolving disputes

- drug education programs
- sexuality education
- gang prevention programs.

A comprehensive juvenile violence and delinquency intervention strategy should include, but not be limited to:

- immediate intervention when delinquent behavior first occurs
- a broad range of graduated sanctions
- accountability of offenders
- a continuum of services that meets individual needs of offenders
- drug education and rehabilitation programs
- family treatment programs
- gang intervention programs.

The state should require schools to provide alternative education programs for students with severe behavioral problems. The state should encourage schools to:

- teach alternatives to violence
- provide alternative education programs for truants and other at-risk students.

### **Explanation and History: Juvenile Justice**

Delegates to the 1993 LWV-TX Convention voted to re-study the juvenile justice system in Texas and to look into the problem of juvenile violence as well. A Facts & Issues, *Juvenile Violence and the Juvenile Justice System in Texas*, was produced by the study committee and circulated to all members, selected government officials and agencies, and other interested groups and individuals. Consensus was reached in the fall of 1994, and the new position was approved by the state board in November of that year. The current position replaces the former juvenile justice position which had been adopted in 1977.

**1995:** During the 1995 legislative session, juvenile violence and the juvenile justice system was a priority issue for LWV-TX. An Advocacy Paper, *Juvenile Crime: Strategies to Stem the Rising Tide*, was published and circulated to all legislators and other elected and appointed officials, as well as to interested members. The League's interest in juvenile crime proved most timely. Legislators and the governor, as well as many other citizens statewide, shared the conviction that this pervasive problem must be addressed with fresh initiatives.

League-supported portions of the enacted bill include: first offender program to allow non-felony juvenile offenders to be processed outside the juvenile court; early intervention services for juveniles as young as seven; a progressive sanctions model (though not fully funded) that ensures juveniles face uniformly consistent consequences that correspond to the seriousness of their offenses; funds for additional probation officers and for construction of post-adjudication intermediate sanction facilities. The League also lobbied successfully for a new law that limits children's access to readily dischargeable firearms. Although a League-supported measure geared to prevention programs in early childhood failed passage, several prevention programs were successfully attached to other bills.

**2007:** SB103, a comprehensive reform bill for the Texas Youth Commission (TYC) was signed by the governor and became law. Major points of the bill are:

- Only children committing felonies may be sentenced to a TYC facility
- Establishes a feasibility study of a regional structure for TYC with smaller, local facilities conforming to needs of an area
- Establishes the office of Executive Commissioner and Advisory Board for TYC
- Establishes authority of a state auditor to review financial transactions of Commission an internal audit procedure, reporting to legislative committees
- Provides for criminal background checks for potential TYC employees
- Allows advocacy and support groups to provide on-site services at TYC facilities
- Establishes the office of inspector General to investigate fraud
- Establishes the office of Ombudsman to evaluate services to youth and review complaints
- Restrict placement of minors under 15 years to dorms for youths 16 years and younger
- Develops and distributes a Parents Bill of Rights
- Assigns a case worker to each child committed to a TYC facility
- Establishment of a zero-tolerance policy regarding of sexual abuse of inmates
- Allows equal access to TYC facilities for female officers
- Will offer rehabilitation programs recommended by the adjudicating judge.

#### **E. SPOUSAL SEXUAL ASSAULT– 1982, 1997, 2010**

*The League of Women Voters of Texas supports Texas laws which provide that sexual intercourse or deviant sexual intercourse with one's spouse without the consent of that spouse is a criminal offense punishable on the same basis as rape or sexual abuse of any other person.*

#### **Explanation and History: Spousal Sexual Assault**

A study of Spousal Rape was adopted in 1981 and the position was adopted in 1982. The Spousal Rape position was studied by the 1995-97 Periodic Program Review Committee, which modified the original position to reflect a law passed in 1993 that eliminated marital rape exemptions. Although the original position has been achieved, it was retained to allow the League to advocate against possible future attempts to reinstate the old law. Retaining the position also allows local Leagues to support their police departments' and district attorneys' efforts to prosecute accused rapists diligently, regardless of the marital status of the parties. The 2003 Convention requested LWV-TX develop a publication with updated information on this position. At Convention 2010, delegates voted to change the name to Spousal Sexual Assault to conform to language in the current criminal code and statutes.

**1980's:** LWV-TX supported successful bills making sexual assault of a spouse illegal where the married persons lived apart or had filed for divorce. New laws were enacted, defining crimes of sexual assault committed by a spouse. These measures required a showing of bodily injury or threat of bodily injury for criminal prosecution against a spouse.

**1993:** The 73rd session of the Texas legislature passed a law mandating that all sexual assault victims be treated equally and eliminating all marital rape exemptions.

**2004:** Written information for members about the League's positions on spousal rape and the status of current law regarding the subject appeared in the Spring 2004 *Texas Voter*.

## **F. HUMAN TRAFFICKING – 2014**

***The League of Women Voters of Texas is opposed to all forms of domestic and international human trafficking of adults and children, including sex trafficking and labor trafficking. We consider human trafficking to be a form of modern-day slavery and support measures to prevent the use of force, fraud or coercion to exploit a person for sexual or labor purposes, to prosecute traffickers and to protect victims.***

Federal, state and local governments should collaborate to fund and implement effective strategies for prosecution, including but not limited to:

- Enact and enforce effective laws against traffickers
- Require human trafficking training for law enforcement officers and prosecutors
- Maintain and share reliable trafficking data among all levels of government and with non-governmental organizations (NGOs)
- Put convicted sex traffickers of children on the National Sex Offender Registry list
- Enforce civil and criminal penalties against persons who knowingly buy services provided as a result of human trafficking, or buy services from a minor, including mandated awareness training
- Enact and enforce laws at the appropriate level to shut down businesses that engage in or allow human trafficking
- Divert victims of human trafficking into justice and rescue programs that provide access to services such as counseling and job training
- Assume all minors are victims, no proof of coercion required.

Federal, state and local governments, in cooperation with nongovernmental agencies, should fund and provide essential services to and remedies for victims and survivors, including but not limited to:

- Legal aid, translations and other court-related services
- Services to shelter victims from their traffickers and help them return to a normal life, such as housing, medical, counseling, job training
- Ability to sue the trafficker for civil damages
- Defined roles for child welfare system and juvenile justice system in assisting trafficked minors
- Guardianship, protective custody and safe houses for trafficked minors when home situation would put the minor at risk.

Federal, state and local governments, in cooperation with nongovernmental agencies, should fund and provide education and awareness programs on human trafficking in our communities

and schools, including but not limited to:

- Training to identify and assist victims or potential victims of human trafficking, for all persons who might come into contact with them, such as medical professionals, law enforcement and prosecution personnel, educators at all levels, mental health professionals, city health inspectors, hotel owners and others
- Internet safety education for youth, parents and teachers
- Services and outreach for homeless, throwaway youth and other at-risk populations.

### **Explanation and History: Human Trafficking**

A study of Human Trafficking in Texas was adopted at Convention 2012. A study committee produced a *Facts & Issues* and local Leagues held consensus meetings in the fall of 2013. The LWV-TX Board adopted the new position in 2014 based on local League consensus.

**Reference Available: (Facts and Issues) *Human Trafficking in Texas, 2013.***

## **G. PAYDAY AND AUTO TITLE LOANS IN TEXAS--2016**

*The League of Women Voters of Texas supports policies, legislation, and programs that enable a small dollar loan market that maintains access to affordable credit while safeguarding consumers. Payday and auto title loan businesses should be regulated so that they function both as a consumer service and a successful business.*

The League believes that a loan is affordable if the borrower can repay the loan and cover basic expenses without borrowing again or obtaining money from another source. Local governments should be able to regulate payday and auto title lending within their jurisdictions in order to achieve a viable small dollar loan market that provides consumer access to affordable credit and safeguards against predatory lending. Criminal charges and penalties for payday and auto title loans in default should continue to be explicitly prohibited by Texas law. The League supports:

- Consumer credit regulations that increase restrictions on short-term loans and require lenders to offer affordable loans,
- Financial education measures that increase the ability of consumers to successfully use small dollar loan financial products, and
- State and private funding of measures to prevent long-term debt by borrowers in need of immediate cash.

**References Available (Facts & Issues: Facts & Issues: Payday & Auto Title Loans in Texas)**

## **III. SOCIAL POLICY/HUMAN RESOURCES**

### **A. CHILD ABUSE AND NEGLECT – 1990, 1995, 2009**

*The League of Women Voters of Texas supports the development and implementation of adequate legislation, policies, services, and programs to protect children from abuse and*

***neglect. Measures the League supports include, but are not limited to the following:***

- adequate funding from governmental and private sources to provide appropriately trained staff and uniform statewide availability and accessibility of effective services and programs
- provision by the responsible state and local agencies for varied and sufficient services to ensure the protection of children.
- development and implementation of programs to prevent child abuse and neglect
- mandatory, uniform, and ongoing training in recognizing and reporting physical and behavioral indicators of child abuse and neglect for persons responsible for the safety and welfare of children, such as law enforcement officers, judges and probation officers, educators, child-care givers, and medical personnel
- availability and enforcement of measures, including protective orders, for the removal of the abuser from home when appropriate
- stringent correctional measures for persons who abuse or neglect children, including mandatory specialized treatment and counseling as well as appropriate enhancements for repeated offenses.

**Explanation: Child Abuse & Neglect**

Delegates at the 1989 state Convention adopted a novel plan regarding this issue. After LWV-Houston Area completed a local study of child abuse and neglect and adopted its local position, the LWV-TX board narrowed the scope of the position statement so that it was appropriate for a statewide concurrence process. The narrowed position statement and a publication (*Focus*) adapted and edited by the LWV-TX board from LWV-Houston's *Facts & Issues* was subsequently made available to participating members statewide. After careful evaluation of resulting concurrence data, the LWV-TX board adopted the state League position in June 1990.

During the Periodic Program Review process in 1993-95, wording changes that enhance format consistency and reflect changed circumstances were suggested by the PPR Committee and received final approval at the 1995 Convention. A substantive addition to the position was also approved: support for stringent correctional measures for persons who abuse or neglect children, including mandatory specialized treatment and counseling, as well as enhancement for repeated offenses. The re-worded position is set forth above.

In Statewide Conference, March 2009, delegates voted to drop our position's limitation to abuse "in their families and homes" so that we could support bills that would reform the Texas Youth Commission.

**History: Child Abuse & Neglect**

**1990-1995:** During this period, the League supported its Child Abuse and Neglect positions through membership in the Texas Council on Family Violence. In 1995 we supported a measure that rededicated monies paid to the Children's Trust Fund of Texas (CTF) directly into the agency's operating funds, thus establishing an improved, more direct method for the CTF to

provide funds to communities for local abuse prevention programs.

**1999:** During the legislative session, funding to Child Protective Services (CPS) was increased significantly. Foster care received a 7% increase. 220 new CPS staff, which had been authorized by an emergency-spending bill, was augmented by an additional 160 caseworkers in order to lower caseloads and to improve the effectiveness of child abuse investigations.

**2003:** During this legislative session Children's Protective Services was reorganized and will continue to be impacted as the result of a huge human services reconsolidation law. Several prevention programs lost funding in the Texas Department of Protective and Regulatory Services, including Big Brothers/Big Sisters, Healthy Families, Family Outreach, and the Children's Trust Fund.

**2005:** Although LWV-TX did not set a priority for this issue, reform of Child Protective Services (CPS) was an important aspect of this session for legislators. The omnibus bill relating to child abuse, as passed and signed by the Governor, decreases worker case loads, strengthens ties between CPS and law enforcement, and provides other protections for children. A last minute attempt to ban gay foster parenting was ultimately unsuccessful. The bill does institute privatization of services for children over the next 6 years, beginning with one region. In the budget battles, CPS received a 12% increase in funding (state and federal), which will be used to reduce caseloads.

**2009:** Three bills supported by the League were passed and signed by Governor Perry. SB 1646 (Van de Putte) creates a Council of Children and Families. SB 2080 (Uresti) creates a Task Force whose task would be to form a strategy for reducing child abuse and neglect and improving child welfare, including providing assistance for adoptive parents and foster care parents. HB 1041 (Parker) relates to school districts policies on addressing sexual abuse and establishes a state agency to reduce child abuse and neglect and to improve child welfare. In addition, the overall budget of CPS received a 8.1% increase over 2008-09 General Revenue expenditures including funding for an additional 118.6 Family Based Safety Services Staff to increase face-to-face contact with children and their parents, therapy for abused children, treatment and other services for parents/families, an increase in foster care services, and funds to strengthen services to youth transitioning from foster care.

**2011:** There was some success in this area with the passage of six bills supported by the LWV. These included bills by Senators Nelson, Uresti, and West which related to the operation of child protective services and the foster care system, mental health services for children in foster care, and the establishment of a task force to study the relationship between domestic violence and child abuse. Also school districts are required to expand their policies to include all types of abuse and to require training of new staff.

**2013:** With the passage of two bills supported by LWV-TX, progress was made on recognition and reporting of child abuse and penalties for not reporting it: SB 939 (West) relates to training

to recognize child abuse in schools and reporting it. HB 1205 (Parker, Raymond, Zerwas, Fallon) relates to the offense of failure to report abuse or neglect of a child in schools or institutes of higher learning.

Other bills also supported by LWV-TX passed: SB 44 (Zaffirini, West) provides mental health services in certain child abuse or neglect cases. SB 66 (Nelson) relates to studying the causes of and making recommendations for reducing child fatalities, including those from abuse or neglect. SB 245 (West) relates to eligibility of children's advocacy centers to provide services for children and family members in cases of child abuse and neglect. SB 1758 (Uresti) establishes a task force to examine hiring and management practices of the Department of Family and Protective Services. HB 1228 (Dukes) relates to consideration by the court of sex abuse and conduct that constitutes sexual assault in certain suits affecting the parent-child relationship.

## **B. CHILD CARE/EARLY CHILDHOOD – 1990, 1995, 2009**

*The League of Women Voters of Texas supports policies, legislation, and programs that address the needs of all Texas children and families for accessible, affordable, and quality child care.*

The League believes that all children in child care are entitled to a safe, nurturing environment and developmentally appropriate activities. Caring for children is a societal as well as a family responsibility and the state should play a role in meeting child care needs. The League supports the development, adoption, and implementation of a comprehensive state child care policy that includes, but is not limited to:

- programs designed to provide an adequate supply of accessible child care
- access to information that will help families recognize and choose quality child care
- a provision for parental choice in the selection of subsidized child care
- programs designed to make child care affordable to all
- consistent and reliable funding, administered efficiently, and used effectively
- financial support from a variety of sources including federal grants and matching funds, state funds, local government funds, employer contributions, fees for service, private philanthropy
- minimum standards, effectively enforced, for child care services
- measures to promote quality child care
- coordination of child care programs, services, and funding
- encouragement of cooperation among groups and agencies
- a state model-employer program that makes quality, affordable child care available to state employees.

### **Explanation: Child Care/Early Childhood**

At the 1989 state Convention delegates adopted a study of Child Care in Texas. The scope of the study included programs, services, availability, standards, enforcement, policies, and affordability. *A Facts and Issues, Child Care in Texas: The Roles and Responsibilities of the*

*State*, was produced by the study committee and widely circulated to members, child care advocacy groups, and legislators. Consensus was reached in the fall of 1990, with 28 local Leagues participating.

The Child Care position underwent Periodic Program Review during 1993-1995. Several editing changes that clarify meaning were recommended by the PPR Committee and approved by the membership. The re-worded position is set forth above. A recommendation by the PPR Committee for a substantive addition to the position (support of measures to override local restrictions on the location of child care facilities, including family day homes), was rejected by the membership. The name was changed by state board vote in October 2009 to Early Childhood to reflect the prevailing title used in the industry.

### **History: Child Care/Early Childhood**

**1991:** Child care was a League priority for the 72nd Legislature and was a very active issue because of developments at the federal and state levels. The passage of federal block grant legislation during 1990 made significant new funding available to the state for child care, necessitating substantial policy development and planning by the state. In response, the interim Child Care Task Force of the House Health and Human Services Committee produced comprehensive recommendations addressing policy, planning, quality, and regulation, as well as measures to make child care affordable and available. The task force recommendations were introduced as a package of bills, most of which the League was able to support. The League worked closely during the session with other child care advocates through the Child Care Working Group for passage of these bills. Thanks to strong legislative leadership in both the House and Senate and coordinated advocacy, most of the legislation passed.

This legislation included a resolution setting forth a clear position for the State of Texas on the importance of child care and specific requirements to make child care affordable and available. Other legislation set guidelines for the implementation of federal and state child care programs and established an advisory committee to assist in developing policies for the use of state and federal funds for child care. A League representative was appointed to this committee. Another successful bill related to standards, licensing, and coordination of pre-kindergarten programs.

Several bills the League supported failed to pass because they required additional state funding. These included bills relating to training of child care providers and reimbursement of start-up costs incurred by child care providers, and one mandating a cost-of-care study.

**1993:** Due to fiscal restraints, few new initiatives for children succeeded in the 73rd Legislature. Most legislation that did pass was of a regulatory or technical nature. Many health and human services programs were under-funded in the 1994-1995 budget. A child care program that enables low-income families to pursue employment or be employed in order to remain off welfare was cut by \$8 million, affecting 6000 children. The federal matching funds were diverted to serve four year-olds in communities that have pre-kindergarten programs, thereby subverting the intent of the program.

**1994-1995:** During the legislative interim, the Texas Board of Regulatory Services adopted stricter minimum standards for child care facilities. The League lobbied in favor of the new standards, contacting board members to urge their support. Unfortunately, the victory was short-lived. The 74th Legislature rolled back key provisions of the new standards, including child/adult ratios, square footage requirements, and group sizes. Prior to future changes to the minimum standards, an independent cost/benefit economic impact study must be completed and sent to the legislature. But implementation of the rolled-back standards was delayed until September 1997. This delay gave advocates for young children, including the League, the opportunity to educate legislators about the components of quality child care.

**1997:** Early in the session many of the recently strengthened Child Care Minimum Standards were lost to a compromise between child care advocates and legislators, but a number of positive child care bills were eventually passed. Child care professionals and advocates will be able to utilize an appropriation of \$34.9 million from general revenue funds to qualify for matching federal funds for child care expenditures being spent, or that can be spent, in their communities. Other bills which passed provide child care training to local workforce boards, establish pilot programs offering child care training to welfare recipients, and mandate a child care representative on local workforce boards. Family home providers are now required to register with the Department of Protective and Regulatory Services, pay annual fees, and obey state regulations. Other legislation provides guarantees for small and medium loans for child care businesses and non-profit centers that provide child care services, establishes the Interagency Council on Early Childhood Intervention, and provides school-based child care for latch key kids. The League produced an Advocacy Paper, *Quality Child Care for Texas Children: A Sound Investment in the Future*.

**1999:** LWV-TX followed several child care bills and the following measures were successfully passed. A child care resource and referral network will be developed to provide a periodically updated listing of child care providers, including hours of operation and cost, for each county. Professional child care training scholarships and student loan repayment assistance will be offered to child care workers. Additional training on Shaken Baby Syndrome, Sudden Infant Death Syndrome, and early childhood brain development will be required for child care providers. LWV-TX supported these bills in order to strengthen the quality or affordability of child care in Texas.

**2001:** The focus of LWV-TX and other child advocates was on adequate funding to ensure that no children in working poor families are removed from child care in the next biennium. There was a slight increase in funding for child care, but it doesn't appear to be sufficient. Only through the reallocation of some unexpended federal Child Care Development Funds was the state's waiting list of approximately 40,000 children as of January 1, 2001 reduced.

**2003:** During the 78<sup>th</sup> session, quality initiatives for child care services were reduced through budget cuts. However, legislation passed which requires coordination of early childhood programs and establishes two groups to address the issue of quality early care programs. Even though the need for child care continues to expand, due to the state budget shortfall, fewer

children will receive subsidized child care in 2004-5. The newly organized Texas Early Childhood Education Coalition, composed of child care advocates, holds promise for successful future collective action.

**2005:** Two of the child care bills LWV-TX supported were signed into law. Approximately 50 early care and education bills were filed this session. **SB 23** expands the Texas Early Education Model (TEEM), an integrated model of service delivery of early care and education programs (pre-K, child care, Head Start) to increase full-day, full-year quality preschool services. **HB 2808** contains an amendment which provided for the appointment of a blue ribbon commission to study early childhood education and development resource needs, financing options to secure adequate funding, as well as identifying barriers to the integration of preschool delivery systems.

Although the Legislative Budget Board (LBB), not a blue ribbon commission, is designated to conduct the study in HB 2808, it does provide an opportunity for advocates to work with leadership on the LBB during the interim. The LBB will conduct a performance review and develop a report to:

- Study the resource needs of high quality early childhood care and education programs
- Recommend options for additional funding
- Develop a plan to implement in phases, full-day preschool programs for at-risk children and to expand the eligibility for early care and education programs.

Promoting quality initiatives and improving access to preschool programs remain as goals on the unfinished League child care agenda.

**2007:** Mixed results were accomplished by the 80<sup>th</sup> Legislature with emphasis on state oversight of child care facilities and staff. Additional funding for residential (foster care) licensing was obtained, but no new funding for day care licensing. Proposed cuts to public pre-kindergarten programs were also avoided.

**SB50 (Zaffarini)** A comprehensive, cooperative and interdisciplinary approach to improve all facets of child care, Pre-K and training of early childhood professionals, stalled in the House and did not pass. However funding for many of the provisions in SB 50 was included in the budget: pre-k services through the Texas Early Education Model, improve reimbursement rates paid to child care participants in Texas Rising Star Certification Program, and funding towards creation of regional development partnership projects to improve the recruitment, retention, and quality of professionals working with young children. A portion of the bill that required school districts to report TPRI reading scores in the school readiness certification system to the State Center for Early Childhood Development was amended onto SB 1871 (Zaffarini) which passed.

**SB 758 (Nelson)** allows children in the foster care system eligibility for Pre-K, ensuring that children who have been sexually abused, physically assaulted and/or neglected have a leg up before kindergarten, and to remain eligible for public pre-kindergarten after leaving foster care. **HB 199 (Madden)** addresses the critical first year of a child's life by establishing a residential infant and parenting program for mothers in prison.

The Texas Workforce Commission adopted new background check rules for relatives who are compensated by the state for providing child care in the home. HB 1385 (Villeareal) created a separate level of regulation for small businesses who offer child care on their premises for employees. This bill also included exemptions from child care regulation to some rural private schools and religious education programs.

**2009:** Update of the program title from Child Care to Early Childhood was approved by the LWV-TX Board of Directors to help better describe the topics in this area of advocacy. The early education movement in Texas this year has grown to be so strong that its only critics are those who opposed any public investment, no matter how solid the research. Since many bills filed for have to do with early childhood education we also act under the LWVUS position on **Early Intervention for Children at Risk**, adopted in 1994. See the section on National Program action at the end of this publication for action under this position.

Also SB 572 (Shapiro) “Jacob’s Law,” mandates two hours of annual training hours specifically related to the safe transport of children under the age of nine; SB 1646 (Van de Putte) establishes a Council on Children and Families to identify methods to ensure children and youth receive appropriate assessment, diagnoses, and intervention services; HB 136 (Villarreal) requires school districts to notify parents of prekindergarten eligibility; HB 1240 (Villarreal) requires infant care information to be provided to parents.

Following the legislative session, Texas Child Care Licensing initiated a review of the current Minimum Standards for center-based and home-based day care operations. The review process will further evaluate child care licensing regulations, addressing expired legislative initiatives, regarding the training provider qualifications and minimum training hour changes for child-care employees/operators facilities.

**2011:** Ten out of twenty-three bills supported by LWV-TX were signed into law, with eight taking effect 9/1/11. Legislation focused on safety and staff training, specifically increasing child care provider training hours, specifying qualifications for those providing child care training, and allowing the Texas Rising Star child care centers to use comptroller purchasing discount programs. Licensed child care homes will also receive additional fire safety inspections annually by local government, with other safety violations reported directly to child care licensing. Licensure improvements and government-sponsored databases will provide data indicating child care providers who meet minimum standards. Those centers meeting higher quality rating systems standards will also be identifiable for the first time from a state website. (Also see Child Health Insurance Program (CHIP) under Health Care for Those of Lesser Means).

**2013:** Seventeen of the 44 bills were signed into law with only \$40 million earmarked specifically for supplemental pre-K funding. With nearly \$300 million cut from pre-K programs during the 82<sup>nd</sup> legislative session, successful bills were low fiscal impact and dealt with early childhood program quality, earlier identification of children with disabilities, Early Childhood Intervention caseload growth, and child care regulation enforcement concentrating

on child health and safety of all children.

The advocacy goals since 2005 for quality initiatives and improving access to preschool programs were largely accomplished this session with the success of HB 376 (Strama, et al), SB 50 (Zaffirini) and SB 430 (Nelson). HB 376 prioritized quality components in the Texas Workforce Commission (TWC) child care subsidy system with quality programs receiving additional and incremental reimbursement rates. It also provided technical assistance to improve child care centers, required child care quality initiatives for local workforce development boards, and created the establishment of an appointed Texas Rising Star Program Review Work Group to continuously improve the quality of education/care for children on TWC child care subsidies. HB 376 was the result of a statewide work group collaboration, with LWV-TX participating, spending four years to create legislation prioritizing quality care for children on federally funded TWC child care subsidies and resolving the extremely low reimbursement rates providers receive.

SB 50 expanded the composition of the Texas Children's Policy Council adding representation for at-risk and special needs children. SB 430 requires the Department of Family and Protective Services to verify the unavailability of community day care before day-care assistance or services are specified to be provided by foster parents.

The successful Texas Early Childhood Education Coalition consolidated with Texans Care for Children to better serve advocates on priority and crossover issues. Texas early childhood program funding continues to be a concern; local entities are creatively funding pilot projects to gain increased child access to local pre-K programs.

**2015:** Only four of 52 filed bills were signed into law this session with three focusing on child care records/inspection transparency and one on pre-K. With pre-K identified as one of the Governor's emergency legislative issues, **HB 4** was earmarked the Governor's pre-K bill. It passed providing a small bump in funding for public school pre-K programs that meet new requirements. It does not include class size limits or other quality provisions, but it takes a first step that future legislatures can build on. **HB 4** provides an additional \$130 million via grants for the 2016-2017 biennium for high quality pre-K programs to currently eligible 4 year old students without explicitly funding or requiring full-day programs. **HB 4** does change the Education Code requiring the Texas Education Agency (TEA) or school districts to do the following:

- To "attempt" to maintain a ratio of not less than one teacher or one teacher's aide for each 11 students;
- Pre-K teachers are certified teachers and have a Child Development Associate or certain other additional early childhood qualifications;
- The TEA Commissioner to develop a pre-K teacher training course;
- To permit partnerships between school districts and private providers;
- High-quality pre-K programs measure the progress of students in meeting recommended learning outcomes;
- To opt into the new high-quality programs to create family engagement plans;

- High-quality programs use a curriculum that meets the TEA Prekindergarten Guidelines, and
- To report to TEA class sizes, teaching ratios, the type and results of assessments used, and the curriculum used for all district pre-K programs.

The Early Childhood Intervention (ECI) program has experienced growth in the proportion of enrolled children who have more complex needs, such as a medical diagnosis or a delay in multiple areas. Much of this change stems from budget cuts in 2011, which led Department of Assistive and Rehabilitative Services (DARS) to narrow the eligibility criteria for ECI and keep children with less acute needs out of the program. DARS requested \$14 million in additional General Revenue (GR) for the 2016/2017 biennium. The Legislature opted to cut pediatric therapy service rates and partially fund this budget request with \$3.8 million in GR funding and \$5.9 million in All Funds (a combination of state and federal funding). This funding was estimated to allow the program to provide an average of 2.75 monthly service hours, rather than the 2.78 that DARS hoped to reach by 2016 and the 2.88 it hoped to reach by 2017. This represents a \$2.5 million decrease in All Funds from expenditures during the 2014/2015 biennium, despite an anticipated increase in the number of children served and hours of service provided. The ECI program is expected to serve a monthly average of 26,753 children in 2016 and 27,170 in 2017. Another unknown is the state agency consolidation impact of transferring DARS functions to the Health and Human Services Commission (HHSC).

**References Available:** (Advocacy Paper) *Early Childhood Education Integral to Texas Economic Development*, January 2009. (Advocacy Paper) *The State of Child Care in Texas 2005*, February 2005.

### **C. CHILD SUPPORT ENFORCEMENT – 1983, 1987, 1997**

*The League of Women Voters of Texas supports equitable and efficient means of enforcing court orders for child support.*

#### **Explanation: Child Support Enforcement**

LWV-TX adopted this position in 1983, after member study and concurrence. The League lobbied statewide in support of a proposition amending the Texas constitution to provide garnishment of wages for enforcement of court orders for child support. After passage of the proposition in November 1983, the League dropped the position at Convention '85, believing its goal had been achieved. However enforcement of court orders for child support payments continued to be a significant statewide problem, and delegates voted to reactivate the position at Convention '87.

#### **History: Child Support Enforcement**

**1991-1993:** In the 1991 and 1993 legislative sessions, League efforts contributed to passage of bills to bring Texas into compliance with federal guidelines for income withholding, to improve insurance protection for children, and to facilitate procedures for establishing paternity.

An especially important 1993 bill provides the requisite authorization for Texas to develop and implement procedures to enforce child support obligations under the provisions of the federal Child Support Recovery Act of 1992 (a.k.a. "Deadbeat Parents Act"). The federal law provides for interstate enforcement of child support orders and makes it a federal offense with a criminal penalty to willfully fail to pay past due support obligations for a child residing in another state.

**1995:** Passage of a measure providing for suspension of professional and recreational licenses for those delinquent in paying child support was another victory for the League and other proponents of effective means of enforcing support orders. Despite recent progress, much more remains to be accomplished under this position. Children in single-parent households still comprise the fastest category of persons living in poverty in Texas today. Many live in poverty because they are sustained by only one parent, while court orders for their support are ignored and un-enforced.

The Periodic Program Review Committee studied the Child Support Enforcement position in the 1995-97 biennium. Despite recent more stringent enforcement legislation, the committee recognized that in this area the law is far from perfect and recommended no change in this position.

#### **D. DOMESTIC VIOLENCE - 1985, 1986, 1997, 2008**

*The League of Women Voters of Texas supports adequately funded state and local programs that work to eliminate the incidence of domestic violence and to alleviate its effects.*

*The League also supports appropriate penalties for offenders, easy access to protective orders, improved enforcement and administrative procedures for criminal justice professionals who deal with domestic violence, financial compensation to victims, and improved accessibility to services dealing with domestic violence. The League supports state funding for seed money, capital funds, and operating costs for the following:*

- local and regional residential centers for victims
- nonresidential support services
- counseling programs for all affected members of the family or household
- mandatory treatment and counseling programs for offenders to correct abusive behavior
- mandatory specialized training for peace officers, prosecutors, judges and court personnel, and parole and probation officers
- expanded training in police academies to deal with domestic violence
- public information about domestic violence.

*In order to provide appropriate penalties for domestic violence offenders, the League supports:*

- enhanced enforcement of present assault statutes and imposition of penalties intended by the law
- penalties for injury to any victim of domestic violence equivalent to the penalties for injury to a child or an elderly person
- adoption by prosecutors of a "no drop" policy so that a victim's request for dismissal will

- be denied if charges have already been filed
- criminal prosecution of those who violate temporary restraining orders in domestic violence cases.

The League supports efforts to make it easy for domestic violence victims to obtain protective orders by:

- requiring that prosecuting attorneys file all applications for protective orders upon receipt
- providing applications and easy-to-follow instructions for filing protective orders without representation by an attorney.

To enable criminal justice professionals to deal effectively with domestic violence cases, the League supports:

- requiring specialized training for police officers, prosecutors, judges and court personnel, and parole and probation officers
- establishing crisis or domestic violence teams
- mandating arrest without a warrant when there is probable cause
- establishing and providing adequate funding for a central Protective Orders Registry.

***The League supports mandatory specialized treatment and counseling of abusers to correct their behavior.***

***To work to eliminate the incidence of domestic violence and to make services more accessible to victims, the League supports the use of financial compensation, including payment by abusers for medical and legal expenses, counseling, and living expenses incurred by victims as a result of abuse.***

### **Explanation: Domestic Violence**

Domestic violence was chosen by 1983 state Convention delegates for statewide study, and members adopted the first LWV-TX position regarding domestic violence in 1985. The first WUTL domestic violence position called for adequate state and local funding for programs to reduce the incidence of domestic violence and alleviate its effects. Because the League's position was limited to *support of adequate funding*, LWV-TX advocates were unable to act on domestic violence bills that went beyond funding during the 1985 session. To remedy that situation, a second domestic violence study focusing on the legal system was selected by delegates at Convention '85. The current, expanded domestic violence position statement was adopted in June 1986.

As a result of legislation enacted in 1995, the 1994-97 Periodic Program Review committee eliminated several provisions dealing with protective orders and added one concerning creation of, and funding for, a central Protective Orders Registry.

Convention 2006 recommended that the position should not read "reduce" domestic violence, but to "eliminate" it. Revised wording was put forward as an item of concurrence in Program Planning, fall 2007, agreed to unanimously, and adopted by the board in January, 2008.

### **History: Domestic Violence**

**1987-1989:** In the 1987 and 1989 legislative sessions, LWV-TX supported successful bills to reduce the cost and improve the accessibility of protective orders to victims of family violence and to tighten their enforcement. In the 1989 session, League efforts included strong support for a successful omnibus protective order bill and a bill providing for the incremental upgrading of offense classification and punishment for subsequently occurring acts of domestic violence. Funding was secured with passage of Lt. Governor Hobby's Anti-Crime Plan.

**1991-1993:** LWV-TX supported its domestic violence position through membership in the Texas Council on Family Violence. An important achievement of the 1993 session was passage of the so-called "stalking" bill which provides a means for victims to report an individual's harassment before actually experiencing physical injury, thus giving the law enforcement system the ability to protect potential victims of domestic violence.

**1995:** With League support, the 74th session of the Texas legislature amended the Code of Penal Procedure to create a legal exception to the spousal adverse testimony privilege. The Senate Interim Committee on Domestic Violence had strongly recommended creation of the exception to prevent perpetrators of family violence from hiding behind the shield of "spousal privilege," thus escaping successful prosecution and conviction. Another significant measure enacted during this session created a statewide central registry for protective orders through the Texas Department of Public Safety.

**1997:** A strengthened anti-stalking bill was passed early in the session, followed by several proactive bills to assist survivors of domestic violence. One measure authorizes the Department of Human Services to develop procedures to assist family violence survivors who are welfare recipients, while another bill will use a small increase in court-filing fees to provide basic legal services to the indigent, many of whom are battered women and children. Two bills that would have made it more difficult for women to escape abusive marriages were defeated. A bill that would have authorized the creation and distribution to all public schools of an anti-violence curriculum did not get out of committee.

**1999:** Advocates scored significant victories during the 76<sup>th</sup> Legislature. There were significant increases in appropriations to the Department of Human Services Family Violence Program and to Battering Intervention and Prevention Programs. Legislation passed making it more difficult for batterers to obtain custody and/or visitation of children.

**2001:** The League supported a bill, signed by the governor, which provides that as of September 1, it is illegal in Texas for those under final protective order for family violence and those convicted of family violence crimes to possess guns.

### **E. EQUAL OPPORTUNITY/INCOME ASSISTANCE – 1970, 1995**

*The League of Women Voters of Texas supports legislation and administrative action to achieve equal rights for all, to combat discrimination and poverty, and to provide equal access*

*to housing, employment, and quality education in Texas. Specific measures that we support include:*

- access for all persons to free public education which provides equal opportunity for all
- removal of the ceiling on income assistance (welfare) spending from the state constitution
- provision by the state of supportive services, such as health care, child care, family planning, legal aid, and job training for income assistance (welfare) recipients
- an effective human relations commission for Texas that includes such features as:
  - permanent independent status
  - investigative and legal enforcement powers that go beyond the conciliation process
  - an adequate budget funded independently of the governor's office
  - equitable representation of racial, religious, and ethnic groups
  - an adequately-sized staff trained in human relations work.

**Explanation: Equal Opportunity/Income Assistance**

In the fall of 1970, local Leagues in Texas studied income assistance under a national program item, with the state League adding two consensus questions to the list of national consensus questions. The basis for action at the state level was thus increased by the resulting positions on state income assistance and state supportive services.

League members have supported establishment of a human relations commission for many years and, in 1970, identified those elements that comprise an effective commission. League members believe that such a commission should publicize its existence and help communities form their own commissions. Other programs which members support include these: enforcement of fair housing laws; enforcement of minimum building codes; expansion of vocational education opportunities; expansion of counseling services; and combating discrimination in employment.

The legislature created the Texas Human Rights Commission in 1983. However, this commission currently addresses only employment discrimination, not the other program needs identified in our position.

This position underwent Periodic Program Review in the 1993-1995 biennium. Several wording changes that update the statement to reflect changed policies and circumstances were suggested by the PPR Committee and approved by delegates at the 1995 Convention. The updated position is printed above.

**History: Equal Opportunity/Income Assistance**

**1971-1987:** During this period, the League focused on the removal of Texas' constitutional limits on state spending for income assistance and on raising Aid to Families with Dependent Children (AFDC) benefits. Because attempts to remove the ceiling on income assistance benefits were repeatedly defeated, the League supported the politically feasible action of raising the constitutional ceiling. There was both legislative and public support for a ceiling of one percent

of the annual state budget, and the 1982 ballot measure designating that ceiling was approved by the voters. Raising AFDC grants remained a legislative priority in 1985 as the League lobbied for a benefit of \$60 or more per AFDC recipient. The AFDC benefit was raised from \$53 to \$57 per month for the 1985-1987 biennium.

**1987-1993:** The state fiscal crisis and the major threat of budget cuts caused the League and other human services advocates to work in the 70th Legislature to maintain the level of services in the 1987-1989 biennium rather than lobbying for much needed increases. LWV-TX joined the statewide coalition People First! which successfully urged the legislature to address the basic needs of people first in state budget priorities, and which supported state revenue restructure and enhancement to provide adequate funding for essential state services. In the 1989, 1991, and 1993 sessions the League again worked with People First! to maintain funding levels.

**1995:** A bill restructuring welfare in Texas was signed into law. Some of its provisions include: a needs assessment must be done for all AFDC recipients; support services such as education, child care, and transportation assistance will be provided subject to availability of funds; a recipient must be a U.S. citizen or legal immigrant and a citizen of the state; and a recipient must sign a responsibility agreement that includes cooperating in efforts to check the child's paternity, taking the child for regular checkups and immunizations, and education/work agreements among other commitments.

**1999:** Legislative activity continued to deal with "welfare reform" in Texas. LWV-TX actively lobbied to protect support services to Texans receiving Temporary Aid for Needy Families (TANF). Some successes were legislation which allows TANF recipients to keep more of their earned income, which removes barriers to finding and keeping jobs, and which funds additional child care for low-income families. A "success" was preventing the monthly TANF benefit from being reduced; it will remain at 17% of the federal poverty level.

**2001:** The League's goal during this legislative session was to support bills that would remove many of the barriers in the present system for Temporary Assistance for Needy Families (TANF) and for food stamps. Results were mixed. Successful legislation will provide hardship exceptions for TANF time limits, phone application and recertification for food stamps, a required interagency plan for coordinated services for hard-to-employ clients and aid for distribution of fresh produce from farmers to food banks. The governor vetoed bills that would have extended transitional services for certain TANF clients and another that would have eased work requirements for certain clients. We have expressed concern that the current budgetary practice of using TANF funds for other state needs will continue to put pressure on the program designed to effectively meet the needs of needy families, especially in welfare-to-work services.

**2002-2003:** During the interim between the 77th and 78th Legislature, the Sunset Advisory Commission reviewed the operations of the Texas Workforce Commission, which was established in 1995 during welfare restructuring to merge all employment and training programs into a single, locally-controlled workforce system. The Sunset Commission made several

recommendations to make TWC more accountable. LWV-TX submitted comments on particular recommendations, stating that TWC would benefit from more input from the public, local workforce boards, and child care experts before formulating policies to be carried out by local workforce boards. The general intent of accountability and additional input for TWC was adopted in the final legislation.

“Budget cuts” were the name of the game in the legislative session. The number of families eligible for Temporary Aid to Needy Families (TANF) will be reduced by lowering the asset test, lowering the vehicle value limit, and enforcing full termination of assistance to a family for any infraction of the Personal Responsibility Agreement. Budget priorities indicated that lawmakers were more interested in reducing numbers of recipients, rather than removing barriers to employment.

**2005: Priority:** Support for work development programs, including training for living wage jobs. Unfortunately, no legislation was passed out of committee to improve training for higher wage jobs. The Skills Development Fund, Texas’ Workforce training program, was actually cut by nearly 60%. Funds were shifted to the Texas Enterprise Fund, a program to give incentives to businesses moving to Texas.

## **F. HEALTH CARE FOR THOSE OF LESSER MEANS/CHILD HEALTH CARE – 1986, 1995, 2009, 2010**

*The League of Women Voters of Texas supports a basic level of health care for the medically indigent.*

The League believes that all persons whose incomes fall below the federal poverty guidelines are most at risk of medical indigence and should be eligible for basic health care services. Special attention should be given to children of low-income families and to persons of low income who are elderly, pregnant, or mentally ill.

It is the responsibility of individuals to pay for their own health care to the best of their ability. For those unable to pay, health care services and programs for the medically indigent are the responsibility of various levels of government.

The League of Women Voters believes the following services constitute the basic level of health care for the medically indigent:

- maternal and child care
- emergency care
- primary care
- preventive care
- care for the mentally ill
- care for catastrophic illness
- nutrition
- substance abuse treatment

- health education
- long-term care
- care for persons with disabilities.

The League believes that all health care facilities, both public and private, have a responsibility to serve the medically indigent and should be accessible to those in need.

**Explanation: Health Care for Those of Lesser Means/Child Health Care**

League delegates to the 1985 state Convention adopted a study of Health Care for the Medically Indigent (HCMI), focusing on eligibility, providers, funding, services, alternatives, and the role of state government. The LWVUS Health Care position, adopted in 1993, also calls for a basic level of quality health care that is affordable to all residents. (For more information on the LWVUS Health Care position and on relevant LWV-TX advocacy efforts, see Social Policy section of National Program at the end of this publication.

The HCMI position was reviewed during the 1993-1995 Periodic Program Review process. The PPR Committee recommended an editorial change and a substantive change in wording; the recommended substantive change was deletion of a phrase which listed several government levels as being responsible for indigent health care services. The committee's rationale was that the listing was not all-inclusive and that the phrase, "various levels of government," without specifying which levels, would give Leagues more options for local advocacy efforts. The PPR Committee's recommendations were approved, and the updated position is printed above.

**History: Health Care for Those of Lesser Means/Child Health Care**

**1980's:** During the 70th Legislature, a budget crisis meant no additional funding for health care programs. The League supported continuation of current levels of state funding passed in 1985.  
**1988-1989:** Two active interim committees examined the expansion of Medicaid and alternative funding methods for health care. In July 1988, the board of the Texas Department of Human Services approved expansion of Medicaid coverage to pregnant women and to children up to age two who are eligible.

Important gains for expansion of Medicaid were realized during the 71st Legislature in 1989. Because Medicaid for pregnant women was no longer tied to AFDC guidelines, perhaps up to 22,000 pregnant women and 50,000 more children became eligible for health care benefits under Medicaid. Income eligibility for this special population was set at 130% of the federal poverty guideline. The income eligibility cap for nursing home care was raised to the maximum federal level, allowing Medicaid benefits that increase access to care for a greater number of elderly, disabled persons.

**1990-1992:** The League monitored the Governor's Health Care Policy Task Force and presented written testimony in support of major portions of the draft recommendations. The final report was released in January 1993, calling for universal access to health care and, as a first step toward that goal, creation of health care coverage for all children and pregnant women.

**1993:** Please refer to the end of *Program Perspectives* under LWVUS Social Policy for the LWVUS Health Care position and the LWV-TX HCMI position during the 1993 legislative session.

**1995:** LWV-TX published an Advocacy Paper, *Medicaid Reform: To Solve a Crisis*, which was circulated to legislators and other interested officials, groups, and individuals. The paper called for implementation of the following cost-saving steps to ensure the availability of health services for the indigent: streamlining of administrative processes; emphasis on preventative and primary care; expansion of managed care options for Medicaid recipients; and creation of incentives for expansion of community services by public and private providers.

The 74th Legislature enacted legislation that dramatically alters how the state delivers and funds medical care to the indigent. In effect, the Medicaid program has been converted into a managed health care system which places new emphasis on prevention. The legislation also mandates pooling local and state health care monies used to provide indigent health care in order to maximize access to federal matching funds.

**1997:** Five League-supported bills on health care were signed into law. The Texas Healthy Kids Corporation will provide low-cost health insurance for children of parents who cannot afford insurance but make too much money to qualify for Medicaid. Another bill directs the Texas Department of Health to provide rules for lead abatement, a serious health hazard faced disproportionately by children in the lower socio-economic level, while an omnibus nursing home act establishes procedures and penalties for noncompliance of existing laws and regulations. Legislation was enacted requiring health plans that provide maternity benefits to also include coverage of inpatient care for a mother and her newborn in a health care facility for a minimum of 48 hours, and, consistent with the League's position on Medicaid reform, a new law provides increased penalties for Medicaid fraud.

**1997-1999:** In the fall of 1997, following passage of enabling federal legislation, LWV-TX became actively involved in a coalition of child health advocacy groups calling for a Children's Health Insurance Program (CHIP) for Texas. Throughout the legislative interim, the coalition, including LWV-TX representatives, worked with agency staff to help shape the legislation which was ultimately introduced. Named one of the priority issues for LWV-TX, CHIP received grass-roots advocacy from local Leagues, including travel to the capitol for CHIP Advocacy Day. We achieved passage of all our goals: a health insurance plan which will provide primary and preventive care to low-income, uninsured children who are not eligible for Medicaid. The plan will maximize the use of federal matching dollars, provide family-friendly enrollment, provide appropriate benefits for children, and support working parents.

In addition to CHIP, health care in general was an active issue for LWV-TX. Nine League-supported bills on health care became effective September 1, 1999. School districts may establish school-based student health centers. Legislation was enacted that sets forth the standards and procedures for the delivery of indigent health care. Another bill provides for state assistance to counties that spend at least 10% of county general revenue to provide health

care services to residents through a hospital. Permanent funds were established for certain public health items. The elderly should benefit from a bill that provides for required immunizations for nursing home residents. Consistent with the League's position on Medicaid reform and cost containment, a bill streamlines the administration and delivery of federally funded Medicaid programs supporting long-term care while another stipulates that contracts must be in effect for insurers to reimburse providers. Legislation directs state agencies to study and make strategic plans concerning the delivery of long-term care and other health services. While female genital mutilation was prohibited, the 75<sup>th</sup> Legislature did not add the budget line item for Women's Health for which the League had actively lobbied. The Campaign for Women's Health will regroup during the interim and work for a more favorable outcome in 2001.

**2001:** During the 77<sup>th</sup> session LWV-TX continued its active participation in the CHIP Coalition working towards simplification of the Medicaid application and recertification procedures to become comparable to those of the CHIP program. We were largely successful in obtaining more simplified forms and processes, phased-in continuous eligibility, age six to age 19, by 2002, and one-year continuous eligibility no later than June, 2003. We were unable to obtain elimination of the assets test for Medicaid, although the extensive documentation formerly required has been dropped. In addition, the governor signed a bill requiring a pilot study and, if successful, a pilot project to allow portability of Medicaid benefits for migrant children. The governor vetoed a bill that would have allowed Texas to exercise its option under federal law to provide Medicaid benefits to otherwise-eligible legal immigrants after they have been in the U.S. for five years. It is not clear that there is adequate funding for either Medicaid or the CHIP program. Since Medicaid is an entitlement program, the legislature must fund any shortfalls. However, CHIP is not an entitlement program and is already exploring options for restricting or reducing services if a budgetary shortfall materializes.

The League was also active in the area of women's health care. Medicaid can now cover uninsured women under the age of 65 who have breast cancer. However, the governor vetoed a bill for a Medicaid waiver for women's health and family planning. The waiver would have saved the state \$300 million over the next four years and provided family planning services and preventive health care to an additional one million uninsured Texas woman. The legislature did not pass legislation that would have allowed application for a Medicaid waiver to provide for comprehensive health care for women.

**2003:** During the 78<sup>th</sup> session the Medicaid Waiver failed again. A bill, which would have called for the state to apply for the Medicaid Waiver for Women's Health, was heard in House Human Services Committee and died in Committee. The bill would have established a demonstration project through the application of an 1115 Medicaid Waiver to expand women's health care services for women 18 years and older with an income at or below 185 percent of the federal poverty level. During the appropriations process prenatal health care services were also reduced.

**2007:** Due to lots of hard work by members of the Children's Health Insurance Program (CHIP) coalition and by a number of committed legislators, HB109 passed restoring much of what had

been lost in 2003. The bill is to be fully implemented by September 1, 2008. Provisions of the bill are:

- Section 1. Allows deduction of certain child care expenses when determining if a family's income qualification for CHIP
- Section 2. Restores language from original CHIP law requiring community-base- outreach program which includes contracts with community-based organizations
- Section 3. Increases the asset limit authorized in 2003 for children and families at 150-200 percent of the Federal Poverty, level from \$50,000 to \$10,000
- Section 4. Requires that CHIP use some method to verify the reported incomes of CHIP applicants
- Section 5. Provided an eligibility period of 12 months for children in families with incomes at or below 185 percent of the Federal Poverty level. For children in Families at 185 percent of the Federal Poverty Level are to have their income reviewed every six months. The Department of Health and Human Services must notify parents at least 30 days prior to ending coverage if a child is found ineligible due to income reviews under one of the 6 month reviews.
- Section 6. The 90 day delay in coverage is eliminated to allow for uninsured children to be eligible for CHIP.

**2009:** The Community Based Alternatives (CBA) program received additional \$15 million (\$3.7 million for FY 2010, \$11.3 million for FY 2011) to fund an additional 430 slots by the end of FY 2010, and 861 slots by the end of FY 2011. In addition, \$58.5 million all funds (\$28.8 million for FY 2010, \$29.7 for FY 2011) was appropriated to fund a \$.80 per hour wage increase for attendants as a result of the July 2009 minimum wage increase. Also, the reimbursement rate for nursing homes was increased by 3%.

The Legislature wants the state to promote the importance of having health insurance and educate the public on purchasing and the availability of health insurance. They directed the HHSC to cost effectively process claims for all health care services by the same system. Also, they outlined streamlining initiatives in applying for Medicaid waiver programs and called for long-term care consumer information to be provided on the internet.

**2011: Children's Health Insurance Program (CHIP).** Much of the legislation impacting health care for the children of Texas was contained within the budget and a massive health efficiency bill. These measures changed and expanded multiple times during the regular and special sessions. As finally passed and signed, they included beneficial provisions and provisions that could undermine the well-being of those qualifying for either Children's Medicaid or CHIP.

Budget discussions focused on proposed provider rate cuts of 10% to those delivering health care to Medicaid and CHIP patients, in spite of Texas' already low reimbursement rates and recent cuts. In the end, payments to children's hospitals and primary care physicians treating children were spared the large cuts made to other hospitals and providers.

Multiple proposals targeting greater health care efficiency evolved into SB 7 (Nelson), which passed during the special session. On the positive side, SB 7 included strategies for improved quality of care provided to CHIP and Medicaid recipients. It also called for shifting from the traditional system of payment for services to payment rewarding better health outcomes. Negatively, the final bill carried provisions designed to give the State of Texas more control over health care programs. A health care compact, if ultimately approved by the US Congress, would turn all federal health funding coming to Texas for Medicaid and Chip, as well as Medicare and other programs, into a single large block grant to the state. A waiver of federal law would radically restructure Medicaid in the state. If either the block grant or the waiver were to take effect, children and other vulnerable populations would lose much in the way of protection currently guaranteed under federal law.

Most individual bills designed to either improve or restrict Children's Medicaid and CHIP died in the regular session. Unfortunately, an attempt to extend Children's Medicaid eligibility to a 12-month continuous period, thus allowing many qualified children to retain access to health insurance, made little headway.

**Other Issues:** With a \$27 billion shortfall, Medicaid and education were big targets for cuts in the 82<sup>nd</sup> State Legislative Session. Maintaining existing reimbursement rates was a priority for many groups including the League. Because of strong advocacy, Medicaid reimbursement rates for nursing homes and community based alternative care were maintained at 2010 rates. Hospice got a 2% cut. Everyone on a Medicaid waiver got their funding cut 10%. Direct health care will not be cut as it is deemed non-negotiable. Negotiable expenses such as home modifications will make up the 10%. Providers got cuts in administration costs. During the Special Session, "Secession Legislation" passed seeking a health care compact, a partnership with other states to take control of Medicaid & Medicare, and legislation asking the Obama administration for a waiver to operate Medicaid as Texas sees fit. Both are unlikely to happen under the Obama administration. Legislation passed to protect patient advocacy activities by nurses and certain other persons, providing an administrative penalty for denying right to advocate.

**2013:** The most significant health care considerations for the 83<sup>rd</sup> Legislature were related to implementation of the Patient Protection and Affordable Care Act (ACA). Other measures concerning Children's Medicaid and Children's Health Insurance Program (CHIP) were focused mainly in three areas: expansion, efficiency and funding.

Legislators filed only a few bills designed to expand access to publicly funded insurance for deserving children. Proposed measures called for opening CHIP to families with somewhat greater assets or increasing the time to a full year before families must reapply for Children's Medicaid. Expansion efforts all died without consideration by the full legislative body.

Massive bills intended to make health care delivery more efficient did become law. Some features of the bills could ultimately benefit children, such as extending managed care to a wider range of medical situations and providing incentives for quality care. Other features could have

a negative impact, such as limitations on the criteria for expanding Medicaid eligibility.

Lawmakers rectified some of the deliberate underfunding of Medicaid and CHIP from the previous session just in time to meet current needs. The budget for 2014 to 2015 provided for an 11% increase in the number of children in Medicaid, but it projected a drop in the number of children in CHIP due to ACA implementation. When adjusted for inflation and population growth, overall health related funding (including immunizations, Children with Special Health Care Needs, education on tobacco and abstinence, and a number of other programs, in addition to Children's Medicaid and CHIP) saw a per-child decrease.

**2015:** The most significant health care issue, Medicaid expansion, was completely ignored by the 84<sup>th</sup> Legislature. There was no consideration or deliberation on any Medicaid expansion laws in Texas.

The Appropriations committee did have one meeting to consider the possible loss of the federal 1115 Waiver money. No actions were taken. The cost of uncompensated care in Texas is partially paid for by the Affordable Care Act's (ACA) 1115 Waiver. The 1115 Waiver was meant to be a temporary solution to uncompensated care while the ACA was ramping up. Now the federal government's Center for Medicare and Medicaid Services (CMS) is threatening to cut the 1115 waiver to encourage Texas to participate fully in the ACA and allow more citizens access to health insurance.

Meanwhile the Children's Health Insurance Program (CHIP) continues to be an available insurance program for Texas. With the Affordable Care Act more children qualified for Medicaid. Rider 50 to the Texas budget was added at the last minute which removed 350 million dollars for therapy services for children with special health care needs.

**References Available: (Advocacy Paper) *Texas Health Care: Inadequate State Programs Are Costly to All Texans*, February 2013. (Advocacy Paper) *Medicaid: A Wise Investment of State Dollars*, January 2007.**

## **G. HEALTH CARE SYSTEM FOR OLDER TEXANS, 2001**

*The League of Women Voters of Texas supports a comprehensive health care system for older Texans that ensures a seamless continuum of quality care.*

Access to health care should include:

- statewide and local information and referral networks which provide clear, correct, and consistent information about publicly funded health care programs and eligibility requirements
- development of programs to provide adequate and affordable transportation for clients and health care providers.

Health care for older adults should include:

- integration of health care services, including developing an individual health care plan and providing a continuum of services, such as health care screening, prevention services, acute care, long-term care, and hospice care
- a variety of long-term care services and alternative housing options in sufficient quantities to provide the level of care appropriate for each individual
- options that include home and community-based services, in addition to institutional care
- programs that address limitations to access in rural and other medically underserved areas for dentistry, hearing and vision services, mental health services, and long-term care
- innovative programs that use waivers and blending of funds to customize services to fit individual and community needs
- access to prescription drugs which is not limited by the ability of an individual to pay for them.

Actions to achieve high quality health care should include:

- adoption and strict enforcement of high standards for all long-term care services for older Texans
- programs to improve the training, pay, benefits, and retention of personnel engaged in planning, regulation, and delivery of care
- policies that promote training in geriatrics at all levels of medical and nursing education
- coordination of benefits from Medicare, Medicaid, and other publicly funded programs in order to serve individuals who are eligible for more than one program
- sufficient funding to support comprehensive, high quality health care for older adults.

### **Explanation: Health Care System for Older Texans**

Reflecting a widespread interest in issues surrounding health care, delegates to the 1999 LWV-TX Convention approved the Continuum of Health Care for Older Adults study. Focused on health care options for older adults, the study examined existing laws and regulations relating to health care for older adults; a wide range of health care options for indigent and non-indigent older adults at varying states in their lives; and accessibility to available health care options including the financial implications of these options. A study committee produced a *Facts & Issues: A Continuum of Care: Health Issues for Older Adults, 2000*, which was distributed to League members, public officials and agencies, and other interested groups and individuals. Consensus was reached in the fall of 2000 and the state board approved the new position in November of that year.

### **History: Health Care System for Older Texans**

**2001:** The League followed a large number of bills related to long-term care, nursing homes and related areas. Many of the bills passed and indicate that Texas is taking health care more seriously than in the past. Bills related to pharmaceuticals will allow more information about pharmaceutical assistance programs, bulk purchasing of prescription drugs and a state prescription program for certain Medicare beneficiaries. Other bills would allow for dental services to some recipients of medical assistance, require health maintenance organizations to provide periodic health evaluations, establish a medical assistance buy-in pilot program for

certain people with disabilities, and establish a program of all-inclusive care for the elderly. Other bills that passed will improve case management for Medicaid recipients and improve services through telemedicine.

Other bills that passed will improve health care in rural areas, further protect nursing home residents, and provide an opportunity for nursing homes to purchase liability insurance from the Texas Liability Insurance Underwriting Association as well as allowing the state to make grants to nursing homes that demonstrate "best practices." A temporary measure to rescue nursing homes as a result of the current crisis in liability insurance also passed. This law includes means to insure quality of care with an early warning and amelioration process and a quality assurance fee (or bed tax) for nursing homes in order to increase nursing home reimbursement rates.

**2003:** The 78<sup>th</sup> Legislative session was faced with a budget crisis that resulted in decreased funding of health care for the elderly and disabled. Community care programs were reduced. Medical services for the elderly on Medicaid will no longer cover counseling, podiatric and chiropractor care, eyeglasses, hearing aids, and other optional benefits. The personal needs allowance for those on nursing home Medicaid was also reduced although legislation was proposed in the first special session to reverse this.

Health and Human Services is being reorganized and a state agency created called Department of Disability and Aging will be responsible for programs that were originally under the Department of Aging. Whether these changes will be more efficient is yet to be seen. The budget crisis drove the legislative session and hence this was not a good session for the advancement of care for the elderly.

**2005:** The major concern for the 79<sup>th</sup> Legislative Session was funding of programs and the hope that cuts from the 78<sup>th</sup> Session would be restored. Funding to provide eyeglasses, hearing aids, mental health services and podiatry benefits for adult Medicaid clients was restored. The 79<sup>th</sup> budget provides funds to increase enrollment in a number of non-entitlement community care and health programs that had been reduced in the previous session. The budget assumes lower caseloads for Medicaid and cost per client and includes funding to reduce waiting lists. There is some anticipated cost savings from greater management care for the aged, blind and disabled Medicaid clients. Proposed change to Medicaid Managed Care was most controversial. Some compromises were made and some models will be implemented in the Dallas area.

Long-term care programs now reside in the Department of Aging and Disability Services (DADS). Most DADS services are through Medicaid. Nursing facility rates were not restored nor increased and there is a possibility of a nursing home deficit. At the last minute, the governor vetoed "a quality assurance fee," a type of bed tax on nursing homes that would have provided funds for rate restorations and increases to nursing home facilities. Consequently this leaves DADS without state funding for nursing home rate restorations or updates and without basic operating funds. Medicaid provider rates were not increased nor restored to previous

rates, but remain at the 2003 rates. In addition the personal needs allowance remains at the 2003 level.

**2007:** The 80<sup>th</sup> Legislature passed no major legislation for senior health care. The personal needs allowance for Nursing Home Medicaid recipients was increased to \$60/month. A bill was passed to establish the creation of nursing home family councils. Legislation was passed to make long term care insurances for Medicaid consistent with federal law under the Deficit Reduction Act of 2005.

**2013:** The debate over Medicaid overshadowed much of the session. Sweeping changes were proposed relating to how the state administers the program. Some of the changes came from studying the changes to Medicare in the Affordable Care Act. Many of the changes are expected to improve the quality of care and cost effectiveness of the Medicaid program and to combat fraud.

SB 7 and SB 8, by Senator Jane Nelson, contained some of the largest changes to the way the state administers Medicaid. SB7 redesigns long-term and acute care services for the elderly, which are among the most costly services provided by Medicaid, and allows Medicaid managed care to cover services provided in nursing homes. SB 8 bars providers who have been found guilty of Medicaid fraud in Texas or elsewhere from participating in the Texas program.

Legislators turned down Medicaid expansion and the \$90 billion it would provide over 10 years.

Medicaid reimbursement for many services did increase. For example, nursing home reimbursement increased 2% the first year and 4% in the second year. Attendant care salaries were increased \$.50 in 2013 and \$.50 more in 2014.

Legislation passed to establish a reuse program for durable medical equipment provided to recipients under the Medicaid program.

**Reference Available: (Advocacy Paper) *A Continuum of Care for Older Texans*, February 2005.**

## **H. POST-DIVORCE PAYMENTS – 1982, 1997**

*The League of Women Voters of Texas supports changes in Texas laws that would enable a court to award adequate post-divorce payments to a spouse when appropriate.*

### **Explanation and History: Post-Divorce Payments**

A bill enacted in the 1995 legislative session removed the stigma of notoriety from Texas as the only state in the U.S. that did not allow its courts the option of ordering post-divorce (alimony) payments. The new law gives courts discretion to order alimony payments for an ex-spouse who is unable to support herself or himself, if the couple has been married at least ten years. In each previous legislative session dating back to 1982, similar, League-supported measures were passed by the Texas Senate but died in the House.

Although the 1995 legislature enacted a law awarding post-divorce payments (“spousal maintenance” or “alimony”), the new law is very limited. Consequently, the 1995-97 Periodic Program Review Committee added the word “adequate” and urged retention of the position.

## **I. SERVICES FOR PEOPLE WITH BEHAVIORIAL HEALTH DISORDERS - 1988**

*The League of Women Voters of Texas supports the right of all persons who have behavioral health disorders to have access to services designed to help them reach and maintain an optimal level of functioning in the least restrictive environment.*

The League believes that state government should ensure that the following services are accessible to persons with behavioral health disorders:

- residential services
- non-residential services
- continuity of care services
- outreach to those who cannot or will not seek assistance
- programs for special populations.

The League supports these actions to improve the number and quality of services available for people with behavioral health disorders:

- provide incentives for community-based residential programs
- implement measures to encourage public and private funding of long-term rehabilitative care
- provide technical assistance to, and regulation of, housing providers such as room and board homes that house patients with behavioral health disorders
- implement measures to prevent discrimination and encourage community acceptance of residents with behavioral health disorders, including community education about serious behavioral health disorders
- supplement federal Supplemental Security Income (SSI) payments for mentally disabled persons
- allocate state funds to local mental health authorities according to need for services and performance level and quality
- provide incentives for local mental health authorities to develop residential services for persons who are most difficult to place
- increase the number of physicians who receive training in the public system for behavioral health disorders
- expand academic and research opportunities in the public system for behavioral health disorders
- require continuing education and in service training for mental health professionals and direct care staff in the public system for behavioral health disorders
- provide higher salaries and benefits as required to attract and retain qualified personnel in the public health system for behavioral disorders

The League supports funding of services for persons who have behavioral health disorders by:

- state government
- state government through participation in federal programs
- city, county and other local governments
- private insurance
- individuals to the best of their ability.

The federal government is currently the major funding source for research on behavioral health disorders. The League supports sharing the responsibility for financing research on the prevention, causes, treatment, and need for treatment of those with behavioral health disorders with state government and the private sector.

### **Explanation: Services for the Seriously Mentally Ill**

League delegates to the 1987 state Convention adopted a new study of the state mental health and mental retardation system, with emphasis on persons who are seriously mentally ill. There was excellent participation in the study with 75% of local Leagues responding. The consensus indicated strong support for access to a range of high-quality services by Texans with serious mental illness, and public education regarding serious mental illness to combat stigma and discrimination against persons who suffer from it. The position on services for the seriously mentally ill was adopted in November 1988.

### **History: Services for the Seriously Mentally Ill**

**1989:** League efforts focused primarily on increasing the Texas Department of Mental Health and Mental Retardation (TDMH/MR) budget in order to initiate programs for youths and to expand services to rural areas. Although the final budget was an expansion over previous levels, it primarily reflected the increased cost of providing current service levels and some court-- mandated reforms for hospitalized clients. A small amount of funding was designated for programs for children and youth. The League also opposed several discriminatory bills, which ultimately died. These bills would have significantly reduced access to housing, within residential areas, for disabled persons including the mentally ill.

**1990-1993:** During the 1990 interim, LWV-TX testified before a hearing of the Senate Health and Human Services Committee to reiterate our support for private board and care homes operated in a responsible fashion. The 1991 legislative session produced successful legislation clarifying the regulatory and licensing procedures for board and care homes and outlining a “bill of rights” for residents and providers.

Although not active on this specific issue in the 73rd Legislature, the League worked to maintain funding levels for human services programs, including those for the mentally ill.

**1994-1995:** During the legislative interim, LWV-TX presented testimony to an advisory task force of the TDMH/MR charged with delineating authority/provider roles. The League objected to the proposed separation of local authority from local providers, noting the need for the authority and provider to be one entity at the local level to ensure accessibility, continuity, and

flexibility of assistance to those in need of services.

**2005:** The Legislative Priority for the 2005 session was to work to influence the Legislature to maintain or increase the current funding level for services for the seriously mentally ill, when appropriate, combining efforts in coalition with other organizations. We appreciate being able to work with the Mental Health Association of Texas, and in particular, the Mental Health Association of Greater Dallas.

The final budget bill included the following mental health items: \$20 million added statewide for adult community mental health, \$3 million added statewide for children's community mental health, \$15 million added statewide to increase state psychiatric hospital bed capacity, \$3.3million added for full restoration of CHIP mental health benefit, \$44 million added for restoration of Medicaid adult psychological counseling benefit, \$195 million for the NorthSTAR program.

The following mental health related bills were signed by the Governor: **HB 224** (Corte) preventing a minor from discharging him or herself or refusing psychoactive medication under specified conditions, and **SB 1473** (Lindsay)/ **HB 2524** (Coleman) requiring that all law enforcement officers, veterans as well as cadets, receive training on de-escalation and crisis intervention techniques for dealing with persons with mental impairments. **HB 2572** (Truitt) authorizing a local mental health and mental retardation authority to determine whether to provide services directly or to contract with another organization to provide service, was vetoed.

**2007:** The LWV-TX worked to influence the Legislature to maintain or increase the current funding level for services for the seriously mentally ill. A request by the Department of State Health Services for \$82 million in new dollars for mental health crisis services was full funded. The additional funding will allow the state to pen six new psychiatric emergency observation sites, provide children's outpatient and crisis stabilization for 87,000 people and to train and certify 340 community center staff to respond to crisis calls. In addition funding provided for state mental health facilities totaled \$634 million, a \$14.6 million increase to maintain the 2007 caseloads.

Legislation for "parity" to require health insurance plans to cover treatment for serious mental health disorders advocated by LWV-TX did not make it through the process. However SB 568 (Ellis), which mirrored pending federal legislation, and HB 510 (Fabree) made it through respective chambers. The features of both pieces of parity legislation were attached to HB 1919 relating to health insurance coverage for individuals with brain injury, however at the last minute these were stripped from the bill in conference committee.

**2011:** The League monitored legislation affecting mental health and substance abuse services throughout the legislative session and encouraged members through the Legislative Newsletter to contact their congressional representatives serving on the relevant committees and when budget considerations came to the floor of both houses in support of League positions. In light of current language being used to describe mental health and substance abuse issues, it was recommended

and adopted that the issue title be changed to "Services for People with Behavioral Health Disorders."

Although the State Legislature generally maintained 2010-2011 levels of funding for mental health in the Department of State Health Services budget, this must be understood in the context that Texas is at the bottom of all 50 states in per capita spending for public mental health services. While Community-based Services for Children were increased by almost \$21 million, Community-based Services for Adults were decreased by over \$11 million, and Substance Abuse Treatment Services were decreased by over \$29 million. Substance Abuse Treatment Services are critical because of the large number of people with mental illnesses who have co-occurring substance abuse disorders.

**2013:** While Texas continued to be at the bottom of all 50 states in per capita spending for public mental health and substance abuse services, the Legislature did provide an additional \$350 million for the biennium. This significant increase was in large measure motivated by several tragic mass shootings of people attending a political event, people at a movie, and children and teachers in an elementary school; the three shootings were conducted by young people with histories of mental illness.

Some 70 bills related to mental health were filed and LWV-TX monitored and advocated for those related to our positions. In addition to our highest priority for increased funding, the most significant bills passed include the following: authorization of a study of the mental health workforce shortage; facilitation of best practices in hospital emergency rooms for Screening, Brief Intervention and Referral to Treatment (SBIRT) in cases of injuries from substance use/abuse; authorization of a study of the need statewide for forensic and civil hospital beds; expansion of the number of mental illnesses eligible for treatment (previous law limited coverage to major depression, bipolar disorder and schizophrenia) and funding for Mental Health First Aid training statewide; integration of mental health with the rest of the health care system in the Medicaid program; provision of improved mental health awareness and suicide prevention training for public school educators and staff; and clarification of judicial authority to court-order outpatient treatment for people with mental illness.

## **IV. NATURAL RESOURCES**

### **A. AIR AND CLIMATE CHANGE - 1960's**

*The League of Women Voters of Texas supports state government action for control of air pollution in Texas, including:*

- power to set and enforce standards stricter than those required by the federal government
- adequate funding to carry out research, planning, and enforcement
- legislation allowing local and regional governments to set and enforce standards stricter than those of the state
- encouragement of citizen involvement in the rule-making and enforcement process.

#### **Explanation and History: Air**

The League has been involved with air quality legislation at the state and national levels since

prior to the passage of the Federal Clean Air Act (FCAA) in 1970. In 1977, amendments to the FCAA were passed extending deadlines and relaxing some pollution standards.

In 1990, the Clean Air Act Amendments of 1990 were passed. These aimed to reduce substantially air pollution from most American cities by the turn of the century. The requirements will protect human health and the environment, while balancing environmental and economic concerns. Provisions include more stringent pollution controls for air quality, motor vehicles, hazardous air pollutants, acid rain, and stratospheric ozone depletion. Areas in Texas not meeting the air quality standards are Houston, Beaumont/Port Arthur, El Paso, and Dallas/Fort Worth. Additionally, Victoria County and Culberson County (Guadalupe Mountains National Park) are being evaluated for non-attainment status.

The vehicle provided under the Clean Air Act to show compliance or a plan to attain compliance is the State Implementation Plan (SIP). The League has been involved in numerous revisions of the SIP and supports legislation that will promote clean air, such as vehicle inspections, changes in gasoline formulation and/or the use of alternate fuels, and more auto and industry pollution controls.

**1985-1989:** In the 1985 legislature, the League supported requirements for the state to do periodic reviews of permits and to institute administrative penalties for industry violations of air quality guidelines. We worked in the 1987 session to maintain these gains. The League also intervened on behalf of the state in the suit brought against Texas by the Texas Association of Business regarding jury trial and administrative penalties. (In 1993, the Texas Supreme Court upheld the lower court's ruling in our favor, affirming the constitutionality of administrative penalties.) The League worked in the 1989 session in support of legislation that promoted the use of alternative fuels in fleets of vehicles such as school buses, taxicabs, and metropolitan transit systems.

**1991-1993:** In 1991, the League supported funding at adequate levels for the Texas Air Control Board and the necessary statutory authority to implement the FCAA in Texas. This legislation ultimately passed during the first special session as part of a reorganization of natural resources agencies. In the 1993 session, the League supported dedication of revenues from environmental fees, such as those required of air polluters, to environmental regulatory and remedial programs. We also successfully opposed legislation that would have exempted agriculture operations from all state air pollution control requirements. Also adopted in 1993 were legislative changes required to bring Texas clean air programs into compliance with regulations adopted by the U.S. Environmental Protection Agency to implement the 1990 FCAA amendments. Despite League opposition, the 1993 session repealed the requirement that school buses convert to alternative fuels; conversion of school buses is now purely voluntary.

**1995:** Though environmental protection was a priority for LWV-TX in the 74th Legislature, an anti-regulatory mood prevailed. A League-opposed measure that broadens the definition of alternative fuels to include petroleum fuels passed and signed into law. In addition, despite opposition from the League and environmental groups, the statewide air emissions testing

program was scuttled. Centralized testing was abandoned in favor of returning to the old system of tailpipe testing that is done at the time of the annual safety sticker inspection. Known as the Interim Texas Plan, the program will be in effect while the governor, through the Texas Natural Resource Conservation Commission (TNRCC), negotiates a program with the EPA. The new program will be designed to show that Texas meets the requirements of the Clean Air Act while at the same time administers a program of maximum convenience. The League considers these actions to be a major setback to efforts to achieve cleaner air for polluted areas of the state.

**1997:** The League was unable to support any of the bills concerning air quality that passed during this legislative session. One law authorized TNRCC to exempt a permit applicant from meeting pollution control requirements as long as the exemption is consistent with federal law and is at least as protective as the usual standard. Another bill weakened previously enacted laws that required a significant percentage of the vehicle fleets of state and local government agencies, mass transit authorities, and school districts to use alternative fuels. A third bill allowed grandfathered facilities from the 70's to continue to receive exemptions from obtaining air pollution control permits for new construction and modification permits. The League did not support a provision which was added requiring TNRCC to develop a voluntary emissions reduction plan for these facilities, which could provide the opportunity for interested parties to address the issue of bringing grandfathered facilities into permitted status. The good news is that several other objectionable air pollution bills failed passage.

**1999:** As in the 75th legislative session, natural resources was one of our legislative priorities: advocacy to promote funding and policy initiatives supporting environmental protection and public participation. In 1999 the legislature revisited the issue of “grandfathered” facilities, those facilities that were exempted from having to obtain air pollution control permits as they were in operation prior to implementation of the Clean Air Act in 1970.

Believing that thirty years is long enough, LWV-TX worked with a broad coalition to require that all air-polluting facilities be required to comply with laws protecting public health by a certain date. A House bill would have set a deadline to require facilities to be permitted, would have required the use of best available technology, and would have ended the volume discount for polluters that only had to pay fees on the first 4000 tons of emissions. However, what passed was a bill implementing the governor’s voluntary program for moving grandfathered polluters into the air control permitting process.

The greatest success in cleaning up Texas air came through the electric deregulation/restructuring bill that was passed and signed into law. Although the League does not have a position on electric deregulation, LWV-TX testified before the Senate and House committees urging them to consider (in the legislation) the importance of public participation and education, the impact on public health and the environment, the use and conservation of energy, and the development of renewable energy resources.

Language in this bill requires about 100 grandfathered power plants to reduce emissions by 50 percent. With that provision, the exemption loophole was removed from roughly 30 percent of

the state's total grandfathered facilities. Together the two bills will ensure that 60 percent of the annual emissions by grandfathered plants, or about 540,000 tons of air pollutants, will now have to begin to meet clean air standards. This stands as the biggest win for the environment this session.

**2001:** The 77<sup>th</sup> session was the best in a decade for air quality. Important air quality bills that were strongly supported by the League and signed by the governor included the TNRCC Sunset/Reauthorization bill that ended the Grandfather Loophole. After four years of sustained work by environmental and public interest groups, including LWV-TX, the legislature finally ended the 30-year-old loophole for grandfathered plants, forcing Texas' oldest, dirtiest industrial plants to meet modern clean air standards. The law defined new standards for "upset emissions" of pollution, required that all emissions be reported within 24 hours, made the source come up with a corrective action plan, and provided penalties.

A large setback came when the legislature failed to remove the fee cap or volume discount collected under the Clean Air Act on air emissions above 4,000 tons. The League, along with our coalition partners, lobbied hard on this issue.

In another major victory for cleaner air in Texas, the Texas Emissions Reduction Program provided three types of incentive programs: rebates to consumers for the purchase of low-emission and alternative fuel vehicles; incentives to use more fuel-efficient building materials and appliances; and assistance to companies that agree to retrofit or replace high polluting diesel engines. Another bill expanded vehicle emissions inspection and maintenance requirements to counties beyond the one specified by federal requirement. LWV-TX supports a regional approach to solving air quality problems.

Other legislation establishes the Clean Coal Technology Council, requires TNRCC to suspend operations for a rock crusher or cement batch plant found to be operating without a permit, allows TNRCC to authorize emissions reductions achieved outside the United States to satisfy emission reduction requirement in international border issues, allows TNRCC to waive public notice and hearing requirements under certain conditions during construction or modification of a facility. In a loss for the environment, the legislature enacted a provision that prevents TNRCC from requiring petroleum marketers to sell cleaner grades of motor fuels in Texas markets.

**2003:** In a session in which environmental protection was rolled back dramatically, funding the Texas Emissions Reduction Program (TERP) was a rare positive for Texans. Although TERP was adopted by the 2001 Legislature and signed into law, a court in 2002 ruled the main funding mechanism unconstitutional. Without the 16.3 tons of emissions reductions per day in the Dallas-Fort Worth area and 18.9 tons per day in the Houston area, last year the EPA threatened to reject the state's urban smog strategies (SIP). So the legislature was under pressure to find the money to fund the program.

Last minute action by both the legislature and the Governor prevented federal intervention by funding a program to replace dirty, old diesel-powered construction equipment. Consistent with

the prevailing mood of legislators regarding public health and the environment, a state program on low-sulfur diesel fuel was replaced by less stringent federal rules that could increase pollution by 6 tons per day statewide. The new law also eliminated the program of rebates to consumers for the purchase of low-emission and alternative fuel vehicles.

As passed, TERP provides assistance to companies that agree to retrofit or replace high-polluting diesel engines and pays for research into new clean air technologies. To pay for it, the plan raises vehicle title transfer fees Texans pay when buying new cars and adds surcharges for on- and off-road diesel vehicles and equipment.

Another LWV-TX supported bill that passed allows areas with early action compacts with the EPA to establish motor vehicle inspection and maintenance programs as an air control strategy. Formerly only areas designated non-attainment were allowed to have I&M programs and other areas were prohibited.

Despite the budget shortfall, the legislature took no action to raise or remove the cap on the air emissions fee. They also failed to prohibit the use of hazardous waste as a fuel in cement plants. LWV-TX supports efforts to force polluters to pay for all emissions and to tighten the regulation of cement kilns, as the current permits are inadequate to protect air quality.

**2005:** The quality of the air in Texas was a low priority for the 79<sup>th</sup> Legislature. No significant piece of clean-air legislation passed, although many areas of the state face severe air-pollution problems. In fact, the Legislature worked hard to cut the Texas Emissions Reduction Program, or TERP, which since 2001 has provided hundreds of millions of dollars in grants to help companies replace older, dirtier diesel-powered construction equipment. Off-road equipment such as bulldozers and cranes contribute a significant portion of the state's pollution. The Legislature even proposed cutting in half the fund that helps low-income motorists repair vehicles that fail the annual emissions test required in non-attainment areas of the state, but restored that fund to current levels at the end.

The enactment of TERP in 2001, an economic incentive program to reduce air pollution instead of punishing polluters, was hailed as a model for the nation and was crucial to gaining EPA approval for State Implementation Plans in Dallas-Fort Worth and Houston-Galveston Area. As a compromise, that Legislature did not restrict use of heavy construction equipment during the summer smog season nor did it impose a requirement for faster replacement of old, high polluting diesel engines by providing funding through TERP for voluntary replacement by diesel-dependent industries.

The reason given was the budget constraints. But a proposal on raising operating permit fees from the current cap of 4,000 tons per day (no matter how much air pollution is emitted) to 8,000 tons per day never was considered. Proposals requiring TCEQ to make the amount of a penalty for air or water pollution at least as much as the value of any economic benefit gained by the polluter through the violation had little consideration. Both these would have increased revenue and would have made it more beneficial to business to prevent pollution.

Also, unfortunately, the health of residents living near industrial plants had low priority. A proposal that would have required the state to develop enforceable health-based pollution standards to protect residents living near industrial plants choked legislators. Proposals to monitor and control toxic air emissions near those plants, along with requiring consideration of cumulative effects of pollution, went nowhere.

Ongoing action in the air quality portfolio involves cement batch plants in Ellis County. While these plants contribute half the industrial pollution in North Texas, they were not included in the Dallas-Fort Worth (DFW) non-attainment area under the old one-hour standard. Their permits allow them to emit more pollution than other industrial plants in Texas. When the EPA designated non-attainment areas under the new eight-hour standards in 2004, they included Ellis County in the Dallas-Fort Worth area. One plant had a permit change request under review to turn off the scrubbers as it costs them too much to operate them at their desired profit levels. That was not approved before the EPA designation, so the law does not allow them to cite economic disincentive. We gave input to include Ellis County in the DFW non-attainment area as well as to request denial of this permit change.

**Border Issues:** The League followed a number of issues that were unique and/or critical to the border region. Many of the bills were directed at vehicular traffic, electronic and clearance checks, coordination of activities between various government agencies, and the review and development of road projects.

**2007:** Many bills were filed in the Legislature concerning air quality. However, only two passed and those were introduced by Senator Averitt, the Senate Natural Resources Committee Chairman. The first updated the Texas Emissions Reduction Plan (TERP) and the Low-Income Vehicle Repair Assistance Program (LIRAP.) These programs were both funded. The second bill required that not only should a pre-construction permit be reviewed every ten years, it must also be reviewed during the permit amendment process—a great step forward. The League testified many times on the various bills that were introduced, including many that did not pass. These include the “toxic hotspots” bills, fence-line monitoring, California standards for cars and light trucks, establishing an air pollutant watch list, and a clean school bus bill.

**2009:** Once again, many bills were introduced in the Legislature regarding air quality. Many were also introduced regarding climate change. Only three passed, however. Senator Averitt, chairman of the Senate Natural Resources Committee, introduced an omnibus bill which included air quality and climate change. Unfortunately, this bill did not pass, though parts of it were added to another bill which did pass and was signed by the governor. Those parts which were added include the TERP extension through August 31, 2019 (Texas Emissions Reduction Plan), a requirement that the Department of Agriculture, TCEQ, PUC and RRC collaborate in the federal government process for developing federal greenhouse gas reporting requirements and the federal greenhouse gas registry requirements, and a program for new technologies for emissions control which requires “best available control technology” as defined by the federal

Clean Air Act instead of TCEQ! (A major gain.) NOT included in the floor amendment were building energy codes, idling of motor vehicles, maximum weight for vehicles with idle reduction systems, housing partnership program rebates and an online emissions database.

A bill by Senator Watson passed relating to “no regrets” greenhouse gas emissions reduction strategies to be prepared by TCEQ by December 31, 2009.

The third bill that passed was by Senator Gallegos. It requires a permit applicant or the applicant’s designated representative to attend a public meeting on the permit application. So they can’t just “skip out!” We also prepared testimony for several bills that dealt with cement kilns. Regrettably, none passed.

**2011:** While much of our time was spent fighting off “bad” bills in the 82<sup>nd</sup> Legislature, we did have a number of successes—primarily the passage of the Sunset Bill for the Texas Commission on Environmental Quality (TCEQ.) Changes to TCEQ include the following:

- TCEQ is to develop and implement a policy for negotiated rulemaking and alternative dispute resolution
- The Executive Director is charged with making sure that the agency is responsive to environmental and citizens’ concerns, including environmental quality and consumer protection. This was formerly under the purview of the Public Interest Council
- The Public Interest Council is to ensure that the TCEQ promotes the public interest; however, the primary duty of the office is to represent the public interest as a party to matters before the TCEQ
- The TCEQ by rule shall develop standards for evaluating and using compliance history that ensures consistency. However, the compliance history shall not exceed one year from the date of issuance of each notice of violation. In addition, compliance history is to be classified as “satisfactory, unsatisfactory or above satisfactory”
- Fees are changed in the Health and Safety Code from not to exceed \$2,500 per day to “not to exceed \$5,000 per day”
- All other violations are changed from not to exceed \$10,000 per day to “not to exceed \$25,000 per day for each violation”
- The commission is to develop a policy to prevent regulated entities from systematically avoiding compliance through the use of supplemental environmental projects.

In addition, Rep. Howard’s bill passed which states that a person commits a Class C misdemeanor if that person violates a rule set by TCEQ relating to idling limitations. Rep. Burnam’s bill adds electric vehicles and natural gas vehicles to vehicles covered by the low-income vehicle retirement program (LIRAP.)

With regard to climate change, we worked hard opposing Rep. Hancock’s bill—which was a Concurrent Resolution urging Congress to prevent the Environmental Protection Agency from regulating greenhouse gases from stationary sources. And it failed! Another bill which failed was by Senator Hancock and would have allowed Texas to participate in a Regional Air Quality

Compact with one or several states, thus avoiding EPA's jurisdiction. Needless to say, we opposed this bill. In addition, Rep. Craddick's bill allowing oil and gas facilities to have reduced permit requirements failed.

In addition, we prepared testimony which was presented to EPA on the Plan for Texas under the Prevention of Significant Deterioration Rule, the proposed EPA ozone rules, and the proposed rules on New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants for the oil and gas industry, including fracking.

We also encouraged local leagues to become involved in the Clean Air Promise, a campaign of the LWV-US.

**2013:** Of the 26 bills we watched closely, five bills that we supported passed, and nine bills that we opposed didn't pass. That's 14 of 26, more than half – a real plus for our environment! The most important bills that passed were the re-writing of the legislation regarding the Texas Commission on Environmental Quality (TCEQ), more funding for the Texas Emissions Reduction Plan (TERP), and encouraging the capture and utilization of carbon dioxide for use in enhanced oil recovery.

The important bills that passed included:

HB 2446 (Crownover) SUPPORT relates to the qualifications of electric generation projects designed to encourage the capture and utilization of carbon dioxide for use in enhanced oil recovery. We registered for this bill; it passed and was signed by the governor.

HB 2859 (Harless) SUPPORT increases the funding for the Low Income Repair and Replacement Assistance Program (LIRAP) from \$5 million to \$10 million. We registered in favor of the bill; it passed and was signed by the governor.

HB 3658 (Reynolds) SUPPORT is a rewrite of the Texas Emissions Reduction Plan (TERP) and brings together a number of programs funded by TERP. Testimony was presented to Environmental Affairs Committee in support of the bill. Attention then turned to the Senate companion, SB 1727 (Deuell), which passed and was signed by the governor.

SB 1 (Williams) WATCH. We presented testimony to the Senate Finance Committee commending them for raising funds for the Texas Emissions Reduction Plan (TERP) and requesting that they add more funds to the Clean Water account, as well as to the Enforcement and Compliance account. We encouraged the Committee to increase TERP funding even more. The Committee Substitute increased the funding for TERP from \$65,163,876 to \$90,759,950. The final appropriation for TERP was a compromise between the House recommendation and the Senate -- \$77,596,164 per year. The governor signed SB 1 on June 14, making a number of line-item vetoes.

Major bills we opposed included:

HB 147 (Burkett) OPPOSE relates to changes in environmental regulations and examination of rules to be added to a fiscal note. HB 147 failed to receive an affirmative vote in committee. LWV-TX registered against this bill.

HB 569 (White) OPPOSE relates to a study of the stringency of state environmental standards. If any are more stringent than required, a report is to be made to the governor, lieutenant governor, speaker of the house and others. The bill was left pending in committee. We registered in opposition to the bill.

HB 788 (Smith) OPPOSE relates to regulation by the TCEQ of greenhouse gas emissions. LWV-TX registered in support of this bill as it was originally written. However, it was amended in such a way that we could no longer support it. The bill now indicates that it is not subject to contested case hearings and that fees for exceeding emissions of greenhouse gases are limited to the cost of imposing the fee. We submitted testimony opposing the bill unless changed. Unfortunately, the governor signed the bill.

HB 1714 (Smith) OPPOSE relates to the discontinuance of the TCEQ's compliance history program. Fortunately, it did not pass.

HB 2949 (Harper-Brown) OPPOSE relates to a performance-based program for permits issued by TCEQ. There was much room for mischief in this bill. We registered against the bill. It was referred to Environmental Regulation and died in committee.

SB 467 (Hegar) OPPOSE is described as "very similar" to HB 147 by Burkett and relates to the regulatory analysis of rules proposed by the TCEQ and to adding the cost of the rules to the fiscal note. It was referred to Environmental Regulation and failed to receive an affirmative vote in committee. HB 147 (above) was left pending.

## **2015:**

### Air Quality

Successes were important this legislative session as we were, as always, in defensive mode. The following bills, are those that we opposed and did not pass. They ranged from regulatory changes to repealing both TERP and LIRAP.

HB 190 required a regulatory analysis of rules proposed by TCEQ. Fortunately, it died in committee. HB 624 reduced the funding going to TERP. It died in the transportation committee. HB 1113 required additional regulatory requirements to achieve standing in a contested case hearing conducted by TCEQ. It passed the House, but went no further. One of the worst bills was HB 1247 which required the complainant in a case hearing of TCEQ to provide proof of his/her allegations. Fortunately, this one, as well, died in committee. SB 8 would do away with the franchise tax, some of which goes to TERP. It, too, died too. SB 321 required a reduction in monthly transfers to TERP from the state highway fund. It died in Calendars. SB 1685 would

repeal both TERP and LIRAP. It died in the Natural Resources & Economic Development Committee. SB 1849 reduced the amount sent to TERP from title fees. It died in the Finance Committee.

### Climate Change:

Few legislators were interested in climate change. However, one bill passed and another introduced that will continue.

Representative Farrar introduced HB 706, which allows an exemption from ad valorem taxation of property on which a solar or wind-powered energy device is installed or constructed.

Representative Anchia introduced HB 2078 establishing a Global Climate Change Commission to study the impact of climate change in Texas from a global perspective. We gave testimony supporting this bill, including a definition of greenhouse gases which Representative Anchia said was the best definition he had heard. His goal is to inform his committee and others about the importance of climate change. He intends to speak to every member of the legislature about the growing impact of climate change on the earth.

**References Available: (Advocacy Paper) *Countdown to Copenhagen!*, 2009. (Advocacy Paper) *Air Quality: A Right for All Texans*, 2007.**

## **B. LAND USE – 1974**

***The League of Women Voters of Texas supports a comprehensive state land use policy to provide for the orderly development of the state, including:***

- land being used according to its carrying capacity based on a thorough inventory of our land and natural resources
- growth and development of an area being compatible with the degree of availability of essential natural resources in that area
- protection of the traditional rights of ownership of property, but in conflicts between private interest and public welfare, precedence should be given to the public interest
- preservation of agricultural lands and desirable open space with preferential tax treatment for each
- preferential tax treatment for maintenance of the desirable existing buildings and infrastructure
- a coordinated system of land use management in Texas including the establishment of a state land use management agency
- identification and protection of areas of particular significance (historical, archaeological, aesthetic, recreational) and rare or fragile ecosystems
- planning being carried out at the local level should be the main thrust of land use
- equitable enforcement of land use regulations and a method for appeal and arbitration when conflicting needs exist.

**Explanation: Land Use**

After two years of study, League members in 1974 asserted that public interests should take precedence over private rights when there are conflicts over traditional rights of property ownership. Support for preferential tax treatment to preserve agricultural lands and open space and maintain the built environment allows consideration of many innovative tax reform ideas, though care must be taken to examine this aspect of the Land Use position in conjunction with other positions, especially Financing State Government and LWVUS' Urban Policy. While the League's desire for a state land use management agency has not been realized, changes in agencies such as the General Land Office have accomplished some of our goals.

**History: Land Use**

**1975-1984:** Land Use advocacy has often focused on coastal issues. From the late 1970's to early 1980's, League members played key roles in the development of a Texas coastal zone management plan, but the plan was not approved by the governor. The League supports the national celebration of COAST WEEK each year.

The League worked for the establishment of the Big Thicket National Preserve in 1973-74. We have continued to support legislation that would add areas of unique biological diversity and/or essential components of ecologically viable systems to the preserve. The League also played a key role in the 1984 designation of 34,000 acres of east Texas national forest land for wilderness purposes, and we annually cosponsor a Wilderness Pow Wow and support beach cleanup programs.

**1990-1991:** In 1990, the League supported the successful reauthorization of a strong federal Coastal Zone Management Act and was represented on a Coastal Management Committee formed to aid the General Land Office in the development of a comprehensive long-term plan for state-owned coastal public lands in Texas. In 1991, the League opposed proposed state legislation that would have facilitated the development of fragile and disaster-prone areas on the Texas coast.

**1995: "Takings" and other regulatory measures.** Within the broad priority issue of environmental protection, land use restrictions vs. private property rights was a major focus of League advocacy during the legislative session. The League joined other groups in mounting opposition to the Private Real Property Rights Preservation Act, known as the "takings bill." Unfortunately, anti-regulatory sentiment, apparently a nationwide trend at this time, carried the day, and the bill was signed into law.

Key provisions of the new "takings" law include:

- a broadened definition of "taking" of private property by government entities to include actions that reduce market value by 25% or more
- requirement that governmental entities prepare "takings impact assessments" to determine proposed actions would constitute "takings"
- unless specifically exempted in the law (about 20 categories of government actions are exempted), requirement that health and safety actions meet a stringent three-part test to

qualify for exemption from its provisions.

On the *plus* side was the death of several bills opposed by the League that would have required cost-benefit analyses of major environmental rules by state agencies.

**Coastal Management:** The 74th legislature passed and the governor signed a revamped state coastal management plan. The League supported the revised plan and proposed rules drafted by the General Land Office.

The Railroad Commission submitted numerous amendments to the proposed rules to the Coastal Coordination Council. At a hearing on August 30, LWV-TX expressed opposition to these amendments, noting their conflict with the Federal Coastal Zone Management Plan and the likelihood that adoption of the amended rules would result in rejection of Texas' coastal management plan by the federal government and loss of state authority to regulate the coastal area. The League also urged rejection of the objectionable amendments because they do not reflect important land policy goals, including preservation of the physical, chemical, and biological integrity of the ecosystem, with maximum protection of public health and the environment. (See LWVUS position on Environmental Protection and Pollution Control).

**1999:** A number of land use issues were debated during the 76th Session, and two bills affecting county land use powers were passed and signed into law. Because of substandard development and growth concerns the first bill gives counties a little more power to regulate growth by requiring developers to file plats when they subdivide land into parcels of ten acres or less. It allows counties to set standards for roads and drainage. Adoption of this bill reverses a 1995 appellate court decision, the Elgin Bank Case, that required platting only if roads or parks were being dedicated to the county for maintenance. In order for subdivisions to be approved where the source of water is groundwater, this bill requires that a statement, certified by a registered engineer and approved by TNRCC, must be attached stating that adequate ground water is available to the subdivision. This requirement applies to municipal authorities and counties.

LWV-TX continues to support a comprehensive state land use policy to provide for the orderly development of the state; growth and development of an area should be compatible with the availability of essential natural resource in that area, and should avoid the depletion of ground water.

The League actively opposed a bill that would have prohibited wetlands mitigation negotiations on proposed airport sites. The bill, which was counter to the wishes of a majority of Houstonians, and would have threatened the Katy Prairie Westside airport tract, a waterfowl wintering area, did not pass the Senate.

Unfortunately another bill supported by the League that proposed an interim study of farmland preservation was never reported out of committee. Agricultural land is threatened in Texas, the most rapidly urbanizing state in the country.

**2003:** Most of the bills introduced in the 78<sup>th</sup> session followed by the League, dealt with county

authority to regulate development. (This was also true of border issues.) Issues addressed in bills that did not pass included elections to require a subdivision to use a central water or waste water system and standards for (a) minimum amounts of open space or limits on the amount of impervious surfaces; (b) rights of way; (c) drainage; (d) utility connections; and (d) the location, use, and occupancy of housing. A bill prohibiting the operation of a motor vehicle in or on the beds or banks of Texas rivers passed and was signed into law. This issue was examined during the 2002 interim and drew interest statewide from people on both sides of the issue.

**2007:** HB 12 (Hildebran) passed and became law. It appropriates \$170 million more dollars to the Texas Parks and Wildlife Department, and also transfers 18 historical sites to the Texas Historical commission.

HB 3447 (Rose) failed to pass. This bill would regulate land development in a county wholly or partly located in a priority groundwater management area designated by the Texas Commission on Environmental Quality that contains a territory from seven or more counties.

**2011:** Activity was concentrated primarily in making eminent domain procedures and property owners' associations fairer to property owners. In both instances, these powers are widely perceived to have been abused in the past. In the case of eminent domain, the process and method of calculating reimbursement were spelled out in more detail, and the definition of who can wield eminent domain authority was tightened. This topic was deemed an "emergency" by Governor Perry at the beginning of the 2011 session, so passage was streamlined and nearly guaranteed. Natural gas pipelines, however, were specifically omitted from this legislation.

Property owners' associations, particularly in unincorporated areas, wield great power, but regulations governing the operations of the associations have been ill-defined. In the most egregious example of an over-reaching POA, a home was foreclosed for relatively small arrears in POA dues. New regulations are intended to result in better notification procedures and more open decision-making.

**NOTE:** A concurrence entitled "Homeowners Association Reform" was adopted by the 2012 LWV-TX Convention. This position includes protection against unreasonable foreclosure on homesteads, and priority of payments so that assessment payments apply first to delinquent dues, and then to non-assessment items such as interest and penalties.

**Reference Available:** *County Regulatory Authority in Texas, LWV-TEF and Wray Trust Funds, 2001.*

## **C. TRANSPORTATION - 2006**

*The League of Women Voters of Texas support a transportation system to move people and goods that includes a variety of transportation modes, with emphasis on increased transportation services and other viable alternatives; that is efficient, convenient, and cost effective; that services all segments of the population and diverse geographic needs; that minimizes the harmful effects on the environment, is integrated with land use, and is*

*supported by extensive public education.*

Planning for transportation projects should be accomplished by:

- cooperation and coordination among agencies and different levels of government
- timely, informed citizen input in the planning process
- selection of projects based on needs assessment
- analyses of alternate routes and modes
- analysis of environmental impact
- measures to provide public transportation to groups who do not have or cannot drive a private auto (elderly, disabled, youth, low-income)
- policies encouraging the integration of various modes of transportation to promote seamless systems.

Transportation and land use planning should include the following strategies in order to influence travel behavior:

- parking fees
- taxes
- tolls
- alternatives to single occupancy vehicle travel (HOV lanes, cars/van pools, bicycle lanes, etc.)
- flexible lanes for high traffic times
- land use policies to encourage mixed use development coordinated with public transportation.

Construction, maintenance and/or expansion projects should be funded through:

- Tolls on new highways
- regional rail authorities with taxing ability
- federal funding
- usage taxes for commercial vehicles
- local user taxes
- state gas and user taxes
- bonds
- private sources (developers, etc.)

To alleviate congestion on Texas highways, existing routes should be expanded to include added passenger rail service and expanded freight rail lines. New routes should connect major Texas centers of population, preferably by rail.

### **Explanation and History: Transportation**

This study was adopted at Convention 2003 as a three-year study, after being recommended by seven Leagues, several of which had local transportation positions. The focus was on current public transportation systems, future needs and funding availability. Additionally members focused on the impact of public transportation on air quality and land use, and the need for

regional public transportation networks. Consensus was completed and adopted by the Board in January, 2006.

**2006:** The League opposed the proposed route for the Trans-Texas Corridor because local and regional planning groups had concerns about economic and environmental effects which were not addressed, their recommendations were not included in the route selection, and major population centers were not connected in a seamless manner.

**2007:** The LWV-TX opposed HB1892 (Smith) a moratorium bill on Trans-Texas Corridor (includes many other toll roads). Highways 1604 and 281 were not included in this moratorium. Some north Texas roads which had been approved were not in the moratorium. The bill passed by the legislature was vetoed by the governor.

**2013:** During the last legislative session, transportation bills were followed but few were passed. The major legislation involved a proposed constitutional amendment to allow funds from the Rainy Day Fund to be utilized for infrastructure repair and expansion. The amendment legislation passed but did not appear on the same ballot as the water amendment in November 2013. The Texas Department of Transportation was challenged to utilize funds in as efficient way as possible, which resulted in gravel on some rural roads instead of paving. Effects on roads from oil/gas drilling trucks were a concern. There has been much uproar since then and projects have been redirected. Both House and Senate committees were concerned with congestion – e.g., on I35 W and I35 E – but with limited funds could come up with no funding solution.

Transportation will be a high priority in the coming legislature. High speed rail from Houston to the D/FW metroplex, plus the Mexico to Oklahoma City corridor rail, are being addressed by the Texas Department of Transportation (TxDOT). Interim charges include: passenger and freight rail are to be evaluated through a review of the Rail Division of TxDOT, and the port system will be evaluated through a review of the Maritime Division of TxDOT. There was a constitutional amendment on funding that will be on the ballot in November 2014 for use for road infrastructure and improvement. Our current positions enable us to address the proposed legislation in a favorable fashion.

**Reference Available: (Facts and Issues) *Transportation, 2006.***

#### **D. WATER - 1971, 1974, 1978, and 2012**

***The League of Women Voters of Texas supports the proposition that water is a natural resource and should be managed for the benefit of the people and the protection of the environment. Further, water conservation should be mandatory, with adequate citizen education for effective water stewardship.***

***The League of Women Voters of Texas supports long-range state water planning that:***

- takes into consideration its social, economic, environmental, and land use implications
- provides for development of adequate water supplies by ecologically and financially

sound means

- emphasizes conservation and reuse of water
- is based on increased research concerning wise and efficient use of the state's land and water resources
- affords protection for the land and for fragile ecosystems
- establishes water availability criteria before issuing any leases, permits and licenses for new industry, business, housing, and other developments.

***The League of Women Voters of Texas supports measures for the protection, conservation, and development of the groundwater resources of the state as an integral part of the comprehensive state water plan, and groundwater management that would achieve the following objectives:***

- maintain groundwater quality by preventing harmful contamination of aquifers
- assure the long-term productivity of the state's groundwater resources and availability of groundwater supplies
- minimize adverse effects of groundwater withdrawals, including land subsidence and reduction of spring flows

Water resources planning should also include the following:

- detailed information concerning:
  - the hydraulic characteristics and recharge of the state's aquifers
  - quantities, locations, and trends of groundwater withdrawals
  - measures that could conserve and extend existing supplies
  - current and projected costs of ground water and alternative surface water supplies
  - potential conjunctive use of ground water and surface water
- management options developed specifically for each area of the state where ground water is a significant resource and assurance that water transfers to urban areas do not endanger future rural economies
- methods to strengthen groundwater conservation districts so they can continue to regulate groundwater use
- full public consideration of groundwater management options including a strong state agency with enforcement powers to regulate all water transfers
- recommendations of measures to be taken by the state, by political subdivisions of the state, and by the private sector to assure wise management of the state's groundwater resources
- coordination of state plans for groundwater management with relevant policies and programs of the federal government and of other states.

Adequate funds should be appropriated for planning and for management of the state's groundwater resources.

**Explanation: Water**

In the 1950s and 1960s, LWVUS positions were reached on water conservation and

development and on abatement of water pollution. These positions, as well as national and state positions in other natural resource areas -- especially land use -- are relevant to action on Texas water issues.

A study of state water planning was adopted by the 1970 Convention. Impetus for the study was the 1968 Texas Water Plan, and the 1969 election in which a \$3.5 billion bond program to begin implementation of the plan was narrowly defeated. The plan proposed importation of out-of-state water to West and South Texas via two large canal systems. The League consensus disagreed with that aspect of the plan, stating that additional water supplies should be developed in an ecologically sound manner from within the state, and that more efficient use should be made of existing water supplies.

The League took another look at the Texas Water Plan in 1974, following publication of a Corps of Engineers analysis of a proposal for importation of water from the Mississippi River. This consensus reaffirmed our 1971 positions.

The 1977 Convention deleted the position statement that additional water supplies should come from within the state. Delegates continued to oppose massive water transfer projects but felt that opposition should be based on other League positions. The 1977 Convention also adopted a study of groundwater management and protection, and consensus was reached in November, 1978.

The water position was updated in 2012 after the study of Water as a Commodity was completed. The changes specified that the LWV believes that water is a natural resource and should be managed for the benefit of the people and the protection of the environment. Further, water conservation should be mandatory, groundwater conservation districts should be strengthened so they can continue to regulate groundwater use, water transfers should be regulated by the state, and rural economies should not be endangered by water transfers to urban areas.

### **History: Water**

**1976-1980:** When Proposition 1 authorizing \$400 million in Texas Water Development bonds was placed on the ballot in November 1976, the League worked to defeat this proposition. League opposition was based on the absence of financial safeguards guaranteeing timely repayment by beneficiaries of water development projects, absence of environmental protection provisions, and inadequate information as to what projects would be funded. The amendment was defeated. Proposition 2, authorizing \$100 million in water quality enhancement bonds, was supported by the League and approved by voters.

Over the next several years, testimony based on League water positions was presented on the state lignite mining program, state water quality management plans, hazardous waste disposal legislation, the High Plains Ogallala Aquifer Study, the federal Soil and Water Resources Conservation Act, and a proposed EPA Groundwater Protection Strategy.

LWV-TX Education Fund projects on water issues included co-sponsorship of a regional

floodplain conference in 1975; and “Project Safewater” in 1976, which explained through a slide program and information kit the implications of the federal Safe Drinking Water Act for Texas communities.

**1981-1984:** In 1981, League action again focused on opposition to a proposed constitutional amendment. Proposition 4 would have dedicated half of the state’s “excess” revenues in each biennium to a new water fund. In addition to the concern that prompted our opposition to the 1976 amendment, the League opposed the constitutional dedication of state revenues, in accordance with our position on Financing State Government. The League also pointed out that the revision of the Texas Water Plan initiated in 1976 had not been completed. The amendment was defeated.

Shortly after the November 1981 election, the governor called for revision of the Texas Water Plan. The state League and local Leagues testified at forums on water planning issues in 1982 and at hearings on a draft revision of the plan in 1983. In September 1984, the Water Development Board adopted a revised plan, “Water for Texas: A Comprehensive Plan for the Future,” which emphasized water conservation and reuse, and recognized that importation of water was not feasible under present conditions.

In 1981, LWV-TX Education Fund published *Fresh Water for Texas Bays and Estuaries*.

**1985-1988:** The 1985 legislative session passed a major package of water legislation. Prior to and during the session, the League lobbied to strengthen provisions for water conservation and protection—especially for groundwater. The package consisted of water conservation programs, protection of freshwater inflows to estuaries, creation of groundwater conservation districts in critical areas, and expanded powers for groundwater districts. These initiatives were funded by a bond issue authorized by voters in the November 1985 election. The League also supported a related ballot issue that passed, authorizing state bonds for an Agricultural Water Conservation fund, if approved by a two-thirds vote of the legislature by 1989.

The League worked with the Water Development Board and the Water Commission for effective implementation of the new conservation requirements and groundwater district provisions. In the 1987 legislative session, some League-supported proposals (for example, stronger septic tank regulation) passed, but all statewide groundwater bills failed.

In 1987-88 local Leagues and the state League participated in the League of Women Voters Education Fund’s “Community Drinking Water Survey,” interviewing water officials on impacts of the 1986 Safe Drinking Water Act amendments. At Texas Water Commission hearings, LWV-TX testified for more stringent water quality standards and more effective controls of non-point source pollution.

**1989-1993:** The League reviewed the thirteen critical groundwater area reports published by the Texas Water Commission in 1989 and 1990, and urged the commission to address promptly the more serious problems described in the report. Also in 1990, the state League and several local

Leagues presented statements at the Texas Water Development Board's public hearings on draft revisions of the state water plan. We commended the plan's emphasis on water conservation and subsequently worked successfully for legislation adopting water-conserving plumbing standards, as recommended in the plan.

In 1990, we attended numerous meetings of the legislature's interim committee on the Edwards Aquifer and testified in the 1991 legislative session on two bills proposing management of the aquifer, neither of which passed. A League priority in the 1993 legislative session was the creation of a regional management entity for the Edwards Aquifer. The bill the League supported passed in the final days of the session.

In the fall of 1991, LWV-TX testified for a more effective Integrated Environmental Plan for the Mexico-U.S. Border Area and supported a constitutional amendment authorizing use of \$150 million of Water Development Fund bonds for water and wastewater services to *colonias*.

The League was represented on the Texas Water Commission's Clean Water Council, which submitted its report in November 1992, and on the Clean Texas 2000 Awards Committee, which recommended the April 1993 award winners.

**1994-1995:** In 1994, LWV-TX Education Fund sponsored a workshop in New Braunfels highlighting local League work to protect water quality in south central Texas. Since early 1994, League members have been participating in regional advisory committees to the Trans-Texas Water Program, which is considering future water supply options to be recommended in the 1996 revision of the Texas Water Plan. The League is also represented on Watershed Texas, a statewide watershed management project of the Texas Natural Resource Conservation Commission's (TNRCC) Office of Water Resource Management.

In the 1995 legislative session, the League supported the bill which was passed to meet U.S. Justice Department requirements for the election of the Edwards Aquifer Authority Board. We opposed several bills that did *not* pass, including those lowering water quality standards and limiting pollution control authority of the TNRCC.

**1997:** Major new water legislation, known as SB 1, was drafted by various groups during 1996 in response to a statewide drought and also to provide a broader state framework for dealing with the state's current and future water needs. Early in the session representatives of several public interest and environmental groups, including the League, met to discuss the proposed legislation and to identify essential elements of a state water bill. A resulting policy statement was submitted to legislative staff and these elements were incorporated into the final bill. Key provisions include:

- adoption of a new state water plan which will incorporate regional plans for drought planning and water conservation by September 1, 2001
- retention of the right of capture doctrine for state groundwater
- inter-basin transfers approved by the TNRCC would become "junior" water rights with little or no water to transfer out of the basin during a drought

- stream flow needs for streams and rivers and environmental flow for bays and estuaries will continue to compete with perceived water use needs of agricultural, municipal, and industrial needs
- formulation of a state water plan addressing different needs of managing water in various regions of the state.

The 1997 appropriations bill contains funding of \$36 million for the water legislation during the biennium. An Interim Committee on Water Resources and Development and Management will be created to study a broad range of water issues, including water marketing, and make recommendations to the next legislature. The League plans to monitor this committee during the biennium.

Another bill reinstates the funding mechanism for the state's Clean Rivers Program, which would have expired in 1998. However, the population threshold for cities required to establish a water pollution abatement program was increased, weakening the program.

Two constitutional amendments concerning water will be on the ballot in November 1997. One would create Water Development Fund II. The other would allow local governments to give tax breaks to businesses which install water conserving equipment.

**1999:** LWV-TX worked on water quality and protection issues and on budget issues. LWV-TX had as a key priority the provision of money for water quality and quantity issues. The League successfully supported full funding for the ongoing regional water planning process set up by SB 1 in 1997.

LWV-TX joined environmental groups in asking the legislature to fund programs and employees in the storm water permitting process, a water quality program that emphasizes working to maintain the designated uses of specific rivers and streams, water quality improvement and water modeling, and revenue for the National Estuary implementation program for Corpus Christi and Galveston Bay areas. We met with mixed success, but have made an important stride forward in working on the legislative budget and appropriation processes.

The two most important bills, both opposed by LWV-TX, concerned ground water protection and a wastewater discharge bill that restricted the opportunity for public participation. The groundwater bill, originating in the House, was directed at the regulation of the Edwards Aquifer, and would have put a moratorium on the pending Edwards Aquifer (protection) Rules that the League supported. The bill would have established a committee to study the rules adopted by TNRCC that had not yet gone into effect. The League opposed the bill, believing that the rules offered increased protection to the contributing, as well as the recharge zone, and were already the result of a large amount of public participation. The bill did not pass; the rules went into effect June 1.

The second bill, which did pass and was signed into law, authorizes TNRCC to lift the "cap" on wastewater discharges eligible for a general permit. Previously the law had a discharge limit, which if exceeded resulted in having to go through a permit hearing process. These general

permits restrict the opportunity for public participation by replacing the contested case hearing process with a notice and comment provision. The bill was strongly opposed by LWV-TX and environmental organizations. This bill serves as an example of legislation that deals with more than one issue, in this case public participation and water quality.

**2001:** The legislature continued its examination of Texas water policy and planning. SB 2 (Brown), signed by the governor, revised the state's regional water planning process, established the Texas Water Policy Council, provided direction on water management strategies, and set up a comprehensive study of water resource issues that will occur during the 2002 interim. The bill strengthened the ability of underground water districts to control the pumping of groundwater. The bill also established the water infrastructure fund to be funded through the Texas Water Development Board. LWV-TX did not support or oppose (during the session or the election) a proposed constitutional amendment to authorize an additional \$2 billion in general obligation bonds for water projects.

**2003:** For a session that was not supposed to deal with water there were a large number of significant bills introduced and passed. These include bills that:

- deal with the Texas Water Development Board administration and funding including the Water Infrastructure Fund, the Rural Community Water and Wastewater Loan Fund, and the Rural Water Assistance Fund
- consolidate various agricultural assistance funds
- create the Water Conservation Implementation Task Force
- require all water conservation plans and drought contingency plans submitted with a water rights permit or financial assistance application to include specific, quantifiable 5- year and 10-year targets for water savings
- establish the Study Commission on Water for Environmental Flows, prohibits TCEQ from issuing a new permit for in-stream flows dedicated to environmental needs or bay and estuary inflows, and clarifies that groundwater conservation districts may adopt different well spacing or production limits for distinct aquifers or for different geographic areas within their boundaries
- require the Texas Water Development board to study, investigate, and survey the development of water supplies from seawater desalination
- relate to notice of groundwater contamination that may affect a public or private drinking water well
- relate (a) to prohibiting the creation or enforcement of certain restrictive covenants that undermine water conservation; (b) to the authority of certain nonprofit water supply corporations to establish and enforce customer water conservation measures; (c) to the definition, use, regulation, and permitting of grey-water
- relate to requiring water rights applicants and holders, water utilities, and conservation and reclamation districts to adopt and implement certain water conservation measures
- relate to lawn irrigation and rainwater cutoffs, wastewater, the discharge of wastewater into waters of the state, storm water, land application of sludge, and water supplies.

Bills that would affect low-flow toilets and washing machines conservation standards did not pass. Two other water bills that did not pass addressed issues relative to small community water systems that face exceptional physical or financial circumstances in attempting to comply with federal Safe Drinking Water Act requirements relating to naturally occurring material. This legislation could have led to the loss of federal funds.

**2005:** The latest super water bill SB 3 (Armbrister) (in line with SB 1 and SB 2) died in the House, a victim of late filing and bad timing. The bill would have covered conservation, groundwater, in stream flows, protection of the bays and estuaries, and other topics. At the last moment representatives were looking for bills to attach environmental flows and the protection of the bays and estuaries amendments. However no significant water legislation passed. Senator Armbrister filed a bill in the special session dealing with Article I of SB 3, environmental flows and bay and estuary protection but the bill was not added to the Governor's list for the special session. The Governor had said that school finance took priority before anything else would be considered.

Several water bills that failed to pass. SB 352 (Madla), relating to the protection of groundwater under state lands, was sent to House Land and Resource Management where it died. HB 2429 (Puente), relating to water and energy saving performance standards for commercial clothes-washing machines, died in House Calendars, and was strongly opposed by washing machine manufacturers. HB 1223 (Puente), relating to performance standards for toilets sold in this state, died in House Calendars. This bill, so important to water conservation in the State, was strongly opposed by manufacturers. HB 1226 (Puente), that would establish a Water Conservation Advisory Council, was placed on the General State Calendars, where it died.

Water bills that passed include HB 2428 (Puente), relating to water and energy saving performance standards for commercial pre-rinse spray valves, HB 1224 (Puente), relating to a study of the effects of take-or-pay contracts on water conservation, and HB 1225 (Puente), relating to the grounds for an exemption from cancellation of a water right for nonuse.

**2006:** The 2<sup>nd</sup> 5 Year SB1 State Water Plan was adopted in the fall following statewide hearings.

**2007:** HB 3 (Puente) supported by the LWV-TX creates a basin-by-basin process for developing recommendations to meet in-stream needs, requires the Texas Commission on Environmental Quality to adopt recommendations in the form of environmental flow standards, and creates the Environmental Flow Advisory Group to oversee the process.

HB 4 (Puente) supported by the LWV-TX, is a water conservation bill that represents the consensus recommendations of the state's Water Conservation Implementation Taskforce established by the legislature in 2003. The bill establishes a statewide water conservation public awareness program to educate Texas residents about water conservation.

SB 3 (Averitt) opposed by LWV-TX, passed. This bill became a reservoir designation bill. The

passage of SB 3 does not mean that reservoirs will automatically be built, but may set up conflicts that will take years to resolve.

**2011:** SB 332 (Fraser) originally attempted to reaffirm groundwater as a property right ("rule of capture") by describing it as a "vested" property right. The result would have been to threaten the balance between landowners and the 97 local groundwater conservation districts (GCD) who are the only community regulators of groundwater reservoirs. These reservoirs supply more than 60% of the state's water needs. In a compromise, the bill eventually just re-stated groundwater ownership as a landowner's "property right." Had "vested" remained in the bill, it would have been a constitutionally protected property right, becoming a statute of common law.

The "vested" question was answered by the TX State Supreme Court in the Edwards Aquifer Authority vs. Day case in early 2012 when they ruled that water was indeed owned by the landowner. The full implication of this decision is to classify any restriction in the use or sale of a landowners' water as a legal "taking" which must then be remunerated! The problem now returns to the legislature and the courts to decide how to guarantee the best use of water for the people. In commenting on this Texas Court decision, the New York Times noted that Texas is the only state that "functions by the rule of capture, which allows landowners to pump essentially unlimited amounts of water. Elsewhere in the U.S. groundwater is a public resource." (March 18, 2012)

There were two proposed constitutional amendments relating to water passed by the legislature for the November 2011 ballot:

- SJR 4 (Hinojosa): This proposition is a product of the Sunset Advisory Commission's recommendations on the TX Water Development Board's (TWDB) ability to issue debt. It authorizes the TWDB to issue self-supporting general obligation fund bonds at its discretion and on a continuing basis (essentially a revolving fund). The TWDB would thus have greater flexibility in targeting needs across a longer time horizon and increase their ability to meet needs of local governments that must upgrade infrastructure to meet growing populations. This amendment passed.
- SJR16 (Estes): This is the "Water Stewardship Amendment" that would add "water stewardship purposes" to the agricultural exemption option (aka the "open-space valuation option") for property tax valuations. According to the bill analysis, adding water stewardship purposes to the land management practices would give land owners "a tool to better manage their property and incentivize land owners to invest in projects that improve water quality and quantity for the state." This amendment failed.

Otherwise, this session was a disappointment for all hoping that the issues of water demands and shortages would be faced once and for all. The new, increasing challenges involving groundwater depletion, pollution and toxic spillage resulting from natural gas drilling and soil fracturing (i.e., "fracking) will be in the forefront of water planning and permitting for some time to come.

**2013:** LWV-Texas followed 23 bills during the session, of which seven passed. The most important water bill signed by the governor was HB 4, which sets up the Texas Water

Development Board (TWDB) funding for implementation of the so-called SWIFT loan fund (State Water Implementation Fund of Texas) and bond sales to support SWIFT.

Also, this bill re-organized the TWDB from being run by an administrative voluntary board of six appointed by the governor to a paid professional board of three, one each appointed by the governor, lieutenant governor, and speaker of the house, respectively. The reorganization of the TWDB was effective Sept. 1, 2013. However, the SWIFT funds would not be established until the constitutional amendment proposal (SJR 1) passed by the voters in the statewide election November 2013. This vote would authorize the state to move \$2 billion from the Rainy Day Fund to set up the funds. There were lots of pros and cons on this proposal, and LWV-TX undertook a campaign to pass the amendment, including a press conference, working with other groups, and working with local Leagues, sending them blue wristbands to show their support. The amendment passed by a wide margin.

**Reference Available: (Advocacy Paper) *The Texas Water Crisis: Increasing Demand But Decreasing Supply*, February 2013.**

## NATIONAL PROGRAM 2016-2018

*This is a summary of recent LWV-TX actions based on national League positions.*

Please note: A complete record and explanation of current LWVUS positions can be found in *Impact on Issues 2016-2018* (to be revised after the 2016 National Convention.)

### **I. REPRESENTATIVE GOVERNMENT**

*Promote an open governmental system that is representative, accountable, and responsive; that has a fair and adequate fiscal basis; that protects individual liberties established by the constitution; and that assures opportunities for citizen participation in government decision-making.*

#### **VOTING RIGHTS-**

#### **DC SELF GOVERNMENT AND FULL VOTING REPRESENTATION**

*Secure for the citizens of the District of Columbia the rights of self-government and representation in both houses of Congress.*

**LWV-TX Action:** During the 1983 session of the Texas Legislature, the League joined a coalition of groups in support of the proposed U.S. constitutional amendment granting the District of Columbia full voting representation in Congress. Although the amendment passed the Texas House committee, it was never brought up on the floor. In 1985, there was little action on this topic. Therefore, Texas was one of the states that did not approve the amendment before the deadline for passage in August, 1985.

#### **ELECTION PROCESS-CAMPAIGN FINANCE**

*Improve methods of financing political campaigns in order to ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office, and promote citizen participation in the political process.*

## **ETHICS**

*Promote an open governmental system that is representative, accountable and responsive.*

**1991 LWV-TX Action:** In the 1991 Legislature the League supported the creation of the Texas Ethics Commission as originally introduced. This support was based on the LWVUS position calling for an independent body to monitor and enforce laws concerning the election of public officials. However, the bill that finally passed had been considerably weakened, and the League decided to oppose the proposed constitutional amendment on the November 1991 ballot because the prescribed method of appointing members to the commission was flawed. The amendment passed, however, and the commission was created in January 1992. See the Political Campaign Process section of *Program Perspectives* for more information on the Texas Ethics Commission and on campaign finance.

## **CITIZEN RIGHTS-**

### **CITIZEN RIGHT TO KNOW/ CITIZEN PARTICIPATION**

*Protect the citizen's right to know and facilitate citizen participation in government decision-making.*

**LWV-TX Action – Open Meetings/Open Records:** The League supported a successful effort on the part of a coalition of several groups (Common Cause, news media) during the 1987 Legislature to amend the Texas Open Meetings Act to strengthen the provisions on executive sessions of public bodies, requiring them to tape record such sessions or file certified agendas. In the 1989 session the League supported successful legislation that strengthened the Texas Open Records Act by requiring agencies to make records available within ten days after they are requested and establishing reasonable fees for copying records.

**1997:** The League supported a bill that would have prohibited closed-door staff briefings of governing boards in cities, counties, school districts, etc., a common practice throughout the state. The bill passed the Senate easily, was voted out of the House committee, but was killed when it was pointed out that the practice is already illegal under current law. Another League supported bill that would have mandated that private contractors, offering services formerly provided by the state, operate under the Open Meetings Act, did not come out of committee.

**1999:** Two important bills dealing with open meetings and open records statutes were passed during the session. The first bill removed a loophole that allowed governmental bodies to meet in secret without notice when called a “staff briefing.” The second bill combined multiple changes in the open records act, preventing delay tactics and restricting the withholding of information.

**2001:** Although the League followed several bills, none will significantly affect the public's right to know. At the end of the session the League worked with Common Cause and

Consumer's Union to defeat several otherwise dead bills that were attached as amendments to still-alive bills. Two of these amendments would have closed certain records to the public. The League's biggest concern, a proposed constitutional amendment making privacy an explicit constitutionally guaranteed right, did not pass.

**2005** - SB 286 (Wentworth) and HB 634 (Baxter), both supported by LWV-TX, added an educational requirement to the existing Open Meetings Act and Public Information Act for elected and appointed officials in Texas. This training was one of the legislative priorities of Attorney General Abbott. SB 286 was signed by the governor.

**2006:** See Political Campaign Process- 2006 Legislative Interim.

**2011:** The governor signed HB 2973, known as the Citizen Participation Act or Anti-SLAPP legislation, which is an acronym for Strategic Lawsuits Against Public Participation. The new law places burdens on lawyers who want to file lawsuits on behalf of public figures or institutions in order to discourage people from investigating or complaining about the public figures.

Other bills supported by the League that became law include HB 336, requiring the posting on the internet of political contributions and expenditures of public school board trustees in larger school districts. HB 2439 requires state agencies with more than 1500 employees to allow employees to submit suggestions for cost efficiencies on their website; HB 2460 makes public retirement systems subject to the Texas Public Information Act; HB 2017 requires advisory committee meetings of the Texas Dept. of Motor Vehicles to be publicly accessible; SB 227 requires the Texas Medical Board to make public any remedial plans created to resolve complaints about physicians.

#### **Explanation and History – Recorded Votes**

Texas is the largest of the ten states that does not require that votes be routinely recorded by legislators' names. About half of the votes taken are as "voice vote"; all those in favor say aye, opposed nay. Legislators must request a recorded vote by roll call in the Senate and by electronic means in the House. Records of votes are published in the *Texas Journal* and are difficult to access by even competent computer users. The participation of citizens in the democratic process is hindered by the unavailability of voting records of their individual representatives.

**2003:** In April, the Dallas Morning News began a media campaign to inform the public of when and how votes are recorded and not recorded. A Recorded Votes Committee was approved at the state level in August, 2003. During the special session of the Legislature in the summer of 2003, Senator John Carona of Dallas introduced legislation to record non-ceremonial votes. The efforts of the Recorded Votes Committee resulted in an action motion passed overwhelmingly at the 2004 LWV-TX Convention in support of the constitutional amendment noted above. Throughout 2004-2005, advocacy efforts were undertaken with written articles, educational forums, meetings with candidates for office, and lobbying of state representatives.

**2005:** League members can take pride in the progress that was made in the 2005 session

regarding the need to routinely record all substantive votes. In previous legislative sessions, bills for recorded votes were not even heard in Committees. In 2005 both the House and the Senate changed their rules to make recorded votes easier and more frequent, and to have them posted on the internet. Bills to require routinely recorded votes were heard in Committees in both Houses, and the Senate passed a bill to record all substantive votes. The Senate vote was unanimous! Regrettably, the House leadership persisted in their opposition of the bill and did not allow a vote in the State Affairs Committee, although there were enough votes to pass it.

Efforts to make routinely recorded votes and public access to them a reality in Texas will continue in the interim and the 2007 legislative session. It is not unusual for a bill to take three sessions to pass. Our plans for future action include:

- researching the mechanics of recording votes in other states
- getting candidates and elected legislators on record regarding recorded votes in the 2006 primaries and general election
- continued education of our members and the public
- ongoing collaboration with newspapers and advocacy groups which support routinely recorded votes.

**2007:** History was made in the 80<sup>th</sup> Legislature when the House and Senate passed HJR 19 (Branch), a constitutional amendment to the Texas Constitution:

“to require that a record vote be taken by a house of legislature on final passage of any bill, other than local bills, of a resolution proposing or ratifying a constitutional amendment, or of any other non-ceremonial resolution, and to provide for public access on the internet to those record votes.”

The amendment was supported by the League and approved by Texas voters in the November, 2007 election. This achievement is the culmination of work by a dedicated program chair and other LWV-TX League members who worked tirelessly since 1997 to advocate for recorded voted.

**Reference Available: (Advocacy Paper) *Recorded Legislative Votes: Let the Sunshine In, January 2005.***

### ***PUBLIC POLICY ON REPRODUCTIVE CHOICES -***

*Protect the constitutional right of privacy of the individual to make reproductive choices.*

**LWV-TX Action:** This national position was adopted in 1983. During each succeeding legislative session, bills attempting to place various restrictions on abortions have been introduced. LWV-TX has worked with other pro-choice groups to defeat these measures, initially with great success. But laws enacted in recent sessions severely restrict Texas women’s access to meaningful reproductive choices.

Also in recent years, pro-choice groups, including LWV-TX, have broadened their focus in this area to include advocacy for women’s access to comprehensive reproductive health services and for medically accurate sexuality education. In supporting these initiatives, LWV-TX has relied on the LWVUS position on **Meeting Basic Human Needs** and its subheads “Preventing and

Reducing Poverty” (“LWVUS supports policies and programs designed to decrease teen pregnancy...”) and “Access to Health Care” (“LWVUS believes that access to health care includes...health and sex education programs...”). The LWV-TX position on **Health Care for Those of Lesser Means** also supports advocacy for access to comprehensive reproductive health services.

Following the 1989 U.S. Supreme Court decision in Webster V. Reproductive Health Services that gave states increased power to regulate abortion and threatened to overturn Roe v. Wade, pro-choice groups in Texas, including both state and local Leagues, began organizing concerted responses to the escalating calls for restrictive legislation. In **1991**, bills attempting to mandate parental notification for teenage abortions and to ban so-called sex-selection abortions were introduced. These measures received a hearing in a House committee, but were never reported out and were not heard in the Senate.

Once again in **1993**, several bills were introduced which would have placed various restrictions on reproductive choice (parental involvement, requirements for minors, waiting periods, so-called “informed consent” requirements, etc.) These measures all died in committee, with LWV- TX and other pro-choice groups working successfully behind the scenes to avoid circus- atmosphere hearings.

On a more discouraging note, bills filed in both houses that would have stiffened the penalties for criminal trespass on the premises of health care facilities also died in committee. These measures were introduced following the murder in Florida of Dr. David Gunn, an abortion provider, by an anti- choice fanatic. LWV-TX filed testimony in support of the proposals at a House committee hearing.

**1995:** Pro-choice groups, including the League, faced and surmounted several close calls in the 74<sup>th</sup> Legislature. As in previous sessions, a number of bills were filed that would have imposed restrictions on reproductive freedom. For the first time, two of these measures were voted out of Senate committees; one would have mandated parental or judicial involvement in a minor’s decision to seek an abortion; the other would have classified abortion providers as “ambulatory centers,” thereby driving the cost of the procedure beyond the means of most women. At committee hearings, LWV presented testimony in opposition to both bills. Fortunately, neither measure garnered the 21 votes necessary to be voted consideration on the Senate floor. Local Leagues with senators who were “uncommitted” or considered to be “swing” votes in the move to block consideration responded swiftly and effectively to LWV-TX requests to contact these officials and inform them of League opposition to these measures.

**1997:** The session’s major anti-choice legislation (requiring parental involvement in minors’ abortions) seemed securely on its way to passage when, on the last weekend, the bill was killed on a Point of Order and reproductive choice was still intact in Texas. Indicating increased legislative opposition to choice, a health insurance bill was passed which contains a clause exempting religiously affiliated HMO’s from providing services which conflict with their beliefs and from referring or paying for a member to receive such services from another provider.

**1999:** After many failed attempts in previous sessions, anti-choice proponents were able to enact a “parental notification bill,” vigorously opposed by the League. Under its provisions, a physician performing an abortion on a minor must provide 48 hours notice to a parent. A judicial by-pass was provided as the only alternative to parental notification.

**2001:** LWV-TX opposed “Injury to a Pregnant Woman” legislation that was introduced. Because the League believes in the right of every woman to safely carry a pregnancy to term, LWV- TX supports legislation enabling women who have suffered the loss of a pregnancy due to deliberate 3<sup>rd</sup> party misconduct to seek civil remedies and be assured of appropriate criminal prosecution. But the introduced legislation went beyond addressing this important issue and established risky precedents for pregnant women. It is important to note that a nationwide effort was underway by anti-choice organizations to use the issue of “injury” to a pregnant woman to promote their legislative goals and to establish a fetus as a separate, independent entity under law.

**2003:** Several laws were enacted that further compromise a woman’s right to choose:

- An “omnibus” law implements a 24-hour waiting period before a woman can obtain an abortion; requires physicians to provide women seeking abortions with “informational” materials including misinformation linking abortion to breast cancer; and requires abortions after 16 weeks to be performed in ambulatory surgical centers, making their availability and cost prohibitive for most women.
- Another law allows criminal or civil charges to be brought against anyone who causes the death or injury of a fetus, and defines “individual” as “an unborn child at every stage of gestation from fertilization until birth.” By thus giving a fetus status as an individual, this law opens the door to future measures and lawsuits that would undermine women’s reproductive choices. The law also has the potential to interfere with a doctor’s care of a pregnant woman, as a doctor might not be willing to perform certain procedures (such as amniocentesis) for fear of being charged with a crime if the woman lost the fetus as a result.

The legislature failed to enact Emergency Contraception (EC) measures supported by LWV-TX. EC has the potential to reduce the number of unintended pregnancies and abortions in the U.S. by 50%. Access to EC is especially important to survivors of sexual assault. One bill that died would have enabled Texas women to access EC directly through their pharmacists; another would have required hospitals to inform sexual assault survivors about EC and provide it if requested. (NOTE: Subsequently promulgated federal rules allow over-the-counter sale of EC to women over the age of 18.)

Anti-choice bills opposed by LWV that died included: mandatory viewing of materials about “fetal pain” prior to obtaining an abortion; “Choose Life” license plates for which fees would have been allocated to so-called Crisis Pregnancy Centers; requirement that judges from whom minors seek “judicial bypass” as an alternative to parental notification do not have to keep detailed records and make them available to the public.

**2005:** Enacted setbacks to choice were in the form of amendments attached to the measure reauthorizing the state Board of Medical Examiners. These amendments mandate parental *consent* for a minor's abortion (cf. the notification requirement enacted in 1999), and further restrict the already extremely narrow circumstances under which a woman can obtain a legal abortion in the third trimester of pregnancy to cases where the fetus has a severe and irreversible brain impairment or the woman risks death or severe and irreversible brain damage or paralysis.

Other setbacks for women's health included two Riders attached to the state budget: One diverted \$5 million to "crisis pregnancy centers" whose chief mission is giving misinformation to pregnant women in order to discourage them from having abortions, rather than providing actual health care services. The other Rider diverted \$20 million from existing providers (including Planned Parenthood affiliates, medical schools, hospital districts and health departments), displacing over 70,000 low income women currently receiving family planning and other health care services from these entities.

Egregious measures opposed by the League and other pro-choice groups and individuals that met well-deserved oblivion include the so-called "right of refusal" bill that would have enabled pharmacists to refuse to fill or provide referrals for birth control prescriptions; and several measures that would have made it more difficult for a minor to obtain a judicial bypass permitting her to choose an abortion without parental involvement (involvement that will henceforth equal consent under the new law discussed above). The proposed measures targeting the judicial bypass process included restrictions on the venue of such cases, requirement that rulings be collected and published, and raising the standard of proof/level of parental abuse that must be shown.

On the good news front, the Legislature passed the Medicaid Waiver bill, which instructs the Department of Health to apply for a federal waiver that will expand access to preventive health care and family planning services for low-income women, including screening for diabetes, cervical and breast cancer, hypertension and tuberculosis, as well as counseling and education on contraception. Unfortunately, a bad amendment attached to the waiver prohibits waiver funds from going to agencies that perform or "promote" abortions and limits coverage of information about and prescriptions for EC. Another victory was passage of a bill mandating hospitals to implement plans for adequate and comprehensive services to victims of sexual assault, though it regrettably does not mention EC.

Finally, unfortunately, several bills that would have promoted choice and/or women's health died, including provisions for increased access to educational information about EC and other forms of contraception, and removal from the so-called informed consent to abortion law enacted in 2003 the required misinformation that having an abortion increases one's risk of getting breast cancer.

**2007:** Although there were a couple of close calls; all of the bills filed during the 80th

Legislative session that would have imposed additional burdens on Texans seeking abortions and/ or abortions providers died.

The state budget brought both good news and bad news for proponents of women's health and increased access to preventive and reproductive health care. New language was added to the Rider passed by the 79th Legislature in 2005 that diverted \$20 million away from proven providers of preventive health care and resulted in 33,000 fewer women receiving family planning services. The new Rider restricted the state health department from implementing the Rider if it would adversely affect the number of women who receive family planning services; however, the "alternatives to abortion" rider enacted by the 79th Legislature remained intact. The provision allows for allocation of \$5 million to agencies that provide no medical services and do nothing to prevent unwanted pregnancies.

**2009:** For better AND worse, "status quo" is an appropriate summation of the 81<sup>st</sup> Legislative Session in this program area. On the "better" side, no anti-choice bills were passed, thanks in part to unrelated procedural maneuvers. Measures opposed by LWV-TX that came close to passage included those that would have required an ultrasound prior to abortion; that would have authorized "Choose Life" license plates whose purchase would fund unregulated, unlicensed pregnancy centers; and that would have placed burdensome new reporting requirements on women seeking and physicians performing abortions, under the guise of protecting women from "coerced" abortions.

On the "worse" side, efforts to improve sex education in public schools and to expand low income women's access to preventive family planning and other health care services were ultimately unsuccessful. Some of these efforts were encompassed in the **Education Works** bills and the **Prevention Works** bills strongly supported by LWV-TX. Kudos to Representatives Castro, Villarreal and Strama who tried but failed, during the frantic waning days of the session, to attach amendments to an education-related bill that would have required information taught in sex education courses to be medically accurate.

Also for the "worse," once again, provisions included in the state Budget opposed by LWV-TX impede women's access to preventive health care:

- Rider 56 diverts \$20 million from expert family planning health care providers such as Planned Parenthood and gives it to Federally Qualified Health Centers (FQHCs) that don't have the capacity to see large numbers of family planning patients. Since the Rider was enacted in 2005, 70,700 fewer such patients have been served. A bright spot: New language was added requiring funds not spent by FQHCs to go back to family planning providers who can use them.
- The "**Alternatives to Abortion**" program was also renewed, with increased funding that is directed to Crisis Pregnancy Centers – organizations that provide no medical services and do nothing to help women prevent unintended pregnancies.

**2011-2012:** Despite vigorous advocacy by LWV-TX and other pro-choice groups and individuals, Women's health and reproductive choice were big losers in the 2011 Legislature and

its aftermath.

### **Family planning funds and the Women's Health Program:**

A budget cut of approximately \$62 million from the state family planning program will leave an estimated 200,000 women without access to basic health services. Adding insult to injury, the budget actually includes an increased amount for the "Alternatives to Abortion" program which encourages women in crisis pregnancies to carry to term, often with Medicaid support. "Alternatives to Abortion," which has an \$8.3 million budget in the current biennium, provides no medical services, though it does make referrals to other government programs.

Though the Women's Health (Medicaid waiver) Program (WHP) was re-authorized, this was something of a "Pyrrhic victory", first because the loss of family planning funding means that providers will not be able to give preventive care to many of the neediest women during this budget cycle. And then, the renewal application that the state submitted to the federal government effectively excluded Planned Parenthood centers from providing WHP services. (The specious line of reasoning used to justify the exclusion is that the 2005 enabling legislation for the WHP indicated that the state Health and Human Services Commission is prohibited from contracting with agencies affiliated with organizations that provide abortions - and that the Commission has the authority to define "affiliated.")

The federal government responded that excluding qualified providers is a violation of federal law and that funding for the WHP would be withheld if Planned Parenthood were excluded. The state refused to back down and Planned Parenthood then filed a lawsuit against the state Human Services Commission, alleging that it is unconstitutional to block Planned Parenthood from participating in the WHP and depriving women of the right to choose their health care provider. The judge has issued a temporary injunction that allows renewal of the program and Planned Parenthood participation pending a full hearing and arguments from both sides. Stay tuned....

### **Anti-Choice Legislation/Regulations:**

*Sonogram requirement.* As passed and signed into law, Texas now has perhaps the most extreme pre-abortion sonogram requirement law in the country - it mandates that the woman receive a verbal description of the fetal image even if she opts out of viewing it. (Only Oklahoma has a similar provision.) Another especially harmful provision in the law is increased penalties - including possible loss of license - that may be imposed on doctors who violate any part of the "informed consent" process of which the mandatory sonogram is a part.

Further, though a woman may certify that she doesn't wish to view the fetal image, the law actually says that her consent to the medical procedure of an abortion is not informed if she doesn't view the image. This provision could have a further chilling effect on doctors' willingness to perform abortions.

The Center for Reproductive Rights, a national organization, filed a lawsuit in the U.S. District

Court in Austin challenging the constitutionality of the sonogram law and alleging that it violates the First Amendment rights of doctors and patients. The Center described the law as an intrusive and patronizing hijacking of the doctor/patient relationship to promote an anti-choice agenda. The suit was filed on behalf of a plaintiff class of physicians and medical facilities that provide abortions. Unfortunately, the 5th Circuit Court of Appeals overturned an injunction against enforcement of the law issued by the district judge in the case, prompting the district judge to declare that the appellate court's decision "effectively eviscerated the protections of the first amendment and allows the government to make puppets out of doctors."

*"Choose Life" license plates.* This new law authorizes the issuance and purchase of "Choose Life" license plates. Proceeds from the purchases will go to "eligible organizations" that give assistance to pregnant women who are considering placing their children for adoption. BUT organizations that provide abortions or abortion-related services or make referrals to abortion providers or are affiliated with such referrers or providers are not "eligible" to receive these funds.

*Funding restrictions.* Another amendment to SB 7, the special session's omnibus health care bill, effectively bans hospital districts from using local tax revenue to fund abortions - or risk losing state funding. The amendment allows exceptions if the woman's life is in danger or if the fetus has a "severe fetal abnormality," meaning "a life-threatening physical condition ... incompatible with life outside the womb." The measure is clearly aimed at Travis County, whose hospital district is the only one in the state that currently uses tax dollars to pay for elective abortions. But it has been reported that most of those funds come from local taxes and other non-state funds, so the law might not have much "bite."

*Reporting requirements* Most recently, the State Health Services Council has proposed a rule that would require a woman seeking an abortion to first file a report indicating how many children and how many abortions she has had, her level of education, whether she viewed the required sonogram and, if a minor, whether she obtained a judicial bypass in lieu of parental consent. AND physicians performing the procedure would be required to report on "complications" - though what constitutes a "complication" is unspecified. This proposed regulation, if it goes into effect, will impose requirements that even the most anti-choice legislatures have rejected legislatively. Again, stay tuned....

**2013:** As the **regular session** adjourned, LWV-TX and other advocates for reproductive choice and for comprehensive, affordable women's health care briefly rejoiced that:

- None of the bills on these issues that LWV opposed passed. In fact, none of them even received a vote from either chamber.
- Preventive health care for women was a winner in the state budget which:
  1. Allocated \$71.3 million in state funding for the Texas Women's Health Program (TWHP). Approximately 90% of this was to replace lost federal funding because of the "Affiliate Ban Rule" enacted in 2011. This funding maintains the TWHP but shifts the funding source from federal to state dollars.
  2. Expanded the state's Community Primary Care program by \$100 million to

support women's preventive care, including contraceptive care for approximately 100,000 low income women;

3. Added \$32.1 million to the Texas Family Planning Program to replace federal Title X grant funds that were awarded to the Women's Health and Family Planning Association of Texas instead of to the state.

As noted by the Texas Women's Healthcare Coalition (of which LWV-TX is a member), the budget was "a critically important step in repairing the tattered women's healthcare safety net [and]...represents important progress toward the goal of access to preventive care for all Texas women." But although this budget included funds for approximately the same number of clients in 2014-2015 as before the big cuts in 2011, "the women's health safety net will take time to rebuild," and many specialized family planning providers (such as Planned Parenthood) with expertise and geographic reach were excluded.

Unfortunately, along with the "death" of the anti-choice bills opposed by LWV during the regular session, all of the pro-choice and pro-women's health measures supported by LWV-TX also died without receiving votes.

In the **1<sup>st</sup> Special Session** that immediately followed the regular one, the governor added "legislation relating to abortion procedures, providers and facilities" to the agenda. And the senate rule that requires a 2/3 vote to consider bills was declared to be inoperative in special sessions, enabling a simple majority to pass bills in the senate. A number of "abortion" bills were filed but the ones that moved were companions SB 5 (Hegar) and HB 60 (Laubenberg) – omnibus measures banning abortion after 20 weeks; requiring all procedures to be performed in a mini-hospital; forcing women to make four trips to a clinic for a drug-induced abortion; and requiring all abortion doctors to have admitting privileges at a nearby hospital.

In spite of impassioned and cogent arguments against SB 5 by LWV-TX and many other others at the Senate Health & Human Services Committee hearing, the bill passed out of the Committee by a 5-2 vote. The Committee Substitute for SB 5 added an exception to the 20-week ban for situations involving "a severe fetal abnormality."

The Senate passed SB 5 (20-10 vote) after an amendment by Sen. Hegar to remove the 20-week ban on abortions was accepted by the majority. All amendments offered by other senators that would alleviate the harmful impact of the bill were rejected. The battleground then moved to the House where the State Affairs Committee scheduled HB 60 and HB 16 (Laubenberg – a stand-alone fetal pain measure banning virtually all abortions after 20 weeks) for hearing. Responding to calls to action by pro-choice and women's health advocates, hundreds of women (estimates as high as 700), including LWV Capitol Corps member Judy Parken with testimony at the ready, registered to be heard. After more than 10 hours of testimony, with hundreds (including LWV) still waiting to be heard, the Committee closed the hearing.

The State Affairs Committee reconvened the next day and quietly approved both HB 60 and its companion bill SB 5, as well as HB 16. But pro-choice advocates were heartened that, with the

special session set to end by midnight on June 25, their testimonies had held up the bills for precious hours that might enable senators to filibuster the legislation on its return to the senate for final approval. Texas women's impassioned and eloquent stand against these anti-choice bills began to receive national attention. The marathon testimony in the State Affairs Committee was widely reported and dubbed "the people's filibuster." With the full House set to hear SB 5 and HB 60 on Sunday June 23, hundreds of motivated and mobilized reproductive rights advocates headed for the Capitol, most wearing orange as urged by organizers and many wearing orange T-shirts saying "Stand with Texas Women."

On the House floor, pro-choice representatives, knowing they were outnumbered, adopted the strategy of delaying votes on the bills as long as possible, hoping to forestall their arrival in the Senate where, with the June 25 midnight deadline looming, a filibuster might prevent passage. Filibusters are not an option in the Texas House. Instead, pro-choice House members utilized "chubbing" as a delaying tactic, extending their conversations on the bills for several hours on Sunday afternoon and into the night. Meanwhile, it became clear that anti-choice representatives would focus on passing SB 5. That bill had already passed the Senate, but Senate concurrence was needed on the House change to the bill, i.e., the addition of the "fetal pain" provision. After hours of debate that went on into Monday morning, the House passed SB 5 on a vote of 95-34 with 20 members absent.

As the bill moved back to the Senate for its final approval on Tuesday June 25, activists began arriving early in the Senate gallery. Although the weekday turnout was lower than on Sunday, hundreds of pro-choice activists showed up as the day wore on, bolstered by the presence of Cecile Richards, Planned Parenthood of America President. Senator Davis began to filibuster against SB 5 at approximately 11 a.m., needing to continue until midnight in order to kill the bill. Filibuster rules prohibit the speaker from eating, drinking, taking bathroom breaks or straying off the subject of the bill. According to Davis' communications director, Davis was acting as the "voice of those people that were basically cut off from presenting their stories and testimony" at the previous hearing.

As afternoon turned into evening, several senators challenged Davis with specious "points of order" – alleging that it was out of order for Davis to accept a back brace from Sen. Ellis as she stood on the floor and, twice, that her remarks had strayed from the subject and were not germane. Unfortunately, the points of order were sustained and as senate rules provide, the filibuster ended on the third ruling, shortly after 10 p.m.

Other pro-choice senators then stalled a vote on the bill with procedural questions until 11:45 p.m. As Sen. Duncan, presiding in place of Lt. Gov. Dewhurst, was about to start the roll call on a procedural vote before the final vote on the bill, Sen. Van de Putte interrupted with a parliamentary inquiry, asking at what point must a female senator raise her voice to be heard by her male colleagues. At that point, the gallery filled with pro-choice supporters erupted in cheers that were taken up and echoed by others standing outside the gallery and all around the Capitol building. Midnight came and went and the bill died amid the cheering and chaos.

Though faced with another special session and another round of anti-abortion proposals and tactics, the experience of the 1<sup>st</sup> special session was an inspiration and motivation for all champions of reproductive health and rights to stay strong and hang tough. Governor Perry wasted no time in calling a 2<sup>nd</sup> special session for July 1, with abortion front and center on the agenda. With unabated passion, approximately 5,000 pro-choice supporters, including many LWV members, assembled on the Capitol steps on July 1 to bring their message to legislators.

In the 2<sup>nd</sup> special session, though many abortion bills were filed, the Legislature focused on SB 1 (Hegar) and HB 2 (Laubenberg) – companion, omnibus measures mandating: prohibition on abortion after 20 weeks; requirements that facilities where abortions are performed meet the standards of “ambulatory surgical centers” and that doctors performing them have admitting privileges at a nearby hospital; and requirement that physicians administer in-person the two medicines used for drug-induced abortions and see the patient again within 14 days.

Capitol Corps member Grace Chimene brought LWV testimony against HB 2 to a hearing by the House State Affairs Committee on July 2 but was not called to testify before the Committee. Chair closed the hearing at midnight; 3,543 persons had signed up to speak but only 100 were heard. The Committee voted (8-3) to send the bill to the full House – which passed it in short order. On July 8, the action shifted to the Senate HHS Committee for a hearing on SB 1, and again Grace Chimene, representing LWV, was among thousands who registered to testify. This time she was able to present the testimony.

Unfortunately, HB 2 ultimately passed both House and Senate and was signed into law by Governor Perry on July 18. During floor debate in the Senate, pro-choice senators offered 20 amendments, ranging from proposals to add exceptions to the 20-week abortion ban for victims of rape and incest to requiring annual inspections of abortion facilities. All were rejected. Senator Davis did not try to reprise her heroic filibuster but spoke eloquently against the bill, noting the numbers and passions of citizen opponents who showed up again and again at the Capitol during the special sessions: “The fight for the future of Texas is just beginning.” The Texas Tribune reported the chants and cheers from the massive crowd of pro-choice advocates gathered outside of the chamber and also that the audience observing from the gallery remained mostly quiet and orderly throughout the proceedings – in contrast to the closing hours of the 1<sup>st</sup> Special Session.

The bad news is that Texas now has one of the strictest abortion laws in the U.S. – designed to drastically reduce women’s access to safe, legal abortions. The silver lining is that the “sleeping giant” -- the pro-choice majority -- has been awakened and activated. On another hopeful note, Planned Parenthood and other abortion providers have filed suit in federal court seeking to block the state from implementing the new law because its provisions conflict with the U.S. Supreme Court rulings in *Roe v. Wade* and *Planned Parenthood v. Casey* that states cannot enact substantial obstacles to women seeking abortion. Stay tuned!

**2015:** Following their victories in the 2013 legislative session, those who oppose women’s access to safe, legal abortions and to comprehensive, affordable and accessible reproductive health care were not content to “rest on their laurels” in 2015. Regretfully, these people worked to restrict access to safe, legal abortions

even further, coming up with new, draconian proposals affecting women's health. Given the large number of such bills that were filed and the makeup of the legislature, we can be grateful that most died, along with some good bills supported by LWV. Details below.

### Access to Safe, Legal Abortions

Worst bill that passed:

- **HB 3994** imposes significant and unreasonable restrictions on the “judicial bypass” option for young women seeking safe, legal abortions. Pro-choice proponents managed to kill a provision in the bill that would have required all doctors to presume that any pregnant woman seeking an abortion is a minor unless she presents a “valid government record of identification” to prove she is 18 or older. Pro-choice proponents also killed the presumption of denial of bypass when a judge's fails to rule on a bypass petition within the required time.

The harmful provisions of the bill as passed include: requirement that bypass petition be filed in the teen's home county (unless the county has a population under 10,000); elimination of physical, sexual or emotional abuse as grounds for a bypass; extension of the time (from 2 to 5 business days) in which judges must rule on bypass petitions; requirement that the minor's attorney and guardian ad litem be the same person.

This “omnibus” judicial bypass measure will have an especially adverse impact on vulnerable minors who have been neglected, abused or abandoned. Stay tuned for a probable lawsuit alleging its unconstitutionality.

Other bad bill that passed:

- **HB 416** requires abortion facility personnel to take education and training on human trafficking. The author initially stated she would accept an amendment that would expand the bill to include other medical settings, such as emergency rooms, where health care staff is also likely to encounter trafficking victims. But the bill as passed does not contain such an amendment. The measure as passed is thus a TARP (targeted regulation of abortion providers) that should apply to all frontline medical personnel. Note that Planned Parenthood clinics in Texas have for many years been proactive in training staff to recognize and appropriately deal with trafficking victims.

Biggest victory for pro-choice advocates:

- Death of **SB 575** that would have prohibited health benefit exchanges that might be established under the Affordable Care Act from providing abortion coverage except when a life-threatening physical condition exists.

Unfortunately, a number of good bills also died, including measures that would have ameliorated some of the laws restricting access to safe, legal abortions enacted in previous session.

### Women's Healthcare Safety Net

Budget – the good news:

- The General Appropriations bill for 2016-2017 includes \$50 million in new funding for women's preventive health care, including contraception. As expressed by the Texas Women's Healthcare Coalition of which LWV-TX is a member: “Combined with the funding restoration in the 2013

legislative session, this funding has the potential to reverse much of the devastating effect of the 2011 budget cuts and subsequent upheavals to women's health programs." The Coalition has called for thoughtful implementation that will "increase the number of women served and help provide access for the more than 1.3 million Texas women in need of contraception and other preventive services."

- The budget rider that requires increasing access to Long Acting Reversible Contraceptives (LARCs – such as implants and IUDs), if properly implemented with education and training, has the potential to dramatically lower rates of unplanned pregnancy and abortion.

Budget – the bad news:

- Unfortunately the budget as passed effectively removes Planned Parenthood's participation in the Breast and Cervical Cancer Screening (BCCS) program by stipulating that providers of these screenings must be eligible for the Texas Women's Health Program. (Planned Parenthood was excluded from that Program in 2011.) Planned Parenthood has been serving about 10% of BCCS program clients.
- The budget also stipulates that family planning funds cannot be used for sexuality education or family planning instruction if the instruction is provided by affiliates of abortion providers (read Planned Parenthood again).

Good bill that passed:

- **HB 786** requiring public employers (such as state agencies, local governments and public schools) to provide accommodations for mothers who need to pump breast milk while at work. According to the Texas Breastfeeding Coalition, 40% of mothers who return to work choose not to breastfeed because they anticipate lack of accommodations at work. This new law is definitely a step in the right direction.

More good news:

- An **amendment to SB 200** requires appointment of an advisory committee to provide recommendations to the Health and Human Services Commission on the consolidation of women's health programs.

Good bills that did not pass included proposals to extend eligibility for benefits under the Texas Women's Health Program, including access to family planning services, to females 15 or older; and to provide coverage for contraceptive drugs or devices for children enrolled in the child health program with written consent from child's parent.

### Comprehensive, Medically Accurate Sexuality Education

Although both good and bad bills relating to sexuality education were filed, none passed. **However, as noted above, the budget that passed unfortunately contains a stipulation that family planning funds cannot be used for sexuality education or family planning instruction if the instruction is provided by affiliates of abortion providers, i.e., Planned Parenthood.**

## II. NATURAL RESOURCES

*Promote the management of natural resources as interrelated parts of life-supporting ecosystems.*

## **ENVIRONMENTAL PROTECTION AND POLLUTION CONTROL**

*Preserve the physical, chemical and biological integrity of the ecosystem, with maximum protection of public health and the environment.*

### **ENERGY**

*Support environmentally sound policies that reduce energy growth rates, emphasize energy conservation and encourage the use of renewable resources.*

**LWV-TX Action:** The League of Women Voters of Texas became active in the energy area in 1973, when we recommended to LWVUS Council the adoption of Energy as an emergency study item. The study item was not adopted then, but Council directed that a series of energy briefs be published to give members background material on this timely topic. The following year, again with strong LWV-TX involvement, an Energy Task Force was established at Convention and our first position on energy—relating to conservation—was the outcome. Our national study on alternate sources of energy was also strongly supported by LWV-TX at the 1976 LWVUS Convention.

**1980's:** During the existence of the Texas Energy and Natural Resources Advisory Council (TENRAC) and its predecessor agencies, the League was represented on advisory committees in the areas of conservation, solar, and nuclear energy. We worked diligently but in vain during the 1983 session to prevent the demise of TENRAC and the Energy Development Fund. We also supported legislation dealing with conservation, solar energy, low-level nuclear waste management, and funding of the Energy Development Fund.

In the effort to increase use of renewable energy, we supported legislation protecting consumers (installer licensing, device testing,) protecting users' access to sun and wind, providing assistance in financing installations, and establishing an energy conservation code.

During the 1980's the League was represented at several utility-consumer interaction meetings, where we pressed the utilities to encourage conservation and use of renewable energy to delay the need for more generating plants. We argued this would conserve both natural resources and capital while providing increased employment in the labor-intensive, pollution-free solar energy and weatherization industries. In 1985, we cosponsored a second electric utilities dialogue.

**2007:** CSHB 3693, supported by LWV-TX, passed and is law, requiring electric utilities in Texas to achieve energy efficiency and conservation. This bill improves and expands existing energy efficiency measures, allows better management of customer demand, updates energy codes, and requires state agencies to utilize equipment and appliances that are more energy efficient.

**2011:** None of the legislation that we supported passed in this legislative session. However some of the other bills that passed may have positive impacts such as HB 51 (Lucio III,) which establishes high-performance sustainable-design standards for the construction of new state buildings and renovations for which the cost exceeds 50 percent of the value of the existing

facility. These standards would apply to institutions of higher education, public education instructional facilities, and certain state agencies.

HB 362 (Solomons) prevents a property owners' association from including or enforcing a provision in a real estate dedicatory instrument that would prohibit a homeowner from installing a solar energy device as defined by the Tax Code. The bill would void any existing deed restriction against solar energy devices.

### ***WASTE MANAGEMENT***

*Promote policies to reduce the generation and promote the reuse and recycling of solid and hazardous wastes.*

**LWV-TX Action:** Under this national position, LWV-TX has taken action on both municipal solid waste and hazardous waste issues.

**1980's:** Since the adoption of the position in 1973, the state League has worked for passage of container deposit legislation, actively participating in the Association for Beverage Container Deposits (ABCD,) publishing an Advocacy Paper in 1987, and submitting legislative testimony in 1989, to no avail. In 1983, the League helped draft the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act and served on a related Texas Department of Health advisory committee.

LWV-TX advocacy for proper hazardous waste management began in the 1970's and intensified in 1980 when Texas first sought EPA authorization to implement the federal Resource Conservation and Recovery Act. In 1981, the League obtained a grant from LWVUS and sponsored an educational workshop and tour of hazardous waste management facilities in the Houston area. League legislative and administrative action in 1981-83 focused on the need for more stringent criteria for siting new facilities.

In the interim before the 1985 legislative session the League testified on hazardous materials administratively. In 1986, the League intervened on behalf of the TWC and Texas Air Control Board in a lawsuit filed by the Texas Association of Business contesting the constitutionality of administrative penalty powers. The transportation and on siting-related issues and used the sunset review process to request additional public participation opportunities and enforcement powers for the agencies that regulate hazardous waste. During this interim, a state League director served on the Governor's Hazardous Waste Task Force which drafted consensus recommendations that led to passage of comprehensive hazardous waste legislation addressing most of the issues of concern to the League. Sunset reauthorization of the Texas Water Commission (TWC) gave the agency the power to assess penalties case was decided in 1989 in favor of the state agencies, a victory for the League. This decision was affirmed by the Texas Supreme Court.

During the mid-1980's, the League played an educational role on the controversial issue of hazardous waste incinerator ships, sending an observer aboard an incinerator ship in the North

Sea, and participating in EPA briefings, as well as a Keystone Center national policy dialogue on the role of the oceans in hazardous waste management.

**1985:** The League completed the major part of the Keystone Education Project, a two-year League effort to educate communities about hazardous waste management and the Keystone siting process for community involvement in the siting of new hazardous waste facilities. The project included sponsorship of workshops in six industrial areas of the state and publication of informational materials as well as a training manual for those who serve on Keystone local review committees.

The League commented on rules implementing the comprehensive hazardous waste legislation and fee system and lobbied for waste reduction. Legislative activity focused successfully on preservation of the joint and several liability clauses of hazardous waste laws during the legislative efforts to reform the tort law system.

**1989:** Since 1989, the League has been represented on the Waste Reduction Advisory Committee (WRAC), a policy advisory committee to the Texas Water Commission (TWC) and its successor agency, the Texas Natural Resource Conservation Commission (TNRCC). The League supported a policy that would require industry to reduce waste at the source. In October 1990, the TWC adopted WRAC's policy on waste reduction, which required industry to move toward source reduction, to work toward recycling and neutralization of toxins, and to move away from injection wells, incineration, and land fills.

**1991:** In the 72nd Legislature, the League supported bills calling for waste reduction and pollution prevention. These included a comprehensive hazardous waste reduction and pollution prevention bill that passed, making significant changes in regulatory programs in Texas. This legislation called for a temporary moratorium on new permits for commercial hazardous waste facilities, a greater role in the siting process for citizens' groups, needs assessments, and requirements for source reduction.

The League has also been represented on Task Force 21: Waste Management Policy for the Future, a TNRCC (formerly TWC) advisory council made up of representatives of industry and environmental groups. The task force has worked on development of regulations to bring state agencies into compliance with existing law. See next section, PUBLIC PARTICIPATION, for more on Task Force 21.

In the 1991 session the League also supported an omnibus recycling bill, addressing many League concerns, which passed. The law charged the General Land Office with coordinating a recycling market development study, implementing a strategy for expanding markets, and developing and implementing a recycling awareness campaign.

**1993 and 1995:** Unfortunately, the sessions did not continue the progress made in 1991 toward pollution prevention, waste reduction, and recycling goals. Despite League opposition, bills were enacted in that limit the power of local governments to regulate what goes into their local

solid waste streams and that encourage the environmentally unsound process of mixed municipal solid waste composting. The League has continued to monitor development of regulations to implement the comprehensive waste minimization and recycling legislation enacted in 1991. We have submitted comments on proposed composting regulations and the adoption process.

**1999:** Low-level nuclear waste disposal: Following denial by TNRCC of a permit for low level radioactive waste disposal at the state site near Sierra Blanca in west Texas, the legislature worked on and debated a bill that would have allowed private facilities to receive low level waste. The issues of disposal are complex and involve an interstate compact Texas has with Maine and Vermont, the licensing of private entities, siting issues, groundwater protection, full public disclosure and participation, as well as the kind and volume of waste. Following a public forum held by LWV-Midland and discussions with LWVUS, LWV-TX decided to oppose the legislation that failed to pass the legislature.

The bill would have mandated the use of “assured (above ground) isolation,” an alternative to burial. Following the failure of the bill the governor used the pocket veto to remove the second year budget for the Low-Level Radioactive Waste Disposal Authority. The Agency’s functions will be transferred to TNRCC. The issue of low level nuclear waste disposal will be an important interim issue as the state continues to look at the need for a low level waste disposal site, the type of disposal that can be used, and licensing and permitting issues.

**2001:** LWV-TX worked with other groups to defeat the Low-Level Nuclear Waste Bill, which would have created privately operated (for profit) waste disposal facilities in West Texas, left the state with liability, and possibly led to contamination of the Ogallala Aquifer. A number of serious questions were raised that helped bring about the bill’s defeat: siting, liability, kind, source and amount of waste, problems of cleanup, and a total lack of public participation in addressing the concerns raised during the process.

**2003:** The 78<sup>th</sup> session will be known as the one in which Texas finally, after many years and sessions, adopted a low-level nuclear waste disposal bill (HB 1567) that was signed by the governor. One of the bad aspects of this bill will be the acceptance of mixed waste, which means a combination of *hazardous waste and low-level radioactive waste*, in particular federal mixed waste. The final bill kept the 6 million cubic yard cap on total federal waste, but increased the B and C cap to 600,000 cubic yards. Texas is now in line to become the dumping ground for the hottest “low-level” radioactive waste, even waste that is not allowed at the low-level site in Utah. The Texas Commission on Environmental Quality (TCEQ) will permit a private facility and will begin writing rules for the permitting in mid-July.

The League was not successful in killing or modifying the Low-level Radioactive Waste Disposal bill, but the positive is that we worked very well with members of a coalition, Beyond Nuclear Power. The League’s improvements would have prohibited a private company from holding the license for long-term management, prohibited importation of out-of-state waste for storage, used assured isolation instead of below ground burial, minimized waste transport, kept waste near the site of generation, and increased the role of the public in decision making.

**2005:** The League of Women Voters of Texas held a Press Conference on February 28th in Austin with Representative Mike Villarreal, Representative Pete Gallego, Sierra Club, and Public Citizen to express support for the Representatives' legislation concerning the importation, storage, and disposal of low level nuclear waste in Texas.

HB 1656 (Villarreal) directed the governor-appointed Low Level Radioactive Waste Compact Commissioners to contract to accept waste only from the initial compact states (Texas, Vermont, or Maine). This would amend the existing law to close what is known as the *Compact Loophole*. As currently written, the existing law allows the Texas Compact Commission representing Texas and Vermont to enter into an agreement by majority vote with any person, state, regional body, or group of states to import low-level radioactive waste into the compact facility. The Compact Commission would consist of six commissioners from Texas and one commissioner from Vermont.

HCR85 (Gallego) requested that the lieutenant governor and the speaker of the House of Representatives *create a Joint Interim Committee* to study issues relating to the importation of radioactive waste into Texas, and that this committee submit a full report including findings and recommendations to the 80<sup>th</sup> Texas Legislature in January 2007. Recent actions by the federal government and requests by the private company (Waste Control Specialists) applying to Texas Commission of Environmental Quality (TCEQ) for a license to dispose of low level radioactive waste in west Texas have brought to light the expansiveness of Texas law when it comes to the importation, storage, and disposal of radioactive wastes. Currently two state agencies, TCEQ and the Texas State Department of Human Services (TSDHS) control the management and disposal of low-level radioactive waste. The Federal Government has reclassified the by-product from concentrating highly radioactive ore from the Congo as 11-e-2 waste, a low-level radioactive waste classification. This waste is managed by TSDHS, and Waste Control Specialist is in the process of requesting an amendment to their current Hazardous Waste License to bring this waste to west Texas. The 11-e-2 waste is in addition to the low level radioactive waste allowed by HB1567 (2003) permitting the disposal of both Compact and Federal waste by a private company in Texas. Since passage of that legislation another possible low-level radioactive waste stream has developed. A multi-national company, Louisiana Energy Services (LES), has applied for a license from the Federal Government to operate a uranium enrichment facility near Eunice, New Mexico. This facility would produce low-level radioactive waste which could be imported a few miles east into west Texas for disposal.

The issue is complex to begin with and has become more complex due to actions by the Federal government, a for-profit private company, and the expansively-written legislation from last session. Neither of these bills passed.

**2006:** TCEQ is reviewing the application for the Andrews County low-level disposal site.

**2007:** The LWV-TX achieved goals from the last three legislative sessions with the passage of SB 1604. Activities associated with storage, processing, and disposal that relate to uranium

mining and radioactive waste will now be regulated by the Texas Commission on Environmental Quality (TCEQ.) Activities at the permitted low-level radioactive disposal site near Andrews, Texas will be monitored by TCEQ.

**2011:** Ultimately two bills passed in the 82<sup>nd</sup> Texas Legislative Session relating to “low-level” radioactive waste disposal at the Waste Control Specialists (WCS) site being constructed in Andrews County, TX. While the bills were a mixture of protections of the health and safety of people and the environment, many aspects are not healthy or safe for either. On the whole, the legislature opened Texas and the site to the liabilities of out-of-compact waste in a significant way that is ultimately expensive and unsafe for Texas.

**SB 1504** (Seliger) allows out-of-compact radioactive waste to be imported with certain restrictions. It includes an annual limit by volume and by curies on how much waste may be imported, sets a total limit on how much of the site’s capacity may be used for imported waste, directs TCEQ to study the anticipated capacity of the dump site, and clarifies TCEQ’s authority related to importation. Additional sections of the bill dealt with other matters.

**Improvements made in SB 1504 due to advocacy:**

- Changed the capacity study date to 2012 from 2014
- Amended to ensure that WCS must amend their license to accept out-of-compact waste
- Commissioned a financial assurance study which includes assessment for unplanned events or accidents to protect the State of Texas and local governments’ budgets.

The LWV worked for improvements to SB 1504, but was not successful in all areas. Points that need to be addressed include: a capacity study *before* beginning importation of LLRW since the three existing studies are so varied, a transportation study to examine emergency preparedness and liability to the state and local governments for accidents resulting from increased shipments of radioactive waste on highways and railways, tighter limits that spread importation over the expected lifetime of the site, clarification of the ratemaking process, and a full study of dangers to nearby groundwater because the existing studies are inconsistent.

**SB 1605** (Seliger) provides stronger guidance to the Texas Low-Level Radioactive Waste Disposal Compact Commission, stating that it shall operate and be funded independently of TCEQ, requiring that bylaws be in place prior to the commission reviewing import applications. However this bill eliminates all six of the current Texas Compact Commissioners, giving Governor Perry authority to fill the vacancies midway through the original terms of his first six appointed commissioners.

The LWV sponsored a forum with six panelists for legislators, their aides, and LWV and community members on February 8, 2011, in the State Capitol to provide information about the issue. The forum was well attended and appreciated.

Other legislation that pertained to hazardous waste:  
Senate Bill 329 (Watson and Chisum) (passed) will have TV manufacturers “take back” and

recycle obsolete televisions, keeping toxic materials such as lead and mercury out of Texas landfills and water sources passed. This bill is one of the rare environmental victories during the 2011 Texas Legislative Session. The League spoke in support of this and other recycling legislation.

**2013:** The 83rd Legislature was generally a success for the environment and conservation. Several laws were passed that help reduce hazardous materials being released, including legislation dealing with clean energy development, water conservation, and significant increases in state funding to state parks and clean air programs. Numerous bad bills failed that would have rolled back environmental regulations and curtailed citizen participation in environmental decision-making. Stopping and slowing the release of hazardous materials help create a cleaner Texas environment.

Compared to other states, Texas ranks 4<sup>th</sup> in total amount of toxic releases into water and 5<sup>th</sup> in releases into the air. Texas ranks 4<sup>th</sup> in the amount of recognized cancer causing carcinogens released into the air and 5<sup>th</sup> in releases into the water. Texas ranks 1<sup>st</sup> in the amount of hazardous waste generated.

Some legislation with benefits to public health and the environment are the expansion of Texas's successful Emission Reduction Program (TERP) and the renewal of the state's Chapter 313 economic development program, which will allow Texas to continue being the nation's leader in wind power. Each will help with reducing hazardous materials released into the air and water.

In terms of the state budget, significant gains were made in funding essential environmental programs, including using dedicated environmental funds for their intended purpose and not diverting them or allowing them to build up to help balance the state budget. While the legislature ultimately did little to address the problem with dedicated funds across the board, some improvement was made in using parks and clean air funds, which had accrued tens of millions in unspent fund, for their intended purpose.

In other legislative areas, there was mixed success in oil and gas regulation. Positive measures passed included improvements to gathering line safety in rural areas; increased fines for pipeline violations; increased funding for the Railroad Commission; and the setting of regulations for saltwater pipelines. A good "resign to run" provision in the Ethics Commission Sunset bill, which would have prohibited Railroad Commissioners seeking statewide office from collecting campaign contributions from the energy companies they regulate, was vetoed by the governor. Also, a good Senate bill dealing with water permitting for hydraulic fracturing failed to advance in the House.

Two bad bills, SB 347 and SB 791, dealing with uranium mining and radioactive waste storage were passed into law. One measure ends the ability of citizens to bring meaningful challenges on production area authorization permits for uranium mining. The other significantly increases the concentration of radioactive waste allowed to enter an Andrews County radioactive waste dump

without taking adequate precautions to protect public health and safety around the site and on Texas's roadways. The bill allows far more radioactivity to come to the site sooner and produces far more revenue for Waste Control Specialists by eliminating the annual caps on volume or curries at the site. This could allow an increase in radioactivity and allows for three times the waste to be stored on the site and transported across Texas. One section of the law appears to allow the executive director of the Texas Low-Level Radioactive Waste Disposal Compact Commission to modify the license without requiring a public hearing or public review, and another section appears to allow a huge fee waiver.

It is important to note that all eight of the nation's low-level radioactive storage dumps have leaked and the cleanup costs have ranged from \$750 million to over \$5 billion and climbing. The bill states that when the environmental radiation and perpetual care account reaches \$100 million, fees charged to the company to ensure funds for cleanup are suspended.

In addition, a number of good bills dealing with beverage container recycling, paint take-back, and diverting electronic waste from landfills were derailed by industry groups.

#### ***PUBLIC PARTICIPATION-***

*Promote public understanding and participation in decision-making as essential elements of responsible and responsive management of our natural resources.*

**1994:** Commenting on proposed compost regulations (see ENVIRONMENTAL PROTECTION AND POLLUTION CONTROL, above,) the League objected to the circumventing of the public participation component during the rule-making process.

**1995:** In recent years, public participation has emerged as a focus of LWV-TX advocacy efforts in the area of natural resources. During the legislative session, the League testified in favor of a measure that would establish the independence of the Office of Public Interest Council (OPIC) of the TNRCC and ensure adequate public representation on PIC. We testified against a measure that would have weakened OPIC's duties. Both bills died in committee.

A law enacted in 1995 directed the TNRCC to develop criteria to determine who is an affected person/party in the permitting/hearing process. LWV-TX will monitor to determine if rules are proposed that would limit public participation in permit hearings.

Public participation issues led the League representative to Task Force 21 (see ENVIRONMENTAL PROTECTION AND POLLUTION CONTROL, above,) along with representatives of other public interest groups, to resign from that advisory council in 1995. These representatives felt the council's decisions had been reopened and undermined during the legislative session. The League also objected to legislative action that resulted in loss of expense reimbursements for representatives to groups such as Task Force 21.

**1997:** Public participation in the environmental decision-making process was one of the League's two priority issues during the 75th Legislative session. The League, working with environmental and consumer groups, helped draft more than a dozen different pieces of

legislation that would have increased public participation in environmental decision making, but none passed and most never left committee. A bill directing TNRCC to do an annual enforcement report that will allow enforcement comparisons over a five-year period was the only League supported public participation bill signed into law. Some bills that the League opposed passed--a cost benefit analysis bill, also known as paralysis by analysis, and the Pine Island Bayou Storm Water Control District bill. The latter was considered a local bill although it will affect a federally protected ecosystem, the Big Thicket.

**1999:** As in 1997, public participation in environmental decision making was high on the League's legislative action list and, as in 1997, again met with mixed results. On the positive side an anti-contested case hearing bill, considered to be Public Enemy Number One, ended up as a bill that effectively enhances public participation by providing earlier notice and protection of the hearing process that is streamlined but retained. Upon hearing the serious criticisms of the original bill the sponsor invited proponents and opponents of his original bill to sit down, discuss their differences and try to mold a compromise. Rep. Tom Uher was successful and the bill was signed into law.

To quote our lobbyist, G.K. Sprinkle, "We made a difference." We can point with pride to the fact that we made legislators look at the issue of funding the travel of the public on key TNRCC advisory committees. The League succeeded in incorporating a rider allowing TNRCC to fund travel for public members to two key advisory committees.

A bill, supported by the League, that requires the responsible party to report accidental discharges or spills that may adversely affect a public or private source of drinking water within 24 hours, and provides the opportunity for public participation and notification, passed and was signed into law.

On the other hand the Right to Know, Right to Act Agenda did not fare well although early, timely notice was incorporated into the bill discussed above. The establishment of an independent Office of Public Interest Counsel at TNRCC, and the environmental justice issues involved in the siting of landfills remain two important issues that have NOT been put into law.

The governor signed a law that will prohibit TNRCC from requiring computer modeling of air pollutant emissions from concrete batch plants if TNRCC does some modeling in establishing a "standard exemption" for such plants, a move which will increase the difficulty for the public in using valid scientific data to protect the air.

**2001:** As in the past few sessions, LWV-TX continued to lobby hard in the area of public participation in environmental decision-making. Since the close of the 76<sup>th</sup> session LWV-TX has been a member of the Public Interest Sunset Working Group and later a member of the Alliance for a Clean Texas (ACT). The TNRCC Sunset/Reauthorization bill contained a number of changes that strengthen public participation in environmental protection:

- Cumulative impacts will be considered in issuing permits, an important environmental justice provision
- Anonymous citizen complaints will remain anonymous

- Timely responses by TNRCC to complaints received during non-business hours is now required.
- Citizen access to information and avenues for influencing permitting and enforcement decisions are now available. For example all advisory committee meeting minutes, pending permit and enforcement actions, and compliance histories and violations by repeat offenders must be posted on the agency website.
- The role of the TNRCC Executive Director in contested case hearings is now limited to solely providing administrative information for the record
- The mission of the Agency has been changed to bring balance to the role of economic development.

Another bill that strengthened public participation shifts the notice requirement for multiple plant air permits from TNRCC to the applicant for the permit, requires that the applicant publish notice statewide, and requires that TNRCC provide an opportunity for a public hearing and submission of public comment.

The biggest disappointment was the legislative failure to create an independent Office of Public Interest Counsel at TNRCC. However, a senate interim committee has been appointed to look into this issue that the League and its coalition partners have lobbied for during the past several sessions.

**2003:** As we have for a number of sessions, the League continued to follow the progress of reform of the TCEQ Office of Public Interest Counsel. Created by the legislature in 1977 to represent the public interest, the Office of Public Interest counsel was the subject of intense scrutiny during the TNRCC sunset review process in 2001. Legislation was filed to establish the independence of the Office of Public Interest Counsel, give Counsel the right to appeal commission decisions to courts, and allow Counsel to make recommendations to the legislature and participate in advisory committees. Advocates argued that “only with similar access to trained legal staff and technical experts that those seeking permits have, can people effectively participate in agency decisions that have a direct impact on the health, safety, and environment of their community.” In order to provide this level of expertise, the budget must be adequate to fund a technical staff or hire consultants to evaluate permit applications and other public interest issues that come before the Agency.

Although the effort to make OPIC independent passed the house but ultimately failed, progress was made in protecting public participation. The sunset legislation authorized OPIC to use outside technical support and to recommend needed legislative and regulatory changes. It directed the Executive Director to ensure that advisory committees, work groups, or task forces be used and that these groups have balanced representation. It further directed the legislature to complete an interim study on the need for an independent OPIC.

The Interim Joint Committee on Natural Resource Public Interest Counsel charges were to examine (a) the authority of the Counsel (including the authority to appeal decisions of the Texas Natural Resource Conservation Commission), (b) the resources needed to carry out the

function of the office, and (c) the relationship of the office to other public assistance efforts in the agency.

The Alliance for a Clean Texas, and the League of Women Voters of Texas, a member of the Alliance, urged the legislature to adopt the recommendations proposed by the Joint Interim Committee. The Joint Interim Committee's report recommended that the legislature:

- give the Office of the Public Interest Counsel an independent budget, including \$100,000 annually for outside technical expertise
- allow the Public Interest Counsel to appeal rules packages, if it appears that they were adopted without proper legal procedure or exceed the authority of the TCEQ
- allow the Public Interest Counsel to appeal when the Commission has substantially amended a proposal for decision from the State Office of Administrative Hearings, and appeal is necessary to serve the broad public interest.

Although a number of bills were introduced none of them passed. We will monitor the OPIC and wait for another session in which to reintroduce and support these proposed improvements.

**References available: (Advocacy Paper) TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) OFFICE OF PUBLIC INTEREST COUNSEL: *Public Participation in Environmental Decision-Making, 2003***

### **III. SOCIAL POLICY**

*Secure equal rights and equal opportunity for all. Promote social and economic justice and the health and safety of all Americans.*

#### ***CHILD CARE-***

*Support programs, services and policies at all levels of government to expand the supply of affordable, quality child care for all who need it, in order to increase access to employment and to prevent and reduce poverty.*

**LWV-TX Action:** Action to strengthen and expand the state's role in child-care programs was taken during the 1985 session in support of legislation enabling the Texas Employment Commission to provide public and private employees information and technical assistance regarding child care. LWV-TX also supported the successful legislation which allows counties to provide child-care services for employees and jurors and to set fees for those programs. Also see the LWV-TX Early Childhood.

#### ***EARLY INTERVENTION FOR CHILDREN AT RISK-***

*Support policies and programs at all levels of the community and government that promote the well-being, encourage the full development and ensure the safety of all children.*

#### **LWV-TX Action:**

**2009:** The governor's veto of House Bill 130, despite House and Senate passage of research-

based, enhanced quality legislation, ended state-wide coalition efforts to advance a full-day high-quality pre-k policy. The veto did not eliminate the \$25 million funding to the Public School Pre-kindergarten expansion program, which will go to the state's existing pre-k grant program. This was the largest appropriations increase for pre-k in the nation.

Additional legislative oversight and contracting transparency passed for the State Center for Early Childhood Development. Increased funding was obtained for TEEM, Early Childhood School Readiness Programs and the School Readiness Certification System. Plus, the passage of HB 635 (Guillen) allows Texas Head Start programs operated by school districts or community-based organizations to qualify for federal grant funding, such as the "E-Rate Program", that provides discounted access to technological and informational services in the classroom.

Other bills which passed include the following: SB 68 (Nelson) requires the Department of Family and Protective Services (DFPS), before adopting school-age program minimum standards, to convene a temporary work group to advise DFPS regarding the proposed standards; SB 90 (Van de Putte) allows adoption of the Interstate Compact on Educational Opportunity for Military Children; SB 95 (Van de Putte) prohibits the sale or use of unsafe children's products; providing a civil penalty; SB 282 (Nelson) funds a grant program to provide nutrition education to children.

### ***EQUALITY OF OPPORTUNITY-***

*Support equal access to education, employment, and housing; support ratification of the equal rights amendment and efforts to bring laws into compliance with the goals of the era.*

**LWV-TX Action:** During the 1985 Texas legislative session, the state League lobbied in support of measures that would have established state studies in the area of comparable worth and pay equity as a means of eliminating sex-based wage discrimination and alleviating the growing feminization of poverty.

### ***GUN CONTROL-***

*Protect the health and safety of citizens through limiting the accessibility and regulations the ownership of handguns and semi-automatic assault weapons. Support regulation of firearms for consumer safety.*

**1993 and 1995:** Utilizing this position and with the blessing of LWV-TX, several local Leagues opposed passage of legislation allowing Texans to carry concealed weapons. A concealed weapons law was enacted in 1995. The law required would-be weapons carriers to undergo training and be licensed by the state.

**2001:** Several gun control bills worked their way through the 77<sup>th</sup> session. Legislation, which did not pass, would have banned gun possession by juveniles convicted of felony-level crimes. Other legislation supported by the League, which also didn't pass, related to background checks of all sales at gun shows.

**2003:** There was a great deal of interest in who should be allowed to carry handguns and with allowing gun permit holders in other states to carry handguns in Texas. The League strongly opposes the new law that took away the power of the cities to have “Gun Free Zones” on designated municipal property. Courts, schools, and race-tracks were exempted.

**2015:** Texas continues to encourage the ownership and use of guns. Gun Laws passed this session include an Open Carry law which allows Concealed Handgun License (CHL) holders to carry a gun visibly and a Campus Carry law which allows CHL license holders to carry on public school colleges and universities.

### ***HEALTH CARE***

*Support programs and policies that will ensure availability of a basic level of quality health care at an affordable cost to all U.S. residents, equitable distribution of services, efficient and economical delivery of care, advancement of medical research and technology, and a reasonable total national expenditure level for health care.*

**LWV-TX Action:** In 1993, following adoption of the LWVUS position, health care was selected as a priority issue for the 73rd Legislative session. An Advocacy Paper, *Health Care in Texas: Condition—Critical; Rx—Major Surgery*, was written and distributed to all House and Senate members and to local Leagues throughout the state. According to the Advocacy Paper, the goals for LWV-TX in the session were to establish a health care system that covered all pregnant women, create an immunization program that pays for vaccine for all children whose families cannot afford this care, and to reform health insurance by making it available to everyone at a reasonable cost, creating a uniform, mandatory package of basic health care benefits, and eliminating deductibles and co-payments for a variety of preventive health screenings.

League testimony was delivered in both houses supporting the creation of an immunization program that met our established goal. Several variations of the bill were filed and ultimately combined. In coalition with other organizations, the League worked successfully behind the scenes to remove language from the bill that was onerous and punitive to poor children and their families. The bill was signed into law at a ceremony attended by League representatives.

The League also worked in support of a bill that passed addressing small employer access to health insurance by increasing the availability of insurance to employers of three (3) to fifty (50) persons. While the measure calls for voluntary employer participation, several factors may encourage small employers to join the system. The law allows for the creation of purchasing cooperatives, establishes the nonprofit Texas Health Benefits Purchasing Cooperative, requires insurers to use a modified community rating rather than an experience rating system, and stipulates a basic package of health care services that must be offered to employers who select the plan. Insurance carriers electing to offer the benefit plans set forth in the legislation must agree to accept all employers regardless of prior claim experience and to renew the employer’s health benefit plan.

The League supported successful legislation aimed at expanding health services in medically under-served areas. Support was also given to measures that failed, including creation of a cost containment council and limitations on a physician's ability to refer patients to a facility in which the physician or a family member has a significant ownership interest.

## ***IMMIGRATION POLICY***

*Immigration policies should promote reunification of immediate families; meet the economic, business and employment needs of the United States; and be responsive to those facing political persecution or humanitarian crises; and provide for student visas. Ensure fair treatment under the law for all persons. In transition to a reformed system, support provisions for unauthorized immigrants already in the country to earn legal status.*

### **History and action: Immigration**

**1997:** Because immigration is largely regulated by federal law, few bills relating to immigration were introduced during the 75<sup>th</sup> Legislature and no League action was taken. However, one of the League's legislative priorities in 1997, fair and adequate funding and delivery of vital state services in the era of block grants, encompassed the needs of all low income persons, immigrants as well as non-immigrants.

**2001:** Changes in federal law in 1996 and partial restoration of federal food stamps in 1998 still left many legal immigrants in Texas ineligible for food assistance. The League supported legislation to alleviate these hardships by requiring the Texas Department of Human Services to develop and implement a food assistance program.

**2007:** The immigration issue generated much sound and fury during the 80<sup>th</sup> Legislative session, but none of three bills supported by LWV-TX passed.

**2009:** The 81<sup>st</sup> Texas Legislature did provide a few minor affirmative measures like allowing children to be absent from school if they are involved in an immigration court hearing, and providing services and protection to victims of human trafficking. However, of the more than 100 immigration bills filed, more than 60 were anti-immigrant. One questionable bill that did pass was a measure which would provide deportation for those convicted of a misdemeanor involving family violence. According to the Progressive States Network the anti-immigration movement failed in most states, and Texas was rated as a somewhat integrated state.

## ***MEETING BASIC HUMAN NEEDS***

*Support programs and policies to prevent or reduce poverty and to promote self-sufficiency for individuals and families.*

**LWV-TX Action:** The League has been very active in the support of adequate benefit levels for the Texas Aid to Families with Dependent Children (AFDC) program, described previously in the state program section on Equal Opportunity/Income Assistance.

Opposition to state workfare legislation, which would have required work for AFDC adult recipients, was taken by the League in 1983 as the proposed bills did not clearly define nor fund training, education, work opportunities, or essential support services such as child care, medical care, or transportation for participants.

In 1985, the League lobbied for an interim legislative study of affordable housing in Texas and supported legislation which would allow the Texas Department of Human Services to collect information on teenage pregnancy in Texas and to serve as a clearinghouse for such data. The state League testified in 1987 that state funding for the administration of the Texas Food Stamp program was inadequate to serve those persons eligible for Food Stamps and that federal and state requirements for the processing and issuing of Food Stamps were not being met in many areas of the state. In subsequent sessions, LWV-TX has worked with the People First! Coalition to increase state funding for human service programs mandated by the federal government.

### ***URBAN POLICY-***

*Promote the economic health of cities and improve the quality of urban life*

**LWV-TX Action:** In 1982 and 1983, federal aid through block grants to Texas brought to our attention the need for public participation in the procedures for the administration and disbursement of block grant funds by the states. LWV-TX also focused on protection of civil rights and targeting funds to distressed areas and low-income individuals. Concerns were raised with the Texas Department of Human Services about the 1985 legislation that combined block grant public hearings with the statewide budget hearing.