HOUSE JOURNAL

SEVENTY-NINTH LEGISLATURE, FIRST CALLED SESSION

PROCEEDINGS

FIFTH DAY — WEDNESDAY, JULY 6, 2005

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 24).

Present — Mr. Speaker; Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Absent — Naishtat.

The invocation was offered by Reverend Clint Regen, associate pastor, Westlake Hills Presbyterian Church, Austin, as follows:

Almighty God, creator, redeemer, and sustainer, we come seeking your blessing upon the proceedings, deliberations, and actions of this legislative body.

We give you thanks for the work that is done in this place. We give thanks for those who have been called to represent the people of this great state. We thank you, O God, for the hard work of seeking justice and mercy—for the hard work of balancing freedom and responsibility. We ask for your guidance, for your wisdom, and for your grace.

Grant that the proceedings here today bring honor and glory to you. Grant that freedom and justice be administered for the people and that all who labor here today do so in a manner worthy of image bearers of God. Help them honor

one another in their disagreements, mindful of the calling we have to treat one another with dignity and respect. We ask these things, O God, because you are loving and because you are good. In Jesus' name I pray.

The speaker recognized Representative Keel who led the house in the pledges of allegiance to the United States and Texas flags.

REGULAR ORDER OF BUSINESS SUSPENDED

On motion of Representative Denny and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

HR 45 - ADOPTED
(by Zedler)

Representative Zedler moved to suspend all necessary rules to take up and consider at this time **HR 45**.

The motion prevailed.

The following resolution was laid before the house:

HR 45, Honoring James Williams for his service as an intern in the office of State Representative Bill Zedler during the 79th Legislative Session.

HR 45 was adopted.

HR 46 - ADOPTED
(by Zedler)

Representative Zedler moved to suspend all necessary rules to take up and consider at this time **HR 46**.

The motion prevailed.

The following resolution was laid before the house:

HR 46, Honoring Omid Rafiei for his service as an intern in the office of State Representative Bill Zedler during the 79th Legislative Session.

HR 46 was adopted.

HR 47 - ADOPTED
(by Zedler)

Representative Zedler moved to suspend all necessary rules to take up and consider at this time **HR 47**.

The motion prevailed.

The following resolution was laid before the house:

HR 47, Honoring Dustin Edwards for his service as an intern in the office of State Representative Bill Zedler during the 79th Legislative Session.

HR 47 was adopted.

HR 48 - ADOPTED
(by Zedler)

Representative Zedler moved to suspend all necessary rules to take up and consider at this time **HR 48**.

The motion prevailed.

The following resolution was laid before the house:

HR 48, Honoring David Bradley for his service as an intern in the office of State Representative Bill Zedler during the 79th Legislative Session.

HR 48 was adopted.

HR 49 - ADOPTED
(by Zedler)

Representative Zedler moved to suspend all necessary rules to take up and consider at this time **HR 49**.

The motion prevailed.

The following resolution was laid before the house:

HR 49, Honoring Talia Gaster for her service as an intern in the office of State Representative Bill Zedler during the 79th Legislative Session.

HR 49 was adopted.

HCR 1 - ADOPTED
(by Merritt, Van Arsdale, Baxter, Strama, and Naishtat)

Representative Merritt moved to suspend all necessary rules to take up and consider at this time **HCR 1**.

The motion prevailed.

The following resolution was laid before the house:

HCR 1, Congratulating The University of Texas Longhorns baseball team on winning the 2005 NCAA College World Series Championship.

HCR 1 was adopted.

On motion of Representative Farabee, the names of all the members of the house were added to **HCR 1** as signers thereof.

EMERGENCY CALENDAR
HOUSE BILLS
SECOND READING

The following bills were laid before the house and read second time:

CSHB 3 ON SECOND READING
(by J. Keffer)

CSHB 3, A bill to be entitled An Act relating to property tax relief and protection of taxpayers, taxes and fees, and other matters relating to the financing of public schools; providing civil and criminal penalties; making an appropriation.

(Naishtat now present)

Amendment No. 1

Representative J. Keffer offered the following amendment to **CSHB 3**:

Amend **CSHB 3** as follows:

(1) On page 1, line 11, strike "(d-3),".

(2) On page 2, strike lines 11-22 and substitute the following:

(d-2) Subsection (d-1) and this subsection expire January 1, 2006.

(3) Strike page 3, lines 4-7 and substitute the following:

SECTION 1A.02. (a) The changes in law made by this part apply to the maintenance and operations tax rate of a school district beginning with the 2005 tax year.

(b) If before the effective date of this part, the governing body of a school district adopted an ad valorem tax rate for the district for the 2005 tax year under the law in effect immediately before the effective date of this part, and the adopted ad valorem tax rate included a rate for maintenance and operations expenses that is greater than the maximum maintenance and operations tax rate for the 2005 tax year permitted under this part:

(1) on the effective date of this part, the ad valorem tax rate adopted for the district is invalidated; and

(2) the governing body shall adopt an ad valorem tax rate for the 2005 tax year in accordance with the changes in law made by this part.

(c) If tax bills for the 2005 tax year were sent by the tax assessor for a school district pursuant to a tax rate invalidated under Subsection (b)(1) of this section, the tax assessor for the school district shall prepare and mail a new tax bill for the 2005 tax year to each taxpayer of the district in the manner required by Chapter 31, Tax Code. If a tax payer pays the taxes for the 2005 tax year pursuant to a tax rate invalidated under Subsection (b)(1) of this section, the school district shall refund any difference between the tax paid and the tax due at the rate adopted under Subsection (b)(2) of this section.

(d) If this Act is passed by the legislature without receiving a vote of two-thirds of all the members elected to each house, any action taken before the effective date of this part in preparation for the implementation of the changes in law made by this part, including adoption of a maintenance and operations tax rate, by an officer or employee or the governing body of a school district that the officer, employee, or governing body determines is necessary or appropriate and that the officer, employee, or governing body would have been authorized to take had this part been in effect at the time of the action is validated as of the effective date of this part. Any public notice required by Chapter 26, Tax Code, or Chapter

44, Education Code, given before the effective date of this part that includes an additional statement that the tax rate for the school district will be adopted in accordance with the changes in law made by this part is validated as of the effective date of this part.

(4) On page 5, lines 7-8, strike "rollback tax rate of the district as provided by Section 26.08, Tax Code" and substitute "district's maintenance and operations tax rate for purposes of Chapter 42, Education Code".

(5) On page 7, line 27 through page 8, line 1, strike "rollback tax rate of the district as provided by Section 26.08, Tax Code" and substitute "district's maintenance and operations tax rate for purposes of Chapter 42, Education Code".

(6) On page 8, line 9, strike "weighted".

(7) On page 8, line 10, strike "42.302" and substitute "42.252".

(8) Strike page 8, line 16, and substitute the following:

SECTION 1B.03. Section 26.08(k), Tax Code, is

(9) On page 9, line 3, strike "weighted" and substitute "[~~weighted~~]".

(10) On page 9, line 7, strike "$0.06" and substitute "$0.04 [~~$0.06~~]".

(11) Strike page 9, line 9 through page 10, line 9.

(12) On page 10, between lines 9 and 10, insert the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION 1B.__. Section 26.08(k), Tax Code, is repealed.

(13) Strike page 10, line 19 through page 16, line 15, and substitute the following appropriately numbered section:

SECTION 1B.__. (a) Subchapters O and P, Chapter 403, Government Code, as added by this Act, expire on January 1 of the first tax year after the tax year in which all school district maintenance tax rates are less than $1.00 per $100 of taxable property. After that date, the legislature may appropriate for school district property tax rate reduction any amount of state revenue that would have been required to be used for school district tax rate reduction under those subchapters, as determined by the legislature.

(b) It is the intent of the legislature that Subchapters O and P, Chapter 403, Government Code, as added by this Act, be construed to provide that all additional state revenue resulting from the changes in law made by **HB 3**, Acts of the 79th Legislature, First Called Session, 2005, be used to provide school district tax rate reduction.

Amendment No. 1 was adopted.

Amendment No. 2

Representative J. Keffer offered the following amendment to **CSHB 3**:

Floor Packet Page No. 3

Amend **CSHB 3** as follows:

(1) On page 5, lines 7-8, strike "rollback tax rate of the district as provided by Section 26.08, Tax Code" and substitute "district's maintenance and operations tax rate for purposes of Chapter 42, Education Code".

(2) On page 7, line 27 through page 8, line 1, strike "rollback tax rate of the district as provided by Section 26.08, Tax Code" and substitute "district's maintenance and operations tax rate for purposes of Chapter 42, Education Code".

(3) On page 8, line 9, strike "weighted".

(4) On page 8, line 10, strike "42.302" and substitute "42.252".

(5) Strike page 8, line 16, and substitute the following:

SECTION 1B.03. Section 26.08(k), Tax Code, is

(6) On page 9, line 3, strike "weighted" and substitute "[~~weighted~~]".

(7) On page 9, line 7, strike "$0.06" and substitute "$0.04 [~~$0.06~~]".

(8) Strike page 9, line 9 through page 10, line 9.

(9) On page 10, between lines 9 and 10, insert the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION 1B.___. Section 26.08(k), Tax Code, is repealed.

Amendment No. 2 was withdrawn.

Amendment No. 3

Representative J. Keffer offered the following amendment to **CSHB 3**:

Floor Packet Page No. 5

Amend **CSHB 3** as follows:

(1) On page 17, line 6, strike "and (h)" and substitute "(h), and (i)".

(2) On page 18, between lines 12 and 13, insert:

(i) For purposes of Subsection (d):

(1) a corporation that is a foreign corporation is not doing business in this state solely because the corporation holds an interest in a real estate investment trust as defined by Section 856, Internal Revenue Code, or its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code; and

(2) a real estate investment trust or a "qualified REIT subsidiary" entity as defined in Subdivision (1) is not doing business in this state solely because the real estate investment trust or "qualified REIT subsidiary" entity holds a partnership interest, including an interest as an assignee, as a limited partner in a limited partnership that is doing business in this state, provided that the limited partnership satisfies the gross income requirements of Sections 856(c)(2) and 856(c)(3), Internal Revenue Code, and the asset valuation requirements of Section 856(c)(4), Internal Revenue Code.

Amendment No. 3 was adopted.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of illness in the family:

D. Jones on motion of B. Cook.

CSHB 3 - (consideration continued)

Amendment No. 4

Representative Miller offered the following amendment to **CSHB 3**:

Floor Packet Page No. 6

Amend **CSHB 3** as follows:

(1) On page 1, line 18, strike "$1.12" and substitute "$____".

(2) On page 2, line 6, strike "$1.23" and substitute "$____".

(3) On page 2, lines 24 and 26, strike "$1.23" and substitute "$____".

(4) On page 3, lines 1 and 2, strike "$1.12" and substitute "$____".

(5) Add the following appropriately lettered PART to ARTICLE 3 of the bill and reletter subsequent PARTS accordingly:

PART ___. ELECTRICITY AND GAS

SECTION 3_.01. Sections 321.201(a) and (b), Tax Code, are amended to read as follows:

(a) Each retailer in a municipality that has adopted a tax authorized by this chapter shall add each sales tax imposed by the municipality under this chapter and by Chapter 151 to the sales price, and the sum of the taxes is a part of the price, a debt of the purchaser to the retailer until paid, and recoverable at law in the same manner as the purchase price. [~~If the municipality imposes the tax on gas and electricity for residential use, only the municipal tax is added to the sales price of sales of gas and electricity for residential use.~~]

(b) The amount of the total tax is computed by multiplying the combined applicable tax rates[~~, or the rate of the municipal tax only for sales of gas and electricity for residential use in a municipality that imposes the tax on gas and electricity for residential use,~~] by the amount of the sales price. If the product results in a fraction of a cent less than one-half of one cent, the fraction of a cent is not collected. If the fraction of a cent is one-half of one cent or more, the fraction shall be collected as one cent.

SECTION 3_.02. Section 321.204(a), Tax Code, is amended to read as follows:

(a) In each municipality that has adopted the taxes authorized by this chapter, the taxes imposed by Section 321.104(a) and the tax imposed by Subchapter D, Chapter 151, are added together to form a single combined tax rate, except[~~:~~

[~~(1) in a municipality that imposes the tax on gas and electricity for residential use only the rate of the municipal tax is used to determine the amount of tax on the use, storage, or other consumption of gas and electricity for residential use; and~~

[~~(2)~~] only the rate of the municipal tax is used in a situation described by Section 321.205(b).

SECTION 3_.03. Section 321.208, Tax Code, is amended to read as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter[~~, except as provided by Section 151.317(b)~~].

SECTION 3_.04. Section 323.207, Tax Code, is amended to read as follows:

Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter[~~, except as provided by Section 151.317(b)~~].

SECTION 3_.05. The following provisions of the Tax Code are repealed:

(1) Section 151.317;

(2) Section 321.207(c); and

(3) Section 323.206(c).

SECTION 3_.06. LEGISLATIVE INTENT. It is the legislature's strong intention that, though the legislature has rarely conducted a referendum on matters of statewide importance, the will of the people should be honored and take precedence over any prior constitutional rule of law given the nature of this particularly important issue in our state.

SECTION 3_.07. REFERENDUM AND BALLOT PROPOSITION. At the general election to be held on November 8, 2005, the voters shall be permitted to vote in a referendum as provided by this section. The ballot shall be printed to provide for voting for or against the proposition: "Reduction in school district maintenance and operation property tax rates through imposing the state sales and use tax on electricity and gas." The proposition shall be printed on the ballot beneath the proposed constitutional amendments under the heading: "Referendum Proposition."

SECTION 3_.08. ELECTION PROCEDURE. (a) Notice of the election shall be given in the same manner that notice of proposed constitutional amendments is given.

(b) Returns of the votes cast on the proposition shall be prepared and canvassed in the same manner as the returns on proposed constitutional amendments.

(c) Immediately after the results of the election are certified by the governor, the secretary of state shall transmit a copy of the certification to the lieutenant governor and the speaker of the house of representatives.

SECTION 3_.09. EFFECT OF ELECTION. (a) If a majority of the votes cast in the referendum oppose the proposition, Sections 3__.01-3__.05 of this part do not take effect.

(b) If a majority of the votes cast in the referendum favor the proposition, Sections 3__.01-3__.05 of this part take effect January 1, 2006.

SECTION 3_.10. CONSTRUCTION. (a) Except as provided in Subsection (b) of this section, the rules of construction stated in Section 311.032, Government Code, apply to the construction of this part.

(b) If a majority of votes cast in the referendum opposes the proposition and subsequently the sections of this part requiring a referendum are held invalid by a final judgment of a court of competent jurisdiction, this part expires on the date that the judgment of the court becomes final and the law amended by this part exists as if this part were not enacted.

SECTION 3_.11. This part takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect on the 91st day after the last day of the legislative session.

Amendment No. 5

Representative Miller offered the following amendment to Amendment No. 4:

Amend Amendment No. 4 by Miller to **CSHB 3** (page 6 of the amendment packet) on page 2 of the amendment, between lines 27 and 28 by inserting the following:

SECTION 3__.042. Section 151.318, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The exemption does not include gas or electricity.

SECTION 3_.043. Section 151.328, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) The exemption provided by this section does not apply to gas or electricity used or consumed in relation to repair, remodeling, or maintenance services otherwise exempt under this section.

Amendment No. 5 was adopted.

Amendment No. 4, as amended, was withdrawn.

Amendment No. 6

Representative Coleman offered the following amendment to **CSHB 3**:

Floor Packet Page No. 235

Amend **CSHB 3**, beginning on page 3, line 8, by striking PART B, BUY-DOWN OF SCHOOL DISTRICT TAXES in its entirety.

(W. Smith in the chair)

A record vote was requested.

Amendment No. 6 failed of adoption by (Record 25): 56 Yeas, 86 Nays, 2 Present, not voting.

Yeas — Alonzo; Anchia; Burnam; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Eiland; Escobar; Farrar; Flores; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Griggs; Guillen; Haggerty; Hamilton; Herrero; Hochberg; Hodge; Hopson; Jones, J.; King, T.; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Thompson; Turner; Uresti; Veasey; Vo.

Nays — Allen, A.; Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Denny;

Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Grusendorf; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Villarreal; West; Woolley; Zedler.

Present, not voting — Mr. Speaker; Smith, W.(C).

Absent, Excused — Jones, D.

Absent — Bailey; Delisi; Dukes; Wong.

STATEMENTS OF VOTE

When Record No. 25 was taken, my vote failed to register. I would have voted no.

Delisi

When Record No. 25 was taken, my vote failed to register. I would have voted no.

Wong

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business:

Dukes on motion of Rose.

CSHB 3 - (consideration continued)

Amendment No. 7

Representative Villarreal offered the following amendment to **CSHB 3**:

Floor Packet Page No. 239

Amend proposed **CSHB 3** as follows:

(1) In SECTION 1B.01 of the bill, proposed Section 403.351, Government Code, strike "DEFINITIONS." and substitute "CALCULATION OF AVAILABLE STATE REVENUE AND INCREASE IN AVAILABLE STATE REVENUE. (a)".

(2) In SECTION 1B.01 of the bill, proposed Section 403.351, Government Code, between Subdivisions (1) and (2), insert the following and renumber Subdivision (2) of the section as Subdivision (3):

(2) "Federal mandate" means a statutory provision that is enacted by the United States Congress, or a regulation or order implementing a federal statute that is prescribed or issued by a federal officer or federal agency in the executive branch of the federal government, and that requires this state to

establish, expand, or change an activity in a way that requires an expenditure of revenue that would not have been required in the absence of the statutory provision, regulation, or order.

(3) In SECTION 1B.01 of the bill, following proposed Section 403.351(2), Government Code, insert the following:

(b) For purposes of this section, a federal mandate is considered to be unfunded during any period for which the federal government has not provided, by appropriation or otherwise, for this state to receive federal funds in an amount estimated to be sufficient to meet the cost of complying with or implementing the mandate. If the United States Congress provides for funds by authorizing or requiring this state to collect a regulatory or user fee that the federal government will impose or that this state is authorized to impose on persons who engage in an activity that is the subject of or is directly connected to the subject of the federal mandate, the anticipated revenue from the fee is considered for purposes of this section to be funds provided by the federal government to pay for the costs of the federal mandate.

(c) Subsection (b) does not apply to:

(1) a federal mandate the existence of which is necessary for compliance with a requirement of the United States Constitution or a court order;

(2) a federal law that creates a criminal offense or changes the elements of a criminal offense; or

(3) a decision or order by a federal officer or federal agency that requires this state to comply with, or that sanctions this state for failure to comply with, a law, regulation, or order that is not an unfunded federal mandate to which Subsection (b) applies.

(d) For purposes of this section, available state revenue excludes the amount of state revenue, other than federal funds or revenue that, under a provision of the Texas Constitution, may be used only for a particular purpose, that this state is required to spend to comply with or implement an unfunded federal mandate.

(e) In the statement required by Section 49a, Article III, Texas Constitution, in advance of a regular session of the legislature, the comptroller shall include a description of each unfunded federal mandate and the estimated amount of state revenue, other than federal funds or revenue that, under a provision of the Texas Constitution, may be used only for a particular purpose, that is required to be spent to comply with or implement the mandate.

(f) In calculating the increase in available state revenue for purposes of this section, the comptroller shall adjust the estimate made by the comptroller in advance of a regular session of the legislature under Section 49a(a), Article III, Texas Constitution, of available state revenue for the succeeding state fiscal biennium:

(1) to reflect the change in the purchasing power of the dollar since the date of the preceding estimate made by the comptroller under that subsection, using the average of:

(A) the consumer price index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the change in the price of medical care services purchased by urban wage earners and clerical workers (CPI-W: Seasonally Adjusted U.S. City Average–Medical Care Services); and

(B) the consumer price index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the change in the price of education purchased by urban wage earners and clerical workers (CPI-W: Seasonally Adjusted U.S. City Average–Education); and

(2) to account for the percentage change in the population of the state determined by the most recent decennial census or the most recent official population estimate of the United States Department of Commerce Bureau of the Census as compared to the population two years before that census or estimate.

Representative Chisum moved to table Amendment No. 7.

The motion to table prevailed.

Amendment No. 8

Representative Villarreal offered the following amendment to **CSHB 3**:

Floor Packet Page No. 244

Amend **CSHB 3** by striking page 3, lines 15-25, and substituting the following:

(1) "Available state revenue" means state revenue from the general revenue fund, available school fund, state textbook fund, foundation school fund, or any other fund created by the 79th Legislature specifically for the support of public education, other than federal funds or revenue that, under a provision of the Texas Constitution, may be used only for a particular purpose.

(2) "Increase in available state revenue" means the amount by which the estimate made by the comptroller in advance of a regular session of the legislature under Section 49a(a), Article III, Texas Constitution, of available state revenue for the succeeding state fiscal biennium exceeds the estimate made by the comptroller as required by Section 403.0131 of available state revenue for the current state fiscal biennium.

Representative Chisum moved to table Amendment No. 8.

A record vote was requested.

The motion to table prevailed by (Record 26): 80 Yeas, 59 Nays, 2 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Griggs; Grusendorf; Haggerty; Hamric; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McCall; Merritt; Miller; Morrison; Mowery;

Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rodriguez; Seaman; Smith, T.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Burnam; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Guillen; Hamilton; Herrero; Hochberg; Hodge; Homer; Hopson; Jones, J.; King, T.; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker; Smith, W.(C).

Absent, Excused — Dukes; Jones, D.

Absent — Cook, B.; Goolsby; Hardcastle; Isett; Laney; Wong.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 26. I intended to vote no.

Rodriguez

When Record No. 26 was taken, I was in the house but away from my desk. I would have voted yes.

Wong

Amendment No. 9

Representative Flores offered the following amendment to **CSHB 3**:

Floor Packet Page No. 10

Amend **CSHB 3** (House Committee Report) as follows:

(1) On page 1, line 18, strike "$1.12" and substitute "$1.09".

(2) On page 2, line 6, strike "$1.23" and substitute "$1.228".

(3) On page 2, line 24, strike "$1.23" and substitute "$1.228".

(4) On page 2, line 26, strike "$1.23" and substitute "$1.228".

(5) On page 3, line 1, strike "$1.12" and substitute "$1.09".

(6) On page 3, line 2, strike "$1.12" and substitute "$1.09".

(7) Add the following appropriately numbered ARTICLES to the bill and renumber subsequent ARTICLES of the bill accordingly:

ARTICLE __. VIDEO LOTTERY AS PART OF STATE LOTTERY; REFERENDUM

SECTION __.01. Section 466.002, Government Code, is amended by amending Subdivisions (2) and (4)-(10) and adding Subdivisions (11)-(36) to read as follows:

(2) "Communication technology" means the methods used and the components employed to facilitate the transmission of information, including transmission and reception systems that transmit information through wire, cable, radio, microwave, light, optics, or computer data networks.

(3) "Director" means a [~~the~~] director employed by the executive director under Section 467.033 [~~of the division~~].

(4) "Disable" with respect to video lottery terminals means the process that causes a video lottery terminal to cease functioning on issuance of a shutdown command from the video lottery central system.

(5) "Distribute," with respect to a video lottery terminal, an electronic computer component of a video lottery terminal, the cabinet in which a video lottery terminal is housed, video lottery equipment, or video lottery game software intended for use or play in this state, including on Indian lands in this state, means the sale, lease, marketing, offer, or other disposition of any of those items.

(7) "Electronic storage medium," with respect to video lottery, means the electronic medium on which the operation software for a game playable on a video lottery terminal is stored, in the form of erasable programmable read only memory, compact disc-read only memory, flash random access memory, or other technology medium the commission approves for use in a video lottery terminal.

(8) [~~(4)~~] "Executive director" means the executive director of the commission.

(9) "Gaming agreement" means an agreement authorized under Subchapter K between this state and a federally recognized Indian tribe under which this state allows the tribe to conduct limited gaming activities authorized under this chapter or applicable federal law.

(10) "House-banked game" means a game of chance:

(A) in which the house plays as a participant;

(B) in which the house competes against all players, collects from all losers, and pays all winners; and

(C) that the house has an opportunity to win.

(11) "Indian lands" means land over which an Indian tribe exercises governmental power and:

(A) that is held in trust by the United States on January 1, 1998, for the benefit of the Indian tribe or an individual member of the Indian tribe pursuant to the Restoration Acts (25 U.S.C. Section 731 and 25 U.S.C. Section 1300 et seq.); or

(B) on which Class III gaming is permitted under the Indian Gaming Regulatory Act (18 U.S.C. Section 1166 et seq. and 25 U.S.C. Section 2701 et seq.).

(12) "Institutional investor" means:

(A) a state or federal government pension plan; or

(B) any of the following that meets the requirements of a "qualified institutional buyer" as defined in Rule 144A, Securities Act of 1933 (15 U.S.C. Sections 77a-77aa), and the rules and regulations adopted under that rule by the United States Securities and Exchange Commission:

(i) a bank as defined by Section 3(a)(6), Securities Exchange Act of 1934 (15 U.S.C. Sections 78a-78kk), and the rules and regulations adopted under that act by the United States Securities and Exchange Commission;

(ii) an insurance company as defined by Section 2(a)(17), Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(iii) an investment company registered under Section 8, Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(iv) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the Securities and Exchange Commission;

(v) a group composed entirely of persons specified by this subdivision; or

(vi) any other person the commission recognizes as an institutional investor for reasons consistent with the policies expressed in this chapter.

(13) [~~(5)~~] "Lottery" means the state lottery established and operated in accordance with the Texas Constitution under this chapter and includes the operation of a state-controlled and determined video lottery system [~~procedures operated by the state under this chapter through which prizes are awarded or distributed by chance among persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize~~].

(14) [~~(6)~~] "Lottery game" means an activity conducted lawfully and in accordance with the Texas Constitution and this chapter that is controlled by this state as part of the state lottery and through which prizes are awarded or distributed by chance to persons who have paid or unconditionally agreed to pay, or who otherwise participate in a game, for a chance or other opportunity to receive a prize [~~includes a lottery activity~~].

(15) [~~(7)~~] "Lottery operator" means a person selected under Section 466.014(b) to operate a lottery game.

(16) "Manufacture," with respect to a video lottery terminal, an electronic computer component of a video lottery terminal, the cabinet in which a video lottery terminal is housed, video lottery equipment, or video lottery game software intended for use or play in this state, including on Indian lands in this state, means to design, assemble, fabricate, produce, program, or make modifications to any of those items.

(17) "Net terminal income" means the total amount of money paid to play video lottery games less the value of all credits redeemed for money, including any progressive prizes, by the players of the video lottery games. The costs associated with progressive prizes may not be deducted from the total amount of money paid to play the video lottery games for purposes of determining net terminal income. Promotional prizes offered by a video lottery retailer or video lottery manager may not be deducted or otherwise considered credits redeemed for money by players for the purpose of determining net terminal income.

(18) "Pari-mutuel license holder" means a person licensed to conduct wagering on a greyhound race or a horse race under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(19) "Person" means, for purposes of video lottery operations, any natural person, corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature.

(20) [~~(8)~~] "Player" means a person who contributes any part of the consideration for a ticket or to play a video lottery game under this chapter.

(21) "Racetrack" means a racetrack as defined by Section 1.03(25), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), that is:

(A) a class 1, class 2, or class 3 horse racetrack for which a pari-mutuel license was in effect on June 1, 2005, or for which a person by that date had applied for a pari-mutuel license to conduct horse racing as a class 1 or class 2 racetrack; or

(B) a greyhound racetrack for which a pari-mutuel license was in effect on June 1, 2005, or for which a person by that date had applied for a pari-mutuel license to conduct greyhound racing.

(22) [~~(9)~~] "Sales agent" or "sales agency" means a person licensed under this chapter to sell tickets.

(23) "Slot machine" means a mechanical, electrical, or other type of device, contrivance, or machine that plays or operates on insertion of a coin, currency, token, or similar object or on payment of any other consideration, and the play or operation of which, through the skill of the operator, by chance, or both, may deliver to the person playing or operating the machine, or entitle the person to receive, cash, premiums, merchandise, tokens, or any other thing of value, whether the payoff is made automatically from the machine or in any other manner. The term does not include any equipment, machine, technological aid, or other device used or authorized in connection with the play of bingo under Chapter 2001, Occupations Code.

(24) "Substantial interest holder" means any of the following that is not a bona fide lender, bank, or other authorized or licensed lending institution that holds a mortgage or other lien acquired in the ordinary course of business or a vendor of the applicant or license holder that is not otherwise a substantial business holder:

(A) a person who directly, indirectly, or beneficially owns any interest in a privately owned corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature;

(B) a person who directly, indirectly, or beneficially owns 10 percent or more of any publicly owned corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature;

(C) a person associated with an applicant or license holder who the commission determines has the power or authority to:

(i) control the activities of the applicant or license holder; or

(ii) elect or select the executive director, the managers, the partners, or a majority of the board of directors of the applicant or license holder; and

(D) any key personnel of a video lottery retailer or video lottery manager, including an executive director, officer, director, manager, member, partner, limited partner, executive, employee, or agent, who the commission determines has the power to exercise significant influence over decisions concerning any part of the applicant's or license holder's business operation.

(25) [~~(10)~~] "Ticket" means any tangible evidence issued to provide participation in a lottery game authorized by this chapter other than a video lottery game.

(26) "Video lottery central system" means the system of procedures and facilities operated and controlled by the commission that is designed to link together all video lottery terminals operated in this state, determines the outcome of all video lottery games, and allows the commission to continuously monitor the activity of each video lottery terminal and to disable any video lottery terminal in this state.

(27) "Video lottery central system provider" means a person that, under a contract with the commission, provides the video lottery central system.

(28) "Video lottery equipment" means:

(A) a video lottery terminal;

(B) equipment, a component, or a contrivance used remotely or directly in connection with a video lottery terminal to:

(i) affect the reporting of gross revenue and other accounting information, including a device for weighing and counting money;

(ii) connect video lottery terminals together for accounting or wide-area prize or promotional purposes;

(iii) monitor video lottery terminal operations; and

(iv) provide for the connection of video lottery terminals to the video lottery central system; or

(C) any other communications technology or equipment necessary for the operation of a video lottery terminal.

(29) "Video lottery game" means an electronically simulated game displayed on a video lottery terminal the outcome of which is determined solely by chance based on a computer-generated random selection of winning combinations of symbols or numbers other than roulette, dice, or baccarat game themes associated with casino gambling, except that game themes displaying symbols that roll on drums to simulate a classic casino slot machine or themes of other card games and keno may be used.

(30) "Video lottery manager" means a person who:

(A) is licensed by the commission under this chapter to manage a video lottery terminal establishment; or

(B) provides management services for a video lottery terminal establishment on Indian lands for an Indian tribe that has entered into an agreement with the governor for the operation of video lottery games.

(31) "Video lottery retailer" means a person licensed to operate a video lottery terminal establishment at which video lottery games are conducted under Subchapter K.

(32) "Video lottery system" means the system authorized under Subchapter K and controlled and operated by the commission under which individuals play lottery games on video lottery terminals as authorized under that subchapter.

(33) "Video lottery terminal" means an interactive electronic device that is capable of displaying video lottery games.

(34) "Video lottery terminal establishment" means premises at which the operation of video lottery terminals is authorized by the commission under this chapter in accordance with a license or a gaming agreement.

(35) "Video lottery terminal provider" means a person in the business of manufacturing or distributing video lottery terminals in this state.

(36) "Video lottery ticket" means the tangible evidence issued by a video lottery terminal to reflect winnings from the play of a video lottery game.

SECTION __.02. Section 466.003, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Any [~~A~~] contract or authorized agreement between the division and a lottery operator, the video lottery central system provider, a video lottery terminal provider, or a manufacturer or distributor of video lottery games under Section 466.014(b) must contain a provision allowing the contract or authorized agreement to be terminated without penalty should the division be abolished unless another state agency is assigned to control and supervise all video lottery game activity as required by this chapter.

(c) Notwithstanding Subsection (a), if any gaming agreement that allows video lottery is in effect, the commission or another state agency designated by the legislature must operate, control, and supervise video lottery games as necessary to comply with a gaming agreement under this chapter.

SECTION __.03. Section 466.004(a), Government Code, is amended to read as follows:

(a) A political subdivision of this state may not impose:

(1) a tax on the sale of a ticket;

(2) a tax on the payment of a prize under this chapter; [~~or~~]

(3) an ad valorem tax on tickets;

(4) a tax, fee, or other assessment on consideration paid to play a video lottery game; or

(5) a tax or fee for attendance at or admission to a video lottery establishment or a racetrack at which a video lottery establishment is located unless specifically authorized by statute.

SECTION __.04. Section 466.014, Government Code, is amended to read as follows:

Sec. 466.014. POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR; CONTRACT AUTHORITY. (a) The commission and executive director have broad authority and shall exercise strict control and close supervision over [~~all~~] lottery games [~~conducted in this state~~] to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery.

(b) The executive director may contract with or employ a person to perform a function, activity, or service in connection with the operation of the lottery as prescribed by the executive director. A contract relating to the operation of video lottery must be consistent with Subchapter K. Except as provided by this subsection, a [~~A~~] person with whom the executive director contracts to operate a lottery game must be eligible for a sales agent license under Section 466.155. A person with whom the executive director contracts to provide the video lottery central system must be eligible under the same standards as those applicable to the registration or approval by the commission of a video lottery terminal provider in accordance with Subchapter K.

(c) The executive director may award a contract for lottery supplies, equipment, or services, including a contract under Subsection (b), pending the completion of any investigation and licensing, registration, or other approval authorized or required by this chapter. A contract awarded under this subsection must include a provision permitting the executive director to terminate the contract without penalty if the investigation reveals that the person to whom the contract is awarded would not be eligible for a sales agent license under Section 466.155 or with regard to video lottery does not satisfy the applicable requirements for licensing, registration, or other approval under Subchapter K.

(d) In the acquisition or provision of facilities, supplies, equipment, materials, or services related to the implementation of video lottery, the commission must comply with procurement procedures prescribed under:

(1) Subtitle D, Title 10; and

(2) Section 466.101.

SECTION __.05. Section 466.015(b), Government Code, is amended to read as follows:

(b) The commission shall adopt rules to the extent they are not inconsistent with Chapters 551 and 552 governing the:

(1) security for the lottery and the commission, including the development of an internal security plan;

(2) apportionment of the total revenues from the sale of tickets and from all other sources in the amounts provided by this chapter;

(3) enforcement of prohibitions on the sale of tickets to or by an individual younger than 21 [~~18~~] years of age; [~~and~~]

(4) enforcement of prohibitions on a person playing a lottery game by telephone; and

(5) enforcement of prohibitions provided by law on the sale of any purchase or play of a video lottery game.

SECTION __.06. Section 466.017, Government Code, is amended to read as follows:

Sec. 466.017. AUDITS. (a) The commission [~~executive director~~] shall contract with the state auditor for the state auditor [~~provide for a certified public accountant~~] to conduct an independent audit of the commission's annual financial statements in accordance with the standards applicable to financial audits under the Government Auditing Standards (2003 Revision) issued by the Comptroller General of the United States [~~for each fiscal year of all accounts and transactions~~

~~of the lottery. The certified public accountant may not have, as determined by the executive director, a significant financial interest in a sales agent, lottery vendor, or lottery operator. The certified public accountant shall present an audit report to the executive director, the commission, the governor, the comptroller, and the legislature not later than the 30th day after the submission date for the annual financial report required by the General Appropriations Act. The report must contain recommendations to enhance the earnings capability of the lottery and improve the efficiency of lottery operations. The state auditor may review the results of and working papers related to the audit~~].

(b) The records of a [~~Each~~] lottery operator, sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider [~~operator's and sales agent's records~~] are subject to audit by the commission and the state auditor. For the purpose of carrying out this chapter, the executive director or state auditor may examine all books, records, papers, or other objects that the executive director or state auditor determines are necessary for conducting a complete examination under this chapter and may also examine under oath any officer, director, or employee of a lottery operator, [~~or~~] sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider. The executive director or state auditor may conduct an examination at the principal office or any other office of the person subject to the audit [~~lottery operator or sales agent~~] or may require the person [~~lottery operator or sales agent~~] to produce the records at the office of the commission or state auditor. If a sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider refuses to permit an examination or to answer any question authorized by this subsection, the executive director may summarily suspend the license or registration of the sales agent, video lottery manager, video lottery retailer, or video lottery terminal provider under Section 466.160 or Subchapter K until the examination is completed as required. A video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider that is audited as provided by this section is responsible for the costs incurred by the commission or auditor in conducting the audit. Section 321.013(h) does not apply to an audit of a lottery operator, [~~or~~] sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider.

SECTION __.07. Section 466.018, Government Code, is amended to read as follows:

Sec. 466.018. INVESTIGATIONS. The attorney general, the district attorney for Travis County, or the district attorney, criminal district attorney, or county attorney performing the duties of district attorney for the county in which the violation or alleged violation occurred may investigate a violation or alleged violation of this chapter and of the penal laws of this state by the commission or its employees, a sales agent, a lottery vendor, [~~or~~] a lottery operator, a video lottery manager, a video lottery retailer, a video lottery terminal provider, or a video lottery central system provider.

SECTION __.08. Sections 466.020(c), (d), and (e), Government Code, are amended to read as follows:

(c) A security officer or investigator employed by the department of security or a peace officer who is working in conjunction with the commission or the Department of Public Safety in the enforcement of this chapter may:

(1) [~~,~~] without a search warrant, [~~may~~] search and seize a lottery vending machine, lottery computer terminal, video lottery terminal, or other lottery or gaming equipment that is located on premises for which a person holds a sales agent, video lottery retailer, or video lottery manager license issued under this chapter; or

(2) seize a lottery vending machine, lottery computer terminal, video lottery terminal, or other lottery or gaming equipment that is being used or is in the possession of any person in violation of this chapter.

(d) The Department of Public Safety or any other state or local law enforcement agency in this state, at the commission's request and in accordance with an interagency agreement, shall perform a full criminal background investigation of a prospective deputy or investigator of the department of security. The commission shall reimburse the agency [~~Department of Public Safety~~] for the actual costs of an investigation.

(e) At least once every two years, the executive director shall employ an independent firm that is experienced in security, including computer security and systems security, to conduct a comprehensive study of all aspects of lottery security, including:

(1) lottery personnel security;

(2) sales agent security;

(3) lottery operator and vendor security;

(4) security against ticket counterfeiting and alteration and other means of fraudulent winning;

(5) security of lottery drawings;

(6) lottery computer, data communications, database, and systems security;

(7) lottery premises and warehouse security;

(8) security of distribution of tickets;

(9) security of validation and payment procedures;

(10) security involving unclaimed prizes;

(11) security aspects of each lottery game;

(12) security against the deliberate placement of winning tickets in lottery games that involve preprinted winning tickets by persons involved in the production, storage, transportation, or distribution of tickets; [~~and~~]

(13) security of video lottery retailers, video lottery managers, video lottery terminal providers, and video lottery central system providers; and

(14) other security aspects of lottery operations, including video lottery game operations.

SECTION __.09. Section 466.021(a), Government Code, is amended to read as follows:

(a) The executive director shall, every two years, employ an independent firm experienced in demographic analysis to conduct a demographic study of lottery players. The study must examine [~~include~~] the income, age, sex, race, education, and frequency of participation of players. The study must distinguish between players of traditional lottery games and video lottery games.

SECTION __.10. Section 466.022, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) In addition to commission records excepted from disclosure under Chapter 552, the following information is confidential and is exempt from disclosure:

(1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery;

(2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets or numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers; [~~and~~]

(3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information;

(4) information relating to all system operations of video lottery games, including the operation of the video lottery system, security related to video lottery games, and commission plans and procedures intended to ensure the integrity and security of the operation of video lottery games; and

(5) information that pertains to an applicant's criminal record, antecedents, and background and is furnished to or obtained by the commission from any source, including information obtained by the commission under Section 411.108(d).

(c) Information that qualifies as confidential under Subsection (b)(4) or (5) may be disclosed in whole or in part only as necessary to administer this chapter or under a court order. The commission, subject to appropriate procedures, may disclose the information and data to an authorized agent of a political subdivision of this state, the United States, another state or a political subdivision of another state, a tribal law enforcement agency, or the government of a foreign country.

(d) For the annual report required under Section 466.016, the commission may disclose a compilation of statistical information that is otherwise confidential under Subsection (b)(4) if the compilation does not disclose the identity of an applicant, license or registration holder, or video lottery establishment.

(e) Notwithstanding any other provision of state law, the information provided under Subsection (d) or (e) may not otherwise be disclosed without specific commission authorization.

SECTION __.11. Section 466.024, Government Code, is amended to read as follows:

Sec. 466.024. PROHIBITED GAMES. (a) Except as provided by Chapter 2004, Occupations Code, the [~~The~~] executive director, [~~or~~] a lottery operator, a video lottery manager, a video lottery retailer, a video lottery terminal provider, or a video lottery central system provider may not establish or operate a lottery game in which the winner is chosen on the basis of the outcome of a sports event.

(b) Except as provided by Chapter 2001, Occupations Code, the [~~The commission shall adopt rules prohibiting the~~] operation of any game using a video lottery machine, slot [~~or~~] machine, or other gambling device that is not connected to the video lottery central system and controlled and supervised by the commission is prohibited.

(c) In this section, "sports[~~:~~

[~~(1) "Sports~~] event" means a football, basketball, baseball, or similar game, or a horse or dog race on which pari-mutuel wagering is allowed.

[~~(2) "Video lottery machine" or "machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including video poker, keno, and blackjack, using a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens, or that directly dispenses cash, coins, or tokens.~~]

SECTION __.12. Section 466.025, Government Code, is amended to read as follows:

Sec. 466.025. REPORTS OF TICKETS SOLD, NET TERMINAL INCOME, AND PRIZES AWARDED. For each lottery game, other than a video lottery game, after the last date on which a prize may be claimed under Section 466.408(d), the director shall prepare a report that shows the total number of tickets sold and the number and amounts of prizes awarded in the game. The report must be available for public inspection. For video lottery games, the director shall prepare a weekly report that shows net terminal income for the preceding week.

SECTION __.13. Section 466.103(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the executive director may not award a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who:

(1) would be denied a license as a sales agent under Section 466.155; or

(2) with regard to video lottery equipment:

(A) is not a registered video lottery terminal provider if registration is required; or

(B) would be deemed unsuitable to be a video lottery terminal provider under Subchapter K.

SECTION __.14. Section 466.110, Government Code, is amended to read as follows:

Sec. 466.110. PROHIBITED ADVERTISEMENTS. The legislature intends that advertisements or promotions sponsored by the commission or the division for the lottery not be of a nature that unduly influences any person to purchase a lottery ticket or number or play a video lottery game.

SECTION __.15. Section 466.151(b), Government Code, is amended to read as follows:

(b) The executive director may establish a provisional license or other classes of licenses necessary to regulate and administer the quantity and type of lottery games provided at each licensed location of a sales agent.

SECTION __.16. Section 466.158(a), Government Code, is amended to read as follows:

(a) Unless suspended or revoked, a license issued under this subchapter expires on the date specified in the license, which may not be later than the second anniversary of its date of issuance.

SECTION __.17. Section 466.201(a), Government Code, is amended to read as follows:

(a) The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of:

(1) a sales agent or an applicant for a sales agent license;

(2) a person required to be named in a license application;

(3) a lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider, or prospective lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider;

(4) an employee of a lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider or prospective lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider, if the employee is or will be directly involved in lottery operations;

(5) a person who manufactures or distributes lottery equipment or supplies, or a representative of a person who manufactures or distributes lottery equipment or supplies offered to the lottery;

(6) a person who has submitted a written bid or proposal to the commission in connection with the procurement of goods or services by the commission, if the amount of the bid or proposal exceeds $500;

(7) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license;

(8) a person who proposes to enter into or who has a contract with the commission to supply goods or services to the commission; or

(9) if a person described in Subdivisions (1) through (8) is not an individual, an individual who:

(A) is an officer or director of the person;

(B) holds more than 10 percent of the stock in the person;

(C) holds an equitable interest greater than 10 percent in the person;

(D) is a creditor of the person who holds more than 10 percent of the person's outstanding debt;

(E) is the owner or lessee of a business that the person conducts or through which the person will conduct lottery-related activities;

(F) shares or will share in the profits, other than stock dividends, of the person;

(G) participates in managing the affairs of the person; or

(H) is an employee of the person who is or will be involved in:

(i) selling tickets; or

(ii) handling money from the sale of tickets.

SECTION __.18. Subchapter E, Chapter 466, Government Code, is amended by adding Section 466.206 to read as follows:

Sec. 466.206. CRIMINAL HISTORY INVESTIGATION FOR VIDEO LOTTERY. (a) Except as otherwise provided by this section, Sections 466.020 and 466.201, and Subchapter K, a criminal history investigation of a video lottery retailer, video lottery manager, video lottery terminal provider, or video lottery central system provider is governed by commission rules adopted under Subchapter K, which may consider a criminal history investigation conducted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(b) The Department of Public Safety or a state or local law enforcement agency in this state, in accordance with an interagency agreement with the commission, shall provide any assistance requested by the commission in the administration and enforcement of this chapter, including conducting background investigations of a person seeking a license, registration, or other commission authorization required under Subchapter K or of any person required to be named in an application for a license, registration, or other commission authorization under that subchapter.

(c) This section does not limit the commission's right to obtain criminal history record information from any other local, state, or federal agency. The commission may enter into a confidentiality agreement with the agency as necessary and proper.

(d) Except as otherwise provided by Section 411.108(d) or another provision of this chapter, criminal history record information obtained by the commission under this section may be disclosed only:

(1) to another law enforcement agency to assist in or further an investigation related to the commission's operation and oversight of video lottery; or

(2) under a court order.

SECTION __.19. Section 466.252, Government Code, is amended to read as follows:

Sec. 466.252. PLAYER [~~PURCHASE OF TICKET~~] AGREEMENT TO ABIDE BY RULES AND INSTRUCTIONS. (a) By purchasing a ticket in a particular lottery game or participating as a player in a lottery game, a player agrees to abide by and be bound by the commission's rules and instructions, including the rules or instructions applicable to the particular lottery game involved. The player also acknowledges that the determination of whether the player is a valid winner is subject to:

(1) the commission's rules, instructions, and claims procedures, including those developed for the particular lottery game involved; [~~and~~]

(2) any validation tests established by the commission for the particular lottery game involved; and

(3) the limitations and other provisions prescribed by this chapter.

(b) If the lottery uses tickets, an abbreviated form of the rules or a reference to the rules may appear on the tickets.

SECTION __.20. Section 466.3011, Government Code, is amended to read as follows:

Sec. 466.3011. VENUE. Venue is proper in Travis County or any county in which venue is proper under Chapter 13, Code of Criminal Procedure, for:

(1) an offense under this chapter;

(2) an offense under the Penal Code, if the accused:

(A) is a lottery operator, lottery vendor, sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, video lottery central system provider, or employee of the division; and

(B) is alleged to have committed the offense while engaged in lottery activities, including video lottery activities; or

(3) an offense that involves property consisting of or including lottery tickets under Title 7 or 11, Penal Code.

SECTION __.21. Subchapter G, Chapter 466, Government Code, is amended by adding Section 466.3031 to read as follows:

Sec. 466.3031. UNAUTHORIZED OPERATION, USE, OR POSSESSION OF VIDEO LOTTERY TERMINAL. (a) A person may not operate, use, or possess a video lottery terminal unless the operation, use, or possession is expressly authorized by this chapter or other law.

(b) Except for transport to or from a video lottery establishment and as provided by this chapter, a person commits an offense if the person operates, uses, or possesses any video lottery terminal that is not at all times connected to the video lottery central system or that does not generate revenue for this state, except funds retained by the commission to pay administrative costs. An offense under this subsection is a felony of the third degree.

(c) Notwithstanding Subsection (b), a video lottery retailer, video lottery manager, or registered or approved video lottery terminal provider may store a video lottery terminal as authorized by the commission for a period not to exceed 120 consecutive days, and the commission may possess video lottery terminals for study and evaluation.

(d) Nothing in this section shall be construed to prohibit the operation, use, or possession of equipment, machines, technological aids, or other devices allowed in connection with the play of bingo under Chapter 2001, Occupations Code.

SECTION __.22. Section 466.305(a), Government Code, is amended to read as follows:

(a) A sales agent, video lottery manager, or video lottery retailer, or an employee of a sales agent, video lottery manager, or video lottery retailer, commits an offense if the person intentionally or knowingly sells a ticket to

another person or allows the person to play or conduct a game on a video lottery terminal by extending credit or lending money to the person to enable the person to purchase the ticket or play the game.

SECTION __.23. The heading to Section 466.3051, Government Code, is amended to read as follows:

Sec. 466.3051. SALE OF TICKET OR LOTTERY GAME TO OR PURCHASE OF TICKET OR LOTTERY GAME BY PERSON YOUNGER THAN 21 [~~18~~] YEARS OF AGE.

SECTION __.24. Section 466.3051, Government Code, is amended by amending Subsections (a), (b), (c), (d), and (e) and adding Subsection (a-1) to read as follows:

(a) A sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells or offers to sell a ticket to an individual that the person knows is younger than 21 [~~18~~] years of age.

(a-1) A video lottery manager, a video lottery retailer, or an employee of a video lottery manager or video lottery retailer commits an offense if the person intentionally or knowingly allows a person younger than 21 years of age to play a video lottery game.

(b) An individual who is younger than 21 [~~18~~] years of age commits an offense if the individual:

(1) purchases a ticket;

(2) plays a video lottery game; or

(3) [~~(2)~~] falsely represents the individual to be 21 [~~18~~] years of age or older by displaying evidence of age that is false or fraudulent or misrepresents in any way the individual's age in order to purchase a ticket or play a video lottery game.

(c) A person 21 [~~18~~] years of age or older may purchase a ticket to give as a gift to another person, including an individual younger than 21 [~~18~~] years of age.

(d) It is a defense to the application of Subsection (b) that the individual younger than 21 [~~18~~] years of age is participating in an inspection or investigation on behalf of the commission or other appropriate governmental entity regarding compliance with this section.

(e) An offense under Subsection (a) or (a-1) is a Class C misdemeanor.

SECTION __.25. Section 466.3053, Government Code, is amended to read as follows:

Sec. 466.3053. PURCHASE OF TICKET OR VIDEO LOTTERY GAME WITH PROCEEDS OF AFDC CHECK OR FOOD STAMPS. (a) A person commits an offense if the person intentionally or knowingly purchases a ticket or plays a video lottery game with:

(1) the proceeds of a check issued as a payment under the Aid to Families with Dependent Children program administered under Chapter 31, Human Resources Code; or

(2) a food stamp coupon issued under the food stamp program administered under Chapter 33, Human Resources Code.

(b) An offense under this section is a Class C misdemeanor.

SECTION __.26. Section 466.306, Government Code, is amended to read as follows:

Sec. 466.306. FORGERY; ALTERATION OF TICKET. (a) A person commits an offense if the person intentionally or knowingly alters or forges a ticket or video lottery ticket.

(b) An offense under this section is a felony of the third degree unless it is shown on the trial of the offense that the prize alleged to be authorized by the ticket or video lottery ticket forged or altered is greater than $10,000, in which event the offense is a felony of the second degree.

SECTION __.27. Section 466.309(a), Government Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, video lottery terminal or other video lottery equipment, or other mechanical device used in a lottery game.

SECTION __.28. The heading to Section 466.317, Government Code, is amended to read as follows:

Sec. 466.317. PROHIBITION AGAINST SALE OF CERTAIN LOTTERY TICKETS OR OPERATION OF CERTAIN VIDEO LOTTERY SYSTEMS.

SECTION __.29. Section 466.317, Government Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) A person may not control or operate a video lottery system in this state except as provided by this chapter.

(b) The state may enter into a compact with another state or state government [~~or an Indian tribe or tribal government~~] to permit the sale of lottery tickets of this state in the state's[~~, tribe's,~~] or government's jurisdiction and to allow the sale of the state's[~~, tribe's,~~] or government's lottery tickets in this state.

(c) A person commits an offense if the person violates this section. An offense under this section is a felony of the third degree [~~Class A misdemeanor~~].

SECTION __.30. Section 466.355, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The state lottery account is a special account in the general revenue fund. The account consists of all revenue received from the sale of tickets, license and application fees under this chapter, other than Subchapter K [~~chapter~~], and all money credited to the account from any other fund or source under law. Interest earned by the state lottery account shall be deposited in the unobligated portion of the general revenue fund.

(d) Immediately after the comptroller makes the August transfer to the foundation school fund under Subsection (b)(4) and the transfer to the foundation school fund for the following September 15 under Subsection (c), the comptroller shall determine whether the total amount transferred to the foundation school fund from the state lottery fund in the current fiscal year is less than the total amount transferred to the foundation school fund from the state lottery account in the fiscal year ending August 31, 2005. If the comptroller determines that the total amount transferred to the foundation school fund in the current fiscal year is less than the total amount transferred in the fiscal year ending August 31, 2005,

the comptroller not later than August 31 shall transfer to the foundation school fund from the state video lottery account in the general revenue fund an amount equal to the difference.

SECTION __.31. Subchapter H, Chapter 466, Government Code, is amended by adding Section 466.360 to read as follows:

Sec. 466.360. VIDEO LOTTERY TERMINAL REVENUE. Revenue generated from the operation of video lottery terminals is governed by Subchapter K and commission rules.

SECTION __.32. Section 466.402, Government Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to the payment of prizes for video lottery games governed by Subchapter K.

SECTION __.33. Section 466.409, Government Code, is amended to read as follows:

Sec. 466.409. TREATMENT OF PRIZE PAYABLE ON TICKET PURCHASE BY INELIGIBLE PERSON. If an individual listed in Section 466.254 purchases a ticket or claims or otherwise attempts to collect or receive a lottery prize or a share of a lottery prize or an individual younger than 21 [~~18~~] years of age directly purchases a ticket, the individual is not eligible to receive a prize or share of a prize, and the prize or share of a prize otherwise payable on the ticket is treated as an unclaimed prize as provided by Section 466.408.

SECTION __.34. Chapter 466, Government Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. VIDEO LOTTERY

Sec. 466.501. LEGISLATIVE FINDINGS AND DECLARATIONS. The legislature finds and declares the following:

(1) This state's public policy prohibiting gambling is subject only to limited exceptions provided by the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) or enumerated in the Texas Constitution and approved by the voters.

(2) Any game that is a lottery cannot lawfully be operated in this state unless the game is excepted from the constitutional prohibition against lotteries. In 1991, the electorate approved a constitutional amendment authorizing the state to operate lotteries. In 2005, the electorate approved a referendum allowing expansion of the existing state lottery through a state-controlled video lottery system allowing video lottery terminals connected to a state-controlled and determined video lottery central system to be placed at locations determined in accordance with law enacted by the legislature.

(3) The purpose and intent of this chapter is to carry out the intent of the voters as established by the approval of the referendum to expand the revenue-generating ability of the state lottery by authorizing this state to operate a video lottery system as part of the state lottery consistent with the public policy to strictly limit the expansion of gambling in this state. A state-controlled video lottery system constitutes a valid state-operated lottery and falls within the

exception for state lotteries under Section 47(e), Article III, Texas Constitution, from the general prohibition of lotteries under Section 47(a), Article III, Texas Constitution.

(4) The people of this state intend to allow only state-controlled video lottery games to be conducted in this state and only in locations licensed by this state to operate video lottery terminals or at locations on Indian lands under an agreement between this state and the appropriate Indian tribe.

(5) This state has the authority and responsibility to control the proliferation of gambling by:

(A) limiting the total number of video lottery terminals permitted at authorized locations in this state;

(B) limiting video lottery to licensed establishments;

(C) extending strict and exclusive state oversight and supervision to all persons, locations, practices, and associations related to the operation of video lottery games; and

(D) providing comprehensive law enforcement supervision of video lottery game activities.

(6) This state's ability to monitor and control the operation of all video lottery terminals ensures the integrity of the system and provides for the most efficient oversight and supervision. Costs incurred for oversight and supervision of gambling will be significantly less than if video lottery terminals were not operated as part of the video lottery system. In addition, providing for the state-controlled and determined system will defend against criminal infiltration of gambling operations.

(7) The video lottery games operated at video lottery terminal establishments under this chapter are controlled and determined by this state in a manner that allows this state to continuously monitor all video lottery terminals and to disable any video lottery terminal for the protection of the public and this state.

(8) Through the video lottery system this state will monitor the network of video lottery terminals to ensure maximum security unique to state-operated gambling. Except as may otherwise be required by federal law governing Indian lands, each operating video lottery terminal in this state will be connected to a video lottery central system.

(9) By limiting the operation of video lottery terminals to those connected to the state-controlled and determined video lottery system and to certain lands and certain types of games, the legislature seeks to foster this state's legitimate sovereign interest in regulating the growth of gambling activities in this state. Limiting video lottery terminals to those controlled by this state and located at licensed establishments is reasonably designed to defend against the criminal infiltration of gambling operations and adverse impacts on communities statewide. By restricting video lottery terminals to limited locations and video lottery terminals controlled by this state that may be disabled by this state if necessary to protect the public, this state furthers the state's purpose of ensuring that such gambling activities are free from criminal and undesirable elements.

(10) This chapter is game-specific and may not be construed to allow the operation of any other form of gambling unless specifically allowed by this chapter. This chapter does not allow the operation of slot machines, dice games, roulette wheels, house-banked games, including house-banked card games, or games in which winners are determined by the outcome of a sports contest that are prohibited under other state law.

(11) To effectuate the will of the voters, any video lottery games on lands of Indian tribes must be in strict compliance with state law, unless otherwise required by federal law, or in accordance with a gaming agreement negotiated with the governor and ratified by the legislature.

(12) This state has conferred a substantial economic benefit on federally recognized Indian tribes by allowing operation of video lottery terminals on lands held in trust by the Indian tribes and on Indian lands on which gaming is allowed under applicable federal law. Federally recognized Indian tribes have the exclusive right to operate video lottery terminals at locations on the Indian lands in this state without incurring the investment necessary to construct, maintain, and operate racetracks for live racing, and through revenue-sharing both the policy of self-governance for the tribes and this state's interests in generating additional revenue to fund governmental programs can be promoted.

(13) The public has an interest in video lottery game operations, and gaming operations conducted under this chapter represent an exception to the general policy of this state prohibiting wagering for private gain. Therefore, participation in a video lottery game by a holder of a license, registration, or approval under this chapter is considered a privilege conditioned on the proper and continued qualification of the holder and on the discharge of the affirmative responsibility of each holder to provide to the commission or other regulatory and investigatory authorities established by this chapter any assistance and information necessary to assure that the policies declared by this chapter are achieved. Consistent with this policy, the legislature intends this chapter to:

(A) preclude the creation of any property right in any license, registration, or approval issued or granted by this state under this chapter, the accrual of any value to the privilege of participation in any video lottery game operation, or the transfer of a license or permit; and

(B) require that participation in video lottery game operations be solely conditioned on the individual qualifications of persons seeking this privilege.

(14) Only video lottery terminals lawfully operated in connection with a video lottery system authorized by this subchapter may be lawfully operated on Indian lands under the Johnson Act (15 U.S.C. Section 1175).

Sec. 466.502. CONSTRUCTION; APPLICABILITY OF OTHER LAWS. (a) Nothing contained in this chapter may be construed to implicitly repeal or modify existing state laws with respect to gambling, except that the state lottery and video lottery terminals are not prohibited by another law if conducted as authorized under this subchapter.

(b) To the extent of any inconsistency between Chapter 2003 and this subchapter or a commission rule governing video lottery terminals, this subchapter or the commission rule controls in all matters related to video lottery terminals, including hearings before the State Office of Administrative Hearings.

(c) Video lottery equipment operated under commission authority and this chapter is exempt from 15 U.S.C. Section 1172.

Sec. 466.505. AUTHORITY TO OPERATE VIDEO LOTTERY SYSTEM. (a) The commission may implement and operate a video lottery system and control the operation of video lottery terminals at video lottery terminal establishments in accordance with this chapter and, for a video lottery terminal establishment at a racetrack, the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes). This chapter supersedes any conflicting or inconsistent provision of the Texas Racing Act.

(b) The commission may allow the operation of video lottery terminals pursuant to this chapter at locations on Indian lands in accordance with an effective gaming agreement or license and in compliance with applicable federal law.

Sec. 466.506. VIDEO LOTTERY GAMES; STATE OWNERSHIP AND PROPRIETARY INTEREST. (a) This state must own all video lottery games conducted through the video lottery system, regardless of ownership of the video lottery terminal on which the game is played. This state must possess a proprietary interest in:

(1) the main logic boards and any electronic storage medium used in video lottery equipment or games; and

(2) software consisting of computer programs, documentation, and other related materials necessary for the operation of the video lottery system.

(b) For purposes of this chapter, this state may acquire a proprietary interest in video lottery game software through:

(1) ownership of the software; or

(2) an exclusive product license agreement with a provider in which the provider retains copyrighted ownership of the software but the license granted to this state is nontransferable and authorizes this state to operate the software program, solely for the state's own use, on the video lottery central system and video lottery terminals connected to the video lottery central system.

Sec. 466.507. STATE CONTROL OF VIDEO LOTTERY SYSTEM. (a) The commission shall control and operate the video lottery system and the video lottery central system.

(b) The commission may disable a video lottery terminal if a video lottery retailer's or video lottery manager's license is revoked, surrendered, or summarily suspended under this subchapter.

Sec. 466.510. VIDEO LOTTERY CENTRAL SYSTEM. (a) The commission shall establish or cause to be established a video lottery central system to link all video lottery terminals in the video lottery system through which the commission has the exclusive and unilateral ability to:

(1) control and determine the outcome of all video lottery games;

(2) monitor activity of video lottery terminals and remotely disable video lottery terminals for the public safety, health, and welfare or the preservation of the integrity of the lottery; and

(3) provide the auditing and other information required by the commission.

(b) The video lottery central system must be a central determinant system that provides lottery outcomes from a central determination computer that are transferred to video lottery terminals in a manner prescribed by the commission.

(c) The commission shall provide to a registered video lottery terminal provider or an applicant applying for registration as a video lottery terminal provider the protocol documentation data necessary to enable the provider's or applicant's video lottery terminals to communicate with the commission's video lottery central system for the transmission of auditing information and for activation and disabling of video lottery terminals.

(d) The video lottery central system may not limit or preclude potential providers from providing the video lottery terminals, other than providers that fail to meet specifications established by the commission.

(e) The video lottery central system provider may not sell or distribute video lottery terminals in this state.

(f) The commission may contract with a video lottery central system provider to establish the video lottery central system.

(g) The commission may not contract with a person to provide the video lottery central system if within the preceding five years that person owned any interest in a racetrack or pari-mutuel license in this state.

Sec. 466.511. VIDEO LOTTERY TERMINAL PROVIDER: REGISTRATION OR APPROVAL REQUIRED. (a) A person may not manufacture or distribute video lottery equipment for use or play in this state unless the person is registered as a video lottery terminal provider or is otherwise approved by the commission to manufacture or distribute video lottery equipment in this state.

(b) A person who manufactures and distributes video lottery terminals must obtain a separate certificate of registration or approval for each of those activities.

(c) Unless suspended or revoked, the registration or approval expires on the date specified by the commission, which may not be later than the fifth anniversary of the date of the registration or approval. A person may renew an unexpired registration or approval by paying a renewal fee in the amount determined by the commission to cover the costs of administering the renewal application and complying with the requirements of this subchapter and commission rule.

(d) To be eligible for registration or commission approval as required by this section, an applicant must satisfy all applicable requirements under this subchapter.

Sec. 466.512. VIDEO LOTTERY TERMINAL PROVIDER: APPLICATION; CHANGE IN INFORMATION. (a) The commission shall adopt rules governing the registration or approval of video lottery terminal providers. The rules must require:

(1) the application and any other form or document submitted to the commission by or on behalf of the applicant to determine the applicant's qualification under this section to be sworn to or affirmed before an officer qualified to administer oaths; and

(2) the certificate of registration or approval to designate whether the provider is a manufacturer or distributor.

(b) An applicant seeking registration or approval as a video lottery terminal provider to manufacture and distribute video lottery terminals in this state may apply for both certificates of registration or approvals in a single application.

(c) An applicant for a video lottery terminal provider registration or approval must provide the following information:

(1) the full name and address of the applicant;

(2) the full name and address of each location at which video lottery equipment is or will be manufactured or stored in this state;

(3) the name, home address, and share of ownership of the applicant's substantial interest holders;

(4) a full description of each separate type of video lottery equipment that the applicant seeks to manufacture or distribute in this state;

(5) the brand name under which each type of video lottery equipment is to be distributed;

(6) if the applicant is incorporated under law other than the laws of this state, the applicant's irrevocable designation of the secretary of state as the applicant's resident agent for service of process and notice in accordance with the law of this state;

(7) a list of all businesses or organizations in this state in which the applicant has any financial interest and the details of that financial interest, including all arrangements through which a person directly or indirectly receives any portion of the profits of the video lottery terminal provider and indebtedness between the license holder and any other person, other than a regulated financial institution, in excess of $5,000;

(8) a list of all affiliated businesses or corporations in which the applicant or an officer, director, or substantial interest-holder of the applicant, either directly or indirectly, owns or controls as a sole proprietor or partner more than 10 percent of the voting stock of a publicly traded corporation;

(9) a list of all businesses or corporations licensed to conduct gambling activities or to supply gambling-related equipment, supplies, or services in which the applicant or an officer, director, or substantial interest-holder of the applicant has any interest;

(10) a list of all jurisdictions in which the applicant or an officer, director, or substantial interest-holder of the applicant has been licensed, registered, qualified, or otherwise approved to conduct gambling-related activities during the 10 years preceding the date of the filing of the application;

(11) a statement, including all related details, indicating whether the applicant or an officer, director, or substantial interest-holder of the applicant has ever had a license, registration, qualification, or other approval for

gambling-related activities denied, revoked, or suspended by any jurisdiction or has been fined or otherwise required to pay penalties or monetary forfeitures for gambling-related activities in any jurisdiction; and

(12) a statement acknowledging that the applicant will make available for review at the time and place requested by the commission all records related to the ownership or operation of the business.

(d) The commission may require the following information from an applicant:

(1) personal financial and personal history records of all substantial interest-holders;

(2) all records related to the scope of activity, including sales of product, purchases of raw materials and parts, and any contracts, franchises, patent agreements, or similar contracts or arrangements related to manufacturing or distributing video lottery terminals; and

(3) records related to any financial or management control of or by customers and suppliers.

(e) The applicant must demonstrate the ability to comply with all manufacturing, quality control, and operational restrictions imposed on authorized video lottery equipment, patented or otherwise restricted video lottery games, or other video lottery equipment that the applicant seeks to manufacture or distribute for use in this state. The registration or approval process must include an on-site review of the applicant's manufacturing equipment and process for each separate type of authorized video lottery equipment to ensure compliance with the requirements of this chapter and commission rules.

(f) Not later than the 10th day after the date of any change in the information submitted on or with the application form, the applicant shall notify the commission of the change, including a change that occurs after the registration or other commission approval has been granted.

(g) The applicant shall comply with all federal and state laws, local ordinances, and rules.

Sec. 466.513. VIDEO LOTTERY TERMINAL PROVIDER: APPLICATION AND REGISTRATION OR APPROVAL FEE. (a) An applicant seeking registration or approval or renewal of registration or approval as a video lottery terminal provider must pay a nonrefundable application fee in the amount of $100,000 and an annual fee due on each anniversary of initial registration or approval of $100,000.

(b) An applicant seeking registration or approval as both a manufacturer and distributor must pay a separate application and annual fee for each registration or approval.

(c) Application fees paid under this section shall be retained by the commission to defray costs incurred in the administration and enforcement of this chapter relating to the operation of video lottery terminals.

Sec. 466.520. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER LICENSE REQUIRED. (a) Except as provided by a gaming agreement, a person may not own or operate a video lottery terminal if the person does not satisfy the requirements of this subchapter and is not licensed by the commission to act as a video lottery retailer or video lottery manager.

(b) A federally recognized Indian tribe may obtain a license as a video lottery retailer to conduct video lottery games on Indian lands as an alternative to operating those games under a gaming agreement under this subchapter. A retailer license issued by the commission to the tribe constitutes an agreement between the tribe and this state for purposes of the Indian Gaming Regulatory Act of 1988 (25 U.S.C. Sec. 2701 et seq.).

Sec. 466.521. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER: APPLICATION AND QUALIFICATION. (a) An applicant for a video lottery retailer or video lottery manager license must apply to the commission under rules adopted by the commission, provide the information necessary to determine the applicant's eligibility for a license, and provide other information considered necessary by the commission.

(b) Except as provided by Section 466.520(b) or other law, an applicant for a video lottery retailer license must hold a valid racing license granted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) and operate a racetrack as defined by Section 466.002.

(c) An applicant for a video lottery manager license must:

(1) have a valid and executed contract with a racetrack that satisfies the requirements of Subsection (b) to act as a video lottery manager for the racetrack subject to licensing under this chapter; or

(2) demonstrate to the commission's satisfaction that the applicant seeks to act as a video lottery manager for a federally recognized Indian tribe that:

(A) has entered into a gaming agreement with this state that is in effect and governs the regulation of video lottery terminals on Indian lands in this state; or

(B) has obtained a license as a video lottery retailer in accordance with this subchapter.

(d) Each officer, partner, director, key employee, substantial interest-holder, video lottery game operation employee, and owner of video lottery game operations must be eligible and maintain eligibility in accordance with this subchapter to be involved in video lottery games in this state.

(e) An applicant for a video lottery retailer or video lottery manager license has the burden of proving qualification for a license by clear and convincing evidence. In addition to satisfying minimum requirements established by commission rules, an applicant for a video lottery retailer or video lottery manager license must:

(1) be a person of good character, honesty, and integrity;

(2) be a person whose background and prior activities, including criminal record, reputation, habits, and associations, do not pose a threat to the security and integrity of video lottery or to the public interest of this state or to the effective operation and control of video lottery, or do not create or enhance the

dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of video lottery or in the carrying on of the business and financial arrangements incidental to video lottery;

(3) if applying for a new license, provide fingerprints for a criminal records evaluation by the Texas Department of Public Safety or other law enforcement agency, including fingerprints for each person required to be named in an application, accompanied by a signed authorization for the release of information to the commission by the department of public safety and the Federal Bureau of Investigation;

(4) not have been convicted of an offense under this chapter or of any crime related to theft, bribery, gambling, or involving moral turpitude;

(5) demonstrate adequate business probity, competence, experience, and financial stability as defined by the commission;

(6) demonstrate adequate financing for the operation of the facility at which the video lottery terminals will be operated from a source that meets the requirements of this subchapter and is adequate to support the successful performance of the duties and responsibilities of the license holder and disclose all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery equipment in the degree of detail requested by the commission;

(7) when applying for a new license or renewing a license under this chapter, present evidence to the commission of the existence and terms of any agreement regarding the proceeds from the operation of video lottery terminals;

(8) demonstrate that each substantial interest-holder in the applicant meets all applicable qualifications under this subchapter;

(9) provide all information, including financial data and documents, consents, waivers, and any other materials, requested by the commission for purposes of determining qualifications for a license; and

(10) as part of its application, expressly waive any and all claims against the commission, this state, and a member, officer, employee, or authorized agent of the commission or this state for damages resulting from any background investigation, disclosure, or publication relating to an application for a video lottery retailer or video lottery manager license.

(f) An application or disclosure form and any other document submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery retailer or video lottery manager license must be sworn to or affirmed before an officer qualified to administer oaths.

(g) An applicant who knowingly fails to reveal any fact material to qualification for a license, finding of suitability, or other approval or who knowingly submits false or misleading material information is ineligible for a video lottery retailer or video lottery manager license.

(h) An applicant for a license or renewal of a license as a video lottery retailer or video lottery manager shall notify the commission of any change in the application information for a license or renewal of a license not later than the 10th day after the date of the change, except that a publicly traded corporation or other

business association or entity applicant is not required to notify the commission of a transfer by which any person directly or indirectly becomes the beneficial owner of less than 10 percent of the stock of the corporation or association.

(i) Except as provided by Section 466.525(c), the commission shall deny an application for a license or shall suspend or revoke a license if the commission finds that the applicant would be subject to denial or revocation of a sales agent license under Section 466.155.

Sec. 466.522. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER: APPLICATION FEE AND ANNUAL LICENSE. (a) An applicant for a video lottery retailer or video lottery manager license must pay a nonrefundable application fee in the amount of:

(1) $500,000 for an applicant applying to operate a video lottery terminal establishment at a class 1 racetrack or a greyhound racetrack; or

(2) $200,000 for an applicant applying to operate a video lottery terminal establishment at a class 2 or class 3 racetrack.

(b) A video lottery retailer or video lottery manager must pay an annual license fee due on each anniversary of initial licensing in the amount of:

(1) $50,000 for a license holder operating a video lottery terminal establishment at a class 1 racetrack or a greyhound racetrack; or

(2) $25,000 for a license holder operating a video lottery terminal establishment at a class 2 or class 3 racetrack.

(c) An application may not be processed until the applicant pays the application fee. If the application fee is not received by the 30th day after the date the commission notifies the applicant of the amount of the fee, the application is considered withdrawn and may not be considered by the commission.

(d) The commission shall set any additional application fee necessary to pay the costs of determining the applicant's eligibility, including costs to conduct all investigations necessary for processing the application. An investigation may not begin until the applicant has submitted all required fees to the commission. If additional fees are required by the commission during the course of the investigation or processing of the application and are not received by the commission by the 15th day after the date the commission notifies the applicant of the amount of the fees, the investigation and evaluation processes shall be suspended.

(e) The commission shall retain an application fee paid under this section to defray costs incurred in the administration and enforcement of this chapter relating to the operation of video lottery terminals.

Sec. 466.523. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER: EMPLOYEE INFORMATION. (a) A video lottery retailer or video lottery manager shall provide to the commission the name and address of each employee involved in the operation of video lottery games and the name and address of the providers of surety and insurance required by Section 466.587.

(b) Not later than the 10th day following the date of the change, a license holder must report to the commission any change in an officer, partner, director, key employee, substantial interest-holder, video lottery game operation employee, or owner and any change in a surety or insurance provider.

Sec. 466.525. VIDEO LOTTERY TERMINAL ESTABLISHMENT: REQUIREMENTS; LOCATION. (a) A video lottery retailer or video lottery manager may not operate video lottery terminals at any place that is not licensed as a video lottery terminal establishment.

(b) The commission by rule shall establish standards for video lottery terminal establishments to ensure that establishments are accessible, safe, comfortable, durable, and of sufficiently high-quality construction to promote investments in establishments and related facilities that foster lasting economic development and continuity in producing state revenue, and that protect the health and welfare of employees, patrons, and all state residents. The standards must include or incorporate high-quality commercial building standards, including safety, air-conditioning, heating, and electrical standards.

(c) An applicant for a video lottery terminal establishment license must:

(1) consent to the application of state laws with exclusive venue in Travis County, Texas, related to any action arising out of the operation of video lottery terminals;

(2) provide office space for at least one commission employee as required by commission rule; and

(3) provide free and unrestricted access to the establishment by the commission.

(d) An applicant for a video lottery terminal establishment license must provide the maps, surveys, site plans, architectural plans, and financial statements required by the commission and update the information at least annually if required by the commission.

(e) Notwithstanding Section 466.155, the commission may not deny, suspend, or revoke a license under this subchapter based on the fact that a video lottery terminal establishment or a proposed video lottery terminal establishment is a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit, issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code.

Sec. 466.526. LICENSE HOLDER AS SALES AGENT. The holder of a video lottery retailer or video lottery manager license may operate as a sales agent for lottery tickets in accordance with this chapter.

Sec. 466.527. TERM OF LICENSE, REGISTRATION, OR APPROVAL; RENEWAL ELIGIBILITY. (a) Unless suspended or revoked, a license, certificate of registration, or approval issued under this subchapter expires:

(1) except as provided by Subdivision (2), on the date specified in the license, which may not be later than the fifth anniversary of the date of issuance; or

(2) for a video lottery retailer license held by a pari-mutuel license holder, on the date the person's pari-mutuel license expires.

(b) To be eligible for renewal of a license or certificate, an applicant must satisfy all applicable licensing, registration, or approval requirements under this subchapter, including payment of any renewal fee charged by the commission to cover costs of administering a renewal application.

Sec. 466.528. RULES FOR ADDITIONAL LICENSE QUALIFICATIONS. The commission by rule may establish other license qualifications the commission determines are in the public interest and consistent with the declared policy of this state.

Sec. 466.529. APPLICATION AS REQUEST FOR CHARACTER DETERMINATION. An application under this subchapter to receive or renew a license, registration, or approval or to be found suitable constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in or be associated with the operation of video lottery terminals.

Sec. 466.530. IMMUNITY FOR STATEMENT MADE IN PROCEEDING OR INVESTIGATION. Any written or oral statement made in the course of an official commission proceeding or investigative activities related to an application for commission licensing, registration, or other approval under this subchapter, by any member or agent or any witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

Sec. 466.531. SUITABILITY FINDING. To promote the integrity and security of the lottery, the commission in its discretion may require a suitability finding for any person doing business with or in relation to the operation of video lottery terminals who is not otherwise required to obtain a license, registration, or approval from the commission for the person's video lottery-related operations.

Sec. 466.532. SUMMARY SUSPENSION OF VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER LICENSE; TERMINAL DISABLED. (a) The commission may summarily suspend the license of a video lottery retailer or video lottery manager without notice or hearing if the commission finds the action is necessary to maintain the integrity, security, honesty, or fairness of the operation or administration of the lottery or to prevent financial loss to this state and:

(1) the license holder fails to deposit money received from video lottery terminal operations as required by this chapter or commission rule;

(2) an event occurs that would render the license holder ineligible for a license under this subchapter;

(3) the license holder refuses to allow the commission, the commission's agents, or the state auditor, or their designees, to examine the license holder's books, records, papers, or other objects under Section 466.017; or

(4) the executive director learns the license holder failed to disclose information that would, if disclosed, render the video lottery retailer or video lottery manager ineligible for a license under this subchapter.

(b) A summary suspension under this section must comply with the notice and procedure requirements provided by Section 466.160.

(c) The commission may disable a video lottery terminal operated by a license holder under this subchapter at the time:

(1) a proceeding to summarily suspend the license is initiated;

(2) the commission discovers the license holder failed to deposit money received from video lottery terminal operation as required if the license is being summarily suspended under this section; or

(3) an act or omission occurs that, under commission rules, justifies the termination of video lottery terminal operations to:

(A) protect the integrity of the lottery or the public health, welfare, or safety; or

(B) prevent financial loss to this state.

(d) The commission shall immediately disable a video lottery terminal if necessary to protect the public health, welfare, or safety.

Sec. 466.533. LICENSING, REGISTRATION, SUITABILITY, AND REGULATORY APPROVAL AS REVOCABLE PERSONAL PRIVILEGES. (a) An applicant for a license, registration, suitability, or other affirmative regulatory approval under this subchapter does not have any right to the license, registration, suitability, or approval sought.

(b) Any license, registration, or suitability or other regulatory approval granted under this subchapter is a revocable privilege, and a holder of the privilege does not acquire any vested right in or under the privilege.

(c) The courts of this state do not have jurisdiction to review a decision to deny, limit, or condition the license, registration, suitability, or approval unless the judicial review is sought on the ground that the denial, limitation, or condition is based on a suspect classification, such as race, color, religion, sex, or national origin, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The state court must affirm the commission's action unless the violation is proven by clear and convincing evidence. If a state court has jurisdiction over a claim under this section, then this state's sovereign immunity is waived only to the extent expressly provided by Section 466.601.

(d) A license, registration, suitability, or regulatory approval granted or renewed under this subchapter may not be transferred or assigned to another person, and a license, registration, suitability, or approval may not be pledged as collateral. The purchaser or successor of a person who has been granted a license, registration, suitability, or regulatory approval must independently qualify for a license, registration, suitability, or approval required by this subchapter.

(e) The following acts void the license, registration, suitability, or other regulatory approval of the holder unless approved in advance by the commission:

(1) the transfer, sale, or other disposition of an interest in the holder that results in a change in the identity of a substantial interest holder; or

(2) the sale of the assets of the holder, other than assets bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined to have met the applicable qualifications of this subchapter.

Sec. 466.535. CAPITAL INVESTMENTS AND IMPROVEMENT REQUIREMENTS FOR VIDEO LOTTERY TERMINAL ESTABLISHMENT. (a) A video lottery retailer or video lottery manager shall provide all necessary capital investments and required improvements at a video lottery terminal establishment operated by the retailer or manager.

(b) The commission may not issue a license for the operation of a video lottery terminal establishment at a class 2 racetrack that has not made at least $20 million in capital investments or improvements to new or existing facilities at the racetrack.

Sec. 466.536. VIDEO LOTTERY TERMINAL: PROCUREMENT AND FEE. (a) The commission shall provide all video lottery retailers or video lottery managers with a list of registered video lottery terminal providers, video lottery games, and video lottery terminals authorized for operation under this subchapter.

(b) At the time and in the manner prescribed by commission rule, a video lottery retailer or video lottery manager shall pay to the commission a fee of $5,000 for each video lottery terminal delivered to the video lottery terminal establishment operated by the retailer or manager. The commission by rule may allow a video lottery retailer or video lottery manager to replace a malfunctioning video lottery terminal without paying the fee required by this subsection.

Sec. 466.537. VIDEO LOTTERY TERMINAL: DISTRIBUTION AND COMMISSION APPROVAL. (a) A video lottery terminal provider may not distribute a video lottery terminal or other video lottery equipment for placement at a video lottery terminal establishment in this state unless the video lottery terminal has been approved by the commission.

(b) Only a video lottery terminal provider registered with or approved by the commission may apply for approval of a video lottery terminal or other video lottery equipment.

(c) Not later than the 10th day before the date of shipment to a location in this state, a video lottery terminal provider shall file a report with the commission itemizing all video lottery terminals and other video lottery equipment to be provided to a video lottery retailer or video lottery manager in the shipment.

Sec. 466.538. VIDEO LOTTERY TERMINAL: TESTING; REPORT. (a) A video lottery terminal provider shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, and any other information requested by the commission for the purpose of analyzing and testing the video lottery terminal or other video lottery equipment.

(b) The commission may require up to four working models of a video lottery terminal to be transported to a location designated by the commission for testing, examination, and analysis. The video lottery terminal provider shall pay all the costs of testing, examination, analysis, and transportation of the models. The testing, examination, and analysis of video lottery terminals may require dismantling of the terminal, and some tests may result in damage or destruction to one or more electronic components of the model. The commission may require a video lottery terminal provider to provide specialized equipment or pay for an independent technical expert or laboratory to test the terminal.

(c) The video lottery terminal provider shall pay the cost of transporting up to four video lottery terminals to the headquarters of the commission or a location designated by the commission. The commission shall conduct an acceptance test to determine terminal functions and compatibility with the video lottery central system. At the expense of the video lottery terminal provider, the commission may contract with an independent technical expert or laboratory to determine

compatibility and terminal functions. If the video lottery terminal fails the acceptance test conducted by the commission, the video lottery terminal provider shall make all modifications required by the commission before distribution in this state.

(d) After each test under this section has been completed, the commission shall provide the video lottery terminal provider with a report containing findings, conclusions, and pass or fail results. The report may contain recommendations for modifications to bring a video lottery terminal into compliance with this chapter and commission standards.

(e) Before approving a particular video lottery terminal model, the commission may require a field trial period not to exceed 60 days for a licensed video lottery terminal establishment to test the terminal. During the trial period, modifications may not be made to the video lottery terminal model unless approved by the commission.

Sec. 466.539. VIDEO LOTTERY TERMINAL: INSTALLATION; MODIFICATION REQUEST. (a) A video lottery terminal provider is responsible for the assembly and installation of all video lottery terminals and other video lottery equipment.

(b) A video lottery terminal provider or a video lottery retailer or video lottery manager may not change the assembly or operational functions of a video lottery terminal authorized by the commission for placement in this state unless a request for modification of an existing video lottery terminal prototype is approved by the commission. The request must contain:

(1) a detailed description of the type of change;

(2) a detailed description of the reasons for the change; and

(3) technical documentation of the change.

(c) A video lottery terminal approved by the commission for placement at a video lottery terminal establishment must conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission.

Sec. 466.540. VIDEO LOTTERY TERMINAL REMOVAL. (a) If any video lottery terminal that has not been approved by the commission is distributed by a video lottery terminal provider or operated by a video lottery retailer or video lottery manager or if an approved video lottery terminal malfunctions, the commission shall require the terminal to be removed from use and play.

(b) The commission may order that an unapproved terminal be seized and destroyed and that a malfunctioning terminal not repaired and returned to play within 30 days or as otherwise prescribed by the commission be disposed of in compliance with Section 466.543(b).

(c) The commission may suspend or revoke the license of a video lottery retailer or video lottery manager or the registration of a video lottery terminal provider for the distribution, possession, or operation of an unauthorized video lottery terminal.

Sec. 466.541. VIDEO LOTTERY TERMINAL SPECIFICATIONS. (a) The commission shall adopt rules for approval of video lottery terminals, including requirements for video lottery game tickets, maximum and minimum payout, and maximum wagers.

(b) A commission-approved video lottery terminal must meet the following minimum specifications:

(1) the terminal must:

(A) operate through a player's insertion of a coin, currency, voucher, or token into the video lottery terminal that causes the video lottery terminal to display credits that entitle the player to select one or more symbols or numbers or cause the video lottery terminal to randomly select symbols or numbers;

(B) allow the player to win additional game play credits, coins, or tokens based on game rules that establish the random selection of winning combinations of symbols or numbers and the number of free play credits, coins, or tokens to be awarded for each winning combination; and

(C) allow the player at any time to clear all game play credits and receive a video lottery ticket entitling the player to receive the cash value of those credits;

(2) a surge protector must be installed on the electrical power supply line to each video lottery terminal, a battery or equivalent power backup for the electronic meters must be capable of maintaining the accuracy of all accounting records and video lottery terminal status reports for a period of 180 days after power is disconnected from the video lottery terminal, and the power backup device must be in the compartment specified in Subdivision (4);

(3) the operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference;

(4) the main logic boards of all electronic storage mediums must be located in a separate compartment in the video lottery terminal that is locked and sealed by the commission;

(5) the instructions for play of each game must be displayed on the video lottery terminal face or screen, including a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols;

(6) communication equipment and devices must be installed to enable each video lottery terminal to communicate with the video lottery central system through the use of a communications protocol provided by the commission to each registered video lottery terminal provider, which must include information retrieval and programs to activate and disable the terminal; and

(7) a video lottery terminal may be operated only if connected to the video lottery central system, and play on the terminal may not be conducted unless the terminal is connected to the video lottery central system.

(c) The commission may reject any instructions for play required under Subsection (b)(5) that the commission determines to be incomplete, confusing, or misleading.

Sec. 466.542. VIDEO LOTTERY TERMINALS: HOURS OF OPERATION; COMMUNICATION; LOCATION. (a) The hours of operation for video lottery terminals are subject to restrictions or other conditions provided by commission rules.

(b) The commission by rule may prescribe restrictions or conditions on the hours of video lottery terminal operations for purposes determined by the commission, including accounting for and collecting revenue generated by video lottery terminal operations and performing other operational services on the video lottery system.

(c) Communication between the video lottery central system and each video lottery terminal must be continuous and on a real-time basis as prescribed by the commission.

(d) Except as provided by a gaming agreement, placement or movement of video lottery terminals in a video lottery terminal establishment must be consistent with a commission-approved video lottery terminal establishment floor plan.

Sec. 466.543. VIDEO LOTTERY TERMINAL: TRANSPORT; DISPOSITION OF OBSOLETE TERMINAL. (a) The transportation and movement of video lottery terminals into or within this state is prohibited, except as permitted by this subchapter and approved by the commission.

(b) An obsolete video lottery terminal or a video lottery terminal that is no longer in operation must be promptly reported to the commission and, if taken out of use and play, must immediately be sold or otherwise transferred to a registered video lottery terminal provider or another person in a jurisdiction outside this state for use in that jurisdiction.

Sec. 466.544. VIDEO LOTTERY TERMINALS: MAXIMUM NUMBER. (a) The commission by rule shall establish the maximum number of video lottery terminals that may be operated at each video lottery terminal establishment operated by a video lottery retailer or video lottery manager based on factors prescribed by commission rule, including demographics, to ensure that the number of permits to operate video lottery terminals requested by the retailer or manager is not detrimental to the public health, safety, welfare, and economic development of this state and will result in the optimization of revenue to fund state governmental programs.

(b) The commission shall determine the number of video lottery terminals that may be operated by an Indian tribe in connection with the tribe's video lottery system in accordance with the applicable gaming agreement entered into pursuant to this chapter and the criteria prescribed by Subsection (a).

Sec. 466.5445. REGISTRATION OF VIDEO LOTTERY TERMINALS. (a) A video lottery retailer or video lottery manager may not operate or display a video lottery terminal for play in this state unless the terminal is annually registered with the commission in accordance with this section and the registration certificate is affixed to the terminal.

(b) To obtain a registration certificate under this section, a person must:

(1) file with the commission a registration application on a form prescribed by the commission; and

(2) pay a $1,000 registration fee to the commission for each video lottery terminal that is the subject of the application.

(c) Chapter 2153 does not apply to a video lottery terminal.

Sec. 466.545. LICENSE AND REGISTRATION INVESTIGATIVE TRUST FUND. (a) The investigative trust fund is created as a trust fund to pay all expenses incurred by the commission related to oversight investigations of applicants for a license, registration, or approval and of license, registration, or approval holders.

(b) The commission shall determine the amount initially deposited and the amount maintained in the fund by each applicant or license, registration, or approval holder and shall administer the money in the fund as a revolving fund available to the commission.

(c) If the commission does not receive the initial deposit required by Subsection (b) before the 30th day following the date the commission notifies the applicant or license, registration, or approval holder of the initial deposit amount, the commission may not issue or renew the license, registration, or approval. The investigative trust fund is in the state treasury and is held in trust with the comptroller's treasury operations division.

(d) Expenses may be advanced from the investigative fund, and expenditures may be made from the fund without regard to any other state law regarding travel expenses of state employees.

(e) The commission at least quarterly shall provide each applicant or license, registration, or approval holder a written accounting of the costs and charges incurred in oversight investigations for that applicant or holder. An applicant or a license, registration, or approval holder shall deposit money not later than the 10th day after receipt of the accounting to maintain the fund balance required by the commission.

(f) If an applicant for a license, registration, or approval is not licensed, registered, or approved, or if a license, registration, or approval is not renewed, the commission shall refund to the applicant or holder any balance in the fund paid by the applicant or holder not offset by costs incurred in an investigation for that applicant or holder.

Sec. 466.546. CONSENT TO COMMISSION DETERMINATION. (a) An application for a license, registration, finding of suitability, or other approval under this chapter constitutes a request to the commission for a decision on the applicant's general suitability, character, integrity, and ability to participate or engage in or be associated with the lottery in the manner or position sought.

(b) By filing an application with the commission, the applicant specifically consents to the commission's decision at the commission's election when the application, after filing, becomes moot for any reason other than death.

Sec. 466.547. ABSOLUTE AUTHORITY OF COMMISSION. To protect the integrity of the lottery or the public health, welfare, or safety, or to prevent financial loss to this state, the commission has full and absolute power and authority to:

(1) deny any application or limit, condition, restrict, revoke, or suspend any license, registration, or finding of suitability or approval; and

(2) fine any person licensed, registered, found suitable, or approved for any cause deemed reasonable by the commission.

Sec. 466.548. WAIVER OF REQUIREMENTS. (a) The commission may waive, either selectively or by general rule, one or more of the requirements of Sections 466.512 and 466.521 if the commission makes a written finding that the waiver is consistent with the policy of this state, the public health, safety, and welfare, and the integrity of the lottery.

(b) The commission may waive any requirement under this chapter for a finding of suitability of an institutional investor that is a substantial interest holder with respect to the beneficial ownership of the voting securities of a publicly traded corporation if the institutional investor holds the securities for investment purposes only and applies for a waiver in compliance with Section 466.549 and commission rules.

(c) An institutional investor is not eligible for the waiver, except as otherwise provided by Subsection (f), if the institutional investor beneficially owns, directly or indirectly, more than 15 percent of the voting securities and if any of the voting securities were acquired other than through a debt restructuring.

(d) Voting securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange, exercise, or conversion after a debt restructuring, or any securities issued to the institutional investor through a debt restructuring, are considered to have been acquired through a debt restructuring.

(e) A waiver granted under Subsection (b) is effective only as long as the institutional investor's direct or indirect beneficial ownership interest in the voting securities meets the limitations set forth in this section, and if the institutional investor's interest exceeds the limitation at any time, the investor is subject to the suitability findings required under this subchapter.

(f) An institutional investor that has been granted a waiver under Subsection (b) may beneficially own more than 15 percent, but not more than 19 percent, of the voting securities of a publicly traded corporation registered with or licensed by the commission only:

(1) if the additional ownership results from a stock repurchase program conducted by the publicly traded corporation; and

(2) on the conditions that:

(A) the institutional investor does not purchase or otherwise acquire any additional voting securities of the publicly traded corporation that would result in an increase in the institutional investor's ownership percentage; and

(B) the institutional investor reduces its ownership percentage of the publicly traded corporation to 15 percent or less before the first anniversary of the date the institutional investor receives constructive notice that it exceeded the 15 percent threshold, based on any public filing by the corporation with the United States Securities and Exchange Commission.

(g) The one-year time period under Subsection (f)(2)(B) may be extended for a reasonable time on commission approval.

(h) An institutional investor may not be considered to hold voting securities of a publicly traded corporation for investment purposes only unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of the corporation registered with or licensed by the commission or any of its gaming affiliates, or any other action which the commission finds to be inconsistent with investment purposes only. The following activities may not be considered to be inconsistent with holding voting securities for investment purposes only:

(1) voting, directly or indirectly through the delivery of a proxy furnished by the board of directors, on all matters voted on by the holders of the voting securities;

(2) serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;

(3) nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;

(4) accepting appointment or election as a member of the board of directors in connection with a debt restructuring and serving in that capacity until the conclusion of the member's term;

(5) making financial and other inquiries of management of the type normally made by securities analysts for information purposes and not to cause a change in management, policies, or operations; and

(6) any other activity the commission determines to be consistent with the investment intent.

(i) For purposes of this section, "debt restructuring" means:

(1) a proceeding under the United States Bankruptcy Code; or

(2) any out-of-court reorganization of a person that is insolvent or generally unable to pay the person's debts as they become due.

Sec. 466.549. WAIVER APPLICATION REQUIREMENTS. An application for a waiver under Section 466.548(b) must include:

(1) a description of the institutional investor's business and a statement as to why the institutional investor meets the definition of an institutional investor set forth in this chapter;

(2) a certification, made under oath and penalty of perjury, that:

(A) states that the voting securities were acquired and are held for investment purposes only in accordance with Section 466.548;

(B) provides that the applicant agrees to be bound by and comply with this chapter and the rules adopted under this chapter, to be subject to the jurisdiction of the courts of this state, and to consent to this state as the choice of forum in the event any dispute, question, or controversy arises regarding the application or any waiver granted under Section 466.548(b); and

(C) includes a statement by the signatory explaining the basis of the signatory's authority to sign the certification and bind the institutional investor to its terms;

(3) a description of all actions, if any, taken or expected to be taken by the institutional investor related to the activities described in Section 466.548(f);

(4) the names, addresses, telephone numbers, dates of birth, and social security numbers of:

(A) the officers and directors of the institutional investor or the officers' and directors' equivalents; and

(B) the persons that have direct control over the institutional investor's holdings of voting securities of the publicly traded corporation registered with or licensed by the commission;

(5) the name, address, telephone number, date of birth, and social security number or federal tax identification number of each person who has the power to direct or control the institutional investor's exercise of its voting rights as a holder of voting securities of the publicly traded corporation registered with or licensed by the commission;

(6) the name of each person that beneficially owns more than five percent of the institutional investor's voting securities or other equivalent;

(7) a list of the institutional investor's affiliates;

(8) a list of all securities of the publicly traded corporation registered with or licensed by the commission that are or were beneficially owned by the institutional investor or its affiliates in the preceding year, including a description of the securities, the amount of the securities, and the date of acquisition or sale of the securities;

(9) a list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the publicly traded corporation registered with or licensed by the commission files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor;

(10) a disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding five years against the institutional investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months, except that for a former officer or director, the information need be provided only to the extent that it relates to actions arising out of or during the person's tenure with the institutional investor or its affiliates;

(11) a copy of the institutional investor's most recent Schedule 13D or 13G and any amendments to that schedule filed with the United States Securities and Exchange Commission concerning any voting securities of the publicly traded corporation registered with or licensed by the commission;

(12) a copy of any filing made under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) with respect to the acquisition or proposed acquisition of voting securities of the publicly traded corporation registered with or licensed by the commission; and

(13) any additional information the commission may request.

Sec. 466.550. CHANGE IN INVESTMENT FOLLOWING WAIVER; NOTICE. (a) An institutional investor that has been granted a waiver of a finding of suitability under Section 466.548 and that subsequently intends not to hold the investor's voting securities of the publicly traded corporation for investment purposes only or that intends to take any action inconsistent with the investor's prior intent shall, not later than the second business day after the date of the decision, deliver notice to the commission in writing of the change in the investor's investment intent. The commission may then take any action the commission deems appropriate.

(b) If the commission finds that an institutional investor has failed to comply with this chapter or should be subject to a finding of suitability to protect the public interest, the commission may require the institutional investor to apply for a finding of suitability.

(c) Any publicly traded corporation registered with or licensed by the commission shall immediately notify the commission of any information about, fact concerning, or actions of an institutional investor holding any of its voting securities that may materially affect the institutional investor's eligibility to hold a waiver under Section 466.548.

Sec. 466.551. EFFECT OF DENIAL OF LICENSE OR REGISTRATION. (a) A person whose application for a license or registration has been denied may not have any interest in or association with a video lottery retailer or video lottery manager or any other business conducted in connection with video lottery without prior approval of the commission.

(b) Any contract between a person holding a license or registration and a person denied a license or registration must be terminated immediately. If the person denied a license or registration has previously been granted a temporary license or registration, the temporary license or registration expires immediately on denial of the permanent license or registration.

(c) Except as otherwise authorized by the commission, a person denied a license or registration may not reapply for any license or registration before the second anniversary of the date of the denial.

Sec. 466.553. PRACTICE BY VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER. A video lottery retailer or video lottery manager must:

(1) be aware of patron conditions and prohibit play by visibly intoxicated patrons;

(2) comply with state alcoholic beverage control laws;

(3) at all times maintain sufficient change and cash in denominations accepted by video lottery terminals;

(4) promptly report all video lottery terminal malfunctions and down-time;

(5) install, post, and display prominently any material required by the commission;

(6) prohibit illegal gambling and any related paraphernalia;

(7) except as otherwise provided by this chapter, at all times prohibit money lending or other extensions of credit at the video lottery terminal establishment;

(8) supervise employees and activities to ensure compliance with all commission rules and this chapter;

(9) maintain continuous camera coverage of all aspects of video lottery game operations, including video lottery terminals; and

(10) maintain an entry log for each video lottery terminal on the premises of the video lottery terminal establishment and maintain and submit complete records on receipt of each video lottery terminal on the premises as determined by the commission.

Sec. 466.554. RACETRACK REQUIREMENTS. (a) Except as provided by Section 466.520(b), other law, or this section, a video lottery retailer at all times must hold a valid pari-mutuel wagering license. The commission may allow a video lottery retailer whose pari-mutuel wagering license has lapsed or been revoked, suspended, or surrendered to reapply for a license in order to operate the video lottery terminal establishment or by rule may establish a period not to exceed two years during which time the video lottery terminal establishment may be operated pending acquisition by a person qualified and licensed under this chapter to operate video lottery terminals.

(b) If a video lottery retailer is not licensed as required by Subsection (a) before the second anniversary of the date a license lapses or is revoked, suspended, or surrendered or a new video lottery manager or video lottery retailer is not licensed and authorized to operate the facility before the second anniversary, the racetrack shall permanently lose eligibility under this chapter to operate video lottery terminals.

(c) Subject to the commission's discretion, a video lottery retailer may continue to operate the video lottery terminal establishment after the second anniversary of the date a license lapses or is revoked, suspended, or surrendered only to satisfy the establishment's existing outstanding debt attributable to video lottery operation.

Sec. 466.556. PRIZE RULES. The commission shall adopt rules governing:

(1) the amount a player may be charged to play each video lottery game; and

(2) the prizes and credits that may be awarded to the player of a video lottery game.

Sec. 466.557. VIDEO LOTTERY CENTRAL SYSTEM: COMMUNICATION TECHNOLOGY. The video lottery central system provider shall pay for the installation and operation of commission-approved communication technology to provide real-time communication between each video lottery terminal and the video lottery central system.

Sec. 466.558. RESPONSIBILITY FOR VIDEO LOTTERY GAME OPERATIONS. (a) A video lottery retailer or a video lottery manager, if applicable, is responsible for the management of video lottery game operations, including:

(1) the validation and payment of prizes; and

(2) the management of cashiers, food and beverage workers, floor workers, security personnel, the security system, building completion, janitorial services, landscaping design, and maintenance.

(b) Nothing in Subsection (a) limits the authority of the commission, the Department of Public Safety, or another law enforcement agency to administer and enforce this chapter as related to video lottery.

(c) In addition to other requirements under this chapter relating to video lottery, a video lottery retailer or a video lottery manager at all times shall:

(1) operate only video lottery terminals that are distributed by a registered video lottery terminal provider and provide a secure location for the placement, operation, and play of the video lottery terminals;

(2) prevent any person from tampering with or interfering with the operation of a video lottery terminal;

(3) ensure that communication technology from the video lottery central system to the video lottery terminals is connected at all times and prevent any person from tampering or interfering with the operation of the connection;

(4) ensure that video lottery terminals are in the sight and control of designated employees of the video lottery retailer or video lottery manager and in the sight of video cameras as required under this subchapter;

(5) ensure that video lottery terminals are placed and remain placed in the specific locations in the video lottery terminal establishment that are consistent with the retailer's or manager's commission-approved floor plan;

(6) monitor video lottery terminals to prevent a person who is under 21 years of age or who is visibly intoxicated from placing a wager;

(7) refuse to accept a credit card payment from a player for the exchange or purchase of video lottery game credits or for an advance of coins, currency, vouchers, or tokens to be used by a player to play video lottery games, refuse to extend credit, in any manner, to a player that enables the player to play a video lottery game, and ensure that any person doing business at the video lottery terminal establishment, including a person operating or managing an auxiliary service such as a restaurant, refuses to accept a credit card payment or to extend credit in a manner prohibited by this subdivision, except that:

(A) a license holder may cash a check for a player if the license holder exercises reasonable caution cashing the check and does not cash checks for any player in an amount exceeding $1,000 in any 24-hour period; and

(B) an automated teller machine may be located at a video lottery terminal establishment in compliance with the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) or an effective gaming agreement;

(8) pay all credits won by a player on presentment of a valid winning video lottery game ticket;

(9) conduct only the video lottery game advertising and promotional activities consistent with criteria prescribed by the commission, which must prohibit undue influence, offensive language, and anything that would affect the integrity of video lottery operation;

(10) install, post, and display prominently at the licensed location redemption information and other informational or promotional materials as required by the commission;

(11) maintain general liability insurance coverage for the video lottery terminal establishment and all video lottery terminals in the amounts required by the commission;

(12) assume liability for money lost or stolen from any video lottery terminal; and

(13) annually submit an audited financial statement to the commission in a format approved by the commission.

Sec. 466.560. TECHNICAL STANDARDS FOR VIDEO LOTTERY EQUIPMENT. The commission by rule shall establish minimum technical standards for video lottery equipment that may be operated in this state.

Sec. 466.561. INCIDENT REPORTS. (a) A video lottery retailer or video lottery manager shall record all unusual occurrences related to gaming activity in a video lottery terminal establishment operated by the retailer or manager.

(b) A video lottery retailer or video lottery manager shall assign each incident, without regard to materiality, a sequential number and, at a minimum, provide the following information in a permanent record prepared in accordance with commission rules to ensure the integrity of the record:

(1) the number assigned to the incident;

(2) the date and time of the incident;

(3) the nature of the incident;

(4) each person involved in the incident; and

(5) the name of the employee or other agent of the video lottery retailer or video lottery manager who investigated the incident.

Sec. 466.562. EXCLUSION OF PERSONS. (a) The commission shall compile a list of persons that a video lottery retailer or video lottery manager must bar from a video lottery terminal establishment based on a person's criminal history or association with criminal offenders or because the person poses a threat to the integrity of the lottery.

(b) A video lottery retailer or video lottery manager shall employ the retailer's or manager's best efforts to exclude such persons from entry into the establishment.

(c) A video lottery retailer or video lottery manager may exclude a person for any reason not related to the person's race, sex, national origin, physical disability, or religion.

(d) A person who believes the person may be playing video lottery games on a compulsive basis may request that the person's name be placed on the list compiled by the commission under Subsection (a).

(e) All video lottery game employees shall receive training in identifying players with a compulsive playing problem and shall be instructed to ask the players to leave the establishment. Signs and other materials shall be readily available to direct compulsive players to agencies that offer appropriate counseling.

Sec. 466.563. REPORT ON LITIGATION. (a) A video lottery retailer or video lottery manager shall report to the commission any litigation relating to the retailer's or manager's video lottery terminal establishment, including a criminal

proceeding, a proceeding involving an issue related to racing activities that impact video lottery operations, or a matter related to character or reputation relevant to a person's suitability under this subchapter.

(b) The report required under Subsection (a) must be filed not later than the fifth day after acquiring knowledge of the litigation.

Sec. 466.564. COMMISSION APPROVAL REQUIRED FOR PROCEDURES AND ADMINISTRATIVE AND ACCOUNTING CONTROLS. (a) The commission's approval is required for:

(1) all internal procedures and administrative and accounting controls of a video lottery retailer or video lottery manager; and

(2) all internal procedures and administrative and accounting controls of a video lottery terminal provider that relate to the manufacturing and distribution of video lottery terminals to be used in this state.

(b) The commission by rule shall establish general accounting and auditing requirements and internal control standards for video lottery retailers and video lottery managers.

Sec. 466.565. FINANCIAL AND OPERATING INFORMATION. A video lottery retailer or video lottery manager shall submit financial and operating information and statistical data to the commission in a format approved by the commission in order for the financial operating position of the retailer or manager and performance and trends of the video lottery game industry in this state to be evaluated.

Sec. 466.566. VIDEO LOTTERY TERMINAL EVENTS. A video lottery retailer or video lottery manager shall keep a database of video lottery terminal events. The commission by rule shall determine what constitutes a video lottery terminal event for purposes of this section.

Sec. 466.567. EMPLOYEE REPORTING. (a) On or before the 15th day of each month, a video lottery retailer or video lottery manager shall submit to the commission an employee report for the video lottery terminal establishment operated by the retailer or manager. For each employee of the retailer or manager, the report must provide the employee's name, job title, date of birth, and social security number.

(b) The employee report is confidential and may not be disclosed except under commission order or in accordance with Section 466.022(c).

(c) The commission may conduct criminal history investigations for employees of video lottery retailers and video lottery managers.

(d) The commission may prohibit an employee from performing any act relating to video lottery terminals if the commission finds that an employee has:

(1) committed, attempted, or conspired to commit any act prohibited by this chapter;

(2) concealed or refused to disclose any material fact in any commission investigation;

(3) committed, attempted, or conspired to commit larceny or embezzlement;

(4) been convicted in any jurisdiction of an offense involving or relating to gambling;

(5) accepted employment in a position for which commission approval is required after commission approval was denied for a reason involving personal unsuitability or after failing to apply for a license or approval on commission request;

(6) been prohibited under color of governmental authority from being present on the premises of any gaming establishment or any establishment where pari-mutuel wagering is conducted for any reason relating to improper gambling activity or for any illegal act;

(7) wilfully defied any legislative investigative committee or other officially constituted body acting on behalf of the United States or any state, county, or municipality that sought to investigate alleged or potential crimes relating to gaming, corruption of public officials, or any organized criminal activities; or

(8) been convicted of any felony or any crime involving moral turpitude.

(e) The commission may prohibit an employee from performing any act relating to video lottery terminals based on a revocation or suspension of any gaming or wagering license, permit, or approval or for any other reason the commission finds appropriate, including a refusal by a regulatory authority to issue a license, permit, or other approval for the employee to engage in or be involved with the lottery or with regulated gaming or pari-mutuel wagering in any jurisdiction.

(f) In this section, "employee" includes any person connected directly with or compensated by an applicant or license holder as an agent, personal representative, consultant, independent contractor, or lobbyist for the advocacy of the adoption or amendment of a law related to gaming or lottery activities or the furtherance of gaming or lottery activities in any jurisdiction or as otherwise specified by commission rule.

Sec. 466.568. REPORT OF VIOLATIONS. A person who holds a license or registration under this subchapter shall immediately report a violation or suspected violation of this chapter or a rule adopted under this chapter by any license or registration holder, by an employee of a license or registration holder, or by any person on the premises of a video lottery terminal establishment, whether or not associated with the license or registration holder.

Sec. 466.569. SECURITY. (a) In addition to the security provisions applicable under Section 466.020, a video lottery retailer or video lottery manager shall comply with the following security procedures:

(1) all video lottery terminals must be continuously monitored through the use of a closed-circuit television system that records activity for a continuous 24-hour period and all video tapes or other media used to store video images shall be retained for at least 30 days and made available to the commission on request;

(2) the video lottery retailer or video lottery manager must submit for commission approval a security plan and a floor plan of the area where video lottery terminals are to be operated showing video lottery terminal locations and security camera mount locations; and

(3) each license holder shall employ at least the minimum number of private security personnel the commission determines is necessary to provide for safe and approved operation of the video lottery terminal establishment and the safety and well-being of the players.

(b) Private security personnel must be present during all hours of operation at each video lottery terminal establishment.

(c) An agent or employee of the commission or the Department of Public Safety or other law enforcement personnel may be present at a video lottery terminal establishment at any time.

(d) The commission may adopt rules to impose additional surveillance and security requirements related to video lottery terminal establishments and the operation of video lottery terminals.

Sec. 466.570. VIDEO LOTTERY TERMINAL ESTABLISHMENT: COMMISSION RIGHT TO ENTER. The commission or the commission's representative after displaying appropriate identification and credentials has the free and unrestricted right to enter the premises of a video lottery terminal establishment and to enter any other locations involved in operation or support of video lottery at all times to examine the systems and to inspect and copy the records of a video lottery retailer or video lottery manager pertaining to the operation of video lottery.

Sec. 466.571. APPOINTMENT OF SUPERVISOR. (a) The commission by rule may provide for the appointment of a supervisor to manage and operate a video lottery terminal establishment at the direction of the commission and perform any act that a video lottery retailer or video lottery manager is entitled to perform in the event that:

(1) a video lottery retailer license or other license required for operation of the establishment is revoked or suspended, lapses, or is surrendered;

(2) a video lottery terminal establishment has been conveyed or transferred to a secured party receiver or trustee who does not hold the licenses necessary to operate the establishment; or

(3) any other event occurs that causes the establishment to cease the operation of video lottery terminals.

(b) The rules may allow the commission to:

(1) take any action or adopt any procedure necessary to operate a video lottery terminal establishment pending the licensing of a video lottery retailer, video lottery manager, the video lottery establishment, or a successor on the transfer or sale of the establishment or property; and

(2) if necessary to continue the operation of the video lottery establishment, sell the establishment to a person that holds or has applied for the licenses required to operate the establishment under this subchapter and make appropriate distributions of the proceeds of the sale.

Sec. 466.586. OFFENSE: CONVEYANCE OF VIDEO LOTTERY TERMINAL ESTABLISHMENT PROPERTY. (a) A person commits an offense if during the pendency of any proceeding before the commission that may result in the appointment of a supervisor or during the period of supervision the person:

(1) sells, leases, or otherwise conveys for less than full market value or pledges as security any property of a video lottery terminal establishment; or

(2) removes from this state or secretes from the commission or the supervisor any property, money, books, or records of the video lottery terminal establishment, including evidences of debts owed to the establishment.

(b) An offense under Subsection (a) is a felony of the third degree.

Sec. 466.587. INDEMNIFICATION, INSURANCE, AND BONDING REQUIREMENTS. (a) A license or registration holder shall indemnify and hold harmless this state, the commission, and all officers and employees of this state and the commission from any and all claims which may be asserted against a license or registration holder, the commission, this state, and the members, officers, employees, and authorized agents of this state or the commission arising from the license or registration holder's participation in the video lottery system authorized under this chapter.

(b) Surety and insurance required under this subchapter shall be issued by companies or financial institutions financially rated "A" or better as rated by A.M. Best Company or other rating organization designated by the commission and duly licensed, admitted, and authorized to conduct business in this state, or by other surety approved by the commission.

(c) The commission shall be named as the obligee in each required surety and as an additional insured in each required insurance contract.

(d) A video lottery retailer or video lottery manager may not be self-insured with regard to video lottery terminal operations under this section.

(e) The commission by rule shall establish minimum insurance coverage requirements for a video lottery retailer, video lottery manager, or video lottery terminal provider, including:

(1) insurance for performance;

(2) insurance against losses caused by fraudulent or dishonest acts by an officer or employee of a video lottery retailer, video lottery manager, or video lottery terminal provider;

(3) general liability insurance;

(4) property insurance;

(5) liability insurance for drivers and vehicles employed by a video lottery retailer or video lottery manager; and

(6) crime insurance for the location.

Sec. 466.588. LIABILITY FOR CREDIT AWARDED OR DENIED; PLAYER DISPUTE. This state and the commission are not liable for any video lottery terminal malfunction or error by a video lottery retailer, video lottery manager, or video lottery terminal provider that causes credit to be wrongfully awarded or denied to players.

Sec. 466.589. STATE VIDEO LOTTERY ACCOUNT. (a) The commission shall deposit money received under this subchapter to the state video lottery account. The state video lottery account is a special account in the general revenue fund. The account consists of all revenue received by this state from the operation of video lottery terminals. Except as otherwise provided by this

subchapter, money in the account may be used solely to fund public education and other state governmental programs and the administration of the video lottery system.

(b) Not more than two percent of the net terminal income received by this state under Section 466.590 may be used to defray expenses incurred in administering this chapter related to video lottery, including expenses incurred to operate the video lottery central system.

Sec. 466.590. ALLOCATION OF NET TERMINAL INCOME; TRANSFER OF MONEY. (a) Net terminal income derived from the operation of video lottery games in this state is allocated as follows:

(1) net terminal income generated from the operation of video lottery terminals at a video lottery terminal establishment shall be distributed 65 percent to the establishment and 35 percent to this state; and

(2) net terminal income generated from the operation of video lottery terminals on Indian lands under a gaming agreement authorized under this subchapter shall be distributed in the amount set forth in the gaming agreement.

(b) One-quarter of one percent of the net terminal income received by this state under Subsection (a)(1) shall be allocated to a compulsive gambling program to be established by the commission.

(c) One-quarter of one percent of the net terminal income received by this state under Subsection (a)(1) shall be transferred to the Equine Research Program at the College of Veterinary Medicine at Texas A&M University for use in equine research under Subchapter F, Chapter 88, Education Code, and greyhound research.

(c-1) One-quarter of one percent of the net terminal income received by this state under Subsection (a)(1) shall be allocated to:

(1) the municipality in which the video lottery terminal establishment is located; and

(2) the county in which the video lottery terminal establishment is located.

(c-2) If a video lottery terminal establishment is located in an unincorporated area, one-half of one percent of the net terminal income received by this state under Subsection (a)(1) shall be allocated to the county in which the establishment is located.

(d) The commission shall require a video lottery retailer or video lottery manager to establish a separate electronic funds transfer account for depositing money from video lottery terminal operations, making payments to the commission or its designee, and receiving payments from the commission or its designee.

(e) A video lottery retailer or video lottery manager may not make payments to the commission in cash. As authorized by the commission, a video lottery retailer or video lottery manager may make payments to the commission by cashier's check.

(f) The commission at least daily shall transfer this state's share of net terminal income of a video lottery retailer or video lottery manager to the commission through the electronic transfer of the money.

(g) The commission by rule shall establish the procedures for:

(1) depositing money from video lottery terminal operations into electronic funds transfer accounts; and

(2) handling money from video lottery terminal operations.

(h) Unless otherwise directed by the commission, a video lottery retailer or a video lottery manager shall maintain in its account this state's share of the net terminal income from the operation of video lottery terminals, to be electronically transferred by the commission on dates established by the commission. On a license holder's failure to maintain this balance, the commission may disable all of a license holder's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged under Section 111.060, Tax Code. The interest shall begin to accrue on the date payment is due to the commission.

(i) In the commission's sole discretion, rather than disable a license holder's video lottery terminals under Subsection (f), the commission may elect to impose a fine on a license holder in an amount determined by the commission not to exceed $250,000 for each violation. If the license holder fails to remedy the violation, including payment of any amounts assessed by or due to this state, within 10 days, the commission may disable the license holder's video lottery terminals or use any other means for collection as provided by the penalty chart established by the commission.

(j) A video lottery retailer or video lottery manager is solely responsible for resolving any income discrepancies between actual money collected and the net terminal income reported by the video lottery central system. Unless an accounting discrepancy is resolved in favor of the video lottery retailer or video lottery manager, the commission may not make any credit adjustments. Any accounting discrepancies which cannot otherwise be resolved shall be resolved in favor of the commission.

(k) A video lottery retailer and video lottery manager shall remit payment as directed by the commission if the electronic transfer of money is not operational or the commission notifies the license holder that other remittance is required. The license holder shall report this state's share of net terminal income, and remit the amount generated from the terminals during the reporting period.

Sec. 466.591. COMMISSION EXAMINATION OF FINANCIAL RECORDS. The commission may examine all accounts, bank accounts, financial statements, and records in the possession or control of a person licensed under this subchapter or in which the license holder has an interest. The license holder must authorize and direct all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

Sec. 466.592. FINANCIAL INFORMATION REQUIRED. (a) A video lottery retailer or video lottery manager shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of money to the commission.

(b) A video lottery retailer or video lottery manager must provide the commission 30 days' advance notice of any proposed account changes in information and bank authorizations to assure the uninterrupted electronic transfer of money.

(c) The commission is not responsible for any interruption or delays in the transfer of money. The video lottery retailer or video lottery manager is responsible for any interruption or delay in the transfer of money.

Sec. 466.593. DEDUCTIONS FROM VIDEO LOTTERY PROCEEDS AT HORSE RACETRACKS. A racetrack that conducts horse races under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) shall allocate a percentage of its share of net terminal income retained under Section 466.590(a) to a purse fund as provided by Section 6.095, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

Sec. 466.594. DEDUCTIONS FROM VIDEO LOTTERY PROCEEDS AT GREYHOUND RACETRACKS. A racetrack that conducts greyhound races under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) shall allocate a percentage of its share of net terminal income retained under Section 466.590(a) to a purse fund as provided by Section 6.095, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

Sec. 466.595. LIABILITY OF VIDEO LOTTERY RETAILER AND VIDEO LOTTERY MANAGER. (a) A video lottery retailer, video lottery manager, or both, are liable to the commission for the state's share of net terminal income reported by the video lottery central system.

(b) Net terminal income received by the video lottery retailer or video lottery manager is held in trust for the benefit of this state before delivery of the state's share to the commission or electronic transfer to the state treasury, and the video lottery retailer or video lottery manager, or both, are liable to the commission for the full amount of the money held in trust.

(c) If the video lottery retailer or video lottery manager is not an individual, each officer, director, or owner of the video lottery retailer or video lottery manager is personally liable to the commission for the full amount of the money held in trust, except that shareholders of a publicly held corporation shall be liable in an amount not to exceed the value of their equity investment.

Sec. 466.596. PRIZE PAYMENT AND REDEMPTION. (a) Payment of prizes is the sole and exclusive responsibility of the video lottery retailer or video lottery manager. A prize may not be paid by the commission or this state except as otherwise authorized.

(b) Nothing in this subchapter limits the ability of a video lottery retailer or video lottery manager to provide promotional prizes, including wide area progressive networks, in addition to prize payouts regulated by the commission.

(c) A video lottery ticket must be redeemed not later than the 180th day following the date of issuance. If a claim is not made for prize money on or before the 180th day after the date on which the video lottery ticket was issued, the prize money becomes the property of this state.

(d) The commission shall enact rules consistent with this section governing the use and redemption of prizes and credits recorded on electronic player account records, such as players' club cards and smart cards.

Sec. 466.597. REVOCATION OF LICENSE, REGISTRATION, OR OTHER REGULATORY APPROVAL. (a) The commission shall revoke or suspend a license, registration, or other regulatory approval issued under this subchapter if the holder of the license, registration, or approval at any time fails to meet the eligibility requirements set forth in this subchapter.

(b) Failure to timely remit revenue generated by video lottery terminals to the commission or any tax or other fee owed to this state as demonstrated by report from the applicable taxing authority or to timely file any report or information required under this subchapter as a condition of any license, registration, or other approval issued under this subchapter may be grounds for suspension or revocation, or both, of a license, registration, or other approval issued under this subchapter.

Sec. 466.598. HEARING FOR REVOCATION OR SUSPENSION OF REGISTRATION OR LICENSE. (a) Before the commission revokes or suspends a video lottery terminal provider's registration or video lottery retailer's or video lottery manager's license, or imposes monetary penalties for a violation of this subchapter, the commission shall provide written notification to the license or registration holder of the revocation, the period of suspension, or the monetary penalty. The notice shall include:

(1) the effective date of the revocation or the period of suspension or the amount of the monetary penalty, as applicable;

(2) each reason for the revocation, suspension, or penalty;

(3) an explanation of the evidence supporting the reasons;

(4) an opportunity to present the license or registration holder's position in response on or before the 15th day after the effective date of the revocation; and

(5) a statement explaining the person's right to an administrative hearing to determine whether the revocation, suspension, or penalty is warranted.

(b) The notice required under Subsection (a) must be made by personal delivery or by mail to the person's mailing address as it appears on the commission's records.

(c) To obtain an administrative hearing on a suspension, revocation, or penalty under this section, a person must submit a written request for a hearing to the commission not later than the 20th day after the date notice is delivered personally or is mailed.

(d) If the commission receives a timely request under Subsection (c), the commission shall provide the person with an opportunity for a hearing as soon as practicable. If the commission does not receive a timely request under Subsection (c), the commission may impose the penalty, revoke or suspend a license or registration, or sustain the revocation or suspension without a hearing.

(e) Except as provided by Subsection (f) the hearing must be held not earlier than the 11th day after the date the written request is submitted to the commission.

(f) The commission may provide that a revocation or suspension takes effect on receipt of notice under Subsection (a) if the commission finds that the action is necessary to prevent or remedy a threat to public health, safety, or welfare. The commission by rule shall establish a nonexclusive list of violations that present a threat to the public health, safety, or welfare.

(g) A hearing on a revocation or suspension that takes effect on receipt of notice must be held not later than the 14th day after the date the commission receives the request for hearing under this section. The revocation or suspension continues in effect until the hearing is completed. If the hearing is continued, the revocation or suspension shall continue in effect beyond the 14-day period at the request of the license or registration holder or on a finding of good cause by the commission or administrative law judge.

(h) To prevail in a post-deprivation administrative hearing under this section, the license or registration holder must demonstrate by clear and convincing evidence that the deprivation or imposition of a penalty was unwarranted or otherwise unlawful. The post-deprivation hearing may be conducted by the commission or referred to the State Office of Administrative Hearings.

(i) The administrative record created by the hearing conducted by the State Office of Administrative Hearings shall be provided to the commission for review and determination on the revocation or suspension.

(j) If an administrative law judge of the State Office of Administrative Hearings conducts a hearing under this section and the proposal for decision supports the commission's position, the administrative law judge shall include in the proposal a finding of the costs, fees, expenses, and reasonable and necessary attorney's fees this state incurred in bringing the proceeding.

(k) The commission may adopt the findings for costs, fees, and expenses and make the finding a part of the final order entered in the proceeding. Proceeds collected from a finding made under this section shall be paid to the commission.

Sec. 466.599. JUDICIAL REVIEW OF REVOCATION, SUSPENSION, OR PENALTY IMPOSITION. (a) A person aggrieved by a final decision of the commission to revoke or suspend a registration or license or to impose any monetary penalty may obtain judicial review before a district court in Travis County.

(b) The judicial review must be instituted by serving on the commission and filing a petition not later than the 20th day after the effective date of the final decision and must identify the order appealed from and the grounds or reason why the petitioner contends the decision of the commission should be reversed or modified.

(c) The review must be conducted by the court sitting without jury, and must not be a trial de novo but is confined to the record on review. The reviewing court may only affirm the decision, remand the case for further proceedings, or reverse the decision if the substantial rights of the petitioner have been violated.

(d) If any court of competent jurisdiction concludes on judicial review limited to the administrative record before the commission and subject to the substantial evidence standard that the deprivation or penalty was unwarranted or

otherwise unlawful, the sole remedy available is invalidation of the penalty or reinstatement of the license or registration and the continued distribution, manufacture, or operation of video lottery terminals.

(e) The commission, this state, or the members, officers, employees, and authorized agents of either are not under any circumstances subject to monetary damages, attorney's fees, or court costs resulting from the penalty or license or registration revocation.

Sec. 466.600. LICENSE OR REGISTRATION: AGREEMENT TO WAIVE ENFORCEABILITY. A license or registration holder by virtue of accepting the license or registration agrees that the privilege of holding a license or registration under this subchapter is conditioned on the holder's agreement to Sections 466.597-466.599 and waives any right to challenge or otherwise appeal the enforceability of those sections.

Sec. 466.601. LIMITED WAIVER OF SOVEREIGN IMMUNITY; NO LIABILITY OF STATE FOR ENFORCEMENT. (a) This state does not waive its sovereign immunity by negotiating gaming agreements with Indian tribes or other persons for the operation of video lottery terminals or other lottery games under this chapter. An actor or agent on behalf of this state does not have any authority to waive the state's sovereign immunity absent an express legislative grant of the authority. The only waiver of sovereign immunity relative to video lottery terminal operations is that expressly provided for in this section.

(b) With regard to video lottery terminal operations on Indian lands, this state consents to the jurisdiction of the District Court of the United States with jurisdiction in the county where the Indian lands are located, or if the federal court lacks jurisdiction, to the jurisdiction of a district court in Travis County, solely for the purpose of resolving disputes arising from a gaming agreement authorized under this subchapter for declaratory or injunctive relief or contract damages of $100,000 or more. Any disputes relating to damages or other awards valued at less than $100,000 shall be arbitrated under the rules of the American Arbitration Association, provided, however, that application of the rules may not be construed as a waiver of sovereign immunity.

(c) All financial obligations of the commission are payable solely out of the income, revenues, and receipts of the commission and are subject to statutory restrictions and appropriations.

(d) This state and the commission are not liable if performance by the commission is compromised or terminated by acts or omissions of the legislature or the state or federal judiciary.

(e) This state and the commission are not liable related to any enforcement of this chapter.

Sec. 466.602. ABSOLUTE PRIVILEGE OF REQUIRED COMMUNICATIONS AND DOCUMENTS. (a) Any communication, document, or record of a video lottery central system provider, video lottery terminal provider, video lottery retailer, or video lottery manager, an applicant, or a license or registration holder or holder of a regulatory approval that is made or transmitted to the commission or any of its employees to comply with any law, including a rule of the commission, to comply with a subpoena issued by the

commission, or to assist the commission or its designee in the performance of their respective duties is absolutely privileged, does not impose liability for defamation, and is not a ground for recovery in any civil action.

(b) If a communication, document, or record provided under Subsection (a) contains any information that is privileged under state law, that privilege is not waived or lost because the communication, document, or record is disclosed to the commission or any of the commission's employees.

(c) The commission shall maintain all privileged information, communications, documents, and records in a secure place as determined in the commission's sole discretion that is accessible only to members of the commission and authorized commission employees.

Sec. 466.603. INTELLECTUAL PROPERTY RIGHTS OF COMMISSION. The legislature finds and declares that the commission has the right to establish ownership of intellectual property rights for all lottery products, including video lottery terminals and related video lottery equipment.

Sec. 466.604. MODEL GAMING AGREEMENT. (a) The governor shall execute, on behalf of this state, a gaming agreement with the Ysleta del Sur Pueblo Indian tribe, the Alabama-Coushatta Indian tribe, or the Kickapoo Traditional Tribe of Texas containing the terms set forth in Subsection (b), as a ministerial act, without preconditions, not later than the 30th day after the date the governor receives a request from the tribe, accompanied by or in the form of a duly enacted resolution of the tribe's governing body, to enter into the gaming agreement.

(b) A gaming agreement executed under Subsection (a) must be in the form and contain the provisions as follows:

GAMING AGREEMENT GOVERNING
VIDEO LOTTERY TERMINAL OPERATIONS
Between the [Name of Tribe]
and the STATE OF TEXAS

This agreement is made and entered into by and between the [Name of Tribe], a federally recognized Indian Tribe ("Tribe"), and the State of Texas ("State"), with respect to the operation of video lottery terminals (as defined by Section 466.002, Texas Government Code) on the Tribe's Indian lands (as defined by Chapter 466, Texas Government Code).

SECTION 1.0. TITLE.

Sec. 1.1. This document shall be referred to as "The [Name of Tribe] and State of Texas gaming agreement."

SECTION 2.0. PURPOSES AND OBJECTIVES.

Sec. 2.1. The terms of this agreement are designed and intended to:

(a) evidence the good will and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties;

(b) develop and implement a means of regulating limited Class III gaming on the Tribe's Indian lands to ensure fair and honest operation in accordance with the applicable federal and state law, and, through that regulated limited Class III

gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and governmental services and programs; and

(c) ensure fair operation of video lottery games and minimize the possibilities of corruption and infiltration by criminal influences; promote ethical practices in conjunction with that gaming, through the licensing and control of persons employed in, or providing goods and services to, the Tribe's video lottery operation and protecting against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make the persons unsuitable for participation in gaming, thereby maintaining a high level of integrity in government gaming.

SECTION 3.0. DEFINITIONS.

As used in this agreement, all terms have the meaning assigned by Section 466.002, Texas Government Code, unless otherwise specified:

Sec. 3.1. "Class III gaming" means the forms of Class III gaming defined in 25 U.S.C. Section 2703(8) and by regulations of the National Indian Gaming Commission.

Sec. 3.2. "Financial source" means any person providing financing, directly or indirectly, to the Tribe's video lottery terminal establishment or operation of video lottery terminals authorized under this gaming agreement.

Sec. 3.3. "Gaming activities" means the limited Class III gaming activities authorized under this gaming agreement.

Sec. 3.4. "Gaming employee" means any person who:

(a) operates, maintains, repairs, or assists in any gaming activities, or is in any way responsible for supervising the gaming activities or persons who conduct, operate, account for, or supervise the gaming activities;

(b) is in a category under applicable federal or tribal gaming law requiring licensing;

(c) is an employee of the Tribal Compliance Agency with access to confidential information; or

(d) is a person whose employment duties require or authorize access to areas of the video lottery terminal establishment that are not open to the public.

Sec. 3.5. "Gaming ordinance" means a tribal ordinance or resolution authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA or other applicable federal law.

Sec. 3.6. "IGRA" means the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.), any amendments to the act, and all regulations promulgated under the act.

Sec. 3.7. "Key employee" means any person employed by the Tribe as chief operating or executive officer, chief financial officer, chief of security, or manager of a video lottery terminal establishment or operations of video lottery terminals, or any other person who may directly influence the management of a video lottery terminal establishment or the operation of video lottery terminals.

Sec. 3.8. "NIGC" means the National Indian Gaming Commission.

Sec. 3.9. "Patron" means any person who is on the premises of a video lottery terminal establishment, for the purpose of playing a video lottery game authorized by this gaming agreement.

Sec. 3.10. "Principal" means, with respect to any entity, the entity's sole proprietor or any partner, trustee, beneficiary, or shareholder holding 10 percent or more of the entity's beneficial or controlling ownership, either directly or indirectly, or more than 10 percent of the voting stock of a publicly traded corporation, or any officer, director, principal management employee, or key employee of the entity.

Sec. 3.11. "Restoration Act" means the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (25 U.S.C. Section 731 et seq. and 25 U.S.C. Section 1300g et seq.).

Sec. 3.12. "State" means the State of Texas or an authorized official or agency of the state.

Sec. 3.13. "Texas regulatory commission" means the state agency that regulates video lottery games in Texas under Chapter 466, Texas Government Code, including the Texas Lottery Commission and any successor agency of the state that regulates the games.

Sec. 3.14. "Transfer agreement" means a written agreement authorizing the transfer of video lottery terminal operating rights between the Tribe and another Indian tribe.

Sec. 3.15. "Transfer notice" means a written notice that the Tribe must provide to the Texas regulatory commission of the Tribe's intent to acquire or transfer video lottery terminal operating rights pursuant to a transfer agreement.

Sec. 3.16. "Tribal chairperson" means the person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe.

Sec. 3.17. "Tribal Compliance Agency" ("TCA") means the Tribal governmental agency that has the authority to carry out the Tribe's regulatory and oversight responsibilities under this gaming agreement. Unless and until otherwise designated by the Tribe, the TCA shall be the [Name of Tribe] Gaming Commission. A gaming employee may not be a member or employee of the TCA. The Tribe has the ultimate responsibility for ensuring that the TCA fulfills its responsibilities under this gaming agreement. The members of the TCA are subject to background investigations and shall be licensed to the extent required by any applicable Tribal or federal law and in accordance with this gaming agreement. The Tribe shall ensure that all TCA officers and agents are qualified for the position and receive ongoing training to obtain and maintain skills sufficient to carry out their responsibilities in accordance with industry standards.

Sec. 3.18. "Tribal law enforcement agency" means a police or security force established and maintained by the Tribe under the Tribe's powers of self-government to carry out law enforcement duties at or in connection with a video lottery terminal establishment.

Sec. 3.19. "Tribal gaming license" means any license issued by the TCA as required by and in compliance with this agreement.

Sec. 3.20. "Tribe" means [Name of Tribe], a federally recognized Indian tribe.

Sec. 3.21. "Video lottery terminal establishment" means any premises at which the operation of video lottery terminals is authorized under this gaming agreement.

SECTION 4.0. RECITALS.

Sec. 4.1. This agreement governs all operations of video lottery terminals as defined by Section 466.002, Texas Government Code, on the Tribe's Indian lands.

Sec. 4.2. A principal goal of Federal Indian policy is to promote tribal economic development and tribal self-sufficiency. The State and the Tribe find the goal to be consistent with applicable federal law, state public policy, and the public health, safety, and welfare to regulate video lottery terminals on Indian lands in accordance with this gaming agreement.

Sec. 4.3. The Tribe is a federally recognized Indian tribe possessing sovereign powers and rights of self-government. The Tribe's governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this gaming agreement, with the State.

Sec. 4.4. The Tribe exercises governmental authority within the [name of Reservation] (the "Reservation"), which for purposes of this gaming agreement means those lands within the current boundaries of the Reservation and any other Indian lands over which the Tribe exercises governmental authority.

Sec. 4.5. The State of Texas is a state of the United States of America possessing the sovereign powers and rights of a state. The State has a legitimate sovereign interest in regulating the growth of Class III gaming activities in Texas. Mindful of that interest, the State of Texas, pursuant to Chapter 466, Texas Government Code, authorized certain gaming agreements with Indian tribal governments in the State of Texas to permit the operation of video lottery terminals on Indian lands. It is the general policy of the State to prohibit commercial gambling throughout the state. The exceptions to this prohibition are limited under Texas law to specified types of gaming and to limited locations that meet specific criteria. Any gaming not expressly authorized is prohibited.

Sec. 4.6. The parties recognize that this agreement provides the Tribe substantial benefits that create a unique opportunity for the Tribe to operate video lottery terminals in an economic environment of limited competition from gaming on non-Indian lands in Texas, with the operation of video lottery games on non-Indian lands restricted to licensed racetracks in existence in 2005 or racetracks for which a license application was filed on or before June 1, 2005, and to a limited number of licensed tourist destinations in locations that provide the Tribe with a substantial exclusive territory for its video lottery terminal operations. The parties are mindful that this unique environment is of economic value to the Tribe. In consideration for the substantial rights enjoyed by the Tribe, and in further consideration for the State's willingness to enter into this gaming agreement and allow the Tribe the opportunity to operate video lottery terminals connected to the State's video lottery system, the Tribe has agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of revenue generated by

video lottery terminals on Indian lands and to collect and remit to the comptroller State sales and use taxes and State taxes on motor fuels, alcoholic beverages, cigarettes and tobacco products, and hotel occupancy generated at a video lottery terminal establishment. The requirement to collect and remit these State taxes does not apply to an item sold to or used or consumed by a Tribe member.

Sec. 4.7. The Tribe desires to offer the play of video lottery terminals, as a means of generating revenue for the support of tribal governmental programs, such as health care, housing, sewer and water projects, police, corrections, fire, judicial services, highway and bridge construction, general assistance for tribal elders, day care for the children, economic development, educational opportunities, and other typical and valuable governmental services and programs for tribal members.

Sec. 4.8. The State recognizes that the positive effects of this gaming agreement may extend beyond the Tribe's lands to the Tribe's neighbors and surrounding communities and will generally benefit all of Texas. These positive effects and benefits may include not only those described in Section 4.7, but also may include increased tourism and related economic development activities that, through the Tribe's revenue sharing with the State, will generate additional funds for state governmental programs.

Sec. 4.9. The Tribe and the State jointly wish to protect their citizens from any criminal involvement in the gaming operations regulated under this gaming agreement.

Sec. 4.10. Nothing in this agreement shall supplant the role or duties of the Texas Department of Public Safety under state law. The Texas Racing Commission and the Texas Comptroller of Public Accounts do not have any role in regulation or oversight of gaming activities conducted by a Tribe.

Sec. 4.11. The terms of this gaming agreement strictly define and limit the relationship of the parties. Nothing in this gaming agreement shall be construed to create or imply a joint venture, partnership, principal/agent, or any other relationship between the parties.

SECTION 5.0. CLASS III GAMING AUTHORIZED AND PERMITTED.

Sec. 5.1. The Tribe is hereby authorized and permitted to engage only in the Class III gaming activities expressly referred to in Section 6.0 and may not engage in Class III gaming that is not expressly authorized in that section. Nothing in this agreement shall be construed to allow Internet gaming.

SECTION 6.0. AUTHORIZATION OF VIDEO LOTTERY TERMINALS.

Sec. 6.1. Authorized and Permitted Class III Gaming. The Tribe is hereby authorized and permitted to operate the following Class III gaming under the terms and conditions set forth in this agreement.

Sec. 6.2. The Tribe and State agree that the Tribe is authorized to operate video lottery terminals only in accordance with this gaming agreement. However, nothing in this agreement limits any right of the Kickapoo Traditional Tribe of Texas to operate any game that is a Class II game under IGRA, and Class II games are not subject to the exclusivity payments required under this gaming agreement.

Sec. 6.2.1. Operation of Video Lottery Terminals. Video lottery terminals must be operated in connection with the video lottery system and at all times be connected through communication technology or other video lottery equipment controlled by the State to a State controlled and operated video lottery central system. The Tribe may enter into a management gaming agreement for a third party video lottery manager, or the Tribe may act as its own video lottery manager.

(a) Third Party Video Lottery Manager. If the Tribe enters into a management gaming agreement for a third party video lottery manager, the manager must be licensed under Subchapter K, Chapter 466, Texas Government Code, and all video lottery operations shall be subject to and in strict compliance with that Subchapter. Any video lottery manager conducting business on Indian lands shall indemnify and hold harmless the State and the Texas regulatory commission and all officers and employees of both from any and all claims which may be asserted against a license holder, the commission, the State, and the members, officers, employees, and authorized agents of either, arising from the license holder's participation in the video lottery system authorized under the gaming agreement.

(b) Tribe as Video Lottery Manager. If the Tribe elects to manage video lottery terminal operations, then Sections 7.0 through 14.0 of this agreement govern the procurement and operation of the video lottery terminals on the Indian lands of the Tribe.

Sec. 6.3. In order to remain eligible to operate video lottery terminals under this gaming agreement, the Tribe must strictly comply with all requirements of the gaming agreement, timely file all reports required by this gaming agreement, and timely remit all payments to the State required under this gaming agreement or applicable state law, including the taxes collected as provided by Section 4.6.

Sec. 6.4. Regardless of ownership of video lottery terminals, the State owns all video lottery games.

SECTION 7.0. PROCUREMENT OF VIDEO LOTTERY TERMINALS.

Sec. 7.1. All video lottery terminals shall be procured only from a video lottery terminal provider registered with the Texas regulatory commission under Subchapter K, Chapter 466, Texas Government Code. The Tribe may not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of video lottery equipment with any person who is not registered by the commission as a video lottery terminal provider under Subchapter K, Chapter 466, Texas Government Code. Any agreement between the Tribe and a video lottery terminal provider shall be deemed to include a provision for the agreement's termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums, exclusive of interest, owed as of, or payment for services or materials received up to, the date of termination, on revocation or non-renewal of the video lottery terminal provider's registration.

Sec. 7.2. The Texas regulatory commission shall provide the Tribe a list of registered video lottery terminal providers, commission approved video lottery games, and commission approved video lottery terminals. The Tribe may not operate a video lottery terminal that has not been authorized by the commission.

Sec. 7.3. The Tribe shall file with the Texas regulatory commission any order placed for video lottery terminals simultaneously with the submission of the order to a commission-approved video lottery terminal provider.

Sec. 7.4. The Tribe or the video lottery manager shall provide all necessary capital investments and required improvements at a video lottery terminal establishment.

SECTION 8.0. LICENSING.

Sec. 8.1. Gaming Ordinance and Regulations. All video lottery operations conducted under this agreement, at a minimum, shall comply with all terms and conditions of this gaming agreement, a Gaming Ordinance adopted by the Tribe and approved in accordance with this agreement and any applicable federal law, and with all rules, regulations, procedures, specifications, and standards adopted by the TCA. All licensing related to the operation of video lottery terminals shall be conditioned on an agreement by the license holder to indemnify and hold harmless the State and the Texas regulatory commission and all officers and employees of both from any and all claims which may be asserted against a license holder, the commission, the State and the members, officers, employees, and authorized agents of either arising from the license or registration holder's participation in the video lottery system authorized under this agreement.

Sec. 8.2. Tribal Ownership and Regulation of Gaming Operation. Except as otherwise provided by this agreement, the Tribe shall have the sole proprietary interest in the video lottery terminal establishment and video lottery terminals. This provision may not be construed to prevent the Tribe from granting security interests or other financial accommodations to secured parties, lenders or others, or to prevent the Tribe from entering into leases or financing agreements or a gaming management agreement with a video lottery manager.

Sec. 8.3. Government-to-Government Cooperation. The parties intend that the licensing process provided for in this gaming agreement shall involve joint cooperation between the TCA and the Texas regulatory commission, as described in this agreement.

Sec. 8.4. Video Lottery Terminal Establishment. (a) A video lottery terminal establishment authorized by this agreement shall be operated by a licensed video lottery manager or the Tribe and licensed by the TCA in conformity with the requirements of this gaming agreement, the Tribal Gaming Ordinance, and any applicable federal law. The license shall be reviewed and renewed, if appropriate, every two years. The Tribe shall promptly certify in writing to the Texas regulatory commission each time the license is renewed. The certification must be posted in a conspicuous and public place in the video lottery terminal establishment at all times.

(b) In order to protect the health and safety of all video lottery terminal establishment patrons, guests, and employees, all video lottery terminal establishments of the Tribe constructed after the effective date of this gaming agreement, and all expansions or modifications to a site facility for a video lottery terminal establishment in existence as of the effective date of this gaming agreement, shall meet or exceed the building and safety codes of the Tribe. As a condition for engaging in that construction, expansion, modification, or

renovation, the Tribe shall amend the Tribe's existing building and safety codes if necessary, or enact such codes if there are none, so that the codes meet the standards of the building and safety codes of any county in which the video lottery terminal establishment is located, including all uniform fire, plumbing, electrical, mechanical, and related codes in effect on the date this agreement takes effect. Nothing in this agreement shall be deemed to confer jurisdiction on any county or the State with respect to any reference to such building and safety codes. Any construction, expansion, or modification must also comply with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as amended.

(c) The TCA shall issue a video lottery terminal establishment a certificate of occupancy prior to occupancy if it was not used for any lawful gaming prior to the effective date of this gaming agreement, or, if it was so used, within one year after the effective date. The certificate shall be reviewed for continuing compliance once every two years. Inspections by qualified building and safety experts shall be conducted under the direction of the TCA as the basis for issuing any certificate hereunder. The TCA shall determine and certify that, as to new construction or new use for gaming activities, the video lottery terminal establishment meets the Tribe's building and safety code, or, as to facilities or portions of facilities that were used for the Tribe's gaming before this gaming agreement, that the video lottery terminal establishment or portions of the establishment do not endanger the health or safety of occupants or the integrity of the video lottery system. The Tribe may not offer video lottery gaming in a video lottery terminal establishment that is constructed or maintained in a manner that endangers the health or safety of occupants or the integrity of the video lottery system.

(d) The State shall designate an agent or agents to be given reasonable notice of each inspection by the TCA's experts, and State agents may participate in any such inspection. The Tribe agrees to correct any video lottery terminal establishment condition noted in an inspection that does not meet the standards set forth in Subsections (b) and (c). The TCA and the State's designated agent or agents shall exchange any reports of an inspection within 10 days after completion of the report, and the reports shall be separately and simultaneously forwarded by both agencies to the Tribal chairperson. On certification by the TCA's experts that a video lottery terminal establishment meets applicable standards, the TCA shall forward the experts' certification to the State within 10 days of issuance. If the State's agent objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of this gaming agreement.

Sec. 8.5. Suitability Standard Regarding Tribal Gaming Licenses. In reviewing an application for a tribal gaming license, and in addition to any standards set forth in the Tribal gaming ordinance, the TCA shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's operation of video lottery terminals, or tribal government gaming generally, is

free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the TCA is satisfied that the applicant, in addition to any other criteria in any applicable federal law is all of the following:

(a) a person of good character, honesty, and integrity;

(b) a person whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the security and integrity of the lottery or to the public interest of the State or to the effective operation and control of the lottery, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of the lottery, or in the carrying on of the business and financial arrangements incidental to the conduct of the lottery; and

(c) a person who in all other respects is qualified to be licensed as provided in this gaming agreement, any applicable federal law, the Tribal Gaming Ordinance, and any other criteria adopted by the TCA or the Tribe. An applicant may not be found unsuitable solely on the ground that the applicant was an employee of a tribal gaming operation in Texas that was conducted before the effective date of this gaming agreement. Employment in an unauthorized gaming operation in Texas subsequent to the effective date of this agreement, however, shall impose a presumption of unsuitability.

Sec. 8.6. Gaming Employees. (a) Every gaming employee shall obtain, and thereafter maintain current, a valid tribal gaming license, which shall be subject to biennial renewal, provided that in accordance with Section 8.8.2, a person may be employed on a temporary or conditional basis pending completion of the licensing process.

(b) Without the concurrence of the Texas regulatory commission, the Tribe may not employ or continue to employ any person whose application to the commission for a registration, license, determination of suitability, or other regulatory approval, or for a renewal of a registration, license, determination of suitability, or other regulatory approval, has been denied or has expired without renewal.

Sec. 8.7. Financial Sources. Any person providing financing, directly or indirectly, to the Tribe's video lottery terminal establishment or operation of video lottery terminals must be licensed by the TCA before receipt of that financing, provided that any person who is providing financing at the time of the execution of this gaming agreement must be licensed by the TCA within ninety (90) days of such execution. The TCA shall review licenses at least every two years for continuing compliance. In connection with the review, the TCA shall require the Financial Source to update all information provided in the previous application. Any agreement between the Tribe and a Financial Source is deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums, exclusive of interest, owed as of the date of termination, on revocation or non-renewal of the Financial Source's license by the TCA based on a determination of unsuitability by the Texas regulatory commission. The Tribe may not enter into, or continue to make payments pursuant to any contract or agreement for the provision of

financing with any person whose application to the commission for a determination of suitability has been denied or has expired without renewal. A video lottery terminal provider who provides financing exclusively in connection with the sale or lease of video lottery equipment obtained from that video lottery terminal provider may be registered solely in accordance with the commission's registration procedures for video lottery terminal providers. The TCA may, in its discretion, exclude from the licensing requirements of this section, financing provided by:

(1) a federally regulated or state-regulated bank, savings and loan, or other federally regulated or state-regulated lending institution;

(2) any agency of the federal, state, or local government; or

(3) any investor who, alone or in conjunction with others, holds less than 10 percent of any outstanding indebtedness evidenced by bonds issued by the Tribe.

Sec. 8.8. Processing License Applications. Each applicant for a tribal gaming license shall submit the completed application on forms prescribed by the TCA and approved by the Texas regulatory commission, along with the required information and an application fee, to the TCA in accordance with the rules and regulations of that agency. The parties agree that for purposes of this agreement, the standards set forth under federal law with regard to information required for Tribal gaming operation applications shall govern. Accordingly, at a minimum, the TCA shall require submission and consideration of all information required under federal law, including 25 C.F.R. Section 556.4, for licensing primary management officials and key employees. For applicants who are business entities, the licensing provisions apply to the entity and:

(a) each officer and director;

(b) each principal management employee, including any chief executive officer, chief financial officer, chief operating officer, and general manager;

(c) each owner or partner, if an unincorporated business;

(d) each shareholder who owns more than 10 percent of the shares of the corporation, if a corporation; and

(e) each person or entity, other than a financial institution the TCA has determined does not require a license under the preceding section, that, alone or in combination with others, has provided financing in connection with any video lottery equipment or video lottery terminal establishment under this gaming agreement, if that person or entity provided more than five percent of:

(1) the start-up capital;

(2) the operating capital over a 12-month period; or

(3) a combination thereof.

For purposes of this section, if any commonality of the characteristics identified in Subsections (a) to (e), inclusive, exist between any two or more entities, the entities may be deemed to be a single entity. Nothing herein precludes the Tribe or TCA from requiring more stringent licensing requirements.

Sec. 8.8.1. Background Investigations of Applicants. (a) The TCA shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the applicant is qualified for a tribal gaming

license under the standards set forth in this gaming agreement, and to fulfill all requirements for licensing under any applicable federal law, the Tribal Gaming Ordinance, and this gaming agreement. The TCA may not issue any license other than a temporary license until a determination is made that the qualifications have been met.

(b) Instead of completing its own background investigation, and to the extent that doing so does not conflict with or violate any applicable federal law or the Tribal Gaming Ordinance, the TCA may contract with the Texas regulatory commission or an independent contractor approved by the commission for the conduct of background investigations. An applicant for a tribal gaming license must provide releases to the commission to make available to the TCA background information regarding the applicant. The commission shall cooperate in furnishing to the TCA that information, unless doing so would violate any agreement the commission has with a source of the information other than the applicant, or would impair or impede a criminal investigation, or unless the TCA cannot provide sufficient safeguards to assure the commission that the information will remain confidential.

Sec. 8.8.2. Temporary Licensing of Employees. Notwithstanding any contrary provision in this gaming agreement, the TCA may issue a temporary license and may impose specific conditions on the license pending completion of the applicant's background investigation as the TCA in its sole discretion shall determine, if:

(a) the applicant for a tribal gaming license has completed a license application in a manner satisfactory to the TCA; and

(b) the TCA has conducted a preliminary background investigation, and the investigation or other information held by the TCA does not indicate:

(1) that the applicant has a criminal history that could pose a threat to the security and integrity of the lottery or to the public interest of the State or the effective operation and control of the lottery, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of the lottery, or in the carrying on of the business and financial arrangements incidental thereto;

(2) other information in the applicant's background that would either disqualify the applicant from obtaining a license or cause a reasonable person to investigate further before issuing a license; or

(3) that the applicant is otherwise unsuitable for licensing.

(c) The TCA may require special fees to issue or maintain a temporary license.

(d) A temporary license shall remain in effect until suspended or revoked, or until a final determination is made on the application. At any time after issuance of a temporary license, the TCA may suspend or revoke the temporary license in accordance with Sections 8.9.1 or 8.9.5, and the Texas regulatory commission may request suspension or revocation in accordance with Section 8.9.

(e) For purposes of this agreement, the parties agree that the standards set forth in 25 C.F.R. Part 558 govern licensing and investigations required under the provisions of this agreement. Nothing in this agreement shall be construed to relieve the Tribe of any obligation under this agreement to comply with the standards set forth in 25 C.F.R. Part 558.

Sec. 8.9. Tribal Gaming License Issuance. (a) On completion of the necessary background investigation, the TCA may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an applicant in an opportunity to be licensed, or in a license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the TCA subject to oversight by the Texas regulatory commission as provided herein. Any license, registration, suitability, qualification issued, or other regulatory approval granted pursuant to or in compliance with this gaming agreement is a revocable privilege, and a holder does not acquire any vested right therein or thereunder.

(b) State and Tribal courts shall have no jurisdiction to review decisions to deny, limit, or condition a license, registration, suitability, qualification, or request for approval unless the judicial review is sought on the ground that such a denial, limitation, or condition is proven by clear and convincing evidence to be based on a suspect classification such as race, color, religion, gender, or national origin, protected under the Equal Protection Clause of the United States Constitution.

Sec. 8.9.1. Denial, Suspension, or Revocation of Licenses. (a) The TCA may deny any application for a tribal gaming license and may revoke any license issued if the TCA determines the application is incomplete or deficient or if the applicant is determined to be unsuitable or otherwise unqualified for the gaming license. Pending consideration of revocation, the TCA may summarily suspend a license in accordance with Section 8.9.5. All rights to notice and hearing shall be governed by tribal law. The TCA shall notify the applicant in writing of the tribal law provisions and of the intent to suspend or revoke the license.

(b) On receipt of notice that the Texas regulatory commission has determined a person would be unsuitable for licensure in a video lottery terminal establishment or related to video lottery terminal operations subject to the jurisdiction of the commission, the TCA shall promptly revoke any license issued to the person.

Sec. 8.9.2. Renewal of Licenses; Extensions; Further Investigation. The term of a tribal gaming license may not exceed five years, and application for renewal of a license must be made before the license's expiration. An applicant for renewal of a license must provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the TCA, may not be required to resubmit historical data previously submitted or that is otherwise available to the TCA. At the discretion of the TCA, an additional background investigation may be required at any time if the TCA determines the need for further information concerning the applicant's continuing suitability or eligibility for a license. Before renewing a license, the TCA shall deliver to the Texas regulatory commission copies of all information and documents received in connection with the application for renewal.

Sec. 8.9.3. Identification Cards. The TCA shall require all persons who are required to be licensed to wear, in plain view at all times while in the video lottery terminal establishment, identification badges issued by the TCA. Identification badges must include a photograph and an identification number that is adequate to enable TCA agents to readily identify the person and determine the validity and date of expiration of the license.

Sec. 8.9.4. Fees for Tribal Gaming License. The fees for all tribal gaming licenses shall be set by the TCA.

Sec. 8.9.5. Summary Suspension of Tribal Gaming License. The TCA may summarily suspend a tribal gaming license if the TCA determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may violate the TCA's licensing or other standards or any provision of applicable federal or state law or of this agreement. Any right to notice or hearing in regard to the suspension are governed by tribal law provided the law is not inconsistent with any provision of this agreement.

Sec. 8.9.6. State Certification Process. (a) On receipt of a completed tribal gaming license application and a determination by the TCA that it intends to issue the earlier of a temporary or permanent license, the TCA shall transmit to the Texas regulatory commission a notice of intent to license the applicant, together with all of the following:

(i) a copy of all tribal license application materials and information received by the TCA from the applicant;

(ii) an original set of fingerprint cards;

(iii) a current photograph; and

(iv) except to the extent waived by the commission, the releases of information, waivers, and other completed and executed forms obtained by the TCA.

(b) Except for an applicant for licensing as a non-key gaming employee, the TCA shall require the applicant to file an application with the Texas regulatory commission, before issuance of a temporary or permanent tribal gaming license, for a determination of suitability for licensure under Subchapter K, Chapter 466, Texas Government Code. Investigation and disposition of that application is governed entirely by State law, and the commission shall determine whether the applicant would be found suitable for licensure in a video lottery terminal establishment or in relation to video lottery terminal operations at a video lottery terminal establishment subject to the commission's jurisdiction. Additional information may be required by the commission to assist in a background investigation, provided that the commission requirement is no greater than that which may be required of applicants for a video lottery retailer license in connection with video lottery operations at a video lottery terminal establishment under Subchapter K, Chapter 466, Texas Government Code. A determination of suitability is valid for the term of the tribal license held by the applicant, and the TCA shall require a license holder to apply for renewal of a determination of suitability at the time the license holder applies for renewal of a tribal gaming license. The commission and the TCA, together with tribal gaming agencies under other gaming agreements, shall cooperate in developing standard licensing

forms for tribal gaming license applicants, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, and the forms and procedures must take into account the Tribe's requirements under any applicable federal law and the expense thereof.

(c) Background Investigations of Applicants. On receipt of completed license application information from the TCA, the Texas regulatory commission may conduct a background investigation pursuant to state law to determine whether the applicant would be suitable to be licensed for association with a video lottery terminal establishment or operation subject to the jurisdiction of the commission. If further investigation is required to supplement the investigation conducted by the TCA, the applicant will be required to pay an application fee charged by the commission in an amount that reimburses the commission for actual costs incurred, provided that in requesting any deposit, the commission shall take into consideration reports of the background investigation already conducted by the TCA and the NIGC, if any. Failure to pay the application fee or deposit may be grounds for denial of the application by the commission. The commission and TCA shall cooperate in sharing as much background information as possible to maximize investigative efficiency and thoroughness and to minimize investigative costs. On completion of the necessary background investigation or other verification of suitability, the commission shall issue a notice to the TCA certifying the State has determined that the applicant would be suitable or that the applicant would be unsuitable for licensure in a video lottery terminal establishment subject to the jurisdiction of the commission and, if unsuitable, stating the reasons for unsuitability.

(d) The Tribe, on a monthly basis, shall provide the Texas regulatory commission with the name, badge identification number, and job descriptions of all non-key gaming employees.

(e) The Tribe shall, at all times, have a list of key employees on file with the Texas regulatory commission and shall advise the commission of any change to the list not later than the 10th day following the date of the change.

(f) Before denying an application for a determination of suitability, the Texas regulatory commission shall notify the TCA and afford the Tribe an opportunity to be heard. The courts of the State and the Tribe shall have no jurisdiction to review decisions to deny, limit, or condition a license, registration, suitability, qualification, or request for approval unless the denial, limitation, or condition is proven by clear and convincing evidence to be based on a suspect classification such as race, color, religion, sex, or national origin, protected under the Equal Protection Clause of the United States Constitution. Under these circumstances, any requirement for tribal court exhaustion is hereby waived by the Tribe.

Sec. 8.9.7. State Assessment for Costs of Oversight. (a) The State shall make annually an assessment sufficient to compensate the State for actual costs of oversight of the operation of video lottery terminals pursuant to this gaming agreement.

(b) On or before August 1, annually, beginning with the first such date following the implementation of video lottery operations under this gaming agreement, the State shall render to the TCA a statement of the total cost of oversight and any law enforcement for the preceding fiscal year ending July 31 together with proposed assessments for the forthcoming fiscal year based on the preceding fiscal year cost. In the first year of the effective date of this gaming agreement, however, the assessment must be prospective and based on a pro rata allocation of costs if this gaming agreement becomes operative in the course of a fiscal year and must be established following consultation with the TCA. On September 1, annually, the State, after receiving any objections to the proposed assessments and making such changes or adjustments as may be indicated, shall provide a written notice that assesses the Tribe for the costs of the oversight and any necessary law enforcement. Annually, the Tribe shall pay one-third of the assessment within 20 days of the receipt of the written notice and shall pay the remaining two-thirds of the assessment in two equal payments on January 1 and April 1. The payments must be deposited with the Texas regulatory commission in a video lottery account established solely for funds related to video lottery terminals operated by the Tribe.

(c) In the event that the total assessment paid by the Tribe during any fiscal year of the State exceeds the actual costs of the oversight and any necessary law enforcement during that fiscal year, the State shall adjust the assessment for the succeeding fiscal year in the amount necessary to offset such excess assessment. If the Tribe is aggrieved because of any failure by the State to make such an adjustment, any claim for such an adjustment must be presented in the appeal of the assessment as provided in Section 8.9.8.

Sec. 8.9.8. Procedure for Appeal of Assessments or Payments Made to the State. If the Tribe is aggrieved because of any assessment levied or payment made to the State as required by this gaming agreement, the Tribe, not later than the 30th day following the date provided for the payment, may appeal an assessment or payment to the Texas regulatory commission. If the Tribe is aggrieved by the commission's decision, it may invoke the dispute resolution provisions of this agreement provided that the Tribe must prove by clear and convincing evidence that any collection or assessment of payment to the State was inappropriate.

Sec. 8.9.9. Collection and Distribution of Revenue. (a) The Tribe shall establish separate electronic funds transfer accounts for the purposes of depositing money from video lottery terminal operations, making payments to the Texas regulatory commission, and receiving payments from the commission.

(b) The State's share of net terminal income of the Tribe's video lottery terminal operations shall be transferred to the Texas regulatory commission through the electronic transfer of funds daily by the commission. The commission shall establish the procedures for depositing money from video lottery terminal operations into electronic funds transfer accounts and the procedures for the handling of money from video lottery terminal operations. The State's share of net terminal income from video lottery terminal operations shall be held in trust for the State.

(c) Unless directed otherwise by the Texas regulatory commission, the Tribe shall maintain in its account the State's share of the net terminal income from the operation of video lottery terminals, to be electronically transferred by the commission. On the Tribe's failure to maintain this balance, the commission may disable all of the Tribe's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged under Section 111.060, Texas Tax Code. The interest shall begin to accrue on the date payment is due to the commission. In the commission's sole discretion, rather than disable the Tribe's video lottery terminals, the commission may elect to impose contract penalties in an amount to be determined by the commission not to exceed $250,000 for each violation. If the Tribe fails to remedy the violation, including payment of any amounts due to the State, within 10 days, the commission may disable the Tribe's video lottery terminals or use any other means for collection agreed to by the Tribe instead of disabling the Tribe's video lottery terminals.

(d) The Tribe is solely responsible for resolving any income discrepancies between actual money collected and the net terminal income reported by the video lottery central system. Unless an accounting discrepancy is resolved in favor of the Tribe, the Texas regulatory commission may not make any credit adjustments. Any accounting discrepancies which cannot be resolved shall be resolved in favor of the commission.

(e) Tribes shall remit payment as directed by the Texas regulatory commission if the electronic transfer of funds is not operational or the commission notifies the Tribe that remittance by this method is required. The Tribe shall report the State's share of net terminal income, and remit the amount as generated from its terminals during the reporting period.

(f) The Tribe agrees to furnish to the Texas regulatory commission all information and bank authorizations required to facilitate the timely transfer of money to the commission. The Tribe agrees to provide the commission 30 days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. However, in no event shall the commission be responsible for any interruption or delays in transferring of funds. Rather, the Tribe shall be responsible for any interruption or delay in transferring of funds.

SECTION 9.0. RULES AND REGULATIONS; MINIMUM REQUIREMENTS FOR OPERATIONS.

Sec. 9.1. Regulations. The Tribe shall promulgate any rules and regulations necessary to implement this gaming agreement, which at a minimum shall expressly include or incorporate by reference all requirements of this gaming agreement. Nothing in this gaming agreement shall be construed to affect the Tribe's right to amend its rules and regulations, provided that any such amendment shall be in conformity with this gaming agreement. The Texas regulatory commission may propose additional rules and regulations related to implementation of this gaming agreement to the TCA at any time, and the TCA shall give good faith consideration to such suggestions and shall notify the commission of its response or action with respect thereto.

Sec. 9.2. Compliance; Internal Control Standards. All video lottery operations shall comply with, and all video lottery games approved under the procedures set forth in this gaming agreement shall be operated in accordance with the requirements set forth in this gaming agreement and applicable state law. The parties agree that for purposes of this agreement, the standards set forth in 25 C.F.R. Part 542 shall govern minimum requirements for tribal internal control standards. Accordingly, the Tribe agrees that all tribal video lottery operations shall comply with tribal internal control standards that provide a level of control equal to or exceeding that provided by the standards set forth in 25 C.F.R. Part 542.

Sec. 9.3. Records. (a) In addition to other records required to be maintained herein, the Tribe shall maintain in permanent written or electronic form the following records related to implementation of this gaming agreement:

(1) a log recording all surveillance activities of the video lottery terminal establishment, including surveillance records kept in the normal course of operations and in accordance with industry standards; provided, notwithstanding anything to the contrary herein, surveillance records may, at the discretion of the Tribe, be destroyed if no incident has been reported within one (1) year following the date the records were made;

(2) payout from the conduct of all video lottery games;

(3) maintenance logs for all video lottery gaming equipment used by the video lottery terminal establishment;

(4) security logs as kept in the normal course of conducting and maintaining security at the video lottery terminal establishment, which at a minimum must conform to industry practices for such reports;

(5) books and records on video lottery terminals, as described more particularly in Section 9.4, which shall be maintained in accordance with generally accepted accounting principles (GAAP) and the standards set forth in Section 9.4; and

(6) all documents generated in accordance with this gaming agreement.

(b) The Tribe shall make the records maintained under Subsection (a) of this section available for inspection by the Texas regulatory commission for not less than four years from the date the records are generated.

(c) The security logs required under Subsection (a) of this section must document any unusual or nonstandard activities, occurrences, or events at or related to the video lottery terminal establishment or in connection with the video lottery terminal operations. Each incident, without regard to materiality, shall be assigned a sequential number for each such report. At a minimum, the security logs shall consist of the following information, which shall be recorded in a reasonable fashion noting:

(1) the assigned number of the incident;

(2) the date of the incident;

(3) the time of the incident;

(4) the location of the incident;

(5) the nature of the incident;

(6) the identity, including identification information, of any persons involved in the incident and any known witnesses to the incident; and

(7) the Tribal compliance officer making the report and any other persons contributing to its preparation.

Sec. 9.4. ACCOUNTING.

Sec. 9.4.1. Accounting Records Required. The Tribe agrees with regard to any video lottery terminal operations, to keep accurate, complete, legible, and permanent records of all transactions pertaining to revenue for six years. If the Tribe keeps permanent records in a computerized or microfiche fashion, it shall provide the Texas regulatory commission, on request, with a detailed index to the microfiche or computer records that is indexed by date.

Sec. 9.4.2. Accounting Systems. The Tribe agrees with regard to all video lottery terminal operations, to keep general accounting records on a double entry system of accounting, maintaining detailed, supporting, and subsidiary records, including:

(a) detailed records that identify the revenues, expenses, assets, liabilities, and equity of the video lottery terminal establishment and operations;

(b) records required by the Tribe's Minimum Internal Control System;

(c) journal entries prepared by the Tribe and its independent accountant; and

(d) any other records that the TCA may require.

Sec. 9.4.3. Net Terminal Income and Expenses. The Tribe agrees with regard to all video lottery terminal operations, to create and maintain records sufficiently accurate to reflect the net terminal income and expenses of the video lottery terminal establishment and operation of video lottery terminals.

Sec. 9.4.4. Financial Statements. (a) The Tribe agrees to prepare financial statements covering all financial activities of the video lottery terminal establishment and operation of video lottery terminals for a business year. The statements required by this subsection must be presented on a comparative basis.

(b) If the Tribe changes its business year, it must prepare and submit audited or reviewed financial statements to the Texas regulatory commission covering the "stub" period from the end of the previous business year to the beginning of the new business year not later than 120 days after the end of the stub period or incorporate the financial results of the stub period in the statements for the new business year.

Sec. 9.5. Audits. The parties agree that for purposes of this agreement, the standards set forth in 25 C.F.R. Section 571.12 govern audits required under this agreement. The TCA shall ensure that an annual independent financial audit of the Tribe's conduct of video lottery games subject to this gaming agreement and of the video lottery terminal establishment is secured. The audit shall, at a minimum, examine revenues and expenses in connection with the operation of video lottery terminals in accordance with generally accepted auditing standards and shall include those matters necessary to verify the determination of net terminal income and the basis of the payments made to the State pursuant to this gaming agreement.

(a) The auditor selected by the TCA shall be a firm of known and demonstrable experience, expertise, and stature in conducting audits of this kind and scope and shall be approved by the Texas regulatory commission.

(b) The audit shall be concluded within five months following the close of each calendar year, provided that extensions may be requested by the Tribe and may not be refused by the State if the circumstances justifying the extension request are beyond the Tribe's control. An extension, however, may not extend the conclusion of an audit required by this gaming agreement to more than 12 months following the close of the relevant calendar year.

(c) The audit of the operation of video lottery terminals may be conducted as part of or in conjunction with the audit of the video lottery terminal establishment, but if so conducted shall be separately stated for the reporting purposes required herein.

(d) The audit shall conform to generally accepted auditing standards. As part of the audit report, the auditor shall certify to the TCA that, in the course of the audit, the auditor did not discover any matters within the scope of the audit which were determined or believed to be in violation of any provision of this gaming agreement. If the auditor discovers matters determined or believed to be in violation of any provision of this gaming agreement, the auditor shall immediately notify the Texas regulatory commission of the alleged violation and the basis for the auditor's conclusion.

(e) The Tribe shall assume all costs in connection with the audit.

(f) The audit report for the conduct of video lottery games shall be submitted to the Texas regulatory commission within thirty (30) days of completion. The auditor's work papers concerning video lottery games shall be made available to the commission on request.

(g) Representatives of the Texas regulatory commission may, on request, meet with the auditors to discuss the work papers, the audit, or any matters in connection therewith; provided such discussions are limited to video lottery information and pursue legitimate state video lottery interests.

Sec. 9.6. Security. (a) All video lottery terminals shall be continuously monitored through the use of a closed circuit television system that records all activity for a continuous 24-hour period. All video tapes or other media used to store video images shall be retained for a period of at least 30 days.

(b) Access to video lottery terminal locations shall be restricted to persons legally entitled by age under State law to play video lottery games.

(c) The Tribe must submit for approval by the Texas regulatory commission a security plan and a floor plan of the area or areas where video lottery terminals are to be operated showing video lottery terminal locations and security camera mount locations. This commission approved security plan shall be subject to review by the commission which may require revision of the plan on a biennial basis.

(d) Security personnel shall be present during all hours of operation at each video lottery terminal establishment. The Tribe shall employ at least the number of security personnel the Texas regulatory commission determines is necessary to provide for safe and approved operation of the video lottery terminal establishment and the safety and well-being of the players.

(e) The communication technology used in connection with video lottery operations must meet accepted industry standards for security sufficient to minimize the possibility of any third party intercepting any data transmitted to or from the video lottery terminals.

Sec. 9.7. Exclusion of Persons. The Tribe's rules and regulations shall require at a minimum the exclusion of persons based on their prior conduct at the video lottery terminal establishment or who, because of their criminal history or association with criminal offenders, pose a threat to the integrity of the conduct of video lottery games or may be playing video lottery games compulsively.

(a) The TCA shall establish a list of the persons to be excluded from any video lottery terminal establishment under this provision.

(b) The Tribe shall employ its best efforts to exclude persons on such list from entry into its video lottery terminal establishment.

(c) Patrons who believe they may be playing video lottery games on a compulsive basis may request that their names be placed on the list. All gaming employees shall receive training on identifying players who have a problem with compulsive playing and shall be instructed to ask them to leave. Signs and other materials shall be readily available to direct such compulsive players to agencies where they may receive counseling. Notwithstanding any other provision of this agreement, the TCA's list of self-excluded persons shall not be open to public inspection.

(d) The Tribe or video lottery manager also may exclude any other person for any reason not related to that person's race, sex, national origin, physical disability, or religion.

Sec. 9.8. Sale of Alcoholic Beverages. The sale and service of alcoholic beverages in a video lottery terminal establishment shall be in compliance with state, federal, and tribal law in regard to the licensing and sale of such beverages.

Sec. 9.9. Age Restrictions. (a) No person under the age of 21 may be allowed to play video lottery games or be allowed to operate, or obtain a prize from or in connection with the operation of, any video lottery game, directly or indirectly. If during the term of this agreement, the State amends its law to allow play of video lottery terminals by persons under the age of 21, the Tribe may amend tribal law to reduce the lawful gaming age under this agreement to correspond to the lawful gaming age under state law.

(b) No person under the age of 21 may be employed as a gaming employee unless the employment would be allowed under state law.

(c) No person under the age of 21 may be employed in the service of alcoholic beverages at any video lottery terminal establishment, unless such employment would be allowed under state law.

Sec. 9.10. Destruction of Records. Books, records, and other materials documenting the operation of video lottery terminals may be destroyed only in accordance with rules and regulations adopted by the TCA, which at a minimum shall provide as follows:

(a) material that might be utilized in connection with a prize claim, including incident reports, surveillance records, statements, and the like, shall be maintained at least 180 days beyond the time which a claim can be made under this gaming agreement or, if a prize claim is made, beyond the final disposition of such claim; and

(b) except as otherwise provided in Section 9.3(a)(1), all books and records with respect to the operation of video lottery terminals or the operation of the video lottery terminal establishment, including all interim and final financial and audit reports and materials related thereto which have been generated in the ordinary course of business, shall be maintained for the minimum period of four years.

Sec. 9.11. Location. The Tribe may establish facilities for and operate video lottery terminals only on its Indian lands defined by Chapter 466, Texas Government Code. The Tribe shall notify the Texas regulatory commission of any potential new video lottery terminal establishment following the effective date of this gaming agreement. Nothing herein shall be construed as expanding or otherwise altering the term "Indian lands," as that term is defined by Chapter 466, Texas Government Code.

Sec. 9.12. Placement and Movement of Video Lottery Terminals. Placement and movement of video lottery terminals within a video lottery terminal establishment must be consistent with a video lottery terminal floor plan approved by the Texas regulatory commission.

Sec. 9.13. Monitoring of Operation of Video Lottery Terminals. All terminals connected to the video lottery system will be continuously monitored by the Texas regulatory commission and disabled, when, in the commission's discretion, a problem arises threatening the public health, safety or welfare, or financial loss to the State, or jeopardizing the integrity of the video lottery. Circumstances justifying termination include malfunction of a video lottery terminal or any game displayed on a video lottery terminal, misuse of any video lottery terminal or video lottery game, or a material breach by the Tribe in the operating requirements or a material provision of this agreement.

Sec. 9.14. Wager Limitations. The TCA shall set the maximum wager authorized for any single play of a video lottery terminal consistent with any maximum wager set by rule of the Texas regulatory commission. During the term of this agreement, the wager limitation set forth in this section shall be automatically increased without the need to amend this agreement on each two-year anniversary of the effective date to an amount equal to the wager limitation multiplied by the CPI adjustment rate, rounded up to the next whole dollar.

Sec. 9.15. Prizes. (a) Payment of prizes shall be the sole and exclusive responsibility of the Tribe or video lottery manager. No prizes shall be paid by the Texas regulatory commission or the State except as otherwise authorized. Video

lottery tickets shall be redeemable only for a period of 180 days following the date of issuance. If a claim is not made for prize money on or before the 180th day after the date on which the video lottery ticket was issued, the prize money shall be treated as net terminal income. The Tribe agrees to enact rules consistent with this provision and authorized by the commission, governing use and redemption of prizes and credits recorded on electronic player account records, such as players' club cards and smart cards.

(b) Nothing herein shall limit the ability of the Tribe or video lottery manager to provide promotional prizes, including wide area progressive networks, in addition to prize payouts regulated by the commission.

Sec. 9.16. Patron Disputes. (a) The State and the Texas regulatory commission shall not be liable for any video lottery terminal malfunction or error by the Tribe or video lottery manager that causes credit to be wrongfully awarded or denied to players. Any disputes arising between players and the Tribe or video lottery manager shall be resolved:

(1) if the fair market value of the prize is less than $1,000, in accordance with commission approved written policies of the TCA with no relief available from the commission or the State; or

(2) if the fair market value of the prize is $1,000 or more, by the commission in its sole discretion pursuant to rules established by the commission.

(b) No court of this state or of the Tribe shall have jurisdiction to review the decision of the commission resolving a dispute between players and the Tribe or a video lottery manager.

Sec. 9.17. Transfer of Gaming Device Operating Rights. During the term of this agreement, the Tribe may enter into a transfer agreement with one or more federally recognized Indian tribes with Indian lands in this state to acquire or transfer video lottery terminal operating rights on Indian lands. The Tribe's acquisition or transfer of video lottery terminal operating rights is subject to the following conditions:

(a) Gaming Agreement. Each Indian tribe that is a party to a transfer agreement must have a valid and effective gaming agreement with the State that contains a provision substantially similar to the provision herein permitting transfers of the Indian tribe's video lottery terminal operating rights.

(b) Forbearance Agreement. If the Tribe enters into a transfer agreement to transfer some or all of its video lottery terminal operating rights, the Tribe also shall execute a forbearance agreement with the State. The forbearance agreement shall include a waiver of all rights of the Tribe to put into play or operate the number of video lottery terminal operating rights transferred during the term of the transfer agreement.

(c) The Tribe must be operating video lottery terminals at least equal to its current video lottery terminal allocation before, or simultaneously with, the Tribe acquiring the right to operate additional video lottery terminals by a transfer agreement. The Tribe is not required to utilize any video lottery terminal operating rights it acquires, or to utilize them before acquiring additional video lottery terminal operating rights.

(d) The Tribe shall not at any time simultaneously acquire video lottery terminal operating rights and transfer video lottery terminal operating rights pursuant to transfer agreements.

Sec. 9.17.1. Transfer Agreements. The transfer of video lottery terminal operating rights may be made pursuant to a transfer agreement between two Indian tribes. A transfer agreement must include the following provisions:

(a) the number of video lottery terminal operating rights transferred and acquired;

(b) the duration of the transfer agreement;

(c) the consideration to be paid by the Indian tribe acquiring the video lottery terminal operating rights to the Indian tribe transferring the video lottery terminal operating rights and the method of payment;

(d) the dispute resolution and enforcement procedures, including a provision for the State to receive notice of any such proceedings; and

(e) a procedure to provide quarterly notice to the Texas regulatory commission of payments made and received, and to provide timely notice to the commission of disputes, revocation, amendment, and termination.

Sec. 9.17.2. Transfer Notice. At least 30 days before the execution of a transfer agreement the Tribe shall send to the Texas regulatory commission a transfer notice of intent to acquire or transfer video lottery terminal operating rights. The transfer notice shall include a copy of the proposed transfer agreement, the proposed forbearance agreement, and a copy of the tribal resolution authorizing the acquisition or transfer.

Sec. 9.17.3. Texas Regulatory Commission Denial of Transfer. (a) The Texas regulatory commission may deny a transfer as set forth in a transfer notice only if:

(1) the proposed transfer violates the conditions set forth in this agreement; or

(2) the proposed transfer agreement does not contain the minimum requirements listed in this agreement.

(b) The commission's denial of a proposed transfer must be in writing, must include the specific reasons for the denial (including copies of all documentation relied upon by the commission to the extent allowed by state law), and must be received by the Tribe within 60 days of the commission's receipt of the transfer notice. If the Tribe disputes the commission's denial of a proposed transfer, the Tribe shall have the right to have the dispute resolved pursuant to the dispute resolution process provided in Section 15.0 herein.

Sec. 9.17.4. Effective Date of Transfer. If the Tribe does not receive a notice of denial of the transfer from the Texas regulatory commission within the time period specified in Section 9.17.3, the proposed transfer agreement shall become effective on the later of the 61st day following the commission's receipt of the transfer notice or the date set forth in the transfer agreement.

Sec. 9.17.5. Use of Brokers. The Tribe shall not contract with any person to act as a broker in connection with a transfer agreement. No person shall be paid a percentage fee or a commission as a result of a transfer agreement, nor shall any

person receive a share of any financial interest in the transfer agreement or the proceeds generated by the transfer agreement. Any person acting as a broker in connection with a transfer agreement is providing gaming services.

Sec. 9.17.6. Revenue from Transfer Agreements. The Tribe agrees that all proceeds received by the Tribe as a transferor under a transfer agreement shall be used for the governmental purposes permitted under this agreement for revenue generated by video lottery terminal operations. The Tribe shall include the proceeds in an annual audit and shall make available to the State that portion of the audit addressing proceeds from transfer agreements.

Sec. 9.17.7. Agreed Upon Procedures Report. The Tribe agrees to provide to the Texas regulatory commission, either separately or with the other party to the transfer agreement, an agreed upon procedures report from an independent certified public accountant. The procedures to be examined and reported upon are whether payments made under the transfer agreement were made in the proper amount, made at the proper time, and deposited in an account of the Indian tribe transferring the video lottery terminal operating rights.

Sec. 9.17.8. State Payment. Proceeds received by the Tribe as a transferor under a transfer agreement from the transfer of video lottery terminal operating rights are not subject to any payment to the State under this agreement or otherwise.

Sec. 9.17.9. Access to Records Regarding Transfer Agreements. The Texas regulatory commission shall have access to all records of the Tribe directly relating to transfer agreements and forbearance agreements.

Sec. 9.18. Supervision of Patrons. The Tribe agrees to ensure that gaming employees, at all times, monitor video lottery terminals to prevent access to or play by persons who are under the age of 21 years or who are visibly intoxicated.

Sec. 9.19. Hours of Operation. The Tribe may establish by ordinance or regulation the permissible hours and days of operation of video lottery terminal operations; provided, however, that with respect to the sale of liquor, the Tribe agrees to adopt and comply with standards at least as restrictive as any applicable state liquor laws at all video lottery terminal establishments.

Sec. 9.20. Automatic Teller Machines. The Tribe agrees to adopt and comply with a Tribal ordinance establishing responsible restrictions on the provision of financial services at video lottery terminal establishments. At a minimum, the ordinance shall prohibit:

(a) locating an automatic teller machine ("ATM") adjacent to, or in proximity to, any video lottery terminal, however, an ATM may be installed in a video lottery terminal establishment, provided that the Tribe adopts and complies with an ordinance establishing standards no less restrictive than any state and federal law governing installation of ATMs within a gaming facility;

(b) locating in a video lottery terminal establishment an ATM that accepts electronic benefit transfer cards issued pursuant to a state or federal program that is intended to provide for needy families or individuals; and

(c) accepting checks or other non-cash items issued pursuant to a state or federal program that is intended to provide for needy families or individuals.

Sec. 9.21. Advertising. Advertisements or promotions must comply with guidelines established by the TCA that are consistent with criteria established by the Texas regulatory commission.

Sec. 9.22. Remedies and Penalties for Unlawful Gaming. Operation or possession of any gaming devices not expressly authorized under this gaming agreement or Texas law (excluding any Class II gaming authorized under applicable federal law) shall be considered a material breach of the gaming agreement and justify termination of the agreement. Under those circumstances, the State may bring an action in state court and shall be entitled to an injunction prohibiting the continued operation of any unlawful gaming activity upon a showing by a preponderance of evidence that the breach has occurred. In any such proceeding, it is the finding of the legislature that irreparable injury and inadequate remedy at law shall be presumed once the State has demonstrated the violation has occurred. If the State does not seek an injunction for such a material breach of the gaming agreement, the Tribe agrees to pay a contract penalty of $10,000 per day for every day the violation or breach continues. If the breach or violation is not cured within 30 days, the State shall bring an action to enjoin the unlawful conduct and may disable all video lottery terminals operated by the Tribe or operated by a video lottery manager on the Indian lands of the Tribe.

SECTION 10.0. ENFORCEMENT OF GAMING AGREEMENT PROVISIONS.

Sec. 10.1. The Tribe and TCA shall be responsible for regulating activities pursuant to this gaming agreement. As part of its responsibilities, the Tribe shall:

(a) take reasonable measures to assure the physical safety of video lottery terminal establishment patrons and personnel, prevent illegal activity at the video lottery terminal establishment, and protect any rights of patrons under the Indian Civil Rights Act of 1968 (25 U.S.C. Sections 1301-1303);

(b) promptly notify appropriate law enforcement authorities of persons who may be involved in illegal acts in accordance with applicable tribal, federal, and state law;

(c) assure that the construction and maintenance of the video lottery terminal establishment meets or exceeds federal and Tribal standards for comparable buildings and minimum standards under this gaming agreement; and

(d) prepare adequate emergency access and preparedness plans to ensure the health and safety of all video lottery terminal establishment patrons. On finalization of the emergency access and preparedness plans, the TCA or the Tribe shall forward copies of the plans to the Texas regulatory commission.

Sec. 10.2. Members and employees of the TCA shall be licensed in accordance with the provisions of this agreement. All licenses for members and employees of the TCA shall be issued according to the same standards and terms applicable to video lottery terminal establishment employees. The TCA shall employ qualified compliance officers under the authority of the TCA. The compliance officers shall be independent of the video lottery terminal establishment, and shall be supervised by and accountable only to the TCA. A TCA compliance officer shall be available to the video lottery terminal establishment during all hours of operation on reasonable notice, and shall have

immediate access to any and all areas of the video lottery terminal establishment for the purpose of ensuring compliance with the provisions of this gaming agreement. The TCA shall investigate any suspected or reported violation of this gaming agreement and shall require the correction of the violation. The TCA shall prepare and retain in its files a timely written report of each investigation and any action taken in response to the investigation, and shall forward copies of the report to the Texas regulatory commission within 15 days of the date of the filing. Any such violations shall be reported immediately to the TCA, and the TCA shall immediately forward the same to the commission. In addition, the TCA shall promptly report to the commission any such violations that it independently discovers.

Sec. 10.3. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this gaming agreement, representatives of the TCA and the Texas regulatory commission shall meet at least annually to review past practices and examine methods to improve the regulatory scheme created by this gaming agreement. The meetings shall take place at a location mutually agreed to by the TCA and the commission. The commission, before or during such meetings, shall disclose to the TCA any concerns, suspected activities, or pending matters reasonably believed to possibly constitute violations of this gaming agreement by any person, organization, or entity, if such disclosure will not compromise the interest sought to be protected.

Sec. 10.4. Financial Obligations of the Texas Regulatory Commission. Any financial obligation of the Texas regulatory commission or of the State, under this gaming agreement or arising from the operation of the video lottery on the Tribe's Indian lands, shall be payable solely out of the income, revenues, and receipts of the commission resulting from the operation of video lottery terminals on Indian lands of the Tribe.

Sec. 10.5. Penalties and Remedies for Noncompliance. (a) Failure to timely remit revenue generated by video lottery terminals to the Texas regulatory commission or any sales tax or other fee owed to the State or to timely file any report or information required under this gaming agreement or by applicable federal or state law shall constitute a material breach of this gaming agreement. After receiving at least 24 hours written notice from the commission and an additional 48 hours for the opportunity to remedy the breach or otherwise correct the violation, the Tribe shall be subject to contract penalties in the amount of $10,000 per day for the breach. If the breach is not cured within 30 days, the commission shall disable all video lottery terminals operated by the Tribe.

(b) If the Tribe is in material breach of this agreement and the Texas regulatory commission exercises its right to disable all video lottery terminals operated by the Tribe, the commission shall have the right to enter the premises of any video lottery terminal establishment on the Tribe's Indian lands and remove any video lottery games or other video lottery equipment owned by the State.

Sec. 10.6. No Liability of the State Related to Enforcement. The State and the Texas regulatory commission are not liable for any enforcement of the provisions of this gaming agreement.

SECTION 11.0. STATE MONITORING OF GAMING AGREEMENT.

Sec. 11.1. (a) The Texas regulatory commission shall, pursuant to the provisions of this gaming agreement, have the authority to monitor the conduct of video lottery games to ensure video lottery games are conducted in compliance with the provisions of this gaming agreement. In order to properly monitor the conduct of video lottery games, in addition to the State's operation and control of the central system and video lottery system, agents of the commission shall have reasonable access to all areas of the video lottery terminal establishment related to the conduct of video lottery games as provided herein:

(1) the commission shall have access to the video lottery terminal establishment only during the video lottery terminal establishment's normal operating hours; provided that to the extent such inspections are limited to areas of the video lottery terminal establishment where the public is normally allowed, commission agents may inspect the video lottery terminal establishment without giving prior notice to the Tribe;

(2) any suspected or claimed violations of this gaming agreement or of law shall be directed in writing to the TCA; commission agents may not interfere with the functioning of the video lottery terminal establishment unless the public safety, welfare, or financial loss to the State, or integrity of the state lottery so requires; and

(3) before entering any nonpublic area of the video lottery terminal establishment, commission agents must provide proper photographic identification to the TCA.

(b) A TCA agent shall accompany a commission agent in nonpublic areas of the video lottery terminal establishment. A one-hour notice by the commission to the TCA may be required to assure that a TCA officer is available to accompany commission agents at all times.

Sec. 11.2. Subject to the provisions herein, agents of the Texas regulatory commission shall have the right to review and copy documents or other records related to the operation of video lottery terminals. The review and copying of those records shall be during normal business hours or hours otherwise at the Tribe's discretion. However, the commission may not copy those portions of any records related to the Tribe's operation of video lottery terminals that contain business or marketing strategies or other proprietary and confidential information, including customer lists, business plans, marketing studies, and customer demographics or profiles. No records of the Tribe related to its conduct of video lottery games or copies thereof shall be released to the public by the State. All such records shall be deemed confidential records owned by the Tribe and are not subject to public disclosure by the State.

Sec. 11.3. At the completion of any commission inspection or investigation, the Texas regulatory commission shall forward a written report thereof to the TCA. The TCA shall be apprised on a timely basis of all pertinent, nonconfidential information regarding any violation of federal, or state laws, rules or regulations, or this gaming agreement. Nothing herein prevents the commission from contacting Tribal or federal law enforcement authorities concerning suspected criminal wrongdoing involving the TCA. The TCA may

interview commission agents and inspectors upon reasonable notice and examine work papers in the same fashion that commission agents and inspectors may examine auditors' notes and make auditor inquiry unless providing such information to the TCA will compromise the interests sought to be protected.

Sec. 11.4. Nothing in this gaming agreement shall be deemed to authorize the State to regulate the Tribe's government, including the TCA, or to interfere in any way with the Tribe's selection of its governmental officers, including members of the TCA. The Texas regulatory commission and the Tribe, however, on request of the Tribe, shall jointly employ, at the Tribe's expense, an independent firm to perform on behalf of the commission the duties set forth in Sections 11.2 and 11.3.

SECTION 12.0. JURISDICTION.

Sec. 12.1. Except as expressly provided herein, this gaming agreement shall not alter tribal, federal, or state civil adjudicatory or criminal jurisdiction.

Sec. 12.2. The Tribe expressly consents to the State's jurisdiction to enforce the terms of this gaming agreement including any request for judicial injunctive relief to prohibit unlawful gaming activities.

SECTION 13.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

Sec. 13.1. The Tribe will not conduct any gaming activity in a manner that endangers the public health, safety, or welfare.

Sec. 13.2. For the purposes of this gaming agreement, the Tribe agrees to:

(a) adopt and comply with standards at least as stringent as state public health standards for food and beverage handling at any video lottery terminal establishment. The Tribe will allow inspection of food and beverage services at any video lottery terminal establishment by state or county health inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of the gaming agreement;

(b) adopt and comply with standards at least as stringent as federal water quality and safe drinking water standards applicable in Texas at any video lottery terminal establishment. The Tribe will allow for inspection and testing of water quality at any video lottery terminal establishment by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this gaming agreement;

(c) comply with the building and safety standards set forth in Section 8.4 of this agreement;

(d) carry not less than one million dollars ($1,000,000) in public liability insurance for patron claims. The Tribe herein provides reasonable assurance that such claims will be promptly and fairly adjudicated, and that legitimate claims will be paid; provided that nothing herein requires the Tribe to agree to liability for punitive damages or attorneys' fees. On or before the effective date of this gaming agreement or not less than 30 days before the commencement of operation of video lottery terminals under this gaming agreement, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the video lottery terminal establishment or in connection with the Tribe's operation of video lottery terminals. The tort liability ordinance shall include procedures for processing any claims for such money damages. Nothing in this section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits set out in this subsection. Any insurance policy provided in compliance with the terms of this subsection shall provide that the policy provider shall not raise the Tribe's sovereign immunity as a defense or otherwise to avoid payment of a claim under this subsection;

(e) adopt and comply with standards at least as stringent as federal workplace and occupational health and safety standards at any video lottery terminal establishment. The Tribe will allow for inspection of video lottery terminal establishment workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of this gaming agreement;

(f) comply with tribal codes and any applicable federal law regarding public health and safety;

(g) adopt and comply with standards at least as stringent as federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Tribe in relation to its operation of video lottery terminals or in the video lottery terminal establishment on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability. However, nothing herein shall preclude the Tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance;

(h) adopt and comply with standards that are at least as stringent as state laws prohibiting a video lottery manager or any employee thereof from cashing any check drawn against a federal, state, county, or city fund, including social security, unemployment insurance, disability payments, or public assistance payments;

(i) adopt and comply with standards that are at least as stringent as state laws governing the extension of credit to, the cashing of checks for, and other financial transactions with patrons calculated to protect players from problem and pathological gambling; and

(j) adopt and comply with the provisions of the Bank Secrecy Act (31 U.S.C. Sections 5311-5314), as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to gaming facilities.

Sec. 13.2.1. The Tribe agrees to adopt and, not later than 30 days after the effective date of this gaming agreement, make available on request the standards described in Subsections (a)-(c) and (e)-(j) of Section 13.2 to which the Tribe is held with regard to operation of video lottery terminals. In the absence of a promulgated tribal standard in respect to a matter identified in those subsections, or the express adoption of an applicable federal statute or regulation instead of a tribal standard in respect to any such matter, an applicable state statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

Sec. 13.3. Participation in State Statutory Programs Related to Employment. (a) Instead of allowing the Tribe to participate in the state statutory workers' compensation system for employees of a video lottery terminal establishment or otherwise engaged in the operation of video lottery terminals, the Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance. The system must include a scope of coverage, availability of an independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state law. Not later than the effective date of this gaming agreement, or 60 days before the commencement of video lottery terminal operations under this gaming agreement, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth in this subsection. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

(b) The Tribe agrees to participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees of the video lottery terminal establishment, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that code and of the courts of the State for purposes of enforcement.

(c) As a matter of comity, with respect to persons employed at the video lottery terminal establishment in capacities otherwise related to the operation of video lottery terminals, other than members of the Tribe, the Tribe shall withhold all taxes due to the State as provided by Texas law, and shall forward the amounts as provided by State law.

Sec. 13.4. Emergency Service Accessibility. The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the video lottery terminal establishment.

Sec. 13.5. The Tribe agrees to prohibit the intentional, knowing, or reckless possession of a firearm, illegal knife, club, explosive weapon, machine gun, firearm silencer, knuckles, armor-piercing ammunition, a chemical dispensing device, or a zip gun, as those terms are defined in Section 46.01, Texas Penal Code, at all times in the video lottery terminal establishment. The defenses that apply to the prohibition of possession of those weapons on the premises of a racetrack under Section 46.03, Texas Penal Code, shall also apply to the prohibition of possession of the weapons in video lottery terminal establishments. In addition, Tribal security or Tribal law enforcement personnel, shall be allowed to possess firearms and clubs at a video lottery terminal establishment as authorized by Tribal law.

Sec. 13.6. Tribal Law Enforcement Plan. The Tribe agrees to implement a written tribal law enforcement services plan that provides a comprehensive and effective means to address criminal and undesirable activity at the video lottery terminal establishment. The plan shall provide that sufficient tribal law enforcement resources are available 24 hours a day, seven days per week to protect the public health, safety, and welfare at the video lottery terminal establishment. To accommodate investigations and intelligence sharing, the Tribe will provide that a police officer holding a current Texas police officer standards and training certification is employed by the Tribe and assigned to handle video lottery terminal related matters when they arise. Intelligence liaisons will be established at the tribal police department or TCA and also at the Texas regulatory commission. There will be federal, tribal, and state cooperation in task force investigations. The commission's intelligence unit will gather, coordinate, centralize, and disseminate accurate and current intelligence information pertaining to criminal and undesirable activity that may threaten patrons, employees, and assets of a video lottery terminal establishment or the video lottery system. The State and the Tribe will coordinate the use of resources, authority, and personnel of the State and the Tribe for the shared goal of preventing and prosecuting criminal or undesirable activity by players, employees, or businesses in connection with tribal video lottery terminal operations.

Sec. 13.7. Annual Statement of Compliance Regarding Use of Revenue. The Tribe agrees to submit to the Texas regulatory commission an annual statement of compliance regarding the use of its share of revenue generated from video lottery terminal operations and a copy of a current tribal ordinance requiring that revenue generated from video lottery terminal operations be used exclusively for the establishment and improvement of governmental services and programs.

SECTION 14.0. EXCLUSIVITY AND FEES.

Sec. 14.1. The parties acknowledge and recognize that this gaming agreement provides the Tribe territorial exclusivity through the permitted operation of video lottery terminals without requiring construction or operation of a racetrack for live horse or dog racing. This territorial exclusivity and the additional benefits to the Tribe are of substantial benefit to the Tribe and, consistent with Federal Indian policy, provide special opportunities for tribal economic opportunity through gaming within the external boundaries of Texas. In consideration thereof, as long as the State does not after the effective date of this gaming agreement authorize a person to operate video lottery terminals or any additional form of gaming that would be considered a lottery or gift enterprise under Section 47(a), Article III, Texas Constitution, without the Tribe's written consent within the exclusive territory designated by this gaming agreement for the operation of video lottery games by the Tribe, the Tribe agrees to pay the fees described in this section.

(a) The Tribe covenants and agrees to pay to the State a fee derived from net terminal income calculated as set forth in Subsection (b) of this section. The fee shall be deducted from the daily deposit of funds into the State's account from the video lottery terminal operations prior to the State's transfer of funds back to the Tribe for such operations.

(b) The fee shall be eight percent of all net terminal income received by the Tribe in a calendar year.

Sec. 14.2. Start-Up Assessment. On the effective date of this gaming agreement, the Tribe shall deposit with the Texas regulatory commission the sum of $10,000 ("Start-Up Assessment"). The purpose of the Start-Up Assessment shall be to assist the State in initiating its administrative and oversight responsibilities hereunder, and shall be a one-time payment to the State for such purposes.

Sec. 14.3. Nothing in this gaming agreement shall be deemed to authorize the State to impose any tax, fee, charge, or assessment on the Tribe or the video lottery terminal establishment except as expressly authorized pursuant to this gaming agreement under Sections 4.6 and 13.3(c). To the extent that the Tribe is required under federal law to report prizes awarded, the Tribe agrees to copy such reports to the Texas regulatory commission. Any state sales tax on the sale of goods and services to non-Indians at video lottery terminal establishments shall be conclusively presumed to be a direct tax on the retail consumer, pre-collected for the purpose of convenience and facility.

Sec. 14.4. In consideration for the covenants and agreements contained herein, the State agrees that it will not, during the term of this gaming agreement, allow the nontribal operation of any video lottery games or other gaming that would be considered a lottery or gift enterprise under Section 47(a), Article III, Texas Constitution, without the Tribe's written consent within _____ [limitation on state video lottery or other new lottery gaming in exclusive Indian video lottery territory]. The state recognizes the importance of this provision to the Tribe and agrees, in the event of a breach of this provision by the State, to require any nontribal entity that operates any such games within the prohibited territory to remit to the State not less than 50 percent of any revenue from those games.

The State further agrees to remit that revenue at least quarterly to Eligible Tribes, as liquidated damages. For purposes of this part, "Eligible Tribes" shall mean those tribes that have entered into a gaming agreement with the State under Section 466.604, Texas Government Code, and are operating gaming pursuant to the gaming agreement within _____ [description of exclusive territory for tribal video lottery]. Such liquidated damages shall be allocated pro rata to the Eligible Tribes based on the number of video lottery terminals operated by each Eligible Tribe in the time period when those revenues were generated.

SECTION 15.0. DISPUTE RESOLUTION.

Sec. 15.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this gaming agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief or specific relief provided in this agreement against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this gaming agreement, as follows:

(a) either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved;

(b) the parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time;

(c) if the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section; and

(d) disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided herein may be resolved in the United States District Court with jurisdiction over the location or planned location of the Tribe's video lottery terminal establishment or, if the federal courts lack jurisdiction, in a state district court in Travis County. The disputes to be submitted to court action are limited to claims of breach or violation of this gaming agreement or failure to negotiate in good faith as required by the terms of this gaming agreement. The parties agree that, except in the case of imminent threat to the public health, safety, or welfare or the integrity of the lottery, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resorting to judicial process.

Sec. 15.2. Arbitration Rules. Arbitration shall be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, provided that application of these rules shall not be construed to waive the State's sovereign immunity to an extent greater than otherwise authorized herein. Arbitration shall be held at such location as the

parties may agree. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. Only one neutral arbitrator may be named, unless the Tribe or the State objects, in which case a panel of three arbitrators (one of whom is selected by each party) will be named. The decision of the arbitrator(s) shall be in writing, shall give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or state court having jurisdiction thereof.

Sec. 15.3. Limited Waiver of Sovereign Immunity. (a) In the event that a dispute is to be resolved in federal court or a state court of competent jurisdiction as provided in this section, the State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that:

(1) the dispute is limited solely to issues arising under this gaming agreement;

(2) neither side makes any claim for monetary damages (that is, only injunctive, specific performance, including enforcement of a provision of this gaming agreement requiring payment of money to one or another of the parties, or declaratory relief is sought); and

(3) no person or entity other than the Tribe and the State is party to the action, unless failure to join a third party would deprive the court of jurisdiction, provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(b) In the event of intervention by any additional party into any such action without the consent of the Tribe and the State, the waivers of either the Tribe or the State provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction, provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(c) The waivers and consents provided for under this section shall extend to civil actions authorized by this gaming agreement, such as actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this gaming agreement, no other waivers or consents to be sued, either express or implied, are granted by either party.

(d) The State only waives sovereign immunity to the extent authorized by Section 466.601, Texas Government Code.

SECTION 16.0. CONSTRUCTION OF GAMING AGREEMENT; FEDERAL APPROVAL.

Sec. 16.1. Each provision, section, and subsection of this gaming agreement shall stand separate and independent of every other provision, section, or subsection. In the event that a federal district court or a state court of competent jurisdiction as provided in this agreement shall find any provision, section, or subsection of this gaming agreement to be invalid, the remaining provisions,

sections, and subsections of this gaming agreement shall remain in full force and effect, unless the invalidated provision, section, or subsection is material. It is a material provision of this gaming agreement that Class III gaming be limited to that expressly authorized under this gaming agreement, and Subchapter K, Chapter 466, Texas Government Code. If any final and nonappealable judicial determination authorizes or requires the State to authorize that any Class III gaming be operated by the Tribe other than video lottery terminals connected to the video lottery system or to a government operated video lottery system structured identically to that expressly authorized under Subchapter K, Chapter 466, Texas Government Code, if so required by federal law, then this gaming agreement shall be null and void for all purposes.

Sec. 16.2. Each party hereto agrees to defend the validity of this gaming agreement and the legislation in which it is embodied.

Sec. 16.3. The parties shall cooperate in seeking approval of this gaming agreement from an appropriate federal agency if so required by federal law.

SECTION 17.0. NOTICES.

All notices required under this gaming agreement shall be given by certified mail, return receipt requested, commercial overnight courier service, or personal delivery, to the following persons:

Governor

Chair, State-Tribal Relations Committee

Attorney General

[Principal Chief, Governor or Chair]

[Name of Tribe]

[Address]

With copies to:

SECTION 18.0. DURATION, NEGOTIATION, AND TERMINATION.

Sec. 18.1. This gaming agreement shall become effective on the last date of the satisfaction of the following requirements:

(a) due execution on behalf of the Tribe, including obtaining all tribal resolutions and completing other tribal procedures as may be necessary to render the Tribe's execution effective including a final and nonappealable decision of a tribal court of competent jurisdiction that the Tribe's execution of this gaming agreement is effective and that all parts and provisions of the gaming agreement are enforceable by and against the Tribe as set forth herein;

(b) any federal regulatory approval required under federal law and, if so required, publication in the Federal Register or satisfaction of any other requirement of federal law; and

(c) payment of the Start-up Assessment provided for in Section 14.2 of this gaming agreement.

Sec. 18.2. This gaming agreement shall have an initial term of 10 years from the effective date, renewable for an additional 10 years; provided that the Tribe and the State, acting through its Governor, may renegotiate the terms of this gaming agreement after the initial term. The Tribe's noncompliance with any operational, reporting, or other requirements under this gaming agreement shall justify termination of operation of video lottery terminals on the Tribe's Indian

lands. The Tribe shall be entitled to notice and a hearing on the compliance issue as set forth under Chapter 466, Texas Government Code, and accompanying rules of the Texas regulatory commission. If the Tribe does not remedy the noncompliance issue within 180 days of the termination or 60 days after a final decision of the commission that the Tribe is out of compliance, then this gaming agreement shall terminate without penalty against the commission or the State.

Sec. 18.3. This gaming agreement shall remain in full force and effect until the sooner of expiration of the term, termination as provided herein, or termination by mutual consent of the parties. In addition to the remedies set forth above, either party may bring an action in federal court, after providing a 60-day written notice of an opportunity to cure any alleged breach of this gaming agreement, for a declaration that the other party has materially breached this gaming agreement. On issuance of such a declaration, the complaining party may unilaterally terminate this gaming agreement on service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the district court for the county in which the Tribe's video lottery terminal establishment is located. The parties expressly waive their immunity to suit for purposes of an action under this subsection, subject to the qualifications stated herein. Nothing in this provision shall be construed to limit other remedies available to and contract penalties enforceable by the Texas regulatory commission, as expressly provided herein, in the event of the Tribe's material breach. The Tribe and the State recognize and agree that the narrow and enumerated provisions for such immediate remedies and enforcement by the State are necessary to protect the public health, safety, and welfare and the integrity of the video lottery.

SECTION 19.0. AMENDMENTS; RENEGOTIATIONS.

Sec. 19.1. The terms and conditions of this gaming agreement may be amended at any time by the mutual and written agreement of both parties.

Sec. 19.2. This gaming agreement is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 24 months following the effective date of this gaming agreement.

SECTION 20.0. AUTHORITY TO EXECUTE.

This gaming agreement, as an enactment of the State Legislature, is deemed approved by the State. On valid execution by the Tribe and the Governor of the State, no further action by the State or any state official is necessary for this gaming agreement to take effect on any necessary approval by any federal agency as required by applicable federal law, including publication in the Federal Register, if required. The undersigned tribal official(s) represents that he or she is duly authorized and has the authority to execute this gaming agreement on behalf of the Tribe for whom he or she is signing.

APPROVED:

[Name of Tribe]

_____ Date: _____

[CHIEF EXECUTIVE OFFICER]

State of Texas

_____ Date: _____

Governor of Texas

Sec. 466.605. NEGOTIATION FOR DIFFERENT GAMING AGREEMENT TERMS. (a) Nothing in this subchapter may be construed to limit the ability of a federally recognized Indian tribe to request that a gaming agreement be negotiated with this state on terms that are different from those set forth in the gaming agreement under Section 466.604, or the ability of this state to engage in negotiations and to reach agreement under any applicable federal law.

(b) In offering to enter into a gaming agreement with Indian tribes in this state under Section 466.604(b), and, except for assessments by this state as provided in that section of the amounts necessary to defray state costs of regulating activities as provided under the gaming agreement, nothing in this chapter may be construed to mean that:

(1) this state is imposing any tax, fee, charge, or other assessment on an Indian tribe or on any other person or entity authorized by an Indian tribe as a condition to engaging in a Class III activity; or

(2) this state is refusing to enter into gaming agreement negotiations based on the lack of authority of this state or a political subdivision of this state to impose the tax, fee, charge, or other assessment.

(c) If any federally recognized tribe with jurisdiction over Indian lands in this state requests that the governor enter into negotiations for a gaming agreement under federal law applicable to the tribe, including the Indian Gaming Regulatory Act (18 U.S.C. Section 1166 and 25 U.S.C. Section 2701 et seq.), on terms different than those prescribed in the gaming agreement in Section 466.604(b), the governor shall enter into those negotiations under the federal law applicable to the tribe and without preconditions and is authorized to reach agreement and execute the agreement on behalf of this state, provided that the gaming agreement does not expand the scope of gaming expressly authorized under this chapter and entitles the tribe only to operate video lottery terminals in strict compliance with state law, unless otherwise required by applicable federal law, and provided that the gaming agreement includes the following provisions:

(1) a provision prescribing that the tribe is authorized and allowed to engage only in the Class III gaming activities expressly referred to in the gaming agreement or authorized under Texas law and may not engage in Class III gaming that is not expressly authorized in the agreement or under Texas law;

(2) a provision prescribing that any operation or possession by the tribe of any gaming devices not expressly authorized under the gaming agreement or other Texas law, excluding any Class II gaming authorized under applicable federal law, shall be considered a material breach of the gaming agreement and justify termination of the agreement and this state may bring an action in federal court or, in the event the federal court declines jurisdiction, in state court and shall be entitled to an injunction prohibiting the continued operation of any unlawful gaming activity on the tribal lands on a showing by a preponderance of evidence that the breach has occurred;

(3) a provision waiving state and tribal sovereign immunity for purposes of operation of video lottery terminals and enforcement of the gaming agreement, provided that this state may not waive sovereign immunity except to the extent expressly permitted under Section 466.601;

(4) a provision establishing minimum internal control standards at least as restrictive as those provided under this subchapter and any standards set forth under applicable federal law;

(5) a provision requiring any video lottery manager doing business on Indian lands to indemnify and hold harmless the commission, this state, and the members, officers, employees, and authorized agents of the commission and this state from any and all claims which may be asserted against a license or registration holder, the commission, this state, or the employees arising from the license or registration holder's participation in the video lottery system authorized under the gaming agreement;

(6) a provision requiring the tribe to pay all regulatory costs incurred by this state in relation to the operation of video lottery terminals on the Indian lands of the tribe to assure compliance with all federal and state law and all provisions of the agreement;

(7) a provision recognizing the substantial benefit of the exclusivity or other substantial benefits afforded to the Tribe under the agreement and providing for the sharing of net terminal revenue between the tribe and this state as payment for the exclusivity or other substantial benefit;

(8) a provision establishing investigative and licensing standards at least as restrictive as those provided under this subchapter and under any applicable federal law;

(9) a provision requiring video lottery terminals and facilities operating the video lottery terminals authorized under the gaming agreement to be owned by the tribe;

(10) a provision requiring the video lottery authorized by the gaming agreement to be licensed by the tribe in conformity with the requirements of the agreement, the Tribal Gaming Ordinance, and any applicable federal law, every five years and the tribe shall review and renew the license, if appropriate, and the tribe shall provide to the commission verification that this requirement has been satisfied;

(11) a provision requiring the licensing of all video lottery employees and any person extending financing, directly or indirectly, to the tribe's video lottery operation before extending that financing, provided that any person who is extending financing at the time of the execution of the agreement must be licensed by the tribe not later than the 90th day after the date of execution, and the provision may allow the tribe, in its discretion, to exclude from the licensing requirements of this section financing provided by:

(A) a federally regulated or state-regulated bank, savings and loan, or other federally or state-regulated lending institution;

(B) any federal, state, or local government agency; or

(C) any investor who, alone or in conjunction with others, holds less than 10 percent of any outstanding indebtedness evidenced by bonds issued by the tribe;

(12) a provision allowing the commission, under the provisions of the agreement, to monitor the conduct of video lottery games to ensure that the video lottery games are conducted in compliance with the provisions of the agreement, and granting the Department of Public Safety and agents of the commission reasonable access to all areas of the facility related to the conduct of video lottery games in order to properly monitor the conduct of video lottery games;

(13) a provision specifying jurisdiction of tribal, state, and federal courts with regard to matters arising from the agreement or the operation of video lottery terminals, or both, as authorized by the agreement and consistent with Section 466.601;

(14) a provision requiring the tribe to adopt and comply with standards at least as stringent as state public health standards for food and beverage handling at any facilities where video lottery terminals are operated;

(15) a provision requiring the tribe to adopt and comply with standards at least as stringent as federal water quality and safe drinking water standards applicable in this state at any facilities where video lottery terminals are operated, and requiring the Tribe to allow for inspection and testing of water quality by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to or by the Tribe under express authorization of federal law to ensure compliance with federal water quality and safe drinking water standards;

(16) a provision requiring the tribe to carry at least $5 million in public liability insurance for patron claims and providing reasonable assurance that the claims will be promptly and fairly adjudicated and that legitimate claims will be paid;

(17) a provision requiring the tribe to adopt and comply with standards at least as stringent as federal workplace and occupational health and safety standards for any facilities where video lottery terminals are operated, and requiring the tribe to allow for inspection of the workplaces by state inspectors during normal hours of operation to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards;

(18) a provision requiring the tribe to adopt and comply with standards at least as stringent as federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the facility operating video lottery terminals on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability, provided that nothing in the provision precludes the tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance;

(19) a provision requiring the tribe to adopt and comply with standards that are at least as stringent as state laws prohibiting the use of proceeds of a check issued as a payment under the Aid to Families with Dependent Children program administered under Chapter 31, Human Resources Code, or a food stamp coupon issued under the food stamp program administered under Chapter 33, Human Resources Code, for gaming or other wagering;

(20) a provision requiring the tribe to adopt and comply with standards at least as stringent as state laws governing the extension of credit to, the cashing of checks for, and other financial transactions with patrons calculated to protect players from problem and pathological gambling;

(21) a provision requiring the tribe to participate in state statutory programs related to employment in video lottery terminal operations or instead of participation in this state workers' compensation system, allowing the tribe to create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance that includes a scope of coverage, availability of an independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state law;

(22) a provision requiring the tribe to make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the video lottery terminal operations;

(23) a provision requiring the tribe to prohibit the intentional, knowing, or reckless possession of a firearm, illegal knife, club, explosive weapon, machine gun, firearm silencer, knuckles, armor-piercing ammunition, a chemical dispensing device, or a zip gun, as those terms are defined in Section 46.01, Penal Code, at all times in the video lottery terminal establishment; and requiring the defenses that apply to the possession of weapons on the premises of a racetrack under Section 46.03, Penal Code, to apply to possession of the weapons in a video lottery terminal establishment; and requiring tribal security or tribal law enforcement personnel to be allowed to possess firearms and clubs at a video lottery terminal establishment as authorized by tribal law;

(24) a provision requiring the tribe to agree that on or before the effective date of the agreement, or not less than 90 days before the commencement of any project constructed to serve as the site of video lottery terminals, the tribe shall adopt an ordinance providing for the preparation, circulation, and consideration by the tribe of environmental impact reports concerning potential off-reservation environmental impacts of the construction to be commenced on or after the effective date of the agreement;

(25) a provision requiring the tribe to agree to establish separate electronic funds transfer accounts for the purposes of depositing money from video lottery terminal operations, making payments to the commission, and receiving payments from the commission, which must prohibit the tribe from making payments to the commission in cash, but as authorized by the commission may allow a tribe to make payments to the commission by cashier's check;

(26) a provision requiring the tribe to adopt and comply with the Bank Secrecy Act (31 U.S.C. Sections 5311-5314), as amended, and all reporting requirements of the Internal Revenue Service, insofar as the provisions and reporting requirements are applicable to gaming facilities; and

(27) a provision requiring the tribe to collect and remit to the comptroller state sales and use taxes and state taxes on motor fuels, alcoholic beverages, cigarettes and tobacco products, and hotel occupancy generated at a video lottery terminal establishment, other than on an item sold to or used or consumed by a tribe member.

(d) The legislature finds that, in any proceeding described by Subsection (c)(2), irreparable injury and inadequate remedy at law shall be presumed once this state has demonstrated the violation has occurred. If this state does not seek an injunction for such a material breach of the gaming agreement, the tribe agrees to pay a contract penalty of $10,000 per day for every day the violation or breach continues. If the violation or breach is not cured within 10 days, this state may bring an action to enjoin the unlawful conduct.

Sec. 466.606. IMPLEMENTATION OF GAMING AGREEMENT. The governor shall execute any documents that may be necessary to implement a gaming agreement authorized under this subchapter.

Sec. 466.607. INCORPORATION INTO STATE LAW. The model gaming agreement set out in Section 466.604(b) is hereby incorporated into state law, and the operation of video lottery terminals authorized under the agreement is expressly authorized as a matter of state law for any Indian tribe entering into the gaming agreement in accordance with this subchapter.

Sec. 466.608. REGULATORY MONEY RECEIVED UNDER GAMING AGREEMENT. All money received by the commission under a gaming agreement for regulatory costs incurred relative to tribal operations of video lottery terminals shall be deposited to the credit of the state video lottery account to defray expenses of the commission incurred in the oversight, compliance with, and enforcement of video lottery terminal operations conducted pursuant to a gaming agreement.

Sec. 466.609. INJUNCTION; CIVIL PENALTY. (a) If the commission, the appropriate governing body for an Indian tribe, or the attorney general has reason to believe that this chapter has been or is about to be violated, the attorney general may petition a court for appropriate injunctive relief to restrain the violation. Filing of the petition does not waive applicable sovereign immunity.

(b) Venue for an action by this state seeking injunctive relief is in a district court in Travis County.

(c) If the court finds that this chapter has been knowingly violated, the court shall order all proceeds from any illegal gambling to be forfeited to the appropriate governing body as a civil penalty.

(d) The remedies provided herein are not exclusive. The commission may suspend or revoke a license, impose an administrative penalty, or seek injunctive or civil penalties or both, depending on the severity of the violation.

SECTION __.35. Section 467.001, Government Code, is amended by amending Subdivision (9) and adding Subdivision (12) to read as follows:

(9) "Person that has a significant financial interest in the lottery" means:

(A) a person or a board member, officer, trustee, or general partner of a person that manufactures, distributes, sells, or produces lottery equipment, video lottery equipment, video lottery games, video lottery central systems, supplies, services, or advertising;

(B) an employee of a video lottery terminal provider, video lottery central system provider, or person that manufactures, distributes, sells, or produces lottery equipment, supplies, services, or advertising or video lottery equipment or games and that employee is directly involved in the manufacturing, distribution, selling, or production of lottery equipment, supplies, services, or advertising or video lottery equipment or games;

(C) a person or a board member, officer, trustee, or general partner of a person that has made a bid to operate the lottery in the preceding two years or that intends to make a bid to operate the lottery or an employee of the person if the employee is directly involved in making the bid; or

(D) a sales agent, video lottery retailer, video lottery manager, video lottery terminal provider, or video lottery central system provider.

(12) "Video lottery central system," "video lottery equipment," "video lottery game," "video lottery manager," "video lottery retailer," and "video lottery terminal provider" have the meanings assigned by Section 466.002.

SECTION __.36. Section 467.031, Government Code, is amended to read as follows:

Sec. 467.031. DIVISIONS. The commission shall establish separate divisions to oversee bingo and the state lottery. The commission shall create a division to oversee video lottery and delegate responsibilities in the administration of Chapter 466 to the executive director, the director of the appropriate division, and the division's staff; provided, however, that the commission may not delegate the following actions:

(1) a final determination in any application or request for licensing or registration under Chapter 466;

(2) a final determination in any proceeding involving the suspension or revocation of a registration or license under Chapter 466;

(3) a final determination that Chapter 466 has been violated; or

(4) a final determination or imposition of an assessment of fines or penalties under a law administered by the commission.

SECTION __.37. Section 467.035(a), Government Code, is amended to read as follows:

(a) The commission may not employ or continue to employ a person who owns a financial interest in:

(1) a bingo commercial lessor, bingo distributor, or bingo manufacturer; or

(2) a lottery sales agency, [~~or~~] a lottery operator, a video lottery retailer, a video lottery manager, a video lottery terminal provider, a video lottery central system provider, or a manufacturer of video lottery games.

SECTION __.38. Section 411.108, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The Texas Lottery Commission or a successor agency may obtain from the department, subject to an interagency agreement entered into under Section 466.020(d) or 466.206, criminal history record information maintained by the department that relates to any natural person, corporation, association, trust, partnership, limited partnership, joint venture, government, subsidiary, or other entity, regardless of its form, structure, or nature that the commission has the authority to investigate under Chapter 466 as related to the commission's operation and oversight of video lottery. Criminal history record information obtained by the commission under this subsection may be released or disclosed only as provided in Sections 466.022(c) and 466.206.

SECTION __.39. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Section 6.095 to read as follows:

Sec. 6.095. SPECIAL ALLOCATION TO PURSES. (a) A pari-mutuel license holder that owns or operates a racetrack at which video lottery games are conducted under Subchapter K, Chapter 466, Government Code, and the state breed registry representing the breed conducting live racing at the license holder's racetrack shall enter into a written agreement to allocate a percentage of the share of the video lottery proceeds received by the racetrack under Section 466.590(a)(1), Government Code, for purses at that racetrack as provided by this section and to specify the time period for which the percentage is in effect. If the racetrack is a horse racetrack:

(1) the officially recognized horsemen's organization must also be a party to the agreement; and

(2) the purse amounts shall be deposited in accordance with Section 6.08(b)(3) of this Act.

(a-1) At a greyhound racetrack, the agreement under Subsection (a) must require that 50 percent of the purse amount set aside as provided by Subsection (a) of this section be allocated to Texas-bred greyhounds.

(b) If an agreement cannot be reached under Subsection (a), any party that would be a necessary party to the agreement may submit the matter to the commission 60 days after failure to reach an agreement for determination of the matter in accordance with a procedure established by commission rule.

(c) The commission in a determination under Subsection (b):

(1) may not set the percentage of net terminal income to be used for purses at the racetrack at less than 10 percent of the share of the video lottery proceeds received by the racetrack under Section 466.590(a)(1), Government Code, and must allocate an additional percentage if necessary to ensure the purses at the racetracks are nationally competitive; and

(2) may not establish a time period for which the percentage is to be in effect that is less than two years.

(d) Each officially designated breed registry may use a portion, not to exceed 10 percent, of the amount allocated for purses under this section for administration, Accredited Texas Bred awards, enhancement and promotion of championship Texas-bred race days, and marketing and promotion of the Accredited Texas Bred Incentive Program.

(e) The commission shall adopt rules to administer this section and to require a horse racetrack to allocate from the amount set aside for purses under Subsection (a) of this section:

(1) two percent to the purse account for Arabians;

(2) one percent to the purse account for Paints;

(3) 29.1 percent to the purse account for quarter horses; and

(4) 67.9 percent to the purse account for thoroughbreds.

(f) A matter considered by the commission under this section is a contested case requiring a public hearing under Chapter 2001, Government Code.

SECTION __.40. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Section 6.20 to read as follows:

Sec. 6.20. LIVE RACING REQUIREMENT. (a) Except as provided by Subsections (b) and (c) of this section, a person who holds a class 1 or class 2 racetrack license for a racetrack that is a video lottery terminal establishment under Subchapter K, Chapter 466, Government Code, shall conduct the greater of:

(1) for each breed, not less than the number of live racing days conducted by the racetrack for that breed in 2002; or

(2) for quarter horses and thoroughbreds, not less than 50 live race days or 500 live races.

(b) A class 2 racetrack that has not previously conducted live racing and that becomes licensed as a video lottery establishment under Subchapter K, Chapter 466, Government Code, shall conduct live racing not later than the second anniversary of the date the license is issued under that subchapter.

(c) A person who holds a class 1 or class 2 racetrack license may conduct fewer live racing days than required by Subsection (a) of this section if the racetrack, the affected breed registry, and the recognized horsemen's organization enter into a written agreement to conduct fewer races.

(d) A greyhound racetrack that is a video lottery terminal establishment under Subchapter K, Chapter 466, Government Code, shall offer for pari-mutuel wagering not less than 420 live greyhound racing performances in each calendar year, unless otherwise agreed to in writing by the racetrack and the official state greyhound breed registry. For purposes of this subsection, "greyhound racing performance" means the consecutive running of not fewer than 12 greyhound races.

SECTION __.41. Section 16.18, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) This section does not apply to a county in which is located a racetrack that is authorized to operate video lottery terminals under Subchapter K, Chapter 466, Government Code.

SECTION __.42. The Legislature finds and declares the following:

(1) This state is facing a crisis in providing funding for state governmental programs. A state-controlled video lottery system constitutes a valid state-operated lottery and falls within the exception for state lotteries under Section 47(e), Article III, Texas Constitution, from the general prohibition of lotteries under Section 47(a), Article III, Texas Constitution.

(2) In light of the financial emergency faced by the state and the need to fund state governmental programs, in the event the voters approve this limited state-controlled and state-operated video lottery system, the Texas Lottery Commission must be authorized to commence operation of the video lottery system in accordance with this article at the earliest possible date, consistent with the intent of the voters and legislative directive.

(3) The implementation of the video lottery system will require significant time for application investigations and determinations and for video lottery terminal and video lottery central system providers and manufacturers of video lottery games to develop prototypes for testing for the video lottery central system and video lottery terminals and games.

(4) The state's budget crisis constitutes an imminent peril to the public welfare, requiring the adoption of rules and authorization for the Texas Lottery Commission to conduct certain limited pre-implementation activities related to the establishment of the video lottery system to promote and ensure the integrity, security, honesty, and fairness of the operation and administration of the video lottery system.

(5) In order to commence operation of the video lottery system at the earliest possible date and to maintain the integrity of state-controlled and state-operated video lottery established by this article, the Texas Lottery Commission may conduct limited pre-implementation acts before the referendum to authorize the state video lottery system proposed by the 79th Legislature, 1st Called Session, 2005, is submitted to the voters for approval.

SECTION __.43. (a) At an election to be held on November 8, 2005, the voters of this state shall be permitted to vote in a referendum on the question of whether to authorize the operation of video lottery games as part of the state lottery at licensed pari-mutuel horse and greyhound racetracks and on certain Indian lands.

(b) The ballot shall be printed to permit voting for or against the proposition: "Authorizing the state of Texas to operate video lottery games as part of the state lottery at licensed pari-mutuel horse and greyhound racetracks and on certain Indian lands to provide additional revenue to reduce school district property taxes."

(c) The proposition shall be printed on the ballot beneath the heading: "Statewide Referendum on Video Lottery."

(d) Notice of the election shall be given by inclusion of the proposition in the proclamation by the governor ordering the election and in the election notice given by each county judge.

(e) Returns of the votes cast on the proposition shall be prepared and canvassed in the manner provided by the Election Code.

(f) Immediately after the results of the election are certified by the governor, the secretary of state shall transmit a copy of the certification to the lieutenant governor and the speaker of the house of representatives.

(g) The proposition is approved if a majority of the voters voting in the election vote for the proposition. If the proposition is not approved in that manner, the proposition is considered not approved.

SECTION __.44. (a) As soon as practicable after the referendum to authorize the state video lottery system proposed by the 79th Legislature, 1st Called Session, 2005, is approved by the voters, the Texas Lottery Commission shall adopt the rules necessary to implement video lottery in accordance with Subchapter K, Chapter 466, Government Code, as added by this Act.

(b) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may expend money from the commission's appropriation for the 2006-2007 biennium for purposes of conducting pre-implementation activities to establish the state video lottery system in accordance with Subchapter K, Chapter 466, Government Code, as added by this Act. Notwithstanding Section 466.355, Government Code, the money authorized to be expended under this section may be withdrawn from the state lottery account to fund the establishment of the state video lottery system.

(c) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may develop and approve forms for applications for licensing and registration required under Subchapter K, Chapter 466, Government Code, as added by this Act.

(d) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may accept pre-implementation applications for video lottery retailers and video lottery managers under Subchapter K, Chapter 466, Government Code, as added by this Act. On receipt of a complete application, completion of all investigations, and submittal of the nonrefundable investigatory fees the commission requires consistent with Subchapter K, Chapter 466, Government Code, as added by this Act, the commission may make preliminary findings of suitability for an applicant and location of a video lottery terminal establishment. If the commission determines that all the requirements under Subchapter K, Chapter 466, Government Code, have been satisfied, the commission may issue a letter advising the applicant of the status of approval of the application pending approval by the voters of the proposed referendum to authorize the state video lottery system. If the commission determines that any requirements under Subchapter K, Chapter 466, Government Code, have not been satisfied, the commission may request additional information or conduct further investigations the commission considers necessary and may issue a letter advising the applicant of the status of the application.

(e) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may request and receive information related to applications for licensing and registration under Subchapter K, Chapter 466, Government Code, as added by this Act. An applicant's failure to comply with any requests made by the Texas Lottery Commission under this subsection may be considered grounds for denial of an application.

(f) The Texas Lottery Commission may not issue any license, registration, or temporary license related to the state video lottery system under Subchapter K, Chapter 466, Government Code, as added by this Act, unless and until the referendum authorizing the state video lottery system is approved by the voters.

(g) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may conduct investigations and collect investigative fees related to information requested and received for pre-implementation applications under this section and necessary for the commission's evaluation and determination of an application for any licensing, registration, or commission approval required under Subchapter K, Chapter 466, Government Code, as added by this Act.

(h) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may conduct preregistration of potential video lottery terminal providers. To qualify for preregistration under this subsection, an applicant must satisfy the minimum application requirements under Section 466.512, Government Code, as added by this Act, except that the application fee required under Section 466.513(a), Government Code, as added by this Act, is not due until the applicant files an application for registration under Subchapter K, Chapter 466, Government Code, as added by this Act. A preregistration application must be accompanied by a nonrefundable deposit to the Texas Lottery Commission in the amount of $25,000. A preregistration applicant shall submit additional money not later than the 10th day after the date the applicant receives notice from the commission that it has incurred actual costs for the preregistration investigation in excess of the initial deposit required under this subsection. If the commission does not receive the additional money from the applicant on or before the 15th day after the date the applicant receives the commission's notice, the commission shall suspend the application until the money is received by the commission. Any deposit or other nonrefundable money provided under this subsection shall be credited toward an application fee required under Section 466.513(a), Government Code, as added by this Act.

(i) The Texas Lottery Commission may not register any video lottery terminal providers unless and until the referendum authorizing the state video lottery system is approved by the voters.

(j) Notwithstanding Section 466.513, Government Code, as added by this Act, a video lottery terminal provider that has been preregistered by the Texas Lottery Commission in accordance with this section, a video lottery central system provider, or a manufacturer of video lottery games, under a contract with the commission, may manufacture and test prototypes of or existing video lottery equipment for a video lottery central system, video lottery terminals, and video lottery games for the commission's consideration.

(k) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may negotiate contracts with preregistered video lottery terminal providers. The commission may enter into contracts with preregistered video lottery terminal providers, video lottery central system providers, and manufacturers of video lottery games as required for the creation and testing of a video lottery central system, video lottery terminals, and video lottery games for the commission's consideration.

(l) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may negotiate and enter contracts as necessary to establish the video lottery system.

(m) Before the proposed referendum is submitted to the voters, the Texas Lottery Commission may employ additional full-time equivalent employees to administer this Act and establish the video lottery system.

SECTION __.45. Sections __.01 through __.41 of this article take effect on the date the proposition at the referendum conducted under Section __.43 of this article is certified to have been approved by the voters. If that proposition is not approved, Sections __.01 through __.41 of this article have no effect. Sections __.42, __.43, and __.44 of this article and this section take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections __.42, __.43, and __.44 of this article and this section take effect on the 91st day after the last day of the legislative session. Sections __.43 and __.44(m) of this article expire March 1, 2006.

ARTICLE __. ESTABLISHMENT OF TEXAS GAMING AND BOXING COMMISSION

SECTION __.01. Subtitle A, Title 13, Occupations Code, is amended by adding Chapter 2004 to read as follows:

CHAPTER 2004. TEXAS GAMING AND BOXING COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2004.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Gaming and Boxing Commission.

(2) "Commission member" means a member of the commission.

(3) "Executive director" means the executive director of the commission.

Sec. 2004.002. APPLICATION OF SUNSET ACT. (a) The Texas Gaming and Boxing Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2017.

(b) On the date the commission is abolished under Subsection (a), the following statutes are repealed:

(1) Chapter 2001 of this code;

(2) Chapter 2052 of this code;

(3) Chapter 466, Government Code; and

(4) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

Sec. 2004.003. REFERENCES TO LICENSE INCLUDE REGISTRATION OR OTHER APPROVAL. Except as expressly provided by this chapter, other law, or commission rule, a reference in this chapter to a license applies to a certificate of registration, finding of suitability, or prior approval under this chapter, other law, or commission rule.

[Sections 2004.004-2004.050 reserved for expansion]

SUBCHAPTER B. TEXAS GAMING AND BOXING COMMISSION

Sec. 2004.051. COMMISSION; MEMBERSHIP. (a) The Texas Gaming and Boxing Commission is composed of seven members. Six members shall be appointed by the governor with the advice and consent of the senate. The chairman of the Public Safety Commission is an ex officio voting member of the commission.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2004.052. QUALIFICATIONS OF COMMISSION MEMBERS. (a) To be eligible for appointment to the commission, an individual:

(1) must be a citizen of the United States;

(2) must have resided in this state for the two years preceding the date of the person's appointment;

(3) must submit a financial statement that contains the information required by Chapter 572, Government Code;

(4) may not own a financial or other interest in a person engaged in the conduct of gaming, or in a security issued by that person, or be related within the second degree by affinity or the third degree by consanguinity, as determined under Chapter 573, Government Code, to an individual who owns a financial or other interest or security;

(5) may not be an applicant for or holder of a license registration or approval under a law administered by the commission; and

(6) may not be a member of the governing body of a political subdivision of this state.

(b) A person holding an elective office or an officer or official of a political party is not eligible for appointment to the commission.

(c) A person is not eligible for appointment as a member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of gaming;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Sec. 2004.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission or an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, manager, or paid consultant of a Texas trade association in the field of gaming; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of gaming.

(c) A person may not be a member of the commission or act as general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Sec. 2004.054. TERMS; VACANCIES. (a) Appointed members of the commission serve staggered six-year terms. The terms of two members expire on February 1 of each odd-numbered year.

(b) A vacancy in an appointive position on the commission shall be filled by appointment of the governor with the advice and consent of the senate.

Sec. 2004.055. PRESIDING OFFICER. The governor shall designate a member of the commission as presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Sec. 2004.056. MEETINGS; OFFICIAL RECORD. (a) The commission shall meet not less than six times each year.

(b) The commission may meet at other times at the call of the presiding officer or as provided by commission rule.

(c) The commission shall keep an official record of all commission meetings and proceedings.

Sec. 2004.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 2004.052;

(2) does not maintain during service on the board the qualifications required by Section 2004.052;

(3) is ineligible for membership under Section 2004.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal of a commission member exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Sec. 2004.058. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the other laws administered by the commission and the commission's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the commission;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflict of interest; and

(4) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 2004.059. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the commission, as often as necessary, information regarding their:

(1) qualifications for office under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers.

Sec. 2004.060. BOND. (a) Before assuming the duties of office, an appointed member of the commission must execute a bond in the amount of $25,000 payable to the state and conditioned on the member's faithful performance of the member's duties of office.

(b) The bond must be approved by the governor.

(c) The cost of the bond shall be paid by the commission.

Sec. 2004.061. PROHIBITION OF CERTAIN ACTIVITIES. (a) An appointed member of the commission may not:

(1) use the member's official authority to affect the result of an election or nomination for public office; or

(2) directly or indirectly coerce, attempt to coerce, command, or advise a person to pay, lend, or contribute anything of value to another person for political purposes.

(b) A commission member or the spouse of a commission member may not solicit or accept employment from a license, registration, or approval holder under a law administered by the commission or from an applicant for such a license, registration, or approval before the second anniversary of the date the commission member's service on the commission ends.

(c) A person who violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

Sec. 2004.062. APPLICATION OF FINANCIAL DISCLOSURE LAW. For purposes of Chapter 572, Government Code, a member of the commission, the executive director, and the division directors are appointed officers of a major state agency.

Sec. 2004.063. PER DIEM; EXPENSES. (a) Each appointed member of the commission is entitled to:

(1) a per diem in an amount prescribed by appropriation for each day spent in performing the duties of the member; and

(2) reimbursement for actual and necessary expenses incurred in performing those duties.

(b) Reimbursement for expenses under this section is subject to any applicable limitation in the General Appropriations Act.

(c) The ex officio member is entitled to reimbursement for expenses from that member's agency as provided by law for expenses incurred in the performance of that member's other official duties.

Sec. 2004.064. EXECUTIVE DIRECTOR. (a) The commission shall appoint an executive director, who serves at the pleasure of the commission.

(b) A person holding an elective office or an officer or official of a political party is not eligible for appointment as executive director.

(c) The executive director must have five or more years of responsible administrative experience in public or business administration or possess broad management skills.

(d) The executive director may not pursue any other business or occupation or hold any other office for profit.

(e) The executive director must meet all eligibility requirements relating to members of the commission, except the requirement for prior residency in this state.

(f) The executive director is entitled to an annual salary and other compensation specified by the commission.

(g) The executive director may not, before the second anniversary of the date the director's service to the commission ends, acquire a direct or indirect interest in or be employed by a person licensed or registered by the commission in connection with the conduct of gaming in this state.

Sec. 2004.065. OFFICES. The commission shall maintain its primary office in Travis County and may maintain other offices determined to be necessary by the commission.

Sec. 2004.066. AUTHORITY TO SUE OR BE SUED. (a) The commission may sue and be sued.

(b) Service of process in a suit against the commission may be secured by serving the executive director.

(c) A suit against the commission must be brought in Travis County.

Sec. 2004.067. AUDIT. The transactions of the commission are subject to audit by the state auditor under Chapter 321, Government Code.

Sec. 2004.068. ACCESS TO CRIMINAL HISTORY RECORDS. (a) The governor shall conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the

Federal Bureau of Investigation Identification Division, or another law enforcement agency relating to an individual the governor intends to appoint to the commission.

(b) The commission shall conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency relating to an individual the commission intends to employ.

[Sections 2004.069-2004.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION

Sec. 2004.101. GENERAL POWERS. (a) The commission has broad authority and shall exercise strict control and close supervision over all activities authorized and conducted in this state under a law administered by the commission, including:

(1) Chapter 2001;

(2) this chapter;

(3) Chapter 2052;

(4) Chapter 466, Government Code; and

(5) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(b) The commission shall ensure that all gaming activities subject to the oversight or regulatory authority of the commission are conducted fairly and in compliance with the law.

(c) The commission also has the powers and duties granted under:

(1) Chapter 2001;

(2) Chapter 2052;

(3) Chapter 466, Government Code; and

(4) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(d) All aspects of this chapter and the other laws administered by the commission, including those relating to licensing, qualification, execution, and enforcement, shall be administered by the executive director and the commission for the protection of the public and in the public interest.

(e) The commission and the executive director have full power and authority to hold hearings, and in connection to the hearings, to issue subpoenas, to compel the attendance of witnesses at any place in this state, to administer oaths, and to require testimony under oath. Any process or notice relating to a hearing may be served in the manner provided for service of process and notices in civil actions. The commission and the executive director may pay transportation and other expenses of witnesses as they consider reasonable.

(f) The executive director and the executive director's authorized employees may:

(1) inspect and examine a premises where gaming is conducted or equipment or supplies, including a gaming device, or associated equipment is manufactured, assembled, produced, programmed, sold, leased, marketed, distributed, repaired, or modified for use in gaming;

(2) for good cause, seize and remove from a premises and impound equipment or supplies for the purpose of examination and inspection; and

(3) demand access to, inspect, examine, photocopy, or audit papers, books, and records of applicants and license and registration holders, on their premises or elsewhere as practicable, in the presence of the license or registration holder or the license or registration holder's agent, reporting the gross income produced by a gaming business, verification of the gross income, and other matters affecting the enforcement of this chapter.

(g) For the purpose of conducting audits after the cessation of gaming by a license or registration holder, a former license holder shall furnish, on demand of the executive director or the executive director's authorized employees, books, papers, and records as necessary to conduct the audits. The former license or registration holder shall maintain all books, papers, and records necessary for audits for three years after the date of the surrender or revocation of the license and is responsible for the costs incurred by the commission in the conduct of an audit under this section. If the former license or registration holder seeks judicial review of a deficiency determination or files a petition for a redetermination, the former license or registration holder must maintain all books, papers, and records until a final order is entered on the determination.

Sec. 2004.102. RULEMAKING AUTHORITY. (a) The commission shall adopt rules as the commission considers necessary or desirable in the public interest in carrying out the policy and provisions of this chapter and the other laws administered by the commission.

(b) The rules shall set out:

(1) the method and form of application that an applicant for a license must follow and complete before consideration of an application by the commission;

(2) the information to be furnished by an applicant or license holder concerning antecedents, habits, character, associates, criminal record, business activities, and financial affairs;

(3) the criteria to be used in the award, revocation, and suspension of licenses;

(4) the information to be furnished by a license holder relating to the license holder's employees;

(5) the manner and procedure of hearings conducted by the commission or a hearing examiner of the commission;

(6) the payment of fees or costs an applicant or license holder must pay;

(7) the manner and method of collection and payment of fees and the issuance of licenses;

(8) the definition of "unsuitable method of operation";

(9) the conditions under which the nonpayment of a gambling debt by a license holder constitutes grounds for disciplinary action;

(10) the manner of approval of new games and gaming devices and the method to determine whether the gaming device is a video lottery terminal that must comply with Subchapter K, Chapter 466, Government Code;

(11) access to confidential information obtained under this chapter or other law and means to ensure that the confidentiality of the information is maintained and protected;

(12) financial reporting and internal control requirements for license holders;

(13) requirements for the annual audit of the financial statements of a license holder;

(14) requirements for periodic financial reports from each license holder consistent with standards and intervals prescribed by the commission; and

(15) the procedures for exempting or waiving institutional investors from the licensing requirements for shareholders of publicly traded corporations.

Sec. 2004.103. AUTHORITY OF EXECUTIVE DIRECTOR. (a) With commission approval, the executive director may create executive positions as the director considers necessary to implement the provisions of this chapter and any other law administered by the commission.

(b) The executive director shall employ directors in the areas of audit, investigation, and enforcement. The audit director must be a certified public accountant, have five or more years of progressively responsible experience in general accounting, and have a comprehensive knowledge of the principles and practices of corporate finance or must possess qualifications of an expert in the field of corporate finance and auditing, general finance, gaming, and economics. Other directors must possess five or more years of training and experience in the fields of investigation, law enforcement, law, or gaming.

(c) The executive director may investigate, for the purpose of prosecution, a suspected criminal violation of this chapter or another law administered by the commission. For the purpose of the administration and enforcement of this chapter or another law administered by the commission, the executive director and employees designated by the executive director may be commissioned as peace officers.

(d) The executive director, to further the objectives and purposes of this chapter or another law administered by the commission, may:

(1) direct and supervise all administrative actions of the commission;

(2) bring legal action in the name and on behalf of the commission;

(3) make, execute, and effect an agreement or contract authorized by the commission;

(4) employ the services of persons considered necessary for consultation or investigation and set the salaries of or contract for the services of legal, professional, technical, and operational personnel and consultants, except that outside legal assistance may be retained only with the approval of the attorney general;

(5) acquire furnishings, equipment, supplies, stationery, books, and all other things the executive director considers necessary or desirable in carrying out the executive director's functions; and

(6) perform other duties the executive director may consider necessary to effect the purposes of this chapter or another law administered by the commission.

(e) Except as otherwise provided in this chapter, the costs of administration incurred by the executive director shall be paid in the same manner as other claims against the state are paid.

Sec. 2004.104. OFFICE OF HEARING EXAMINERS. (a) The commission shall create an office of hearing examiners to assist the commission in carrying out its powers and duties.

(b) The office of hearing examiners shall:

(1) hold hearings under the authority of the commission on matters relating to the commission's administration of this chapter or another law administered by the commission as the commission orders; and

(2) report after hearing in the manner prescribed by the commission.

(c) The commission shall refer any contested case arising under this chapter or another law administered by the commission to the office of hearing examiners.

(d) The office of hearing examiners is independent of the executive director and is under the exclusive control of the commission.

(e) The office of hearing examiners is under the direction of a chief hearing examiner appointed by the commission.

(f) The commission may authorize the chief hearing examiner to delegate to one or more hearing examiners the authority to hold any hearing called by the chief hearing examiner.

(g) The chief hearing examiner and all assistant hearing examiners employed by the office of hearing examiners must be attorneys licensed to practice law in this state.

(h) The chief hearing examiner and all assistant hearing examiners may administer oaths, receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of papers and documents in all matters delegated by the commission.

(i) The chief hearing examiner and all assistant hearing examiners are entitled to an annual salary and other compensation specified by the commission.

(j) The office of hearing examiners may contract for additional services it considers necessary to carry out its powers.

Sec. 2004.105. JUDICIAL REVIEW IN CONTESTED CASES. A final ruling of the commission in a contested case is subject to judicial review under Chapter 2001, Government Code. Judicial review is under the substantial evidence rule.

Sec. 2004.106. RECORDS. (a) The executive director shall maintain a file of all applications for licenses, registrations, or approvals under a law administered by the commission, together with a record of all action taken with respect to the applications.

(b) The commission and the executive director may maintain other records they consider desirable.

(c) The information made confidential by this subsection may be revealed, wholly or partly, only in the course of the necessary administration of this chapter or other law administered by the commission or on the order of a court of competent jurisdiction, except that the executive director or the commission may disclose the information to an authorized agent of any agency of the United States, another state, or a political subdivision of this state authorized under commission rules. Notice of the content of any information furnished or released

under this subsection may be given to any affected applicant or license, registration, or approval holder as prescribed by commission rule. The following information is confidential:

(1) information requested by the commission or the executive director to be furnished to either of them under this chapter or another law administered by the commission or that may otherwise be obtained relating to the finances, earnings, or revenue of an applicant or license, registration, or approval holder;

(2) information pertaining to an applicant's criminal record, antecedents, and background that has been furnished to or obtained by the commission or the executive director from any source;

(3) information provided to the commission or the executive director or a commission employee by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as confidential; and

(4) information obtained by the executive director or the commission from a license holder relating to the manufacturing, modification, or repair of gaming devices.

Sec. 2004.107. REPRESENTATION BY ATTORNEY GENERAL. (a) The attorney general shall represent the commission and the executive director in any proceeding to which the commission or the executive director is a party under this chapter or another law administered by the commission or in any suit filed against the commission or executive director.

(b) The office of the attorney general on request shall advise the commission and the executive director in all other matters, including representing the commission when the commission acts in its official capacity.

Sec. 2004.108. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by that person.

(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Sec. 2004.109. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) The commission shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the commission shall list the specific offenses for which a conviction would constitute grounds for the commission to take action under Section 53.021.

Sec. 2004.110. SUBPOENA. (a) The commission may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter or another law administered by the commission.

(b) If a person fails to comply with a subpoena issued under this section, the commission, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the commission may be held.

(c) The court shall order a person to comply with the subpoena if the court determines that good cause exists for issuing the subpoena.

Sec. 2004.111. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Sec. 2004.112. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Sec. 2004.113. COMMITTEES. The commission may appoint committees that it considers necessary to carry out its duties.

Sec. 2004.114. ANNUAL REPORT. (a) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all money received and disbursed by the commission during the preceding fiscal year.

(b) The annual report must be in the form and be reported in the time provided by the General Appropriations Act.

Sec. 2004.115. GIFT OR POLITICAL CONTRIBUTION TO OFFICER OR EMPLOYEE. (a) A commission member, the executive director, or an employee of the commission may not intentionally or knowingly accept a gift or political contribution from:

(1) a person that has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission;

(2) a person related in the first degree of consanguinity or affinity to a person that has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission;

(3) a person that owns more than a 10 percent interest in an entity that has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission;

(4) a political committee that is directly established, administered, or controlled, in whole or in part, by a person that has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission; or

(5) a person who, within the two years preceding the date of the gift or contribution, won a lottery prize exceeding $600 in amount or value.

(b) A person may not make a gift or political contribution to a person known by the actor to be a commission member, the executive director, or an employee of the commission, if the actor:

(1) has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission;

(2) is related in the first degree of consanguinity or affinity to a person that has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission;

(3) owns more than a 10 percent interest in an entity that has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission;

(4) is a political committee that is directly established, administered, or controlled, in whole or in part, by a person that has a significant financial interest in the lottery or in any other activity regulated under a law administered by the commission; or

(5) within the two years preceding the date of the gift or contribution, won a lottery prize exceeding $600 in amount or value.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Sec. 2004.116. DIVISIONS. (a) The commission shall establish separate divisions to oversee and regulate:

(1) bingo;

(2) the state lottery;

(3) video lottery;

(4) boxing; and

(5) pari-mutuel racing.

(b) To facilitate the operations of the commission or a division of the commission, the commission or executive director may delegate to a division or a division director a specific power or duty given to the commission or executive director under this chapter or other law.

(c) A division director shall, at the request of the executive commissioner, assist in the development of rules and policies for the operation and provision of a division of the commission. The division director:

(1) acts on behalf of the executive director in performing the delegated function; and

(2) reports to the executive director regarding the delegated function and any matter affecting commission programs and operations.

Sec. 2004.117. RESTRICTIONS ON EMPLOYMENT. (a) The commission may not employ or continue to employ a person who owns a financial interest in:

(1) a bingo commercial lessor, bingo distributor, or bingo manufacturer;

(2) a lottery sales agency or a lottery operator;

(3) any video lottery activity regulated under Subchapter K, Chapter 466, Government Code, or a person licensed, registered, or approved under that subchapter;

(4) combative sports regulated under Chapter 2052; or

(5) pari-mutuel wagering regulated under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(b) The commission may not employ or continue to employ a person who is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person who is subject to a disqualification prescribed by Subsection (a).

(c) In employing the executive director and other employees, the commission shall strive to reflect the diversity of the population of the state as regards race, color, handicap, sex, religion, age, and national origin.

[Sections 2004.118-2004.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 2004.151. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare and disseminate consumer information that describes the regulatory functions of the commission and the procedures by which consumer complaints are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Sec. 2004.152. COMPLAINTS. (a) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notice:

(1) on each form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The commission shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a person regulated under this chapter.

Sec. 2004.153. RECORDS OF COMPLAINTS. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

Sec. 2004.154. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. The commission shall adopt rules concerning the investigation of a complaint filed with the commission. The rules must:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the commission be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the commission to obtain the services of a private investigator.

Sec. 2004.155. DISPOSITION OF COMPLAINT. (a) The commission shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the commission not later than the 30th day after the date the commission receives the complaint.

(b) Each party shall be notified of the projected time requirements for pursuing the complaint. The commission shall notify each party to the complaint of any change in the schedule established under Subsection (a)(2) not later than the seventh day after the date the change is made.

(c) The executive director shall notify the commission of a complaint that is not resolved within the time prescribed by the commission for resolving the complaint.

Sec. 2004.156. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the commission's programs.

Sec. 2004.157. INFORMAL SETTLEMENT CONFERENCE. The commission shall establish guidelines for an informal settlement conference related to a complaint filed with the commission.

SECTION __.02. Section 47.01, Penal Code, is amended by amending Subdivisions (4) and (9) and adding Subdivision (10) to read as follows:

(4) "Gambling device" means any device:

(A) on which a game or other activity can be played or conducted for consideration; and

(B) that is designed, constructed, adapted, or maintained to afford a user of the device an opportunity to obtain a thing of value based solely or partially on chance [~~electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:~~

[~~(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and~~

[~~(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or $5, whichever is less~~].

(9) "Thing of value" means any property, money, right, privilege, or other benefit, including a representation of value redeemable for any property, money, right, privilege, or other benefit [~~but does not include an unrecorded and immediate right of replay not exchangeable for value~~].

(10) "Device" includes all or part of an operable or inoperable mechanical, electronic, or electromechanical contrivance, machine, or apparatus.

SECTION __.03. Section 47.02(c), Penal Code, is amended to read as follows:

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

(1) was permitted under Chapter 2001, Occupations Code;

(2) was permitted under Chapter 2002, Occupations Code;

(3) consisted entirely of participation in the state lottery or video lottery authorized by the State Lottery Act (Chapter 466, Government Code);

(4) was permitted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); or

(5) consisted entirely of participation in a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

SECTION __.04. Section 47.06(e), Penal Code, is amended to read as follows:

(e) An offense under this section is a felony of the third degree [~~Class A misdemeanor~~].

SECTION __.05. Section 47.09(a), Penal Code, is amended to read as follows:

(a) It is a defense to prosecution under this chapter that the conduct:

(1) was authorized under:

(A) Chapter 2001, Occupations Code (Bingo Enabling Act);

(B) Chapter 2002, Occupations Code (Charitable Raffle Enabling Act); or

(C) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes);

(2) consisted entirely of participation in the state lottery or video lottery authorized by Chapter 466, Government Code; or

(3) was a necessary incident to the operation of the state lottery or video lottery and was directly or indirectly authorized by[~~:~~

[~~(A)~~] Chapter 466, Government Code[~~;~~

[~~(B) the lottery division of the Texas Lottery Commission;~~

[~~(C) the Texas Lottery Commission; or~~

[~~(D) the director of the lottery division of the Texas Lottery Commission~~].

SECTION __.06. Chapter 47, Penal Code, is amended by adding Section 47.091 to read as follows:

Sec. 47.091. DEFENSES FOR CERTAIN AMUSEMENT DEVICES. (a) It is a defense to prosecution under Section 47.02 that the conduct consists entirely of the use of a gambling device in which:

(1) skill is the predominate requirement for the user to win or be awarded a thing of value; and

(2) the user may not win or be awarded a thing of value for playing or using the device other than:

(A) noncash merchandise available only on the premises where the device is located; or

(B) a ticket, coupon, or other representation of value redeemable only on the premises where the device is located for noncash merchandise.

(b) For purposes of Subsection (a)(2):

(1) the noncash merchandise or representation of value redeemable for noncash merchandise that may be won or awarded for a single play of a game or activity on the device may not have a wholesale value of more than 10 times the amount charged for a single play or $5, whichever is less; and

(2) an item of noncash merchandise that may be won or awarded for playing or using the device or for which a person may redeem one or more tickets, coupons, or other representations of value won or awarded for playing or using the device may not have a wholesale value of more than $50.

(c) It is a defense to prosecution under Section 47.02 that:

(1) the conduct consists entirely of the use of a gambling device for which the user of the device may win or be awarded only the opportunity to continue playing the game or conducting an activity on the device; and

(2) the opportunity to continue is not exchangeable for another thing of value.

(d) It is a defense to prosecution under Section 47.03, 47.04, or 47.06 that the conduct consists of or is a necessary incident to offering, using, or maintaining one or more gambling devices used exclusively for conduct for which Subsection (a) or (c) provides a defense to a person using the device, including the manufacturing, transporting, storing, or repairing of such a device.

(e) In this section, "noncash merchandise" does not include:

(1) cash;

(2) an item of cash equivalent, including a check, money order, cashier's check, or traveler's check; or

(3) a gift certificate, gift card, coupon, voucher, or other item that entitles the bearer to receive money or any other thing of value at a location other than the premises where the gambling device is located.

SECTION __.07. Chapter 47, Penal Code, is amended by adding Section 47.095 to read as follows:

Sec. 47.095. INTERSTATE OR FOREIGN COMMERCE DEFENSE. It is a defense to prosecution under this chapter that a person sells, leases, transports, possesses, stores, or manufactures a gambling device with the authorization of the Texas Lottery Commission or the Texas Gaming and Boxing Commission under Chapter 466, Government Code.

SECTION __.08. The governor shall make the initial appointments to the Texas Gaming and Boxing Commission not later than January 1, 2006. In making the initial appointments to the Texas Gaming and Boxing Commission, the governor shall designate two members for terms expiring in 2007, two members for terms expiring in 2009, and two members for terms expiring in 2011.

SECTION __.09. Section 47.02(e), Penal Code, is repealed.

SECTION __.10. The change in law made by this article applies only to an offense committed on or after the effective date of this article. An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this article if any element of the offense was committed before that date.

SECTION __.11. This article takes effect on the date the referendum proposed by the 79th Legislature, 1st Called Session, 2005, authorizing a state video lottery system to operate video lottery games at racetracks and on Indian

lands to provide school district property tax relief is certified to have been approved by the voters. If that referendum is not approved by the voters, this article has no effect.

ARTICLE __. TRANSFER OF POWERS AND DUTIES OF OTHER STATE AGENCIES TO TEXAS GAMING AND BOXING COMMISSION

SECTION __.01. Sections 466.002(1) and (3), Government Code, are amended to read as follows:

(1) "Commission" means the Texas Gaming and Boxing [~~Lottery~~] Commission.

(6) [~~(3)~~] "Division" means the state lottery division established by the commission under Chapter 2004, Occupations Code [~~467~~].

SECTION __.02. Section 2001.002(8), Occupations Code, is amended to read as follows:

(8) "Commission" means the Texas Gaming and Boxing [~~Lottery~~] Commission.

SECTION __.03. Sections 2052.002(5), (7), (9), and (20), Occupations Code, as amended by **SB 796**, Acts of the 79th Legislature, Regular Session, 2005, are amended to read as follows:

(5) "Commission" means the Texas Gaming and Boxing Commission [~~of Licensing and Regulation~~].

(7) "Division" [~~"Department"~~] means the combative sports division of the commission [~~Texas Department of Licensing and Regulation~~].

(9) "Executive director" means the executive director of the commission [~~department~~] or the executive director's designated representative.

(20) "Ringside physician" means an individual licensed to practice medicine in this state who is registered with the division [~~department~~].

SECTION __.04. Section 2052.051, Occupations Code, is amended to read as follows:

Sec. 2052.051. ADMINISTRATION OF CHAPTER. The commission [~~department~~] shall administer this chapter.

SECTION __.05. Section 2052.052(b), Occupations Code, as amended by **SB 796**, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(b) The commission may adopt rules:

(1) governing boxing, kickboxing, martial arts, or mixed martial arts contests and exhibitions;

(2) establishing reasonable qualifications for an applicant seeking a license or registration from the division [~~department~~] under this chapter;

(3) recognizing a sanction, medical suspension, or disqualification of a licensee or registrant by a combative sports authority in any state, provided that if licensure or registration is denied based on those actions, an applicant has an opportunity for a hearing as prescribed by rule;

(4) establishing practice requirements or specialty certifications that a person licensed to practice medicine in this state must meet to register as a ringside physician;

(5) requiring a contestant to present with an application for licensure or license renewal documentation of recent blood test results that demonstrate whether the contestant is free from hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by commission rule and providing that a contestant's failure to provide the required blood test results disqualifies the contestant;

(6) providing that to participate in any event a contestant must be free of hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by rule;

(7) requiring that a contestant present with an application for licensure or license renewal documentation of the results of a physical examination, including an ophthalmologic examination, and providing for disqualification of a contestant who is determined by an examining physician to be unfit;

(8) establishing additional responsibilities for promoters; and

(9) governing regulated amateur events.

SECTION __.06. Section 2052.055(a), Occupations Code, as amended by **SB 796**, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(a) The presiding officer of the commission, with the commission's approval, may appoint a medical advisory committee to advise the division [~~department~~] concerning health issues for combative sports event contestants.

SECTION __.07. Section 2052.109(c), Occupations Code, is amended to read as follows:

(c) A company that issues a bond shall notify the division [~~department~~] in writing of the cancellation of the bond not later than the 30th day before the date on which the bond is canceled.

SECTION __.08. Section 2052.114(b), Occupations Code, is amended to read as follows:

(b) The holder of a license, registration, or permit may renew the license, registration, or permit by paying a renewal fee and complying with other renewal requirements prescribed by division [~~department~~] rule before the expiration date. The division [~~department~~] shall issue a renewal certificate to the holder at the time of renewal.

SECTION __.09. Sections 2052.152(a) and (c), Occupations Code, as amended by **SB 796**, Acts of the 79th Legislature, Regular Session, 2005, are amended to read as follows:

(a) A person on whom a tax is imposed under Section 2052.151, not later than three business days after the end of the event or telecast for which the tax is due, shall submit to the division [~~department~~] a verified report on a form acceptable to the division [~~department~~] stating:

(1) the number of tickets sold to the event;

(2) the ticket prices charged;

(3) the gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges; and

(4) the amount of gross receipts obtained from the event.

(c) The division [~~department~~] may audit a report filed under Subsection (b).

SECTION __.10. Section 2052.302(b), Occupations Code, is amended to read as follows:

(b) The promoter shall surrender any purse or funds withheld as provided by Subsection (a) to the executive director on demand. Not later than the fifth working day after the event, the division [~~department~~] shall notify in writing the promoter and any person from whom a sum was withheld of the date of a hearing to determine whether all or part of the purse or funds withheld should be forfeited to the state. The hearing must be scheduled for a date not later than the 10th day after the date of the notice. Not later than the 10th day after the date of the hearing, the executive director shall enter an order with findings of fact and conclusions of law determining whether all or part of the purse or funds should be forfeited. Any funds not forfeited shall be distributed to the persons entitled to the funds.

SECTION __.11. Section 2052.303(b), Occupations Code, is amended to read as follows:

(b) The attorney general or the commission [~~department~~] may file a civil suit to:

(1) assess and recover a civil penalty under Subsection (a); or

(2) enjoin a person who violates or threatens to violate this chapter or a rule adopted under this chapter from continuing the violation or threat.

SECTION __.12. Sections 1.03(3) and (5), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), are amended to read as follows:

(3) "Commission" means the Texas Gaming and Boxing [~~Racing~~] Commission.

(5) "Executive secretary" means the executive director [~~secretary~~] of the Texas Gaming and Boxing [~~Racing~~] Commission.

SECTION __.13. The heading to Article 2, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

ARTICLE 2. TEXAS GAMING AND BOXING [~~RACING~~] COMMISSION

SECTION __.14. Section 3.09(b), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission shall deposit the money it collects under this Act in the State Treasury to the credit of a special fund to be known as the Texas Racing [~~Commission~~] fund. The Texas Racing [~~Commission~~] fund may be appropriated only for the administration and enforcement of this Act. Any unappropriated money remaining in that special fund at the close of each fiscal biennium shall be transferred to the General Revenue Fund and may be appropriated for any legal purpose. The legislature may also appropriate money from the General Revenue Fund for the administration and enforcement of this Act. Any amount of general revenue appropriated for the administration and enforcement of this Act in excess of the cumulative amount deposited in the Texas Racing [~~Commission~~] fund shall be reimbursed from the Texas Racing [~~Commission~~] fund not later than one year after the date on which the general revenue funds are appropriated, with 12 percent interest per year until August 31, 1993, and 6 3/4 percent interest thereafter with all payments first attributable to interest.

SECTION __.15. Section 6.091(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An association shall distribute from the total amount deducted as provided by Sections 6.08(a) and 6.09(a) of this Act from each simulcast pari-mutuel pool and each simulcast cross-species pool the following shares:

(1)(A) until January 1, 1999, an amount equal to 0.25 percent of each simulcast pari-mutuel pool and each simulcast cross-species simulcast pool as the amount set aside to reimburse the general revenue fund for amounts that are appropriated for the administration and enforcement of this Act and that are in excess of the cumulative amount of funds deposited in the Texas Racing [~~Commission~~] fund, until the excess amount and interest on the excess amount are fully reimbursed;

(B) an amount equal to one percent of each simulcast pool as the amount set aside for the state; and

(C) an amount equal to 1.25 percent of each cross-species simulcast pool as the amount set aside for the state;

(2) an amount equal to 0.25 percent of each pool set aside to reimburse the general revenue fund for amounts that are appropriated for the administration and enforcement of this Act and that are in excess of the cumulative amount of funds deposited in the Texas Racing [~~Commission~~] fund, until the excess amount and interest on the excess amount are fully reimbursed;

(3) if the association is a horse racing association, an amount equal to one percent of a multiple two wagering pool or multiple three wagering pool as the amount set aside for the Texas-bred program to be used as provided by Section 6.08(f) of this Act;

(4) if the association is a greyhound association, an amount equal to one percent of a multiple two wagering pool or a multiple three wagering pool as the amount set aside for the Texas-bred program for greyhound races, to be distributed and used in accordance with rules of the commission adopted to promote greyhound breeding in this state; and

(5) the remainder as the amount set aside for purses, expenses, the sending association, and the receiving location pursuant to a contract approved by the commission between the sending association and the receiving location.

SECTION __.16. The following are repealed:

(1) Sections 2.01-2.05, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes);

(2) Sections 2.073-2.11, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); and

(3) Sections 6.093(a) and 18.01(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

SECTION __.17. (a) On September 1, 2007, or an earlier date specified in the transition plan required under Section 3.19 of this article, the following powers, duties, functions, programs, and activities are transferred to the Texas Gaming and Boxing Commission:

(1) all powers, duties, functions, programs, and activities related to administrative support services, such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, of a state agency or entity abolished by Section 3.22 of this article;

(2) all powers, duties, functions, programs, and activities of the Texas Lottery Commission related to:

(A) the operation of the state lottery or video lottery under Chapter 466, Government Code; and

(B) the regulation of bingo under Chapter 2001, Occupations Code;

(3) all powers, duties, functions, programs, and activities of the Texas Racing Commission under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); and

(4) all powers, duties, functions, programs, and activities of the Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation under Chapter 2052, Occupations Code.

(b) On the date specified by Subsection (a) of this section:

(1) all obligations and contracts of a state agency or entity that are related to a power, duty, function, program, or activity transferred from the agency or entity under Subsection (a) of this section are transferred to the Texas Gaming and Boxing Commission;

(2) all property and records in the custody of a state agency or entity that are related to a power, duty, function, program, or activity transferred from the agency or entity under Subsection (a) of this section and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Texas Gaming and Boxing Commission; and

(3) all complaints, investigations, or contested cases that are pending before a state agency or entity or the governing body of the agency or entity and that are related to a power, duty, function, program, or activity transferred from the agency or entity under Subsection (a) of this section are transferred without change in status to the Texas Gaming and Boxing Commission.

(c) A rule or form adopted by a state agency or entity that relates to a power, duty, function, program, or activity transferred from the agency or entity under Subsection (a) of this section is a rule or form of the Texas Gaming and Boxing Commission and remains in effect until altered by the commission.

(d) A reference in law to a state agency or entity abolished by Section __.22 of this article, or to the governing body of the agency or entity, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the Texas Gaming and Boxing Commission.

(e) A license, permit, or certification in effect that was issued by a state agency or entity abolished by Section __.22 of this article or described in Subsection (a)(4) of this section and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit, or certification of the Texas Gaming and Boxing Commission.

SECTION __.18. (a) The Texas Gaming and Boxing Commission Transition Legislative Oversight Committee is created to facilitate the transfer of powers, duties, functions, programs, and activities between the state's gaming agencies and the Texas Gaming and Boxing Commission as provided by this article with a minimal negative effect on the operation of those regulated activities in this state.

(b) The committee is composed of seven members, as follows:

(1) two members of the senate, appointed by the lieutenant governor not later than December 1, 2005;

(2) two members of the house of representatives, appointed by the speaker of the house of representatives not later than December 1, 2005; and

(3) three members of the public, appointed by the governor not later than December 1, 2005.

(c) Once the other members of the committee have been appointed, the executive director of the Texas Gaming and Boxing Commission serves as an ex officio member of the committee.

(d) An appointed member of the committee serves at the pleasure of the appointing official.

(e) The lieutenant governor and the speaker of the house of representatives shall alternate designating a presiding officer from among their respective appointments. The speaker of the house of representatives shall make the first appointment after the effective date of this section.

(f) A member of the committee may not receive compensation for serving on the committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the committee as provided by the General Appropriations Act.

(g) The committee shall:

(1) facilitate the transfer of powers, duties, functions, programs, and activities between the state's gaming agencies and the Texas Gaming and Boxing Commission as provided by this article with a minimal negative effect on the gaming activities regulated in this state;

(2) with assistance from the Texas Gaming and Boxing Commission and the gaming agencies listed in Section __.17(a) of this article, advise the executive commissioner of the Texas Gaming and Boxing Commission concerning:

(A) the powers, duties, functions, programs, and activities transferred under this article and the funds and obligations that are related to the powers, duties, functions, programs, or activities; and

(B) the transfer of the powers, duties, functions, programs, activities, records, property, funds, obligations, and employees by the entities as required by Section __.17 of this article;

(3) meet at the call of the presiding officer;

(4) research, take public testimony, and issue reports on other appropriate issues or specific issues requested by the lieutenant governor, speaker, or governor; and

(5) review specific recommendations for legislation proposed by the Texas Gaming and Boxing Commission or the other agencies.

(h) The committee may request reports and other information from the Texas Gaming and Boxing Commission, other state agencies, and the attorney general relating to gaming in this state and other appropriate issues.

(i) The committee shall use existing staff of the senate, the house of representatives, and the Texas Legislative Council to assist the committee in performing its duties under this section.

(j) Chapter 551, Government Code, applies to the committee.

(k) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than November 15 of each even-numbered year. The report must include:

(1) identification of significant issues within gaming regulation, with recommendations for action;

(2) an analysis of the effectiveness and efficiency of gaming regulation, with recommendations for any necessary research; and

(3) recommendations for legislative action.

SECTION __.19. (a) The transfer of powers, duties, functions, programs, and activities under Section __.17 of this article to the Texas Gaming and Boxing Commission must be accomplished in accordance with a schedule included in a transition plan developed by the executive commissioner of the Texas Gaming and Boxing Commission and submitted to the governor and the Legislative Budget Board not later than September 1, 2006. The executive commissioner shall provide to the governor and the Legislative Budget Board transition plan status reports and updates on at least a quarterly basis following submission of the initial transition plan. The transition plan must be made available to the public.

(b) Not later than March 1, 2006, the Texas Gaming and Boxing Commission shall hold a public hearing and accept public comment regarding the transition plan required to be developed by the executive commissioner of the Texas Gaming and Boxing Commission under Subsection (a) of this section.

(c) In developing the transition plan, the executive commissioner of the Texas Gaming and Boxing Commission shall hold public hearings in various geographic areas in this state before submitting the plan to the governor and the Legislative Budget Board as required by this section.

SECTION __.20. An action brought or proceeding commenced before the date of a transfer prescribed by this article in accordance with the transition plan required under Section __.19 of this article, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the laws and rules applicable to the action or proceeding before the transfer.

SECTION __.21. (a) The Texas Gaming and Boxing Commission shall implement the powers, duties, functions, programs, and activities assigned to the commission under this article in accordance with a work plan designed by the commission to ensure that the transfer of gaming regulation in this state is accomplished in a careful and deliberative manner.

(b) A work plan designed by the commission under this section must include the following phases:

(1) a planning phase, during which the commission will focus on and stabilize the organization of the agency's powers, duties, functions, programs, and activities, and which must include:

(A) initiation of recommendations made by the Texas Gaming and Boxing Commission Transition Legislative Oversight Committee;

(B) creation of interagency and intra-agency steering committees;

(C) development of global visions, goals, and organizational strategies; and

(D) development of communications and risk management plans;

(2) an integration phase, during which the commission will identify opportunities and problems and design customized solutions for those problems, and which must include:

(A) identification of key issues related to costs or legal requirements for other commission activities;

(B) planning for daily operations; and

(C) validation of fiscal and program synergies;

(3) an optimization phase, during which the commission will complete and expand on the initial transitions, and which must include:

(A) optimization of initial implementation initiatives;

(B) use of enterprise teaming operations;

(C) building infrastructures to support and facilitate changes in gaming regulation and oversight; and

(D) identification and use of beneficial assets management and facilities approaches; and

(4) a transformation phase, during which the commission will continue implementing initial and additional changes in gaming regulation and oversight, and which must include implementation of changes in agency management activities.

SECTION __.22. (a) The Texas Lottery Commission and the Texas Racing Commission are abolished on the date on which their respective powers, duties, functions, programs, and activities are transferred under Section __.17 of this article, and after that date a reference in any law to the Texas Lottery Commission or to the Texas Racing Commission means the Texas Gaming and Boxing Commission.

(b) The abolition of a state agency or entity listed in Subsection (a) of this section and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this article do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

SECTION __.23. (a) Except as provided by Subsection (b), Sections __.01 through __.16 of this article take effect on the date the Texas Lottery Commission and the Texas Racing Commission are abolished under Section __.22 of this article.

(b) Sections __.17 through __.22 of this article and this section take effect on the date the referendum authorizing the operation of video lottery games at racetracks and on Indian lands to provide school district property tax relief proposed by the 79th Legislature, 1st Called Session, 2005, is certified to have been approved by the voters. If that referendum is not approved by the voters, this article has no effect.

Amendment No. 9 was withdrawn.

Amendment No. 10

Representative Turner offered the following amendment to **CSHB 3**:

Floor Packet Page No. 246

Amend **CSHB 3** on page 3, line 25, by inserting the following between "biennium" and the period: ", less any amount by which the comptroller determines that the amount of state revenue necessary to provide for the support and maintenance of the system of public free schools required by Section 1, Article VII, Texas Constitution, in the succeeding state fiscal biennium will exceed the amount of state revenue appropriated for that purpose for the current biennium."

(Speaker in the chair)

Representative Chisum moved to table Amendment No. 10.

A record vote was requested.

The motion to table prevailed by (Record 27): 86 Yeas, 60 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McCall; McReynolds; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Burnam; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Guillen; Herrero; Hochberg; Hodge; Homer; Hopson; Jones, J.; King, T.; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; Menendez;

Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Jones, D.

Amendment No. 11

Representative Hilderbran offered the following amendment to **CSHB 3**:

Floor Packet Page No. 266

Amend **CSHB 3** in ARTICLE 1 of the bill by adding the following PART, lettered appropriately, to read as follows:

PART ___. REAPPRAISAL OF REAL PROPERTY

SECTION 1_.01. Section 25.18, Tax Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) The plan may not provide for reappraisal of a parcel of real property more often than once in any three-year period. Except as provided by Subsection (b-2), the appraisal office may not reappraise a parcel of real property in the district more often than once in any three-year period.

(b-2) Notwithstanding Subsection (b-1), the appraisal office may reappraise a parcel of real property in the year immediately following a year in which the parcel is sold.

SECTION _.02. As soon as practicable after the effective date of this Act but not later than December 31, 2005, each appraisal office that has implemented a plan for periodic reappraisals of real property in the district shall amend that plan if necessary to conform to the change in law made by this Act to Section 25.18, Tax Code. For purposes of complying with Section 25.18(b-1), Tax Code, as added by this Act, the plan must provide that real property is not reappraised more often than once in the three-year period that includes the 2005, 2006, and 2007 tax years.

Representative Geren moved to table Amendment No. 11.

A record vote was requested.

The motion to table was lost by (Record 28): 48 Yeas, 89 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Blake; Brown, F.; Casteel; Chisum; Coleman; Cook, B.; Crownover; Davis, Y.; Deshotel; Driver; Farabee; Flores; Flynn; Geren; Gonzales; Goodman; Goolsby; Griggs; Hardcastle; Hill; Hodge; Homer; Hope; Hopson; Hunter; Keffer, J.; Krusee; Laney; Luna; McCall; McReynolds; Mowery; Noriega, M.; Oliveira; Ritter; Rose; Smith, T.; Smithee; Strama; Swinford; Thompson; Truitt; Veasey; Villarreal; West.

Nays — Allen, A.; Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Burnam; Callegari; Campbell; Castro; Chavez; Cook, R.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farrar; Gallego; Gattis; Giddings; Gonzalez Toureilles; Grusendorf;

Guillen; Haggerty; Hamilton; Harper-Brown; Hegar; Herrero; Hilderbran; Hochberg; Howard; Hughes; Hupp; Isett; Jackson; Jones, J.; Keel; Keffer, B.; King, P.; Kolkhorst; Kuempel; Laubenberg; Leibowitz; Madden; Martinez; Martinez Fischer; McClendon; Menendez; Merritt; Moreno, P.; Morrison; Naishtat; Nixon; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Raymond; Reyna; Riddle; Rodriguez; Smith, W.; Solis; Solomons; Straus; Talton; Taylor; Turner; Uresti; Van Arsdale; Vo; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker(C); Miller.

Absent, Excused — Dukes; Jones, D.

Absent — Bailey; Bonnen; Frost; Hamric; Hartnett; King, T.; Quintanilla; Seaman.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 28. I intended to vote no.

B. Cook

I was shown voting yes on Record No. 28. I intended to vote no.

Flynn

When Record No. 28 was taken, I was in the house but away from my desk. I would have voted no.

Frost

I was shown voting no on Record No. 28. I intended to vote yes.

Gonzalez Toureilles

When Record No. 28 was taken, I was in the house but away from my desk. I would have voted no.

Hamric

I was shown voting yes on Record No. 28. I intended to vote no.

Hope

I was shown voting yes on Record No. 28. I intended to vote no.

Hopson

I was shown voting yes on Record No. 28. I intended to vote no.

Hunter

REASON FOR VOTE

I voted to table because the amendment would freeze appraisal of commercial industries for three years where the constitutional amendment is a 10 percent cap per year applied to homes.

Casteel

Amendment No. 11 was adopted. (The vote was reconsidered later today, and Amendment No. 11 was withdrawn.)

Amendment No. 12

On behalf of Representative Dunnam, Representative Hopson offered the following amendment to **CSHB 3**:

Floor Packet Page No. 255

Amend **CSHB 3** as follows:

(1) On page 16, between lines 15 and 16, insert the following new part, appropriately lettered:

PART __. HOMESTEAD EXEMPTION

SECTION 1___.01. Section 11.13(b), Tax Code, is amended to read as follows:

(b) An adult is entitled to exemption from taxation by a school district of $45,000 [~~$15,000~~] of the appraised value of the adult's residence homestead, except that $40,000 [~~$10,000~~] of the exemption does not apply to an entity operating under former Chapter 17, 18, 25, 26, 27, or 28, Education Code, as those chapters existed on May 1, 1995, as permitted by Section 11.301, Education Code.

SECTION 1___.02. Section 11.26(a), Tax Code, is amended to read as follows:

(a) The tax officials shall appraise the property to which this section applies and calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the amount of the tax as limited by this section, except as otherwise provided by this section. A school district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years of age or older or on the residence homestead of an individual who is disabled, as defined by Section 11.13, above the amount of the tax it imposed in the first tax year in which the individual qualified that residence homestead for the applicable exemption provided by Section 11.13(c) for an individual who is 65 years of age or older or is disabled. If the individual qualified that residence homestead for the exemption after the beginning of that first year and the residence homestead remains eligible for the same exemption for the next year, and if the school district taxes imposed on the residence homestead in the next year are less than the amount of taxes imposed in that first year, a school district may not subsequently increase the total annual amount of ad valorem taxes it imposes on the residence homestead above the amount it imposed in the year immediately following the first year for which the individual qualified that residence homestead for the same exemption, except as provided by Subsection (b). If the first tax year the individual qualified the residence homestead for the exemption provided by Section 11.13(c) for individuals 65 years of age or older or disabled was a tax year before the 2006 [~~1997~~] tax year, the amount of the limitation provided by this section is the amount of tax the school district imposed for the 2005 [~~1996~~] tax year less an amount equal to the amount determined by multiplying $30,000 [~~$10,000~~] times the tax rate of the school district for the 2006 [~~1997~~] tax year, plus any 2006 [~~1997~~] tax attributable to improvements made in 2005 [~~1996~~], other than improvements made to comply with governmental regulations or repairs.

SECTION 1___.03. Section 26.08, Tax Code, is amended by adding Subsections (a-9) and (a-10) to read as follows:

(a-9) For purposes of Subsection (a-10), the chief appraiser shall certify to the assessor for each school district:

(1) a final value for each school district computed on a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of $15,000; and

(2) a final value for each school district computed on:

(A) a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of $45,000; and

(B) the effect of the additional limitation on tax increases under Section 1-b(d), Article VIII, Texas Constitution, made in connection with the increase in the homestead exemption to the amount specified by Paragraph (A).

(a-10) Notwithstanding any other provision of this section, a school district shall adopt a maintenance and operations tax rate that, when applied to the district's taxable value of property as determined provided by Subsection (a-9)(2), yields an amount equal to the amount that would be raised at a tax rate adopted in compliance with the provisions of this section other than this subsection when applied to the district's taxable value of property as determined provided by Subsection (a-9)(1).

SECTION 1__.04. This part takes effect January 1, 2006, but only if the constitutional amendment proposed by the 79th Legislature, 1st Called Session, 2005, increasing the amount of the school district residence homestead property tax exemption to $45,000 and providing for a corresponding adjustment of the limitation on school taxes on residence homesteads of elderly and disabled persons is approved by the voters. If that amendment is not approved by the voters, this part has no effect.

AMENDMENT NO. 12 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE LEIBOWITZ: Mr. Hopson, you are wanting to increase the homestead exemption from what to what, sir?

REPRESENTATIVE HOPSON: From 15,000 to 45.

LEIBOWITZ: Have you made any calculations as to how many districts amongst the 150 of us would benefit from such an action?

HOPSON: Yeah, Mr. Leibowitz, it is 144 out of the 150.

LEIBOWITZ: Say that again please.

HOPSON: One hundred forty-four out of the 150. One hundred forty-four people, districts benefit under this one.

LEIBOWITZ: Have you figured out who the six are that will not benefit?

HOPSON: Yes, sir, I have.

LEIBOWITZ: Okay, who are they?

HOPSON: Baxter, Branch, Woolley, Wong, Harnett, and McCall.

LEIBOWITZ: You are telling us that 144 out of 150 of us have constituencies that will benefit from your amendment.

HOPSON: That is correct.

LEIBOWITZ: Does your amendment require a constitutional amendment?

HOPSON: Yes, Mr. Leibowitz, it does. I have **HJR 11** that is in Ways and Means waiting on a hearing, but it does require a constitutional amendment.

LEIBOWITZ: So, you are looking at needing what a—

HOPSON: One hundred votes, but 144 members' districts benefit from this so I don't see that there would be a problem getting the votes.

LEIBOWITZ: Okay.

REMARKS ORDERED PRINTED

Representative Leibowitz moved to print remarks between Representative Hopson and Representative Leibowitz.

The motion prevailed.

Representative Chisum moved to table Amendment No. 12.

A record vote was requested.

The motion to table prevailed by (Record 29): 75 Yeas, 70 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hill; Hope; Howard; Hupp; Isett; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McCall; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Brown, B.; Burnam; Castro; Chavez; Coleman; Cook, R.; Corte; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Guillen; Hamilton; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Hughes; Hunter; Jones, J.; King, T.; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Solis; Solomons; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Jones, D.

Absent — Gallego.

STATEMENT OF VOTE

When Record No. 29 was taken, my vote failed to register. I would have voted no.

Gallego

Amendment No. 13

Representative McReynolds offered the following amendment to **CSHB 3**:

Floor Packet Page No. 264

Amend **CSHB 3** by inserting the following section appropriately numbered and renumbering subsequent sections as applicable:

Sec. 22.27, Tax Code, is amended by adding new subsection (c-1) to read as follows:

(c-1) An administrative or judicial proceeding in which confidential information is disclosed pursuant to subsection (b) or Section 22.31 shall be closed to the public unless all parties to the proceeding and the persons described in subsection (b)(2) consent to public access. Notwithstanding the provisions of this subsection, an administrative proceeding conducted by a panel of an appraisal review board is not considered to be a deliberation of public business by the appraisal review board.

Amendment No. 14

Representative McReynolds offered the following amendment to Amendment No. 13:

Amend the McReynolds' amendment (page 264 of the floor amendment packet) to **CSHB 3** on line 8 by striking the words "~~or section 22.31~~"

Amendment No. 14 was adopted.

Amendment No. 13, as amended, was adopted.

Amendment No. 15

Representative McReynolds offered the following amendment to **CSHB 3**:

Floor Packet Page No. 267

Amend **CSHB 3** by inserting the following section appropriately numbered and renumbering subsequent sections as applicable:

Section 41A.08, Tax Code, as added by **HB 182**, 79th Legislature, effective September 1, 2005 and by **SB 1351**, 79th Legislature, effective September 1, 2005, is amended by adding subsection (c) to read as follows:

(c) The arbitrator shall require the appraisal district to provide meeting space for the arbitration at no cost to the arbitrator or the property owner.

Amendment No. 16

Representative McReynolds offered the following amendment to Amendment No. 15:

Amend the McReynolds' amendment (page 267 of the floor amendment packet) to **CSHB 3** by striking the word "~~shall~~" on line 8 and replacing it with the word "may".

Amendment No. 16 was adopted.

Amendment No. 15, as amended, was adopted.

Amendment No. 11 - Vote Reconsidered

Representative Hilderbran moved to reconsider the vote by which Amendment No. 11 was adopted.

The motion to reconsider prevailed.

Amendment No. 11 was withdrawn.

(Isett in the chair)

Amendment No. 17

Representative Chisum offered the following amendment to **CSHB 3**:

Floor Packet Page No. 268

Amend **CSHB 3** by striking ARTICLE 2 (house committee report, page 16, line 16, through page 29, line 9) and substituting a new ARTICLE 2 to read as follows:

ARTICLE 2. REFORMED FRANCHISE TAX

SECTION 2.01. Subchapter A, Chapter 171, Tax Code, is amended to read as follows:

SUBCHAPTER A. TAX IMPOSED

Sec. 171.001. TAX IMPOSED. (a) A franchise tax is imposed on[~~:~~

[~~(1)~~] each taxable entity [~~corporation~~] that does business in this state or that is chartered or organized in this state[~~; and~~

[~~(2) each limited liability company that does business in this state or that is organized under the laws of this state~~].

(b) In this chapter:

(1) "Banking corporation" means each state, national, domestic, or foreign bank, whether organized under the laws of this state, another state, or another country, or under federal law, including a limited banking association organized under Subtitle A, Title 3, Finance Code, and each bank organized under Section 25(a), Federal Reserve Act (12 U.S.C. Secs. 611-631) (edge corporations), but does not include a bank holding company as that term is defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841).

(2) "Beginning date" means:

(A) for a taxable entity [~~corporation~~] chartered or organized in this state, the date on which the taxable entity's [~~corporation's~~] charter or organization takes effect; and

(B) for any other taxable entity [~~a foreign corporation~~], the date on which the taxable entity [~~corporation~~] begins doing business in this state.

(3) "Corporation" includes:

(A) a limited liability company, as defined under the Texas Limited Liability Company Act;

(B) a savings and loan association; and

(C) a banking corporation.

(4) "Charter" includes a limited liability company's certificate of organization, a limited partnership's certificate of limited partnership, and the registration of a limited liability partnership.

(5) "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect [~~for the federal tax year beginning~~] on [~~or after~~] January 1, 2005, not including any changes made by federal law after that date [~~1996, and before January 1, 1997~~], and any regulations adopted under that code [~~applicable to that period~~].

(6) "Officer" and "director" include a limited liability company's directors and managers and a limited banking association's directors and managers and participants if there are no directors or managers.

(7) "Savings and loan association" means a savings and loan association or savings bank, whether organized under the laws of this state, another state, or another country, or under federal law.

(8) "Shareholder" includes a limited liability company's member and a limited banking association's participant.

(9-a) "Taxable entity" includes, except as provided by Subdivision (9-b):

(A) a corporation;

(B) a partnership; and

(C) any entity that does business in this state or that is chartered or organized in this state, including an entity described by Subdivision (9-c).

(9-b) "Taxable entity" does not include, except as provided by Subdivision (9-c):

(A) an entity that is:

(i) a grantor trust as defined by Sections 671 and 7701(a)(30)(E), Internal Revenue Code, all of the grantors and beneficiaries of which are natural persons or charitable entities as described in Section 501(c)(3), Internal Revenue Code, excluding a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(ii) an estate of a natural person as defined by Section 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b); or

(iii) an escrow;

(B) a real estate investment trust as defined by Section 856, Internal Revenue Code, and its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code;

(C) an entity other than a corporation or a limited liability company that is:

(i) a publicly traded partnership, as defined by Section 7704(b)(1), Internal Revenue Code, interests in which are listed and traded in an established national securities market and that is treated as a partnership for federal income tax purposes; and

(ii) a limited partnership at least 90 percent of whose interests are owned directly or indirectly by an entity described in Subparagraph (i) and at least 90 percent of whose income constitutes qualifying income as defined by Section 7704(d), Internal Revenue Code;

(D) a family limited partnership in which at least 80 percent of the interests are held, directly or indirectly, by members of the same family, including an individual's ancestors, lineal descendants, spouse, brothers and sisters by the whole or half blood, and the estate of any of these persons, and that is a limited partnership:

(i) formed pursuant to the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);

(ii) formed pursuant to the limited partnership law of any other state; or

(iii) treated as a partnership for federal income tax purposes;

(E) a regulated investment company as defined by Section 851, Internal Revenue Code;

(F) a real estate mortgage investment conduit as defined by Section 860D, Internal Revenue Code;

(G) a passive investment partnership as described by Subparagraph (i) or (ii), at least 90 percent of whose federal gross income is composed of passive investment income, including dividends, interest, capital gains, foreign currency exchange gain, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlement or termination payments with respect to a financial instrument, royalties from the license of intangible property and nonoperating mineral interests, rents from the lease of real property provided that the lessor does not furnish the lessee with any services or utilities other than customary cleaning and security services, and distributive shares of limited partnership income and income from a limited liability company, and the partnership is:

(i) formed pursuant to the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); or

(ii) formed pursuant to the limited partnership law of any other state or a foreign country;

(H) a sole proprietorship;

(I) a general partnership;

(J) an entity, arrangement, or investment vehicle without any employees that is used solely for a finance, securitization, or monetization purpose; or

(K) a trust:

(i) that is taxable as a trust under Section 641, Internal Revenue Code;

(ii) all of the beneficiaries of which are natural persons or charitable entities as defined in Section 501(c)(3), Internal Revenue Code;

(iii) that is not a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(iv) at least 90 percent of whose federal gross income consists of passive investment income as described under Paragraph (G); and

(v) that is organized as a trust and is described in Section 7701(a)(30)(E), Internal Revenue Code.

(9-c)(A) A family limited partnership as described in Subdivision (9-b) is a taxable entity under this chapter if the partnership:

(i) is not a passive investment partnership as defined under Subdivision (9-b)(G); and

(ii) conducts an active trade or business.

(B) An entity conducts an active trade or business if:

(i) the activities being carried on by the entity include one or more active operations that form a part of the process of earning income or profit; and

(ii) the entity performs active management and operational functions.

(C) Activities performed by the entity shall include activities performed by persons outside the entity, including independent contractors, to the extent such persons perform services on behalf of the entity and those services constitute all or part of the entity's trade or business.

(D) An entity conducts an active trade or business if assets held by the entity are used in the active trade or business of one or more related entities.

(E) For purposes of this subdivision, the ownership of a royalty interest or a non-operating working interest in mineral rights shall not constitute conduct of an active trade or business.

(c) The tax imposed under this chapter extends to the limits of the United States Constitution and the federal law adopted under the United States constitution.

(d) For purposes of Subsection (a), a taxable entity does business in this state if the entity is a foreign entity and is:

(1) holding a partnership interest, including an interest as an assignee, as a general partner in a general partnership that is doing business in this state;

(2) holding a partnership interest, including an interest as an assignee, as a general partner in a limited partnership that is doing business in this state; or

(3) holding a partnership interest, including an interest as an assignee, as a limited partner in a limited partnership that is doing business in this state.

Sec. 171.0011. ELECTION OF RATES. (a) Except as otherwise provided by this section and Section 171.0012, a taxable entity shall elect to pay the tax imposed under this chapter at:

(1) the rate provided by Section 171.002; or

(2) the alternate rate provided by Section 171.003.

(b) The election cannot be changed until after the third anniversary of the date the election is made.

(c) A taxable entity that is in the business of leasing employees:

(1) may not elect to pay the tax imposed under this chapter at the rate provided by Section 171.002 and shall pay the tax imposed under this chapter at the alternate rate provided by Section 171.003; and

(2) for the purposes of this chapter, is considered as having elected to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003.

(d) A taxable entity that is an airline:

(1) may not elect to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003 and shall pay the tax imposed under this chapter at the rate provided by Section 171.002;

(2) for the purposes of this chapter, is considered as having elected to pay the tax imposed under this chapter at the rate provided by Section 171.002; and

(3) is not subject to the minimum tax liability under Section 171.0013.

(e) The comptroller shall promulgate a form for a taxable entity to use to make an election under this section. If the taxable entity is an entity other than a corporation and any interests in the entity are owned by natural persons, the election form must be signed by each of those natural persons and by an authorized officer of the entity. The election form shall provide that the taxable entity and those natural persons agree that the taxable earned surplus of the entity shall be calculated pursuant to this chapter without regard to any exclusion, exemption, or prohibition in Section 24, Article VIII, Texas Constitution.

Sec. 171.0012. MANDATORY ELECTION FOR ALL MEMBERS OF AFFILIATED GROUP. (a) In this section:

(1) "Affiliated group" means one or more chains of entities connected through ownership with a common parent, but only if the common parent has a controlling interest in at least one of the connected entities and maintains a controlling interest indirectly through the ownership chain in the other connected entities.

(2) "Controlling interest" means:

(A) for a corporation, either 50 percent or more, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or 50 percent or more, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation; and

(B) for a partnership, association, trust, or other entity, 50 percent or more, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(b) Notwithstanding any other provision of this chapter, all entities that are part of the same affiliated group must make the same election and must pay the tax imposed under this chapter at the rate provided by either Section 171.002 or the alternate rate provided by Section 171.003.

(c) For the purposes of this chapter, a taxable entity required to elect the same rate as all the other members of its affiliated group under this section is considered as having elected to pay the tax imposed under this chapter at that rate.

Sec. 171.0013. MINIMUM TAX LIABILITY. (a) Except as provided by Section 171.0011(d)(3), the minimum tax liability for a taxable entity that elects to pay the tax under this chapter at the rate provided by Section 171.002 is an amount equal to 50 percent of the amount of tax the taxable entity would be liable for under this chapter if the taxable entity had elected to pay the tax under this chapter at the alternate rate provided by Section 171.003.

(b) The minimum tax liability for a taxable entity that elects to pay the tax under this chapter at the alternate rate provided by Section 171.003 is an amount equal to 50 percent of the amount of tax the taxable entity would be liable for under this chapter if the taxable entity had elected to pay the tax under this chapter at the rate provided by Section 171.002.

(c) This section does not apply to an entity that is not a taxable entity as defined by Section 171.001(b)(9-b).

Sec. 171.0014. ADDITIONAL TAX. (a) An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the rate provided by Section 171.002 and during the period in which that election is in effect [~~corporation that~~] for any reason becomes no longer subject to the earned surplus component of the tax, without regard to whether the taxable entity [~~corporation~~] remains subject to the taxable capital component of the tax, other than through a valid election to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003. An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the alternate rate provided by Section 171.003 and during the period in which that election is in effect for any reason becomes no longer subject to the tax imposed under this chapter.

(b) The additional tax is equal to 4.5 percent of the taxable entity's [~~corporation's~~] net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532 and ending on the date the taxable entity [~~corporation~~] is no longer subject to the earned surplus component of the tax.

(c) The additional tax imposed and any report required by the comptroller are due on the 60th day after the date the taxable entity [~~corporation~~] becomes no longer subject to the earned surplus component of the tax.

(d) Except as otherwise provided by this section, the provisions of this chapter apply to the tax imposed under this section.

Sec. 171.0015. RULES: AVOIDANCE OF DOUBLE TAXATION. (a) Except as provided by Section 171.0012, each entity shall be treated as a separate taxable entity.

(b) Wages, as that term is defined under Subchapter F, Chapter 201, Labor Code, that are paid by one taxable entity may not be included in the tax base of another taxable entity either directly, indirectly, or constructively for purposes of determining taxable wages under Subchapter C-1.

(c) A taxable entity shall be entitled to the dividends received deduction for dividends received in computing its earned surplus. For the purposes of this subsection, "dividends received deduction" means the deduction allowed by Section 243, Internal Revenue Code.

(d) Except as provided by Subsection (e), any taxable entity that is allocated a distributive share of income, gain, or capital from another taxable or exempt entity under federal income tax rules, including an actual distribution of income, gain, or capital, shall be entitled to exclude that amount in computing its earned surplus for purposes of this chapter.

(e) Subsection (d) does not apply to the distributive share of income, gain, or capital from an interest in a publicly traded partnership, as defined by Section 171.001(b)(9-b)(C)(i), that is allocated to a taxable entity that is a direct owner of that interest. If the direct owner of that interest is not a taxable entity, Subsection (d) does not apply to the first upper-tier level of a taxable entity or entities, if any, that are indirect owners of that interest.

Sec. 171.002. RATES; COMPUTATION OF TAX. (a) Subject to the minimum tax liability of the taxable entity under Section 171.0013, the [~~The~~] rates of the franchise tax are for a taxable entity that elects to pay the tax at the rate provided by this section:

(1) 0.25 percent per year of privilege period of net taxable capital; and

(2) 4.5 percent of net taxable earned surplus.

(b) The amount of franchise tax on each taxable entity [~~corporation~~] is computed by adding the following:

(1) the amount calculated by applying the tax rate prescribed by Subsection (a)(1) to the taxable entity's [~~corporation's~~] net taxable capital; and

(2) the difference between:

(A) the amount calculated by applying the tax rate prescribed by Subsection (a)(2) to the taxable entity's [~~corporation's~~] net taxable earned surplus; and

(B) the amount determined under Subdivision (1).

(c) In making a computation under Subsection (b), an amount computed under Subsection (b)(1) or (b)(2) that is zero or less is computed as a zero.

Sec. 171.003. ALTERNATE RATE. Subject to the minimum tax liability of the taxable entity under Section 171.0013, the alternate rate of the franchise tax for a taxable entity that elects to pay the alternate rate is 1.15 percent of taxable wages as determined under Subchapter C-1.

Sec. 171.004. EXEMPTION FOR CERTAIN SMALL BUSINESSES. [~~(d)~~] A taxable entity [~~corporation~~] is not required to pay any tax and is not considered to owe any tax for a period if:

(1) the amount of tax computed for the taxable entity [~~corporation~~] is less than $100; or

(2) the amount of the taxable entity's [~~corporation's~~] gross receipts:

(A) from its entire business under Section 171.105 is less than $150,000; and

(B) from its entire business under Section 171.1051, including the amount excepted under Section 171.1051(a), is less than $150,000.

Sec. 171.005. RATE OF TAX FOR CORPORATION IN PROCESS OF LIQUIDATION. The franchise tax rate on a corporation in the process of liquidation, as defined by Section 171.102 [~~of this code~~], is the rate established by Section 171.002 [~~of this code~~].

SECTION 2.02. Subchapter B, Chapter 171, Tax Code, is amended by adding Section 171.088 to read as follows:

Sec. 171.088. EXEMPTION–NONCORPORATE TAXABLE ENTITY ELIGIBLE FOR CERTAIN EXEMPTIONS. A taxable entity that is not a corporation but that, because of its activities, would qualify for a specific exemption under this subchapter if it were a corporation qualifies for the exemption and is exempt from the tax in the same manner and under the same conditions as a corporation.

SECTION 2.03. Section 171.101, Tax Code, is amended to read as follows:

Sec. 171.101. DETERMINATION OF NET TAXABLE CAPITAL. The [~~(a) Except as provided by Subsections (b) and (c), the~~] net taxable capital of a taxable entity [~~corporation~~] is computed by:

(1) [~~adding the corporation's stated capital, as defined by Article 1.02, Texas Business Corporation Act, and the corporation's surplus, to determine the corporation's taxable capital;~~

[~~(2)~~] apportioning the taxable entity's surplus [~~corporation's taxable capital~~] to this state as provided by Section 171.106(a) or (c), as applicable, to determine the taxable entity's [~~corporation's~~] apportioned taxable capital; and

(2) [~~(3)~~] subtracting from the amount computed under Subdivision (1) [~~(2)~~] any other allowable deductions to determine the taxable entity's [~~corporation's~~] net taxable capital.

[~~(b) The net taxable capital of a limited liability company is computed by:~~

[~~(1) adding the company's members' contributions, as provided for under the Texas Limited Liability Company Act, and surplus to determine the company's taxable capital;~~

[~~(2) apportioning the amount determined under Subdivision (1) to this state in the same manner that the taxable capital of a corporation is apportioned to this state under Section 171.106(a) or (c), as applicable, to determine the company's apportioned taxable capital; and~~

[~~(3) subtracting from the amount computed under Subdivision (2) any other allowable deductions, to determine the company's net taxable capital.~~

[~~(c) The net taxable capital of a savings and loan association is computed by:~~

[~~(1) determining the association's net worth; and~~

[~~(2) apportioning the amount determined under Subdivision (1) to this state in the same manner that the taxable capital of a corporation is apportioned to this state under Section 171.106(a) to determine the association's net taxable capital.~~]

SECTION 2.04. Section 171.103, Tax Code, is amended to read as follows:

Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE CAPITAL. In apportioning taxable capital, the gross receipts of a taxable entity [~~corporation~~] from its business done in this state is the sum of the taxable entity's [~~corporation's~~] receipts from:

(1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation;

(2) each service performed in this state;

(3) each rental of property situated in this state;

(4) the use of a patent, copyright, trademark, franchise, or license in this state;

(5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests; and

(6) other business done in this state.

SECTION 2.05. Section 171.1032, Tax Code, is amended to read as follows:

Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except for the gross receipts of a taxable entity [~~corporation~~] that are subject to the provisions of Section 171.1061, in apportioning taxable earned surplus, the gross receipts of a taxable entity [~~corporation~~] from its business done in this state is the sum of the taxable entity's [~~corporation's~~] receipts from:

(1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to any tax on, or measured by, net income, without regard to whether the tax is imposed;

(2) each service performed in this state;

(3) each rental of property situated in this state;

(4) the use of a patent, copyright, trademark, franchise, or license in this state;

(5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests;

(6) each partnership or joint venture to the extent provided by Subsection (c); and

(7) other business done in this state.

(b) A taxable entity [~~corporation~~] shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included under Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 171.110(k), and dividends received from a subsidiary, associate, or affiliated entity [~~corporation~~] that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

(c) A taxable entity [~~corporation~~] shall include in its gross receipts computed under Subsection (a) the taxable entity's [~~corporation's~~] share of the gross receipts of each partnership, including a general partnership and a publicly traded partnership as defined by Section 171.001(b)(9-b)(C)(i), and joint venture

of which the taxable entity [~~corporation~~] is a part apportioned to this state as though the taxable entity [~~corporation~~] directly earned the receipts, including receipts from business done with the taxable entity [~~corporation~~].

SECTION 2.06. Section 171.104, Tax Code, is amended to read as follows:

Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS: DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A taxable entity [~~corporation~~] may deduct from its receipts includable under Section 171.103(1) [~~of this code~~] the amount of the taxable entity's [~~corporation's~~] receipts from sales of the following items, if the items are shipped from outside this state and the receipts would be includable under Section 171.103(1) [~~of this code~~] in the absence of this section:

(1) food that is exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.314(a) [~~of this code~~]; and

(2) health care supplies that are exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.313 [~~of this code~~].

SECTION 2.07. Section 171.105, Tax Code, is amended to read as follows:

Sec. 171.105. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable capital, the gross receipts of a taxable entity [~~corporation~~] from its entire business is the sum of the taxable entity's [~~corporation's~~] receipts from:

(1) each sale of the taxable entity's [~~corporation's~~] tangible personal property;

(2) each service, rental, or royalty; and

(3) other business.

(b) If a taxable entity [~~corporation~~] sells an investment or capital asset, the taxable entity's [~~corporation's~~] gross receipts from its entire business for taxable capital include only the net gain from the sale.

SECTION 2.08. Section 171.1051, Tax Code, is amended to read as follows:

Sec. 171.1051. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE BUSINESS FOR TAXABLE EARNED SURPLUS. (a) Except for the gross receipts of a taxable entity [~~corporation~~] that are subject to the provisions of Section 171.1061, in apportioning taxable earned surplus, the gross receipts of a taxable entity [~~corporation~~] from its entire business is the sum of the taxable entity's [~~corporation's~~] receipts from:

(1) each sale of the taxable entity's [~~corporation's~~] tangible personal property;

(2) each service, rental, or royalty;

(3) each partnership and joint venture as provided by Subsection (d); and

(4) other business.

(b) If a taxable entity [~~corporation~~] sells an investment or capital asset, the taxable entity's [~~corporation's~~] gross receipts from its entire business for taxable earned surplus includes only the net gain from the sale.

(c) A taxable entity [~~corporation~~] shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included in Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 171.110(k), and dividends received from a subsidiary, associate, or affiliated entity [~~corporation~~] that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

(d) A taxable entity [~~corporation~~] shall include in its gross receipts computed under Subsection (a) the taxable entity's [~~corporation's~~] share of the gross receipts of each partnership, including a general partnership and a publicly traded partnership as defined by Section 171.001(b)(9-b)(C)(i), and joint venture of which the taxable entity [~~corporation~~] is a part.

SECTION 2.09. Sections 171.106(a)-(d), Tax Code, are amended to read as follows:

(a) Except as provided by Subsections (c) and (d), a taxable entity's [~~corporation's~~] taxable capital is apportioned to this state to determine the amount of the tax imposed under Section 171.002(b)(1) by multiplying the taxable entity's [~~corporation's~~] taxable capital by a fraction, the numerator of which is the taxable entity's [~~corporation's~~] gross receipts from business done in this state, as determined under Section 171.103, and the denominator of which is the taxable entity's [~~corporation's~~] gross receipts from its entire business, as determined under Section 171.105.

(b) Except as provided by Subsections (c) and (d), a taxable entity's [~~corporation's~~] taxable earned surplus is apportioned to this state to determine the amount of tax imposed under Section 171.002(b)(2) by multiplying the taxable earned surplus by a fraction, the numerator of which is the taxable entity's [~~corporation's~~] gross receipts from business done in this state, as determined under Section 171.1032, and the denominator of which is the taxable entity's [~~corporation's~~] gross receipts from its entire business, as determined under Section 171.1051.

(c) A taxable entity's [~~corporation's~~] taxable capital or earned surplus that is derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, including a taxable entity [~~corporation~~] that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company, is apportioned to this state to determine the amount of the tax imposed under Section 171.002 by multiplying the taxable entity's [~~corporation's~~] total taxable capital or earned surplus from the sale of services to or on behalf of a regulated investment company by a fraction, the numerator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by the investment company shareholders who are commercially domiciled in this state or, if the shareholders are individuals, are residents of this state, and the denominator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by all investment company shareholders. The taxable entity

[~~corporation~~] shall make a separate computation to allocate taxable capital and earned surplus. In this subsection, "regulated investment company" has the meaning assigned by Section 851(a), Internal Revenue Code.

(d) A taxable entity's [~~corporation's~~] taxable capital or taxable earned surplus that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan is apportioned to this state to determine the amount of the tax imposed under Section 171.002 by multiplying the taxable entity's [~~corporation's~~] total taxable capital or earned surplus from the sale of services to an employee retirement plan company by a fraction, the numerator of which is the average of the sum of beneficiaries domiciled in Texas at the beginning of the year and the sum of beneficiaries domiciled in Texas at the end of the year, and the denominator of which is the average of the sum of all beneficiaries at the beginning of the year and the sum of all beneficiaries at the end of the year. The taxable entity [~~corporation~~] shall make a separate computation to apportion taxable capital and earned surplus. In this section, "employee retirement plan" means a plan or other arrangement that is qualified under Section 401(a), Internal Revenue Code, or satisfies the requirements of Section 403, Internal Revenue Code, or a government plan described in Section 414(d), Internal Revenue Code. The term does not include an individual retirement account or individual retirement annuity within the meaning of Section 408, Internal Revenue Code.

SECTION 2.10. Section 171.1061, Tax Code, is amended to read as follows:

Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS TO THIS STATE. An item of income included in a taxable entity's [~~corporation's~~] taxable earned surplus, except that portion derived from dividends and interest, that a state, other than this state, or a country, other than the United States, cannot tax because the activities generating that item of income do not have sufficient unitary connection with the taxable entity's [~~corporation's~~] other activities conducted within that state or country under the United States Constitution, is allocated to this state if the taxable entity's [~~corporation's~~] commercial domicile is in this state. Income that can only be allocated to the state of commercial domicile because the income has insufficient unitary connection with any other state or country shall be allocated to this state or another state or country net of expenses related to that income. A portion of a taxable entity's [~~corporation's~~] taxable earned surplus allocated to this state under this section may not be apportioned under Section 171.110(a-4)(2) [~~171.110(a)(2)~~].

SECTION 2.11. Sections 171.107(b), (d), and (e), Tax Code, are amended to read as follows:

(b) A taxable entity [~~corporation~~] may deduct from its apportioned taxable capital the amortized cost of a solar energy device or from its apportioned taxable earned surplus 10 percent of the amortized cost of a solar energy device if:

(1) the device is acquired by the taxable entity [~~corporation~~] for heating or cooling or for the production of power;

(2) the device is used in this state by the taxable entity [~~corporation~~]; and

(3) the cost of the device is amortized in accordance with Subsection (c) [~~of this section~~].

(d) A taxable entity [~~corporation~~] that makes a deduction under this section shall file with the comptroller an amortization schedule showing the period in which a deduction is to be made. On the request of the comptroller, the taxable entity [~~corporation~~] shall file with the comptroller proof of the cost of the solar energy device or proof of the device's operation in this state.

(e) A taxable entity [~~corporation~~] may elect to make the deduction authorized by this section either from apportioned taxable capital or apportioned taxable earned surplus for each separate regular annual period. An election for an initial period applies to the second tax period and to the first regular annual period.

SECTION 2.12. Sections 171.108(b), (d), and (e), Tax Code, as added by Section 4, **HB 2201**, Acts of the 79th Legislature, Regular Session, 2005, are amended to read as follows:

(b) A taxable entity [~~corporation~~] may deduct from its apportioned taxable capital the amortized cost of equipment or from its apportioned taxable earned surplus 10 percent of the amortized cost of equipment:

(1) that is used in a clean coal project;

(2) that is acquired by the taxable entity [~~corporation~~] for use in generation of electricity, production of process steam, or industrial production;

(3) that the taxable entity [~~corporation~~] uses in this state; and

(4) the cost of which is amortized in accordance with Subsection (c).

(d) A taxable entity [~~corporation~~] that makes a deduction under this section shall file with the comptroller an amortization schedule showing the period for which the deduction is to be made. On the request of the comptroller, the taxable entity [~~corporation~~] shall file with the comptroller proof of the cost of the equipment or proof of the equipment's operation in this state.

(e) A taxable entity [~~corporation~~] may elect to make the deduction authorized by this section from apportioned taxable capital or apportioned taxable earned surplus, but not from both, for each separate regular annual period. An election for an initial period applies to the second tax period and to the first regular annual period.

SECTION 2.13. Section 171.109, Tax Code, is amended by amending Subsections (a), (b)-(f), (h), (j), (k), (m), and (n), by reenacting and amending Subsection (g), as amended by Chapters 801 and 1198, Acts of the 71st Legislature, Regular Session, 1989, and by adding Subsection (a-2) to read as follows:

(a) In this chapter:

(1) "Surplus" or "taxable capital" means the net assets of a taxable entity [~~corporation minus its stated capital. For a limited liability company, "surplus" means the net assets of the company minus its members' contributions~~]. Surplus includes unrealized, estimated, or contingent losses or obligations or any writedown of assets other than those listed in Subsection (i) [~~of this section~~] net of appropriate income tax provisions. The definition under this subdivision does not apply to earned surplus.

(2) "Net assets" means the total assets of a taxable entity [~~corporation~~] minus its total debts.

(3) "Debt" means any legally enforceable obligation measured in a certain amount of money which must be performed or paid within an ascertainable period of time or on demand.

(a-2) In this section, "distribution" includes a dividend.

(b) Except as otherwise provided in this section, a taxable entity [~~corporation~~] must compute its surplus, assets, and debts according to generally accepted accounting principles. If generally accepted accounting principles are unsettled or do not specify an accounting practice for a particular purpose related to the computation of surplus, assets, or debts, the comptroller by rule may establish rules to specify the applicable accounting practice for that purpose.

(c) A taxable entity [~~corporation~~] whose taxable capital is less than $1 million may report its surplus according to the method used in the taxable entity's [~~corporation's~~] most recent federal income tax return originally due on or before the date on which the taxable entity's [~~corporation's~~] franchise tax report is originally due. In determining if taxable capital is less than $1 million, the taxable entity [~~corporation~~] shall apply the methods the taxable entity [~~corporation~~] used in computing that federal income tax return unless another method is required under this chapter.

(d) A taxable entity [~~corporation~~] shall report its surplus based solely on its own financial condition. Consolidated reporting of surplus is prohibited.

(e) A taxable entity [~~Unless the provisions of Section 171.111 apply due to an election under that section, a corporation~~] may not change the accounting methods used to compute its surplus more often than once every four years without the written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.

(f) A taxable entity making a distribution [~~corporation declaring dividends~~] shall exclude the distribution [~~those dividends~~] from its taxable capital, and a taxable entity [~~corporation~~] receiving a distribution [~~dividends~~] shall include the distribution [~~those dividends~~] in its gross receipts and taxable capital as of the earlier of:

(1) the date the distribution is [~~dividends are~~] declared, if the distribution is [~~dividends are~~] actually paid in cash or property other than a note payable within one year after the declaration date; or

(2) the date the distribution is [~~dividends are~~] actually paid in cash or property other than a note payable.

(g) All oil and gas exploration and production activities conducted by a taxable entity [~~corporation~~] that reports its surplus according to generally accepted accounting principles as required or permitted by this chapter must be reported according to the successful efforts or the full cost method of accounting.

(h) A parent or investor taxable entity [~~corporation~~] must use the cost method of accounting in reporting and calculating the franchise tax on its investments in subsidiary taxable entities [~~corporations~~] or other investees. The retained earnings of a subsidiary taxable entity [~~corporation~~] or other investee before acquisition by the parent or investor taxable entity [~~corporation~~] may not

be excluded from the cost of the subsidiary taxable entity [~~corporation~~] or investee to the parent or investor taxable entity [~~corporation~~] and must be included by the parent or investor taxable entity [~~corporation~~] in calculating its surplus.

(j) A taxable entity [~~corporation~~] may not exclude from surplus:

(1) liabilities for compensation and other benefits provided to employees, other than wages, that are not debt as of the end of the accounting period on which the taxable capital component is based, including retirement, medical, insurance, postretirement, and other similar benefits; and

(2) deferred investment tax credits.

(k) Notwithstanding any other provision in this chapter, a taxable entity [~~corporation~~] subject to the tax imposed by this chapter shall use double entry bookkeeping to account for all transactions that affect the computation of that tax.

(m) A taxable entity [~~corporation~~] may not use the push-down method of accounting in computing or reporting its surplus.

[~~(n) A corporation must use the equity method of accounting when reporting an investment in a partnership or joint venture.~~]

SECTION 2.14. Section 171.110, Tax Code, is amended to read as follows:

Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS. (a) The [~~net~~] taxable earned surplus of a corporation is computed by[~~:~~

[~~(1)~~] determining the corporation's reportable federal taxable income, subtracting from that amount any amount excludable under Subsection (k), any amount included in reportable federal taxable income under Section 78 or Sections 951-964, Internal Revenue Code, and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States, and adding to that amount any compensation of officers or directors, or if a bank, any compensation of directors and executive officers, to the extent excluded in determining federal taxable income.

(a-1) The comptroller shall adopt rules to determine the reportable federal taxable income of an entity other than a corporation using principles similar to the standards applied to a corporation and a limited liability company.

(a-2) The taxable earned surplus of a partnership is the greater of:

(1) an amount computed by:

(A) determining the amount of the partnership's ordinary income or loss under applicable provisions of the Internal Revenue Code, and adding guaranteed payments to partners and capital gains that are additional items not already included in ordinary income or loss; and

(B) subtracting:

(i) the amount paid to the partners that is subject to self-employment taxes; and

(ii) the amount paid to a qualified pension plan or benefit plan for the partners; or

(2) 15 percent of the amount determined under Subdivision (1)(A).

(a-3) The taxable earned surplus of an entity other than a corporation or a partnership is the entity's reportable federal taxable income.

(a-4) The net taxable earned surplus of a taxable entity is computed by:

(1) determining the taxable entity's taxable earned surplus as provided by Subsection (a), (a-1), (a-2), or (a-3), as appropriate [~~to determine the corporation's taxable earned surplus~~];

(2) apportioning the taxable entity's [~~corporation's~~] taxable earned surplus to this state as provided by Section 171.106(b) or (c), as applicable, to determine the taxable entity's [~~corporation's~~] apportioned taxable earned surplus;

(3) adding the taxable entity's [~~corporation's~~] taxable earned surplus allocated to this state as provided by Section 171.1061; and

(4) subtracting from that amount any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (e).

[~~(b) Except as provided by Subsection (c), a corporation is not required to add the compensation of officers or directors as required by Subsection (a)(1) if the corporation is:~~

[~~(1) a corporation that has not more than 35 shareholders; or~~

[~~(2) an S corporation, as that term is defined by Section 1361, Internal Revenue Code.~~

[~~(c) A subsidiary corporation may not claim the exclusion under Subsection (b) if it has a parent corporation that does not qualify for the exclusion. For purposes of this subsection, a corporation qualifies as a parent if it ultimately controls the subsidiary, even if the control arises through a series or group of other subsidiaries or entities. Control is presumed if a parent corporation directly or indirectly owns, controls, or holds a majority of the outstanding voting stock of a corporation or ownership interests in another entity.~~]

(d) A corporation's reportable federal taxable income is the corporation's federal taxable income after Schedule C special deductions and before net operating loss deductions as computed under the Internal Revenue Code, except that an S corporation's reportable federal taxable income is the amount of the income reportable to the Internal Revenue Service as taxable to the corporation's shareholders.

(e) For purposes of this section, a business loss is any negative amount after apportionment and allocation. The business loss shall be carried forward to the year succeeding the loss year as a deduction to net taxable earned surplus, then successively to the succeeding four taxable years after the loss year or until the loss is exhausted, whichever occurs first, but for not more than five taxable years after the loss year. Notwithstanding the preceding sentence, a business loss from a tax year that ends before January 1, 1991, may not be used to reduce net taxable earned surplus. A business loss can be carried forward only by the taxable entity [~~corporation~~] that incurred the loss and cannot be transferred to or claimed by any other entity, including the survivor of a merger if the loss was incurred by the taxable entity [~~corporation~~] that did not survive the merger.

(f) A taxable entity [~~corporation~~] may use either the "first in-first out" or "last in-first out" method of accounting to compute its net taxable earned surplus, but only to the extent that the taxable entity [~~corporation~~] used that method on its most recent federal income tax report originally due on or before the date on which the taxable entity's [~~corporation's~~] franchise tax report is originally due.

[~~(g) For purposes of this section, an approved Employee Stock Ownership Plan controlling a minority interest and voted through a single trustee shall be considered one shareholder.~~]

(h) A taxable entity [~~corporation~~] shall report its net taxable earned surplus based solely on its own financial condition. Consolidated reporting is prohibited.

[~~(i) For purposes of this section, any person designated as an officer is presumed to be an officer if that person:~~

[~~(1) holds an office created by the board of directors or under the corporate charter or bylaws; and~~

[~~(2) has legal authority to bind the corporation with third parties by executing contracts or other legal documents.~~

[~~(j) A corporation may rebut the presumption described in Subsection (i) that a person is an officer if it conclusively shows, through the person's job description or other documentation, that the person does not participate or have authority to participate in significant policy making aspects of the corporate operations.~~]

(k) Dividends and interest received from federal obligations are not included in earned surplus or gross receipts for earned surplus purposes.

(l) In this section:

(1) "Federal obligations" means:

(A) stocks and other direct obligations of, and obligations unconditionally guaranteed by, the United States government and United States government agencies; and

(B) direct obligations of a United States government-sponsored agency.

(2) "Obligation" means any bond, debenture, security, mortgage-backed security, pass-through certificate, or other evidence of indebtedness of the issuing entity. The term does not include a deposit, a repurchase agreement, a loan, a lease, a participation in a loan or pool of loans, a loan collateralized by an obligation of a United States government agency, or a loan guaranteed by a United States government agency.

(3) "United States government" means any department or ministry of the federal government, including a federal reserve bank. The term does not include a state or local government, a commercial enterprise owned wholly or partly by the United States government, or a local governmental entity or commercial enterprise whose obligations are guaranteed by the United States government.

(4) "United States government agency" means an instrumentality of the United States government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage

Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.

(5) "United States government-sponsored agency" means an agency originally established or chartered by the United States government to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States government. The term includes the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, and any successor agency.

(m) Except as provided by Subsection (n), in determining net taxable earned surplus, a taxable entity shall add back to reportable federal taxable income any royalty payment, interest payment, or management fee payment made to a related entity during the period on which earned surplus is based to the extent deducted in computing reportable federal taxable income.

(n)(1) A taxable entity is not required to add back royalty payments made to a related entity if:

(A) the related entity during the period on which earned surplus is based directly or indirectly paid or incurred the amount to a person or entity that is not a related party, the transaction was done for a valid business purpose, and the payments were made at arm's length; or

(B) the royalty payments are paid or incurred to a related party organized under the laws of a foreign nation, are subject to a comprehensive income tax treaty between the foreign nation and the United States, and are taxed in the foreign nation at a tax rate equal to or greater than 4.5 percent.

(2) A taxable entity is not required to add back interest payments made to a related entity if:

(A) the rate of interest used to calculate interest payments does not exceed the interest rate provided by Section 111.060(b) that was in effect at the time the loan agreement was made; or

(B) the related entity during the period on which earned surplus is based directly or indirectly paid or incurred the amount to a person or entity that is not a related entity, the transaction was done for a valid business purpose, and the payments were made at arm's length.

(3) A taxable entity is not required to add back management fee payments made to a related entity if the taxable entity established by a preponderance of the evidence that the payment between the taxable entity and a related entity had a valid business purpose and the payments were made at arm's length.

(o) For purposes of Subsections (m) and (n), the following terms have the following meanings:

(1) "Arm's length" means the standard of conduct under which unrelated parties having substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) "Controlling interest" means:

(A) for a corporation, either 50 percent or more, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or 50 percent or more, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation; and

(B) for a partnership, association, trust, or other entity, 50 percent or more, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(3) "Interest payment" means an amount allowable as an interest deduction under Section 163, Internal Revenue Code.

(4) "Management fee" includes expenses and costs paid for services pertaining to accounts receivable and payable, employee benefit plans, insurance, legal, consulting, payroll, data processing, purchasing, tax, financial and securities, accounting, reporting and compliance services, or similar services.

(5) "Related entity" means a person, corporation, or other entity, including an entity that is treated as a pass-through or disregarded entity for purposes of federal taxation, whether the person, corporation, or entity is a taxable entity or not, in which one person, corporation, or entity, or set of related persons, corporations, or entities, directly or indirectly owns or controls a controlling interest in another entity.

(6) "Royalty payment" means a payment related to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents, or any other similar types of intangible assets as determined by the comptroller.

(7) "Valid business purpose" means one or more business purposes, other than the avoidance or reduction of taxes, that alone or in combination constitute the primary motivation for a business activity or transaction that changes in a meaningful way, apart from tax effects, the economic position of the entity. A meaningful change in the taxable entity's economic position includes an increase in its market share or entry into new business markets.

(p) Notwithstanding any other provision of this section, a taxable entity shall add back to reportable federal taxable income any payments made to a related party that is an entity described in Section 171.001(b)(9-b)(G) during the period on which earned surplus is based to the extent deducted in computing reportable federal taxable income.

(q) The comptroller may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among two or more organizations, trades, or businesses, whether or not incorporated, whether or not organized in the United States, and whether or not affiliated, if:

(1) the organizations, trades, or businesses are owned or controlled directly or indirectly by the same interests; and

(2) the comptroller determines that the distribution, apportionment, or allocation is necessary to reflect an arm's-length standard, within the meaning of 26 C.F.R. Section 1.482-1, and to clearly reflect the income of those organizations, trades, or businesses.

(r) In administering Subsection (q), the comptroller shall apply the administrative and judicial interpretations of Section 482, Internal Revenue Code.

SECTION 2.15. Sections 171.112(b)-(f) and (h), Tax Code, are amended to read as follows:

(b) Except as otherwise provided in this section, a taxable entity [~~corporation~~] must compute gross receipts in accordance with generally accepted accounting principles. If generally accepted accounting principles are unsettled or do not specify an accounting practice for a particular purpose related to the computation of gross receipts, the comptroller by rule may establish rules to specify the applicable accounting practice.

(c) A taxable entity [~~corporation~~] whose taxable capital is less than $1 million may report its gross receipts according to the method used in the taxable entity's [~~corporation's~~] most recent federal income tax return originally due on or before the date on which the taxable entity's [~~corporation's~~] franchise tax report is originally due. In determining if taxable capital is less than $1 million, the taxable entity [~~corporation~~] shall apply the methods the taxable entity [~~corporation~~] used in computing that federal income tax return unless another method is required under this chapter.

(d) A taxable entity [~~corporation~~] shall report its gross receipts based solely on its own financial condition. Consolidated reporting is prohibited.

(e) Unless the provisions of Section 171.111 apply due to an election under that section, a taxable entity [~~corporation~~] may not change its accounting methods used to calculate gross receipts more often than once every four years without the express written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.

(f) Notwithstanding any other provision in this chapter, a taxable entity [~~corporation~~] subject to the tax imposed by this chapter shall use double entry bookkeeping to account for all transactions that affect the computation of that tax.

(h) Except as otherwise provided by this section, a taxable entity [~~corporation~~] shall use the same accounting methods to apportion its taxable capital as it used to compute its taxable capital.

SECTION 2.16. Sections 171.1121(a)-(d), Tax Code, are amended to read as follows:

(a) For purposes of this section, "gross receipts" means all revenues reportable by a taxable entity [~~corporation~~] on its federal tax return, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided in this chapter. "Gross receipts" does not include revenues that are not included in taxable earned surplus. For example, Schedule C special deductions and any amounts subtracted from reportable federal taxable income under Section 171.110(a) [~~171.110(a)(1)~~] are not included in taxable earned surplus and therefore are not considered gross receipts.

(b) Except as otherwise provided by this section, a taxable entity [~~corporation~~] shall use the same accounting methods to apportion taxable earned surplus as used in computing reportable federal taxable income.

(c) A taxable entity [~~corporation~~] shall report its gross receipts based solely on its own financial condition. Consolidated reporting is prohibited.

(d) Unless the provisions of Section 171.111 apply due to an election under that section, a taxable entity [~~corporation~~] may not change its accounting methods used to calculate gross receipts more often than once every four years without the express written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.

SECTION 2.17. Section 171.113, Tax Code, is amended to read as follows:

Sec. 171.113. ALTERNATE METHOD OF DETERMINING TAXABLE CAPITAL AND GROSS RECEIPTS FOR CERTAIN TAXABLE ENTITIES [~~CORPORATIONS~~]. (a) This section applies only to:

(1) a corporation organized as a close corporation under Part 12, Texas Business Corporation Act, that has not more than 35 shareholders;

(2) a foreign corporation organized under the close corporation law of another state that has not more than 35 shareholders; [~~and~~]

(3) an S corporation as that term is defined by Section 1361, Internal Revenue Code of 1986 (26 U.S.C. Section 1361); and

(4) a taxable entity other than a corporation that has 35 or fewer owners.

(b) A taxable entity [~~corporation~~] to which this section applies may elect to compute its surplus, assets, debts, and gross receipts according to the method the taxable entity [~~corporation~~] uses to report its federal income tax instead of as provided by Sections 171.109(b) and (g) and Section 171.112(b). This section does not affect the application of the other subsections of Sections 171.109 and 171.112 and other provisions of this chapter to a taxable entity [~~corporation~~] making the election.

(c) The comptroller may adopt rules as necessary to specify the reporting requirements for taxable entities [~~corporations~~] to which this section applies.

(d) This section does not apply to a subsidiary of a taxable entity [~~corporation~~] unless it applies to the parent [~~corporation~~] of the subsidiary.

(e) The election under Subsection (b) becomes effective when written notice of the election is received by the comptroller from the taxable entity [~~corporation~~]. An election under Subsection (b) must be postmarked not later than the due date for the electing taxable entity's [~~corporation's~~] franchise tax report to which the election applies.

SECTION 2.18. Chapter 171, Tax Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. TAXABLE WAGES

Sec. 171.131. TAXABLE WAGES. (a) In this section:

(1) "Employee" means an employee described by Section 171.133 or 171.134.

(2) "Wages" means:

(A) wages as defined under Subchapter F, Chapter 201, Labor Code, paid by a taxable entity and includes the amounts excluded by Sections 201.082(1) and (9), Labor Code; and

(B) wages, to the extent not covered by Paragraph (A), described under Section 171.132.

(b) The taxable wages of a taxable entity are the total amount of wages paid by the entity to all of the entity's employees during the reporting period as provided by Section 171.1533.

Sec. 171.132. LOCATION OF SERVICE. (a) Wages include wages for a service performed in this state or in and outside this state if:

(1) the service is localized in this state; or

(2) the service is not localized in any state and some of the service is performed in this state and:

(A) the base of operations is in this state, or there is no base of operations but the service is directed or controlled from this state; or

(B) the base of operations or place from which the service is directed or controlled is not in a state in which a part of the service is performed, and the residence of the person who performs the service is in this state.

(b) Wages include wages for a service performed anywhere in the United States, including service performed entirely outside this state, if:

(1) the service is not localized in a state;

(2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and

(3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.

(c) Wages include wages for a service performed outside the United States by a citizen of the United States.

(d) For the purposes of this section, service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "incidental" includes a service that is temporary or that consists of isolated transactions.

Sec. 171.133. FULL-TIME AND PART-TIME EMPLOYEES. (a) In this section, "contribution" has the meaning assigned that term by Section 201.011, Labor Code.

(b) An individual is an employee if the taxable entity pays or is required to pay a contribution for a reporting period without regard to whether:

(1) the individual is a full-time or part-time employee; or

(2) the wages paid were for the entire reporting period or a portion of the reporting period.

Sec. 171.134. DETERMINATION OF WHETHER CERTAIN INDIVIDUALS ARE EMPLOYEES. An individual is an employee of a taxable entity as provided by this section, without regard to whether the taxable entity pays a contribution for the individual, if the individual provides services in this state to the taxable entity for compensation and the taxable entity has a right to direct and control how the individual performs the services for which the individual is provided compensation, indicated by factors that include:

(1) whether the individual is subject to the taxable entity's instructions about when, where, and how to work;

(2) whether the individual is trained to perform services in a particular manner;

(3) the extent to which the individual has unreimbursed business expenses;

(4) the extent to which the individual has a significant investment in the facilities the individual uses in performing the services;

(5) the extent to which the individual makes the individual's services available to the relevant market by advertising, by maintaining a visible business location, or otherwise;

(6) the extent to which the individual can realize a profit or loss;

(7) the manner in which the individual is paid by the taxable entity;

(8) whether a written contract between the individual and the taxable entity provides that the individual is or is not an employee;

(9) whether the taxable entity provides the individual with employee-type benefits, including insurance, a pension plan, vacation pay, or sick pay;

(10) whether the relationship between the individual and the taxable entity is considered permanent or for a limited period; and

(11) the extent to which services performed by the individual are a key aspect of the affairs of the taxable entity.

SECTION 2.19. Section 171.151, Tax Code, is amended to read as follows:

Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The franchise tax shall be paid for each of the following:

(1) an initial period beginning on the taxable entity's [~~corporation's~~] beginning date and ending on the day before the first anniversary of the beginning date;

(2) a second period beginning on the first anniversary of the beginning date and ending on December 31 following that date; and

(3) after the initial and second periods have expired, a regular annual period beginning each year on January 1 and ending the following December 31.

SECTION 2.20. Section 171.152(c), Tax Code, is amended to read as follows:

(c) Payment of the tax covering the regular annual period is due May 15, of each year after the beginning of the regular annual period. However, if the first anniversary of the taxable entity's [~~corporation's~~] beginning date is after October 3 and before January 1, the payment of the tax covering the first regular annual period is due on the same date as the tax covering the initial period.

SECTION 2.21. Sections 171.153(a) and (c), Tax Code, are amended to read as follows:

(a) The tax covering the initial period is reported on the initial report and is based on the business done by the taxable entity [~~corporation~~] during the period beginning on the taxable entity's [~~corporation's~~] beginning date and:

(1) ending on the last accounting period ending date that is at least six months after the beginning date and at least 60 days before the original due date of the initial report; or

(2) if there is no such period ending date in Subdivision (1) [~~of this subsection~~], then ending on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's [~~corporation's~~] first year of business; or

(3) ending on the day after the merger occurs, for the survivor of a merger which occurs after the day on which the tax is based in Subdivision (1) or [~~Subdivision~~] (2), whichever is applicable, [~~of Subsection (a)~~] and before January 1, of the year an initial report is due by the survivor.

(c) The tax covering the regular annual period is based on the business done by the taxable entity [~~corporation~~] during its last accounting period that ends in the year before the year in which the tax is due; unless a taxable entity [~~corporation~~] is the survivor of a merger which occurs between the end of its last accounting period in the year before the report year and January 1 of the report year, in which case the tax will be based on the financial condition of the surviving taxable entity [~~corporation~~] for the 12-month period ending on the day after the merger. However, if the first anniversary of the taxable entity's [~~corporation's~~] beginning date is after October 3 and before January 1, the tax covering the first regular annual period is based on the same business on which the tax covering the initial period is based and is reported on the initial report.

SECTION 2.22. Section 171.1532, Tax Code, is amended to read as follows:

Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE EARNED SURPLUS IS BASED. (a) The tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the business done by the taxable entity [~~corporation~~] during the period beginning on the taxable entity's [~~corporation's~~] beginning date and:

(1) ending on the last accounting period ending date that is at least 60 days before the original due date of the initial report; or

(2) if there is no such period ending date in Subdivision (1) [~~of this subsection~~], then ending on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's [~~corporation's~~] first year of business.

(b) The tax covering the regular annual period, other than a regular annual period included on the initial report, is based on the business done by the taxable entity [~~corporation~~] during the period beginning with the day after the last date upon which net taxable earned surplus on a previous report was based and ending with its last accounting period ending date for federal income tax purposes in the year before the year in which the report is originally due.

SECTION 2.23. Subchapter D, Chapter 171, Tax Code, is amended by adding Section 171.1533 to read as follows:

Sec. 171.1533. WAGES ON WHICH TAX ON TAXABLE WAGES IS BASED. (a) The tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the taxable wages paid by the taxable entity during the period beginning on the taxable entity's beginning date and:

(1) ending on the last accounting period ending date that is at least 60 days before the original due date of the initial report; or

(2) if there is no such period ending date in Subdivision (1), then ending on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's first year of business.

(b) The tax covering the regular annual period, other than a regular annual period included on the initial report, is based on the taxable wages paid by the taxable entity during the period beginning with the day after the last date on which taxable wages on a previous report was based and ending with its last accounting period ending date for federal income tax purposes in the year before the year in which the report is originally due.

SECTION 2.24. Section 171.154, Tax Code, is amended to read as follows:

Sec. 171.154. PAYMENT TO COMPTROLLER. A taxable entity [~~corporation~~] on which a tax is imposed by this chapter shall pay the tax to the comptroller.

SECTION 2.25. Section 171.201, Tax Code, is amended to read as follows:

Sec. 171.201. INITIAL REPORT. (a) Except as provided by Section 171.2022, a taxable entity [~~corporation~~] on which the franchise tax is imposed shall file an initial report with the comptroller containing:

(1) information showing the financial condition of the taxable entity [~~corporation~~] on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's [~~corporation's~~] first year of business;

(2) the name and address of:

(A) each officer, [~~and~~] director, and manager of the taxable entity [~~corporation~~];

(B) for a limited partnership, each general partner;

(C) for a limited liability partnership, each managing partner or, if there is not a managing partner, each partner; or

(D) for a trust, each trustee;

(3) the name and address of the agent of the taxable entity [~~corporation~~] designated under Section 171.354; [~~and~~]

(4) a statement declaring the entity's election of rate required under Section 171.0011 or 171.0012, as applicable; and

(5) other information required by the comptroller.

(b) The taxable entity [~~corporation~~] shall file the report on or before the date the payment is due under Subsection (a) of Section 171.152.

SECTION 2.26. Sections 171.202(a)-(f) and (i), Tax Code, are amended to read as follows:

(a) Except as provided by Section 171.2022, a taxable entity [~~corporation~~] on which the franchise tax is imposed shall file an annual report with the comptroller containing:

(1) financial and other information of the taxable entity [~~corporation~~] necessary to compute the tax under this chapter on both the rate provided by Section 171.002 and the alternate rate provided by Section 171.003;

(2) the name and address of each officer and director of the taxable entity [~~corporation~~];

(3) the name and address of the agent of the taxable entity [~~corporation~~] designated under Section 171.354; [~~and~~]

(4) if applicable, a statement declaring that the election period provided by Section 171.0011(b) has expired and the entity's election of rate under Section 171.0011 or 171.0012, as applicable, for the next election period; and

(5) other information required by the comptroller.

(b) The taxable entity [~~corporation~~] shall file the report before May 16 of each year after the beginning of the regular annual period. The report shall be filed on forms supplied by the comptroller.

(c) The comptroller shall grant an extension of time to a taxable entity [~~corporation~~] that is not required by rule to make its tax payments by electronic funds transfer for the filing of a report required by this section to any date on or before the next November 15, if a taxable entity [~~corporation~~]:

(1) requests the extension, on or before May 15, on a form provided by the comptroller; and

(2) remits with the request:

(A) not less than 90 percent of the amount of tax reported as due on the report filed on or before November 15; or

(B) 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year and filed on or before May 14.

(d) In the case of a taxpayer whose previous return was its initial report, the optional payment provided under Subsection (c)(2)(B) or (e)(2)(B) must be equal to the greater of:

(1) an amount produced by multiplying the net taxable capital, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a)(1) that is effective January 1 of the year in which the report is due; [~~or~~]

(2) an amount produced by multiplying the net taxable earned surplus, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a)(2) that is effective January 1 of the year in which the report is due; or

(3) an amount produced by multiplying taxable wages, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.003 that is effective January 1 of the year in which the report is due.

(e) The comptroller shall grant an extension of time for the filing of a report required by this section by a taxable entity [~~corporation~~] required by rule to make its tax payments by electronic funds transfer to any date on or before the next August 15, if the taxable entity [~~corporation~~]:

(1) requests the extension, on or before May 15, on a form provided by the comptroller; and

(2) remits with the request:

(A) not less than 90 percent of the amount of tax reported as due on the report filed on or before August 15; or

(B) 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year and filed on or before May 14.

(f) The comptroller shall grant an extension of time to a taxable entity [~~corporation~~] required by rule to make its tax payments by electronic funds transfer for the filing of a report due on or before August 15 to any date on or before the next November 15, if the taxable entity [~~corporation~~]:

(1) requests the extension, on or before August 15, on a form provided by the comptroller; and

(2) remits with the request the difference between the amount remitted under Subsection (e) and 100 percent of the amount of tax reported as due on the report filed on or before November 15.

(i) If a taxable entity [~~corporation~~] requesting an extension under Subsection (c) or (e) does not file the report due in the previous calendar year on or before May 14, the taxable entity [~~corporation~~] may not receive an extension under Subsection (c) or (e) unless the taxable entity [~~corporation~~] complies with Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

SECTION 2.27. Section 171.2022, Tax Code, is amended to read as follows:

Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A taxable entity [~~corporation~~] that does not owe any tax under this chapter for any period is not required to file a report under Section 171.201 or[~~,~~] 171.202[~~, or 171.2021~~]. The exemption applies only to a period for which no tax is due.

SECTION 2.28. Section 171.204, Tax Code, is amended to read as follows:

Sec. 171.204. INFORMATION REPORT. (a) Except as provided by Subsection (b), to determine eligibility for the exemption provided by Section 171.2022, or to determine the amount of the franchise tax or the correctness of a franchise tax report, the comptroller may require [~~an officer of~~] a taxable entity [~~corporation~~] that may be subject to the tax imposed under this chapter to file an information report with the comptroller stating the amount of the taxable entity's [~~corporation's~~] taxable capital, [~~and~~] earned surplus, wages paid, or any other information the comptroller may request.

(b) The comptroller may require a taxable entity [~~an officer of a corporation~~] that does not owe any tax because of the application of Section 171.004(2) [~~171.002(d)(2)~~] to file an abbreviated information report with the comptroller stating the amount of the taxable entity's [~~corporation's~~] gross receipts from its entire business. The comptroller may not require a taxable entity [~~corporation~~] described by this subsection to file an information report that requires the taxable entity [~~corporation~~] to report or compute its earned surplus, [~~or~~] taxable capital, or wages paid.

SECTION 2.29. Section 171.205, Tax Code, is amended to read as follows:

Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY COMPTROLLER. The comptroller may require a taxable entity [~~corporation~~] on which the franchise tax is imposed to furnish to the comptroller information from the taxable entity's [~~corporation's~~] books and records that has not been filed previously and that is necessary for the comptroller to determine the amount of the tax.

SECTION 2.30. Section 171.206, Tax Code, is amended to read as follows:

Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided by Section 171.207 [~~of this code~~], the following information is confidential and may not be made open to public inspection:

(1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

(2) information, including information about the business affairs, operations, profits, losses, or expenditures of a taxable entity [~~corporation~~], obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity [~~corporation~~] on which a tax is imposed by this chapter.

SECTION 2.31. Section 171.208, Tax Code, is amended to read as follows:

Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A person, including a state officer or employee or an owner [~~a shareholder~~] of a taxable entity [~~corporation~~], who has access to a report filed under this chapter may not make known in a manner not permitted by law the amount or source of the taxable entity's [~~corporation's~~] income, profits, losses, expenditures, or other information in the report relating to the financial condition of the taxable entity [~~corporation~~].

SECTION 2.32. Section 171.209, Tax Code, is amended to read as follows:

Sec. 171.209. RIGHT OF OWNER [~~SHAREHOLDER~~] TO EXAMINE OR RECEIVE REPORTS. If an owner [~~a person owning at least one share of outstanding stock~~] of a taxable entity [~~corporation~~] on whom the franchise tax is imposed presents evidence of the ownership to the comptroller, the person is entitled to examine or receive a copy of an initial or annual report that is filed under Section 171.201 or 171.202 [~~of this code~~] and that relates to the taxable entity [~~corporation~~].

SECTION 2.33. Section 171.211, Tax Code, is amended to read as follows:

Sec. 171.211. EXAMINATION OF [~~CORPORATE~~] RECORDS. To determine the franchise tax liability of a taxable entity [~~corporation~~], the comptroller may investigate or examine the records of the taxable entity [~~corporation~~].

SECTION 2.34. Subchapter E, Chapter 171, Tax Code, is amended by adding Section 171.213 to read as follows:

Sec. 171.213. ACCESS TO TEXAS WORKFORCE COMMISSION REPORTS. The comptroller shall have full access to reports filed by a taxable entity on wages paid with the Texas Workforce Commission.

SECTION 2.35. The heading to Subchapter F, Chapter 171, Tax Code, is amended to read as follows:

SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

SECTION 2.36. Subchapter F, Chapter 171, Tax Code, is amended by adding Section 171.2515 to read as follows:

Sec. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, forfeit the right of a partnership subject to a tax imposed by this chapter to transact business in this state.

(b) The provisions of this subchapter, including Section 171.255, that apply to the forfeiture of corporate privileges apply to the forfeiture of a partnership's right to transact business in this state.

SECTION 2.37. Section 171.351, Tax Code, is amended to read as follows:

Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER. Venue of a civil suit against a taxable entity [~~corporation~~] to enforce this chapter is either in a county where the taxable entity's [~~corporation's~~] principal office is located according to its charter or certificate of authority or in Travis County.

SECTION 2.38. Section 171.353, Tax Code, is amended to read as follows:

Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits a taxable entity's [~~corporation's~~] charter or certificate of authority, the court may appoint a receiver for the taxable entity [~~corporation~~] and may administer the receivership under the laws relating to receiverships.

SECTION 2.39. Section 171.354, Tax Code, is amended to read as follows:

Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable entity [~~corporation~~] on which a tax is imposed by this chapter shall designate a resident of this state as the taxable entity's [~~corporation's~~] agent for the service of process.

SECTION 2.40. Sections 171.362(a), (d), and (e), Tax Code, are amended to read as follows:

(a) If a taxable entity [~~corporation~~] on which a tax is imposed by this chapter fails to pay the tax when it is due and payable or fails to file a report required by this chapter when it is due, the taxable entity [~~corporation~~] is liable for a penalty of five percent of the amount of the tax due.

(d) If a taxable entity [~~corporation~~] electing to remit under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~] Section 171.202(c)(2)(A) [~~171.202 of this code~~] remits less than the amount required, the penalties imposed by this section and the interest imposed under Section 111.060 [~~of this code~~] are assessed against the difference between the amount required to be remitted under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~] Section 171.202(c)(2)(A) [~~171.202~~] and the amount actually remitted on or before May 15.

(e) If a taxable entity [~~corporation~~] remits the entire amount required by [~~Subsection (c) of~~] Section 171.202(c) [~~171.202 of this code~~], no penalties will be imposed against the amount remitted on or before November 15.

SECTION 2.41. Sections 171.363(a) and (b), Tax Code, are amended to read as follows:

(a) A taxable entity [~~corporation~~] commits an offense if the taxable entity [~~corporation~~] is subject to the provisions of this chapter and the taxable entity [~~corporation~~] wilfully:

(1) fails to file a report;

(2) fails to keep books and records as required by this chapter;

(3) files a fraudulent report;

(4) violates any rule of the comptroller for the administration and enforcement of the provisions of this chapter; or

(5) attempts in any other manner to evade or defeat any tax imposed by this chapter or the payment of the tax.

(b) A person commits an offense if the person is an accountant or an agent for or an officer or employee of a taxable entity [~~corporation~~] and the person knowingly enters or provides false information on any report, return, or other document filed by the taxable entity [~~corporation~~] under this chapter.

SECTION 2.42. Subchapter H, Chapter 171, Tax Code, is amended by adding Sections 171.364-171.366 to read as follows:

Sec. 171.364. TAX NOT DEDUCTED FROM WAGES. A taxable entity may not deduct the tax imposed under this chapter from any wages of the taxable entity's employees.

Sec. 171.365. CRIMINAL PENALTY. (a) A person who violates Section 171.364 commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 171.366. CIVIL PENALTY. (a) A person who violates Section 171.364 is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the comptroller, the attorney general shall file suit to collect a penalty under this section.

SECTION 2.43. Section 171.401, Tax Code, is amended to read as follows:

Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND. The revenue from the tax imposed by this chapter [~~on corporations~~] shall be deposited to the credit of the general revenue fund.

SECTION 2.44. Chapter 171, Tax Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE TAXABLE ENTITIES

Sec. 171.451. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE TAXABLE ENTITIES. Except as provided by Section 171.452, a taxable entity that is not a corporation but that, because of its activities, would qualify for a specific refund or credit under this chapter if it were a corporation qualifies for the refund or credit in the same manner and under the same conditions as a corporation.

Sec. 171.452. TAXABLE ENTITIES ELECTING ALTERNATE RATE NOT ELIGIBLE FOR CREDITS. Notwithstanding any other provision of this chapter, a taxable entity that elects to pay the tax under this chapter at the alternate rate provided by Section 171.003 is not entitled to a credit under Subchapters J-U.

SECTION 2.45. Chapter 171, Tax Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. TAX CREDIT FOR CERTAIN PROVIDERS OF HEALTH CARE SERVICES

Sec. 171.941. DEFINITION of HEALTH CARE PROVIDER. In this subchapter, "health care provider" means:

(1) an ambulatory surgical center;

(2) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(3) an emergency medical services provider;

(4) a home and community support services agency;

(5) a hospice;

(6) a hospital;

(7) a hospital system;

(8) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n);

(9) a nursing home;

(10) an end stage renal disease facility licensed under Section 251.011, Health and Safety Code; or

(11) a taxable entity providing health care services, including physician's services, that participates in the Medicaid program, the Medicare program, or the Children's Health Insurance Program (CHIP) as a provider of health care services.

Sec. 171.942. QUALIFICATION. A health care provider is entitled to a credit in the amount provided by Section 171.943 against the taxes imposed under this chapter for the period on which earned surplus is based if, for that period, the provider received not less than 15 percent of the provider's revenue from payments received under the Medicaid program, the Medicare program, or the Children's Health Insurance Program (CHIP).

Sec. 171.943. AMOUNT OF CREDIT. The amount of credit for a health care provider is equal to an amount computed by:

(1) determining a fraction:

(A) the numerator of which is the total amount of payments the provider received under the Medicaid program, the Medicare program, or the Children's Health Insurance Program (CHIP), for the period on which earned surplus is based; and

(B) the denominator of which is the gross receipts of the provider from business done in this state as determined under Section 171.1032 for the period on which earned surplus is based; and

(2) multiplying the fraction determined under Subdivision (1) by the tax liability of the provider under this chapter for the period on which earned surplus is based.

Sec. 171.944. LIMITATIONS. (a) A health care provider may not receive a credit in an amount that exceeds the amount of the tax or assessment due after applying any other credits.

(b) A health care provider may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the provider are conveyed, assigned, or transferred in the same transaction.

(c) A health care provider that participates in the Medicaid program, the Medicare program, or the Children's Health Insurance Program (CHIP) as a provider of durable medical equipment or as a vendor of pharmaceuticals may not count payments for those services for purposes of qualifying for or receiving the exemption under this subchapter.

Sec. 171.945. RULES. The comptroller shall adopt rules to implement this subchapter. The Health and Human Services Commission shall assist the comptroller in the formulation and adoption of the rules.

SECTION 2.46. If a credit under Chapter 171, Tax Code, is found by a court in a final judgment upheld on appeal or no longer subject to appeal to be unconstitutional, the credit is disallowed for all entities on or after the date of the judgment, and an entity is not entitled to and may not apply for the credit the entity has not received on or after that date for any reporting period beginning before, on, or after that date.

SECTION 2.47. (a) For an entity becoming subject to the franchise tax under this Act:

(1) income or losses, and related gross receipts, earned, paid, or accrued before January 1, 2005, may not be considered for purposes of the earned surplus component, or for apportionment purposes for the taxable capital component;

(2) an entity subject to the franchise tax on January 1, 2006, for which January 1, 2006, is not the beginning date, shall file an annual report due May 15, 2006, based on the period:

(A) beginning the later of:

(i) January 1, 2005; or

(ii) the date the entity was organized in this state, or, if a foreign entity, the date it began doing business in this state; and

(B) ending on the date the entity's last accounting period ends in 2005 or, if none, on December 31, 2005; and

(3) an entity subject to the earned surplus component of the franchise tax at any time after October 31, 2005, and before January 1, 2006, but not subject to the earned surplus component on January 1, 2006, shall file a final report computed on net taxable earned surplus, for the privilege of doing business at any time after October 31, 2005, and before January 1, 2006, based on the period:

(A) beginning the later of:

(i) January 1, 2005; or

(ii) the date the entity was organized in this state, or, if a foreign entity, the date it began doing business in this state; and

(B) ending on the date the entity became no longer subject to the earned surplus component of the tax.

(b) For purposes of this article, an existing partnership is considered as continuing if it is not terminated.

(c) A partnership is considered terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

(d) For a merger or consolidation of two or more partnerships, the resulting partnership is, for purposes of this article, considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(e) For a division of a partnership into two or more partnerships, the resulting partnerships, other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership, are, for purposes of this article, considered a continuation of the prior partnership.

SECTION 2.48. This article takes effect November 1, 2005, and applies to reports originally due on or after that date.

Amendment No. 18

Representative Isett offered the following amendment to Amendment No. 17:

Amend the Chisum Amendment to **CSHB 3** as follows:

On page 4, line 30, strike "provided that the lessor does not furnish the lessee with any services or utilities other than customary cleaning and security services" and substitute "that is owned by the partnership and operated by a property management company as defined by Section 151.354(f), Tax Code, excluding any profits derived from furnishing any services or utilities".

Amendment No. 18 was withdrawn.

Representative McCall moved to table Amendment No. 17.

A record vote was requested.

The motion to table prevailed by (Record 30): 96 Yeas, 47 Nays, 2 Present, not voting.

Yeas — Alonzo; Anchia; Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Castro; Chavez; Coleman; Cook, B.; Corte; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Driver; Dunnam; Eiland; Eissler; Escobar; Farabee; Flynn; Frost; Gallego; Gattis; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Grusendorf; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Hopson; Howard; Hughes; Hupp; Isett; Jackson; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Krusee; Kuempel; Laney; Laubenberg; Madden; Martinez Fischer; McCall; McReynolds; Merritt; Miller; Moreno, P.; Morrison; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr;

Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Rodriguez; Smith, T.; Smithee; Solomons; Strama; Straus; Talton; Taylor; Thompson; Truitt; Van Arsdale; Veasey; Wong; Zedler.

Nays — Allen, A.; Allen, R.; Bailey; Blake; Bonnen; Casteel; Chisum; Cook, R.; Crabb; Crownover; Deshotel; Dutton; Edwards; Elkins; Farrar; Flores; Geren; Giddings; Griggs; Haggerty; Hamilton; Hamric; Hardcastle; Herrero; Hodge; Homer; Hope; Hunter; Keffer, J.; Kolkhorst; Leibowitz; Luna; Martinez; McClendon; Mowery; Otto; Ritter; Rose; Seaman; Smith, W.; Solis; Swinford; Turner; Uresti; Vo; West; Woolley.

Present, not voting — Mr. Speaker(C); Villarreal.

Absent, Excused — Dukes; Jones, D.

Absent — Guillen; Menendez.

STATEMENTS OF VOTE

I was shown voting no on Record No. 30. I intended to vote yes.

Bonnen

I was shown voting no on Record No. 30. I intended to vote yes.

Flores

I was shown voting no on Record No. 30. I intended to vote yes.

Giddings

When Record No. 30 was taken, my vote failed to register. I would have voted present, not voting.

Guillen

I was shown voting no on Record No. 30. I intended to vote yes.

McClendon

When Record No. 30 was taken, I was in the house but away from my desk. I would have voted yes.

Menendez

I was shown voting no on Record No. 30. I intended to vote yes.

Rose

I was shown voting no on Record No. 30. I intended to vote yes.

Solis

I was shown voting no on Record No. 30. I intended to vote yes.

Uresti

I was shown voting present, not voting on Record No. 30. I intended to vote yes.

Villarreal

REASON FOR VOTE

This amendment does not cure inequities in the business tax system in this state and may exacerbate them. Allowing businesses to opt between the new payroll tax or a "franchise tax" option still has the effect of treating marginal, labor-intensive businesses unfairly.

Large capital-intensive businesses—involving in many instances much wealthier enterprises with relatively few employees—will reap the effects of a property tax reduction windfall while at the same time not sharing equitably with small businesses in any significant new tax burden. Many small businesses, that create the bulk of minimum wage and skilled jobs in the service sector, such as restaurants, auto repair shops, etc., that perhaps lease their business premises, will be saddled with either a new franchise tax, or worse, a payroll tax that will serve as a significant disincentive for them to expand their employee payrolls. Even if they opt for the franchise tax, the new tax burden compared to their gross receipts will be significant. The same will not be true with many larger, wealthier, capital-intensive businesses.

The amendment therefore does not move us in the direction of a fairer business tax, nor does it truly serve to close the "franchise tax loophole" and for that reason, I voted against the amendment.

Keel

Amendment No. 19

Representative Anderson offered the following amendment to **CSHB 3**:

Floor Packet Page No. 415

Amend **CSHB 3** by adding the following appropriately lettered PART to ARTICLE 2 of the bill and relettering subsequent PARTS of that article accordingly:

PART __. FRANCHISE TAX CREDIT FOR HEALTH BENEFIT PLAN FOR EMPLOYEES AND DEPENDENTS

SECTION 2__.01. Chapter 171, Tax Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. TAX CREDIT FOR HEALTH BENEFIT PLAN FOR EMPLOYEES AND THEIR DEPENDENTS

Sec. 171.941. ENTITLEMENT TO CREDIT. A corporation is entitled to a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.942. QUALIFICATION. A corporation qualifies for a credit under this subchapter if the corporation:

(1) has gross receipts from its entire business, as determined by Section 171.105, for the reporting period in an amount equal to or less than $1 million; and

(2) obtains coverage for its employees and their dependents under a health benefit plan that constitutes creditable coverage for the purposes of Section 1205.004, Insurance Code.

Sec. 171.943. AMOUNT; LIMITATIONS. (a) The amount of the credit is 15 percent of the cost to the corporation of obtaining coverage for its employees and their dependents under a health benefit plan.

(b) The credit claimed for each privilege period may not exceed the amount of franchise tax due, before any other applicable tax credits, for the privilege period.

(c) A corporation may claim a credit under this subchapter for an expenditure made during an accounting period only against the tax owed for the corresponding privilege period.

(d) A corporation may not carry over an expenditure made during a privilege period to a subsequent privilege period.

(e) A corporation may not convey, assign, or transfer a credit under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.944. APPLICATION FOR CREDIT. A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

Sec. 171.945. RULES. The comptroller shall adopt rules necessary to implement this subchapter.

SECTION 2__.02. This part takes effect January 1, 2006, and applies only to a tax report originally due on or after that date.

SECTION 2__.03. Section 151.325, Tax Code, is repealed.

(B. Cook in the chair)

Representative J. Keffer moved to table Amendment No. 19.

The motion to table was lost.

Amendment No. 19 was adopted.

Amendment No. 20

Representative Howard offered the following amendment to **CSHB 3**:

Floor Packet Page No. 427

Amend **CSHB 3** as follows:

(1) Strike SECTION 3A.05 of the bill, amending Section 151.315, Tax Code, and renumber subsequent SECTIONS of the bill accordingly.

(2) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES of the bill accordingly:

ARTICLE __. TAXES ON ALCOHOL

SECTION ___.01. Section 203.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 203.01. TAX ON BEER. A tax is imposed on the first sale of beer manufactured in this state or imported into this state at the rate of $11 [~~six dollars~~] per barrel.

SECTION ___.02. This article takes effect September 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this article takes effect November 1, 2005.

Representative Geren moved to table Amendment No. 20.

(Branch in the chair)

A record vote was requested.

The motion to table prevailed by (Record 31): 101 Yeas, 41 Nays, 3 Present, not voting.

Yeas — Allen, A.; Alonzo; Anchia; Bailey; Baxter; Blake; Bonnen; Brown, B.; Brown, F.; Burnam; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, R.; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Elkins; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Haggerty; Hamilton; Hamric; Hardcastle; Hegar; Herrero; Hochberg; Hodge; Homer; Hope; Hupp; Isett; Keel; Keffer, J.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; Merritt; Moreno, P.; Morrison; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Solis; Solomons; Strama; Straus; Swinford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; Wong; Woolley.

Nays — Allen, R.; Anderson; Berman; Bohac; Callegari; Cook, B.; Corte; Crabb; Crownover; Dawson; Eissler; Flynn; Griggs; Harper-Brown; Hartnett; Hilderbran; Hill; Hopson; Howard; Hughes; Hunter; Jackson; Jones, J.; Keffer, B.; King, P.; Laubenberg; McReynolds; Miller; Mowery; Paxton; Phillips; Pitts; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Talton; Taylor; West; Zedler.

Present, not voting — Mr. Speaker; Branch(C); Guillen.

Absent, Excused — Dukes; Jones, D.

Absent — Grusendorf; Menendez.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 31. I intended to vote no.

B. Brown

When Record No. 31 was taken, I was in the house but away from my desk. I would have voted yes.

Menendez

Amendment No. 21

Representatives Baxter and Otto offered the following amendment to **CSHB 3**:

Floor Packet Page No. 439

Amend **CSHB 3** as follows:

(1) On page 38, line 27, strike "7.35" and substitute "7.25".
(1) On page 39, line 4, strike "7.35" and substitute "7.25".

Amendment No. 21 - Point of Order

Representative Dunnam raised a point of order against further consideration of Amendment No. 21 on the grounds that it violates the Committee on Calendars rule adopted July 5.

The speaker sustained the point of order.

The ruling precluded further consideration of Amendment No. 21.

Amendment No. 22

Representative West offered the following amendment to **CSHB 3**:

Floor Packet Page No. 440

Amend **CSHB 3** to add Subsection (D) to Section 21.02, Tax Code

(D) This subsection does not apply to a drilling rig designed for offshore drilling or exploration operations. A mobile portable drilling rig, and equipment associated with the drilling rig, is taxable by the taxing unit in which the rig is located on January 1 if the rig was located in the unit for the preceding 365 consecutive days. If the rig and associated equipment was not located at its January 1 location for the preceding 365 days, it is taxable by the taxing unit in which the owner's principal place of business in this state is located on January 1.

Amendment No. 22 was adopted.

Amendment No. 23

Representative Hill offered the following amendment to **CSHB 3**:

Floor Packet Page No. 441

Amend **CSHB 3** by adding the following appropriately numbered SECTION:

SECTION ___. Section 23.12, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) In this subsection, "drug supplies held in surplus" means drugs, as defined by the TEXAS FOOD, DRUG AND COSMETIC ACT, Section 431.002(14), Health and Safety Code, that are owned by a person who holds a wholesale drug distributor license under Chapter 431, Health and Safety Code, other than a pharmaceutical drug manufacturer, retail pharmacy, or chain pharmacy, and that are held for less than a temporary period, for use in responding to catastrophic man-made or natural disasters, public emergencies and local trauma needs, but only that percentage of the owner's inventory necessary to treat victims of catastrophic man-made or natural disasters, public emergencies and incidents of local trauma by attending physicians or other emergency health care personnel. In determining the market value of drug supplies held in surplus, the chief appraiser shall exclude as economic obsolescence from the market value the value attributable to drug supplies held in surplus that exceed the amount of drugs held for normal market purposes. For rendition purposes, in calculating the number of days drug supplies held in surplus are held in an inventory, the owner

shall quantify the average number of days of the owner's day-to-day working inventory (cycle stock) that the owner holds to meet normal customer demand and shall subtract that number of days from the average number of days the owner holds the owner's total drug inventory. When the owner renders the owner's total drug inventory, the owner shall include information sufficient to establish the validity of the owner's calculations under this subsection. Notwithstanding any other provision of this subsection, the percentage of an owner's drug supplies held in surplus inventory may not exceed 10 percent of the owner's total inventory of drugs as defined by Section 431.002(14), Health and Safety Code.

Amendment No. 23 was withdrawn.

CSHB 3 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of **CSHB 3** under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis contains multiple inaccuracies.

The speaker overruled the point of order, speaking as follows:

Representative Y. Davis raised a point of order against further consideration of **CSHB 3**. Ms. Davis raises eight violations of Rule 4, Section 32(c) (accuracy of the bill analysis), which the chair respectfully overrules.

The chair has examined the bill analysis, which is a summary analysis authorized under the rules. The chair believes that the analysis is not significantly misleading or inaccurate and that it complies with the rules.

For these reasons, the point of order is respectfully overruled.

Amendment No. 24

Representative Rodriguez offered the following amendment to **CSHB 3**:

Floor Packet Page No. 443

AMEND **CSHB 3** BY ADDING THE FOLLOWING APPROPRIATELY DESIGNATED ARTICLE AND RE-DESIGNATING SUBSEQUENT ARTICLES ACCORDINGLY:

ARTICLE ___ PROPERTY TAXATION

PART B. RESIDENTIAL TENANT PROPERTY TAX RELIEF

SECTION __.01. Title 1, Tax Code, is amended by adding Chapter 61 to read as follows:

CHAPTER 61. PROPERTY TAX RELIEF FOR RESIDENTIAL TENANTS

Sec. 61.001. PURPOSE. The purpose of this chapter is to ensure that residential rental tenants receive direct and immediate benefit from reductions in local school district ad valorem taxes until the benefit of that tax relief is fully reflected in rental rates through free market competition and that every residential landlord gives a monthly rent credit or rebate, at the landlord's option, to each tenant who is renting a residential dwelling unit in this state during 2006, 2007, and 2008.

Sec. 61.002. DEFINITIONS. In this chapter:

(1) "Landlord" means the owner, lessor, or sublessor of a dwelling unit, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in a written or oral lease.

(2) "Lease" means a written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling unit.

(3) "Multifamily rental dwelling property" means a multiunit residential property with two or more rental dwelling units. The term includes a duplex, apartment building, dormitory, manufactured housing community, retirement center or community, and assisted living center and any other multiunit rental residential property subject to local school district ad valorem taxes.

(4) "Rent" includes the total amount charged by a landlord, or by a person on the landlord's behalf, for the use and occupancy of a dwelling unit. The term does not include a refundable security deposit.

(5) "Rental dwelling unit" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(6) "Tenant" means an individual who is authorized by a lease to occupy a dwelling to the exclusion of others other than cotenants and who is obligated under the lease to pay rent.

Sec. 61.003. APPLICABILITY. (a) This chapter applies only to a rental dwelling unit or multifamily rental dwelling property that is subject to ad valorem taxation by a school district.

(b) This chapter does not apply to a temporary residential tenancy created by a contract of sale under which the buyer is entitled to occupy the property before closing or the seller is entitled to occupy the property after closing for a term of not more than 90 days.

Sec. 61.004. CREDIT OR REBATE TO TENANT OF LANDLORD'S PROPERTY TAX SAVINGS. A landlord shall provide each of the landlord's tenants with a monthly credit or rebate on the tenant's rent to reflect a portion of the landlord's school district ad valorem tax savings for 2006, 2007, and 2008.

Sec. 61.005. NOTICE BY CHIEF APPRAISERS. (a) On or before December 1, 2005, or as soon as practicable after that date, the chief appraiser of each appraisal district shall send to all residential property owners a notice describing the requirements of this chapter. The notice shall contain language substantially similar to the following:

"Due to the property tax relief law approved by the 2005 Texas Legislature, residential landlords are required to pass along school district ad valorem tax savings to their tenants under all leases in effect as of January 1, 2006, and for all leases entered into in 2006, 2007, and 2008. These savings must be provided to tenants by giving a monthly rent credit or rebate that reflects a portion of the property tax savings on school property taxes. Failure to comply with this law could result in severe penalties, including a civil penalty of $100, treble damages, and attorney's fees. Information on complying with this law is available by contacting the (name, address, and telephone number of appraisal district) or by contacting the Texas Comptroller of Public Accounts by calling 1-800-252-5555."

(b) The notice required under Subsection (a) may be sent to property owners as part of another communication sent by the appraisal district under Section 31.01 and is not required to be sent to property owners as a separate communication.

Sec. 61.006. TAX SAVINGS CALCULATIONS BY LANDLORDS. (a) For each year to which this chapter applies, a landlord shall determine the monthly school district ad valorem tax savings payable to the landlord's tenants as follows:

(1) the monthly rent credit or rebate for a single-family rental dwelling unit is equal to 6.25 percent of the difference between the amount of school district maintenance and operations taxes imposed on the dwelling unit for the 2005 tax year and the amount of the school district maintenance and operations taxes that would have been imposed on that dwelling unit for that year if the dwelling unit had been taxed at a school district maintenance and operations tax rate of $1.12 plus the school district enrichment tax rate in that tax year per $100 of taxable value; and

(2) the monthly rent credit or rebate for a rental dwelling unit in a multifamily rental dwelling property is equal to 6.25 percent of the difference between the amount of school district maintenance and operations taxes imposed on the dwelling unit for the 2005 tax year and the amount of the school district maintenance and operations taxes that would have been imposed on that dwelling unit for that year if the dwelling unit had been taxed at the school district maintenance and operations tax rate of the current year.

(b) The amount of the rent credit or rebate under Subsection (a) shall be calculated on a per-dwelling-unit basis and not on a per-tenant basis.

(c) If the amount of the rent credit or rebate calculated under Subsection (a) is less than zero, the rent credit or rebate is zero.

Sec. 61.007. DATE OF REQUIRED CREDIT OR REBATE. (a) If a landlord gives a monthly credit to a tenant under this chapter, the landlord shall give the credit on the due date for each month's rent.

(b) If a landlord pays a monthly rent rebate to the tenant, the landlord shall pay the rebate not later than the 10th day after the date the tenant pays the entire rent due for the month. A landlord is presumed to have timely paid a rebate if the rebate is placed in the United States mail and postmarked on or before that date.

(c) If the tenant's rent is payable weekly, the amount of the weekly credit or rebate is equal to 1/52 of the credit or rebate for the entire year.

Sec. 61.008. LANDLORD'S NOTICE TO TENANTS. (a) In connection with each lease agreement for a rental dwelling unit entered into before January 1, 2006, that has not terminated or expired as of that date, the landlord shall provide a notice to each tenant on or before January 5, 2006, in boldface, 14-point or larger type, that substantially states the following:

"NOTICE OF TAX SAVINGS ON RENT

"Your current monthly rent on (insert unit number or street address) is $(insert amount of rent).

"Because of the property tax relief law approved by the 2005 Texas Legislature, the amount of school district property taxes for your dwelling unit has been reduced by (insert percentage savings) percent. The property tax relief law provides that the property owner must pass along tax savings to you and other tenants until sufficient time has elapsed for the tax relief to be fully reflected in rental rates through free market competition.

"Accordingly, you will receive a rent credit (or rebate check) of $ (insert monthly prorated amount) for the current month of January and for each month thereafter until the date your current lease expires or December 31, 2008, whichever date is first. If the amount of taxes imposed on your dwelling unit is not increased or decreased, the cumulative amount of property tax savings that will be passed on to you during the term of your lease as a result of the 2005 property tax relief legislation is projected to be $ (insert cumulative savings for the unit for the term of the lease).

"This means the net rent you will be paying for this month and each subsequent month under your current lease will be $ (insert net rent rate), and your rent should also be lower if you enter into a new lease for any rental dwelling unit in Texas any time in 2006, 2007, or 2008, through the date your new lease term expires or December 31, 2008, whichever date is earlier.

"If you have any questions about this new law, please contact the County Appraisal District at (insert address and main phone number of the appraisal district established for the county in which the rental dwelling unit is located)."

(b) The notice required by Subsection (a) shall be translated and printed in English and Spanish. A notice provided by a landlord under this section must be provided in both languages if the rental dwelling unit is located in a county in which the Hispanic population exceeds 25 percent of the total population of that county according to the most recent federal census information available.

Sec. 61.009. CREDIT OR REBATE FOR MULTIPLE TENANTS. If two or more tenants are on a lease for the same rental dwelling unit, the credit or rebate under this chapter shall be provided jointly to all tenants renting the dwelling.

Sec. 61.010. PENALTIES. (a) A landlord who fails to comply with this chapter is liable to the affected tenant for a civil penalty of $100 and treble the amount of any required rent credit or rebate that was not provided to the tenant.

(b) In a suit involving the payment of a rent credit or rebate, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.

Sec. 61.011. TAX APPRAISALS. In tax years 2006-2008, a chief appraiser or an appraisal district may not consider a reduction of school district ad valorem taxes attributable to this chapter in any determination of the appraised value of a rental dwelling unit, real property containing a rental dwelling unit, or a multifamily rental dwelling property.

Sec. 61.012. EXPIRATION. This chapter expires January 1, 2009.

SECTION __.02. Chapter 1, Tax Code, is amended by adding Section 1.16 to read as follows:

Sec. 1.16. LANDLORD LIABILITY FOR RESIDENTIAL TENANTS RELIEF. The expiration of Chapter 61 does not affect the liability of a landlord or other person for any amount arising under Chapter 61 before the expiration, and the law governing that liability remains in effect notwithstanding the expiration for purposes of enforcing or satisfying the liability.

Representative Isett moved to table Amendment No. 24.

A record vote was requested.

The motion to table prevailed by (Record 32): 91 Yeas, 43 Nays, 3 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Crabb; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Eissler; Elkins; Farabee; Flynn; Frost; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Hegar; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; McCall; McReynolds; Merritt; Miller; Morrison; Nixon; Oliveira; Orr; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Burnam; Castro; Chavez; Coleman; Davis, Y.; Dutton; Edwards; Escobar; Farrar; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Herrero; Hochberg; Hodge; Jones, J.; Leibowitz; Luna; Martinez; Martinez Fischer; Menendez; Moreno, P.; Naishtat; Noriega, M.; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Thompson; Turner; Uresti; Veasey; Villarreal; West.

Present, not voting — Mr. Speaker; Otto(C); Vo.

Absent, Excused — Dukes; Jones, D.

Absent — Corte; Crownover; Dunnam; Eiland; Flores; Guillen; Hardcastle; Hilderbran; McClendon; Mowery.

STATEMENTS OF VOTE

When Record No. 32 was taken, my vote failed to register. I would have voted yes.

Guillen

When Record No. 32 was taken, I was in the house but away from my desk. I would have voted yes.

Hilderbran

I was shown voting no on Record No. 32. I intended to vote yes.

Menendez

(Otto in the chair)

Amendment No. 25

Representative Hope offered the following amendment to **CSHB 3**:

Floor Packet Page No. 473

Amend **CSHB 3** by adding the following appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

ARTICLE _. MIXED BEVERAGE TAX

SECTION _.01. Subchapter B, Chapter 183, Tax Code, is amended by adding Section 183.0212 to read as follows:

Sec. 183.0212. SEPARATE STATEMENT OF TAX REQUIRED. A permittee shall ensure that each invoice, billing, sales slip, or ticket for the purchase of an item subject to taxation under this chapter includes a separate statement of the amount of tax imposed under this chapter in relation to that item.

SECTION _.02. This article takes effect September 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this article takes effect November 1, 2005.

Amendment No. 25 was adopted.

Amendment No. 26

Representative B. Cook offered the following amendment to **CSHB 3**:

Floor Packet Page No. 474

Amend **CSHB 3** as follows:

(1) Add the following appropriately numbered ARTICLE to read as follows and renumber subsequent ARTICLES accordingly:

ARTICLE __. TAX ON FIRST SALE OF BEER OR WINE

SECTION __.01. Subchapter A, Chapter 201, Alcoholic Beverage Code, is amended by adding Section 201.045 to read as follows:

Sec. 201.045. GROSS RECEIPTS TAX. (a) A tax is imposed on the first sale of wine and vinous liquor to a license holder who intends to sell the wine and vinous liquor at retail for off-premises consumption.

(b) The rate of the tax is _____ percent of the gross receipts from the first sale of the wine and vinous liquor.

(c) The tax imposed under this section is collected and enforced in the same manner as the tax imposed under Section 201.04 is collected and enforced.

(d) Subject to Subsection (e), a license holder who purchases wine and vinous liquor for sale at retail for off-premises consumption may request from the comptroller reimbursement for taxes paid under this section during a tax period in relation to wine and vinous liquor that the license holder loses by fire, theft, or accident.

(e) A license holder may not file a request for reimbursement if the amount of taxes paid under this section in relation to the lost wine and vinous liquor is less than $20.

SECTION __.02. Chapter 203, Alcoholic Beverage Code, is amended by adding Section 203.015 to read as follows:

Sec. 203.015. GROSS RECEIPTS TAX. (a) A tax is imposed on the first sale of beer to a license holder who intends to sell the beer at retail for off-premises consumption.

(b) The rate of the tax is _____ percent of the gross receipts from the first sale of the beer.

(c) The tax imposed under this section is collected and enforced in the same manner as the tax imposed under Section 203.01 is collected and enforced.

(d) Subject to Subsection (e), a license holder who purchases beer for sale at retail for off-premises consumption may request from the comptroller reimbursement for taxes paid under this section during a tax period in relation to beer that the license holder loses by fire, theft, or accident.

(e) A license holder may not file a request for reimbursement if the amount of taxes paid under this section in relation to the lost beer is less than $20.

SECTION __.03. Section 151.308(a), Tax Code, is amended to read as follows:

(a) The following are exempted from the taxes imposed by this chapter:

(1) oil as taxed by Chapter 202;

(2) sulphur as taxed by Chapter 203;

(3) motor fuels and special fuels as defined, taxed, or exempted by Chapter 162 [~~153~~];

(4) cement as taxed by Chapter 181;

(5) motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Chapter 152, other than a mobile office as defined by Section 152.001(16);

(6) mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Chapter 183;

(7) alcoholic beverages when sold to the holder of a private club registration permit or to the agent or employee of the holder of a private club registration permit if the holder or agent or employee is acting as the agent of the members of the club and if the beverages are to be served on the premises of the club;

(8) oil well service as taxed by Subchapter E, Chapter 191; [~~and~~]

(9) insurance premiums subject to gross premiums taxes;

(10) wine and vinous liquor on which the first sale of that wine and vinous liquor was taxed under Section 201.045, Alcoholic Beverage Code; and

(11) beer on which the first sale of that beer was taxed under Section 203.015, Alcoholic Beverage Code.

SECTION __.04. This article takes effect September 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this article takes effect November 1, 2005.

(2) Strike SECTIONS 3A.01-3A.03 (page 29, line 12, through page 31, line 17), and renumber subsequent SECTIONS accordingly.

Amendment No. 26 was withdrawn.

Amendment No. 27

Representative Wong offered the following amendment to **CSHB 3**:

Floor Packet Page No. 483

Amend **CSHB 3** by adding the following appropriately numbered section to Part A of Article 3 of the bill and renumbering subsequent sections accordingly:

SECTION 3A.___. (a) There are exempted from the increase in the rate of the tax imposed by Chapter 151, Tax Code, that is made by this part the receipts from the sale, use, or rental and the storage, use, or consumption in this state of taxable items, if:

(1) the items are used:

(A) for the performance of a construction contract entered into on or before August 1, 2005, if the contract is not subject to change or modification because of the tax rate increase made by this part; or

(B) pursuant to an obligation of a bid submitted for a construction contract submitted on or before August 1, 2005, if the bid may not be withdrawn, modified, or changed because of the tax rate increase made by this part; and

(2) an electronic or paper copy of the contract or bid on which the exemption is claimed is given by the taxpayer to the comptroller not later than October 1, 2005.

(b) The exemption provided by this section expires August 14, 2008.

Amendment No. 27 was withdrawn.

Amendment No. 28

Representative Elkins offered the following amendment to **CSHB 3**:

Floor Packet Page No. 489

Amend **CSHB 3** as follows:

(1) Add the following appropriately numbered article and renumber the subsequent articles of the bill accordingly:

ARTICLE __. DEPOSIT OF CERTAIN TRAFFIC PENALTIES IN GENERAL REVENUE FUND

SECTION __.01. Subchapter D, Chapter 542, Transportation Code, is amended by adding Section 542.405 to read as follows:

Sec. 542.405. DEPOSIT OF REVENUE FROM CERTAIN TRAFFIC PENALTIES TO GENERAL REVENUE FUND. (a) In this section, "photographic traffic signal enforcement system" means a system that:

(1) consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal;

(2) is capable of producing one or more recorded photographic or digital images that depict the license plate attached to the front or the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal; and

(3) is designed to enforce compliance with the instructions of the traffic-control signal by imposition of a civil or administrative penalty against the owner of the motor vehicle.

(b) This section applies only to a civil or administrative penalty imposed on the owner of a motor vehicle by a local authority that operates or contracts for the operation of a photographic traffic signal enforcement system with respect to a highway under its jurisdiction or that operates or contracts for the operation of any other type of electronic traffic law enforcement system consisting of a camera system that automatically produces one or more recorded photographs or digital images of the license plate on a motor vehicle or the operator of a motor vehicle.

(c) Of the gross amount received by a local authority from the imposition of a civil or administrative penalty against the owner of a motor vehicle, the local authority may retain $1 and shall remit the remainder to the comptroller for deposit to the credit of the general revenue fund.

(d) The comptroller shall adopt rules and forms to implement and enforce this section.

SECTION __.02. Section 542.405, Transportation Code, as added by this article, applies to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this Act, regardless of whether the penalty was imposed before, on, or after the effective date of this Act.

(2) On page 1, line 18, strike "$1.12" and substitute "$___".

(3) On page 2, line 6, strike "$1.23" and substitute "$___".

(4) On page 2, line 24, strike "$1.23" and substitute "$___".

(5) On page 2, line 26, strike "$1.23" and substitute "$___".

(6) On page 3, line 1, strike "$1.12" and substitute "$___".

(7) On page 3, line 2, strike "$1.12" and substitute "$___".

Amendment No. 28 was adopted. (Driver and Goolsby recorded voting no.)

Amendment No. 29

Representative Coleman offered the following amendment to **CSHB 3**:

Floor Packet Page No. 491

Amend **CSHB 3**, in Article 1 of the bill, by adding a new part, appropriately designated, to read as follows:

PART ___. PROPERTY TAX RELIEF FOR CULTURALLY SIGNIFICANT SITES

SECTION 1__.01. Section 11.24, Tax Code, is amended to read as follows:

Sec. 11.24. HISTORIC AND CULTURALLY SIGNIFICANT SITES. The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all

of the assessed value of a structure or archeological site and the land necessary for access to and use of the structure or archeological site, if the structure or archeological site is:

(1) designated as a Recorded Texas Historic Landmark under Chapter 442, Government Code, or a state archeological landmark under Chapter 191, Natural Resources Code, by the Texas Historical Commission; or

(2) designated as a historically, culturally, or archeologically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the unit.

SECTION 1__.02. The change in law made by Section 1__.01 of this part applies only to a tax year that begins on or after the effective date of this Act.

Amendment No. 29 was adopted.

Amendment No. 30

Representative Chisum offered the following amendment to **CSHB 3**:

Floor Packet Page No. 401

Amend **CSHB 3** as follows:

(1) On page 26, line 9, strike "or".

(2) On page 26, line 15, strike the period and substitute:

; or

(3) during the period on which earned surplus is based, the corporation received the amount from a person or entity that is not a related party, and on behalf of that unrelated person or entity, paid that amount to the related party in an arm's length transaction.

Amendment No. 31

Representative Chisum offered the following amendment to Amendment No. 30:

Amend the Chisum amendment to **CSHB 3** (page 401, amendment packet) by inserting an appropriately numbered item to read as follows:

(__) On page 26, line 7, strike "party," and substitute "party or".

(Speaker in the chair)

Amendment No. 31 was adopted.

Amendment No. 30, as amended, was adopted.

Amendment No. 32

Representative Hartnett offered the following amendment to **CSHB 3**:

Floor Packet Page No. 484

Amend **CSHB 3** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE ___. UNCLAIMED PROPERTY

SECTION __.01. Subchapter H, Chapter 74, Property Code, is amended by adding Section 74.7085 to read as follows:

Sec. 74.7085. HEARING. (a) If, after an examination of records under Section 74.702, the comptroller determines that a person holds unclaimed property that should have been delivered to the comptroller as provided by this chapter, the person may petition the comptroller for a hearing on that determination and on the imposition of any interest or penalty resulting from that determination.

(b) A person must file a petition for a hearing with the comptroller under this section not later than the 30th day after the date the determination is made. If a petition for a hearing is not filed before the expiration of the period provided by this subsection, the determination is final on the expiration of that period.

(c) At the time a person files a petition for a hearing under Subsection (b), the person must pay to the comptroller a hearing fee in the amount of $50, which the comptroller shall use for the purpose of administering hearings under this section.

SECTION __.02. Subchapter A, Chapter 74, Property Code, is amended by adding Section 74.002 to read as follows:

Sec. 74.002. SINGLE BUSINESS ENTERPRISE DOCTRINE INAPPLICABLE. The single business enterprise doctrine does not apply to this chapter.

SECTION __.03. The change in law made by Section 74.7085, Property Code, as added by this article, applies only to a determination by the comptroller made on or after the effective date of this Act. A determination by the comptroller made before the effective date of this Act is governed by the law in effect on the date the determination was made, and the former law is continued in effect for that purpose.

SECTION __.04. Section 74.002, Property Code, as added by this article, is intended only to clarify existing law with respect to Chapter 74, Property Code.

Amendment No. 32 was adopted.

Amendment No. 33

Representative Isett offered the following amendment to **CSHB 3**:

Floor Packet Page No. 496

Amend **CSHB 3** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE __. NONSETTLING MANUFACTURER FEES

SECTION __.01. Chapter 161, Health and Safety Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) prevent nonsettling manufacturers from undermining this state's policy of discouraging underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(2) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of nonsettling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of nonsettling manufacturer cigarettes and cigarette tobacco products;

(3) provide funding to enforce and administer this subchapter and any legislation relating to nonsettling manufacturers; and

(4) provide funding for any other purpose the legislature determines.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings," and "100s." The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use. The term includes:

(A) a roll of tobacco wrapped in paper or another substance that does not contain tobacco;

(B) tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(C) a roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes and cigarette tobacco products manufactured outside the United States.

(5) "Master settlement agreement" means the settlement agreement and related documents entered into in 1998 by 46 states and leading United States tobacco manufacturers.

(6) "Nonsettling manufacturer" means a manufacturer of cigarettes that did not sign the tobacco settlement agreement.

(7) "Nonsettling manufacturer cigarette tobacco products" means cigarette tobacco products manufactured, fabricated, assembled, or imported by a nonsettling manufacturer.

(8) "Nonsettling manufacturer cigarettes" means cigarettes manufactured, fabricated, assembled, or imported by a nonsettling manufacturer.

(9) "Settling states" and "subsequent participating manufacturer" have the meanings assigned those terms in the master settlement agreement.

(10) "Tobacco settlement agreement" means the Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in the United States District Court, Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91. The term includes the subsequent Clarification of Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in that litigation.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) nonsettling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Chapter 154, Tax Code;

(2) nonsettling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code; and

(3) nonsettling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(c) The fee imposed by this subchapter is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(d) Except as otherwise provided by this subchapter, the fee imposed by this subchapter is imposed, collected, paid, administered, and enforced in the same manner, taking into account that the fee is imposed on nonsettling manufacturers, as the taxes imposed by Chapters 154 and 155, Tax Code, as appropriate.

(e) The fee imposed by this section does not apply to a subsequent participating manufacturer until the date on which the National Association of Attorneys General provides notice to the attorney general of this state that the settling states have offered subsequent participating manufacturers a qualifying credit against their payments under the master settlement agreement. An offered credit shall be considered a qualifying credit if, in each year, it makes available to each subsequent participating manufacturer, other than any subsequent participating manufacturer that has an agreement described by Subsection (f) as of November 1, 2005, a credit against its payment obligations under the master settlement agreement that is equal to or greater than the product of the total number of individual cigarettes sold by that subsequent participating manufacturer in this state during the applicable year multiplied by at least 73.2 percent of the per-cigarette fee provided for in this section, and does not condition that credit on the subsequent participating manufacturer forfeiting

wholly or partly other benefits or credits provided for in the master settlement agreement, except for a reduction in that subsequent participating manufacturer's "grandfather share" under the master settlement agreement as follows:

(1) the market share that is not subject to the subsequent participating manufacturer's payment obligations under Article IX(i) of the master settlement agreement shall be calculated by subtracting from either 125 percent of the subsequent participating manufacturer's 1997 volume or 100 percent of its 1998 volume, depending on which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations, the lesser of:

(A) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 2004; or

(B) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 1998 or 125 percent of the percentage of that subsequent participating manufacturer's nationwide sales made at retail in this state in 1997, depending on which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations; and

(2) the effect of the proposed grandfather share reduction on the subsequent participating manufacturer's master settlement agreement payments shall be phased in according to the following schedule:

(A) one percent of the reduction shall be reflected in the payment due under the master settlement agreement on April 15, 2006; and

(B) in each subsequent April 15 payment, the following additional percentages of the reduction shall be reflected:

(i) two percent;
(ii) three percent;
(iii) five percent;
(iv) seven percent;
(v) eight percent;
(vi) nine percent;
(vii) 10 percent;
(viii) 12 percent;
(ix) 13 percent;
(x) 14 percent; and
(xi) 16 percent.

(f) Subsection (e) does not apply to any subsequent participating manufacturer that as of November 1, 2005, had an agreement with the settling states, pursuant to which agreement the subsequent participating manufacturer has agreed to a different credit against its payment obligations under the master settlement agreement based on its cigarette sales in this state.

Sec. 161.604. RATE OF FEE. (a) Except as provided by Subsection (b), the fee is imposed at the rate of two cents for:

(1) each nonsettling manufacturer cigarette; and

(2) each 0.09 ounce of nonsettling manufacturer cigarette tobacco product.

(b) On January 1 of each year, the comptroller shall increase the rate of the tax prescribed by Subsection (a) by the greater of:

(1) three percent; or

(2) the percentage increase in the most recent annual revised Consumer Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

Sec. 161.605. DISTRIBUTOR'S REPORT. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of nonsettling manufacturer cigarettes during the preceding month;

(2) the number of individual packages of nonsettling manufacturer cigarettes sold or purchased in this state or otherwise distributed in this state for sale in the United States; and

(3) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) The information required by Subsections (a)(1) and (2) must be itemized for each place of business and by manufacturer and brand family.

(c) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Each month, not later than the 10th day after the date the comptroller receives the information required by Section 161.605, the comptroller shall:

(1) compute the amount of the fee imposed by this subchapter that each nonsettling manufacturer owes for that reporting period based on that information and any other information available to the comptroller; and

(2) mail to each nonsettling manufacturer a notice of the amount of the fee the manufacturer owes.

(b) Not later than the 15th day of the month after the month in which the comptroller mails a nonsettling manufacturer a notice under Subsection (a), the nonsettling manufacturer shall send to the comptroller the amount of the fee due according to the notice.

Sec. 161.607. CERTIFICATION TO ATTORNEY GENERAL. (a) Not later than the first day of each month, a nonsettling manufacturer who is required to pay the fee imposed by this subchapter shall certify to the attorney general that the manufacturer is in compliance with this subchapter and has paid in full the fee imposed by this subchapter.

(b) The attorney general shall develop, maintain, and publish on the attorney general's Internet website a directory listing of all nonsettling manufacturers that have provided current, accurate, and complete certifications.

(c) The attorney general shall provide the list described by Subsection (b) to any person on request.

Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a nonsettling manufacturer are not offered for sale or distribution in this state on November 1, 2005, the nonsettling manufacturer may not offer those cigarettes or cigarette tobacco products for sale or distribution in this state after that date unless the manufacturer first prepays the fee imposed by this subchapter for sales of cigarettes and cigarette tobacco products that will occur in the first calendar month in which they are sold or distributed in this state.

(b) The amount a nonsettling manufacturer is required to prepay under this section is equal to the greater of:

(1) the rate prescribed by Section 161.604 in effect on that date multiplied by:

(A) the number of cigarettes the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; and

(B) each 0.09 ounce of nonsettling manufacturer cigarette tobacco products the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; or

(2) $50,000.

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(d) The comptroller may require a nonsettling manufacturer to provide any information reasonably necessary to determine the prepayment amount.

(e) The comptroller shall establish procedures to:

(1) reimburse a nonsettling manufacturer if the actual sales or distributions in the first calendar month are less than the projected sales or distributions; and

(2) require additional payments if the actual sales or distributions in the first calendar month are greater than the projected sales or distributions.

(f) A nonsettling manufacturer shall pay the fee imposed by this subchapter in the manner provided by Section 161.606 beginning in the second calendar month in which the manufacturer offers the cigarettes or cigarette tobacco products for sale or distribution in this state.

Sec. 161.609. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) In addition to prepaying the fee required by Section 161.608, a nonsettling manufacturer described by Section 161.608(a) shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer will offer for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with this subchapter; and

(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes and cigarette tobacco products of a nonsettling manufacturer that has not complied with this subchapter, including full payment of the fee imposed by this subchapter, shall be treated as cigarettes for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

(b) The comptroller shall provide to a nonsettling manufacturer a notice of noncompliance with this subchapter if the manufacturer:

(1) does not pay in full the fee imposed by this subchapter; or

(2) is not included on the list described by Section 161.607(b).

(c) On receipt of the notice of noncompliance, the nonsettling manufacturer may not:

(1) pay the tax imposed by Chapter 154 or 155, Tax Code, as appropriate;

(2) affix to a package of cigarettes the stamp required by Section 154.041, Tax Code; or

(3) otherwise purchase, sell, or distribute cigarettes in this state.

Sec. 161.611. APPLICATION OF SUBCHAPTER. This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

SECTION __.02. (a) Not later than November 30, 2005, a nonsettling manufacturer, as that term is defined by Section 161.602, Health and Safety Code, as added by this article, that is offering cigarettes or cigarette tobacco products for sale or distribution in this state on November 1, 2005, shall provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer began offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer offers for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with Subchapter U, Chapter 161, Health and Safety Code, as added by this article; and

(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under Subsection (a) of this section available to the comptroller.

SECTION __.03. This article takes effect November 1, 2005.

Representative Hardcastle moved to table Amendment No. 33.

A record vote was requested.

The motion to table prevailed by (Record 33): 104 Yeas, 38 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Campbell; Casteel; Castro; Chavez; Coleman; Cook, R.; Corte; Crabb; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Jones, J.; Keel; Keffer, B.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Luna; Madden; Martinez Fischer; McReynolds; Merritt; Miller; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Orr; Peña; Phillips; Pitts; Puente; Quintanilla; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solomons; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Veasey; Villarreal; Vo; West; Wong; Woolley.

Nays — Allen, A.; Alonzo; Blake; Callegari; Chisum; Cook, B.; Crownover; Denny; Edwards; Farrar; Gattis; Griggs; Guillen; Hamric; Herrero; Isett; Jackson; Keffer, J.; King, P.; Laubenberg; Leibowitz; Martinez; McCall; Menendez; Morrison; Mowery; Nixon; Otto; Pickett; Raymond; Reyna; Seaman; Smith, W.; Solis; Strama; Straus; Van Arsdale; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Jones, D.

Absent — Dawson; McClendon; Olivo; Paxton.

STATEMENT OF VOTE

I was shown voting yes on Record No. 33. I intended to vote no.

Howard

Amendment No. 34

Representative Swinford offered the following amendment to **CSHB 3**:

Floor Packet Page No. 508

Amend **CSHB 3** by adding the following ARTICLE, numbered appropriately, to read as follows:

ARTICLE ___. TEXAS ECONOMIC DEVELOPMENT ACT

SECTION __.01. Section 313.007, Tax Code, is amended to read as follows:

Sec. 313.007. EXPIRATION. Subchapters B, C, and D expire December 31, 2011 [~~2007~~].

SECTION __.02. Section 313.024(a), Tax Code, is amended to read as follows:

(a) This subchapter and Subchapters C and D apply only to property owned by an entity [~~a corporation or limited liability company~~] to which Chapter 171 [~~Section 171.001~~] applies.

SECTION __.03. Section 313.024(b), Tax Code, as amended by **HB 2201**, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(b) To be eligible for a limitation on appraised value under this subchapter, the entity [~~corporation or limited liability company~~] must use the property in connection with:

(1) manufacturing;

(2) research and development;

(3) a clean coal project, as defined by Section 5.001, Water Code;

(4) a gasification project for a coal and biomass mixture; or

(5) renewable energy electric generation.

SECTION __.04. Section 313.051, Tax Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) This subchapter applies only to a school district that has territory in:

(1) a strategic investment area, as defined by Section 171.721; [~~, Tax Code,~~] or

(2) [~~in~~] a county:

(A) [~~(1)~~] that has a population of less than 50,000;

(B) [~~(2)~~] that is not partially or wholly located in a metropolitan statistical area; and

(C) [~~(3)~~] in which, from 1990 to 2000, according to the federal decennial census, the population:

(i) [~~(A)~~] remained the same;

(ii) [~~(B)~~] decreased; or

(iii) [~~(C)~~] increased, but at a rate of not more than three percent per annum.

(a-1) Notwithstanding Subsection (a), if on January 1, 2002, this subchapter applied to a school district in whose territory is located a federal nuclear facility, this subchapter continues to apply to the school district regardless of whether the school district ceased or ceases to be described by Subsection (a) after that date.

(b) The governing body of a school district to which this subchapter applies may enter into an agreement in the same manner as a school district to which Subchapter B applies may do so under Subchapter B, subject to Sections 313.052-313.054. Except as otherwise provided by this subchapter, the provisions of Subchapter B apply to a school district to which this subchapter applies. For purposes of this subchapter, a property owner is required to create

only at least 10 new jobs on the owner's qualified property. At least 80 percent of all the new jobs created must be qualifying jobs as defined by Section 313.021(3), except that, for a school district described by Subsection (a)(2) of this section, each qualifying job must pay at least 110 percent of the average weekly wage for manufacturing jobs in the region designated for the regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, in which the district is located.

SECTION __.05. Section 313.051(b), Tax Code, as amended by this Act, applies only to a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes for which the owner files an application on or after the effective date of this Act. A limitation on the appraised value for school district maintenance and operations ad valorem tax purposes for which the owner files an application before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Amendment No. 34 was adopted.

Amendment No. 35

Representative Castro offered the following amendment to **CSHB 3**:

Floor Packet Page No. 422

Amend **CSHB 3** as follows:

(1) Strike page 30, line 14, through page 31, line 1, and substitute the following:

(5) the repair, remodeling, maintenance, and restoration of tangible personal property, including motor vehicle repair services [~~except:~~

[~~(A) aircraft;~~

[~~(B) a ship, boat, or other vessel, other than:~~

[~~(i) a taxable boat or motor as defined by Section 160.001;~~

[~~(ii) a sports fishing boat; or~~

[~~(iii) any other vessel used for pleasure;~~

[~~(C) the repair, maintenance, and restoration of a motor vehicle; and~~

[~~(D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service~~];

(2) On page 31, line 20, strike "7.25 [~~6 1/4~~] percent" and substitute "____ [~~6 1/4~~] percent".

(3) Add the following appropriately numbered SECTIONS to PART A, ARTICLE 3, of the bill and renumber subsequent SECTIONS of that PART accordingly:

SECTION 3A.__. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL SUPPLIES. (a) The sale or storage, use, or other consumption of a school supply is exempted from the taxes imposed by this chapter if the school supply is purchased for use by a student in a class in a public or private elementary or secondary school.

(b) For purposes of this exemption, "school supply" means:

(1) crayons;

(2) scissors;

(3) glue, paste, and glue sticks;

(4) pencils;

(5) pens;

(6) erasers;

(7) rulers;

(8) markers;

(9) highlighters;

(10) paper, including loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(11) writing tablets;

(12) spiral notebooks;

(13) bound composition notebooks;

(14) pocket folders;

(15) plastic folders;

(16) expandable portfolios;

(17) manila folders;

(18) three-ring binders that are three inches or less in capacity;

(19) backpacks and zipper pencil bags;

(20) school supply boxes;

(21) clipboards;

(22) index cards;

(23) index card boxes;

(24) calculators;

(25) protractors;

(26) compasses;

(27) music notebooks;

(28) sketch or drawing pads;

(29) paintbrushes;

(30) watercolors;

(31) acrylic, tempera, or oil paints;

(32) tape, including masking tape and Scotch tape;

(33) clay and glazes;

(34) pencil sharpeners;

(35) thesauruses; and

(36) dictionaries.

(c) A retailer is not required to obtain an exemption certificate stating that the school supplies are purchased for use by a student in a class in a public or private elementary or secondary school unless the supplies are purchased in a quantity that indicates that the supplies are not purchased for use by a student in a class in a public or private elementary or secondary school.

SECTION 3A.__. The change in law made by this part does not affect taxes imposed before the effective date of this part, and the law in effect before the effective date of this part is continued in effect for purposes of the liability for and collection of those taxes.

(4) On page 34, line 19, strike "Section 151.423, Tax Code, is" and substitute "Sections 151.328 and 151.423, Tax Code, are".

Amendment No. 36

Representatives Castro and Martinez Fischer offered the following amendment to Amendment No. 35:

Amend Amendment No. 35 by Castro to **CSHB 3** (amendment packet, page 422) by striking the text of the amendment and substituting the following:

Amend **CSHB 3** as follows:

(1) Strike page 30, line 14, through page 31, line 1, and substitute the following:

(5) the repair, remodeling, maintenance, and restoration of tangible personal property, including motor vehicle repair services, except:

(A) aircraft, if the repair, remodeling, or maintenance services to the aircraft are exempt from taxation under Section 151.328(b); and

(B) a ship, boat, or other vessel, other than:

(i) a taxable boat or motor as defined by Section 160.001;

(ii) a sports fishing boat; or

(iii) any other vessel used for pleasure[~~;~~

[~~(C) the repair, maintenance, and restoration of a motor vehicle; and~~

[~~(D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service~~];

(2) Add the following appropriately numbered SECTIONS to PART A, ARTICLE 3, of the bill and renumber subsequent SECTIONS of that PART accordingly:

SECTION 3A.__. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL SUPPLIES BEFORE START OF SCHOOL. (a) The sale or storage, use, or other consumption of a school supply is exempted from the taxes imposed by this chapter if the school supply is purchased:

(1) for use by a student in a class in a public or private elementary or secondary school;

(2) during the period described by Section 151.326(a)(2); and

(3) for a sales price of less than $100 per item.

(b) For purposes of this exemption, "school supply" means:

(1) crayons;

(2) scissors;

(3) glue, paste, and glue sticks;

(4) pencils;

(5) pens;

(6) erasers;
(7) rulers;
(8) markers;
(9) highlighters;
(10) paper, including loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
(11) writing tablets;
(12) spiral notebooks;
(13) bound composition notebooks;
(14) pocket folders;
(15) plastic folders;
(16) expandable portfolios;
(17) manila folders;
(18) three-ring binders that are three inches or less in capacity;
(19) backpacks and zipper pencil bags;
(20) school supply boxes;
(21) clipboards;
(22) index cards;
(23) index card boxes;
(24) calculators;
(25) protractors;
(26) compasses;
(27) music notebooks;
(28) sketch or drawing pads;
(29) paintbrushes;
(30) watercolors;
(31) acrylic, tempera, or oil paints;
(32) tape, including masking tape and Scotch tape;
(33) clay and glazes;
(34) pencil sharpeners;
(35) thesauruses; and
(36) dictionaries.

(c) A retailer is not required to obtain an exemption certificate stating that the school supplies are purchased for use by a student in a class in a public or private elementary or secondary school unless the supplies are purchased in a quantity that indicates that the supplies are not purchased for use by a student in a class in a public or private elementary or secondary school.

SECTION 3A.__. The change in law made by this part does not affect taxes imposed before the effective date of this part, and the law in effect before the effective date of this part is continued in effect for purposes of the liability for and collection of those taxes.

Amendment No. 36 was adopted.

Amendment No. 35, as amended, was withdrawn.

Amendment No. 37

Representative Leibowitz offered the following amendment to **CSHB 3**:

Floor Packet Page No. 520

Amend **CSHB 3** by adding the following appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

ARTICLE __. PUBLIC NOTICE RELATING TO TAX INCREASES AND DECREASES

SECTION __.01. (a) Not later than the 10th day after the date this Act takes effect:

(1) the chief clerk of the house of representatives and the secretary of the senate, as applicable, shall publish on the public Internet site maintained by or for the appropriate house in a manner that is easily accessible and searchable by members of the public:

(A) the record vote of that house on approval of this Act, including the vote of each individual member;

(B) a description of each tax increase or decrease prescribed by this Act, including an estimate of the amount of each increase or decrease according to revenue estimates prepared by the comptroller of public accounts; and

(C) whether the governor signed the legislation enacting this Act, and if so, the date on which the governor signed that legislation; and

(2) the governor shall:

(A) publish the information required by Subdivision (1) on the public Internet site maintained by or for the governor in a manner that is easily accessible and searchable by members of the public; and

(B) publish the information required by Subdivision (1) in each statewide and regional newspaper that, in the governor's judgment, will provide reasonable notice of that information throughout this state.

(b) The notice published by the governor under Subsection (a)(2)(B) must cover at least 25 percent of the page on which the notice is published.

Amendment No. 37 was withdrawn.

Amendment No. 38

Representative Castro offered the following amendment to **CSHB 3**:

Floor Packet Page No. 422

Amend **CSHB 3** as follows:

(1) Strike page 30, line 14, through page 31, line 1, and substitute the following:

(5) the repair, remodeling, maintenance, and restoration of tangible personal property, <u>including motor vehicle repair services</u> [~~except:~~

[~~(A) aircraft;~~

[~~(B) a ship, boat, or other vessel, other than:~~

[~~(i) a taxable boat or motor as defined by Section 160.001;~~

[~~(ii) a sports fishing boat; or~~

[~~(iii) any other vessel used for pleasure;~~

[~~(C) the repair, maintenance, and restoration of a motor vehicle; and~~

[~~(D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service~~];

(2) On page 31, line 20, strike "7.25 [~~6 1/4~~] percent" and substitute "____ [~~6 1/4~~] percent".

(3) Add the following appropriately numbered SECTIONS to PART A, ARTICLE 3, of the bill and renumber subsequent SECTIONS of that PART accordingly:

SECTION 3A.__. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL SUPPLIES. (a) The sale or storage, use, or other consumption of a school supply is exempted from the taxes imposed by this chapter if the school supply is purchased for use by a student in a class in a public or private elementary or secondary school.

(b) For purposes of this exemption, "school supply" means:

(1) crayons;

(2) scissors;

(3) glue, paste, and glue sticks;

(4) pencils;

(5) pens;

(6) erasers;

(7) rulers;

(8) markers;

(9) highlighters;

(10) paper, including loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(11) writing tablets;

(12) spiral notebooks;

(13) bound composition notebooks;

(14) pocket folders;

(15) plastic folders;

(16) expandable portfolios;

(17) manila folders;

(18) three-ring binders that are three inches or less in capacity;

(19) backpacks and zipper pencil bags;

(20) school supply boxes;

(21) clipboards;

(22) index cards;

(23) index card boxes;

(24) calculators;

(25) protractors;

(26) compasses;

(27) music notebooks;

(28) sketch or drawing pads;
(29) paintbrushes;
(30) watercolors;
(31) acrylic, tempera, or oil paints;
(32) tape, including masking tape and Scotch tape;
(33) clay and glazes;
(34) pencil sharpeners;
(35) thesauruses; and
(36) dictionaries.

(c) A retailer is not required to obtain an exemption certificate stating that the school supplies are purchased for use by a student in a class in a public or private elementary or secondary school unless the supplies are purchased in a quantity that indicates that the supplies are not purchased for use by a student in a class in a public or private elementary or secondary school.

SECTION 3A.__. The change in law made by this part does not affect taxes imposed before the effective date of this part, and the law in effect before the effective date of this part is continued in effect for purposes of the liability for and collection of those taxes.

(4) On page 34, line 19, strike "Section 151.423, Tax Code, is" and substitute "Sections 151.328 and 151.423, Tax Code, are".

Amendment No. 39

Representatives Castro and Martinez Fischer offered the following amendment to Amendment No. 38:

Amend Amendment No. 38 by Castro to **CSHB 3** (amendment packet, page 422) by striking the text of the amendment and substituting the following:

Amend **CSHB 3** as follows:

(1) Strike page 30, line 14, through page 31, line 1, and substitute the following:

(5) the repair, remodeling, maintenance, and restoration of tangible personal property, including motor vehicle repair services, except:

(A) aircraft, if the repair, remodeling, or maintenance services to the aircraft are exempt from taxation under Section 151.328(b); and

(B) a ship, boat, or other vessel, other than:

(i) a taxable boat or motor as defined by Section 160.001;

(ii) a sports fishing boat; or

(iii) any other vessel used for pleasure[~~;~~

[~~(C) the repair, maintenance, and restoration of a motor vehicle; and~~

[~~(D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service~~];

(2) Add the following appropriately numbered SECTIONS to PART A, ARTICLE 3, of the bill and renumber subsequent SECTIONS of that PART accordingly:

SECTION 3A.__. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL SUPPLIES BEFORE START OF SCHOOL. (a) The sale or storage, use, or other consumption of a school supply is exempted from the taxes imposed by this chapter if the school supply is purchased:

(1) for use by a student in a class in a public or private elementary or secondary school;

(2) during the period described by Section 151.326(a)(2); and

(3) for a sales price of less than $100 per item.

(b) For purposes of this exemption, "school supply" means:

(1) crayons;

(2) scissors;

(3) glue, paste, and glue sticks;

(4) pencils;

(5) pens;

(6) erasers;

(7) rulers;

(8) markers;

(9) highlighters;

(10) paper, including loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(11) writing tablets;

(12) spiral notebooks;

(13) bound composition notebooks;

(14) pocket folders;

(15) plastic folders;

(16) expandable portfolios;

(17) manila folders;

(18) three-ring binders that are three inches or less in capacity;

(19) backpacks and zipper pencil bags;

(20) school supply boxes;

(21) clipboards;

(22) index cards;

(23) index card boxes;

(24) calculators;

(25) protractors;

(26) compasses;

(27) music notebooks;

(28) sketch or drawing pads;

(29) paintbrushes;

(30) watercolors;

(31) acrylic, tempera, or oil paints;

(32) tape, including masking tape and Scotch tape;

(33) clay and glazes;

(34) pencil sharpeners;

(35) thesauruses; and

(36) dictionaries.

(c) A retailer is not required to obtain an exemption certificate stating that the school supplies are purchased for use by a student in a class in a public or private elementary or secondary school unless the supplies are purchased in a quantity that indicates that the supplies are not purchased for use by a student in a class in a public or private elementary or secondary school.

SECTION 3A.__. The change in law made by this part does not affect taxes imposed before the effective date of this part, and the law in effect before the effective date of this part is continued in effect for purposes of the liability for and collection of those taxes.

Amendment No. 39 was adopted.

Representative Chisum moved to table Amendment No. 38.

A record vote was requested.

The motion to table prevailed by (Record 34): 100 Yeas, 36 Nays, 1 Present, not voting.

Yeas — Allen, R.; Alonzo; Anderson; Bailey; Baxter; Berman; Blake; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Eissler; Elkins; Farabee; Flores; Flynn; Gattis; Geren; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Luna; Madden; McCall; McReynolds; Merritt; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Peña; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Anchia; Bohac; Castro; Chavez; Coleman; Dunnam; Dutton; Edwards; Escobar; Farrar; Frost; Gallego; Gonzales; Guillen; Herrero; Hochberg; Leibowitz; Martinez; Martinez Fischer; McClendon; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Strama; Thompson; Veasey; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Jones, D.

Absent — Eiland; Giddings; Hardcastle; Hodge; Jones, J.; Solis; Straus; Turner; Uresti; Villarreal.

STATEMENTS OF VOTE

When Record No. 34 was taken, my vote failed to register. I would have voted yes.

Hodge

I was shown voting yes on Record No. 34. I intended to vote no.

McCall

Amendment No. 40

Representative Miller offered the following amendment to **CSHB 3**:

Floor Packet Page No. 486

Amend **CSHB 3** in ARTICLE 1 of the bill by inserting the following appropriately lettered part and relettering the subsequent parts of ARTICLE 1 of the bill accordingly:

PART __. AD VALOREM TAXATION OF CERTAIN RAIL FACILITY PROPERTY OWNED BY CERTAIN RURAL RAIL TRANSPORTATION DISTRICTS

SECTION 1__.01. Section 25.07(b), Tax Code, is amended to read as follows:

(b) Except as provided by Sections 11.11(b) [~~Subsections (b)~~] and (c) [~~of Section 11.11 of this code~~], a leasehold or other possessory interest in exempt property may not be listed if:

(1) the property is permanent university fund land;

(2) the property is county public school fund agricultural land;

(3) the property is a part of a public transportation facility owned by an incorporated city or town and:

(A) is an airport passenger terminal building or a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility;

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes);

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law; or

(D)(i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, which operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), by the same incorporated city or town which owns the airport;

(4) the interest is in a part of:

(A) a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or

(B) a convention center, visitor center, sports facility with permanent seating, concert hall, arena, or stadium that is owned by an incorporated city or town as such leasehold or possessory interest serves a governmental, municipal, or public purpose or function when the facility is open to the public, regardless of whether a fee is charged for admission;

(5) the interest involves only the right to use the property for grazing or other agricultural purposes;

(6) the property is owned by the Texas National Research Laboratory Commission or by a corporation formed by the Texas National Research Laboratory Commission under Section 465.008(g), Government Code, and is used or is useful in connection with an eligible undertaking as defined by Section 465.021, Government Code; [~~or~~]

(7) the property is:

(A) owned by a municipality, a public port, or a navigation district created or operating under Section 59, Article XVI, Texas Constitution, or under a statute enacted under Section 59, Article XVI, Texas Constitution; and

(B) used as an aid or facility incidental to or useful in the operation or development of a port or waterway or in aid of navigation-related commerce; or

(8) the property is part of a rail facility owned by a rural rail transportation district created or operating under Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes).

SECTION 1__.02. This part applies only to the appraisal records for a tax year that begins on or after January 1, 2006.

SECTION 1__.03. This part takes effect January 1, 2006.

Amendment No. 40 was adopted.

Amendment No. 41

Representative Paxton offered the following amendment to **CSHB 3**:

Floor Packet Page No. 412

Amend **CSHB 3** as by adding the following section in the appropriate place:

SECTION 2C.____. Subchapter B, Chapter 171, Tax Code, is amended by adding Section 171.__ to read as follows:

Sec. 171. EXEMPTION—NONCORPORATE ENTITY ELIGIBLE FOR CERTAIN EXEMPTIONS. An association, partnership, limited partnership, limited liability partnership or other entity that is not a corporation but that, because of its activities, would qualify for a specific exemption under this subchapter if it were a corporation qualifies for the exemption and is exempt from the tax in the same manner and under the same conditions as a corporation.

Amendment No. 42

Representative Paxton offered the following amendment to Amendment No. 41:

Amend Floor Amendment No. 41 by Paxton by deleting the words "SECTION 2C.___" and inserting the words "SECTION 2B.___

Amendment No. 42 was adopted.

Amendment No. 41, as amended, was withdrawn.

Amendment No. 43

Representative Miller offered the following amendment to **CSHB 3**:

Floor Packet Page No. 6

Amend **CSHB 3** as follows:

(1) On page 1, line 18, strike "$1.12" and substitute "$____".

(2) On page 2, line 6, strike "$1.23" and substitute "$____".

(3) On page 2, lines 24 and 26, strike "$1.23" and substitute "$____".

(4) On page 3, lines 1 and 2, strike "$1.12" and substitute "$____".

(5) Add the following appropriately lettered PART to ARTICLE 3 of the bill and reletter subsequent PARTS accordingly:

PART ___. ELECTRICITY AND GAS

SECTION 3_.01. Sections 321.201(a) and (b), Tax Code, are amended to read as follows:

(a) Each retailer in a municipality that has adopted a tax authorized by this chapter shall add each sales tax imposed by the municipality under this chapter and by Chapter 151 to the sales price, and the sum of the taxes is a part of the price, a debt of the purchaser to the retailer until paid, and recoverable at law in the same manner as the purchase price. [~~If the municipality imposes the tax on gas and electricity for residential use, only the municipal tax is added to the sales price of sales of gas and electricity for residential use.~~]

(b) The amount of the total tax is computed by multiplying the combined applicable tax rates[~~, or the rate of the municipal tax only for sales of gas and electricity for residential use in a municipality that imposes the tax on gas and electricity for residential use,~~] by the amount of the sales price. If the product results in a fraction of a cent less than one-half of one cent, the fraction of a cent is not collected. If the fraction of a cent is one-half of one cent or more, the fraction shall be collected as one cent.

SECTION 3_.02. Section 321.204(a), Tax Code, is amended to read as follows:

(a) In each municipality that has adopted the taxes authorized by this chapter, the taxes imposed by Section 321.104(a) and the tax imposed by Subchapter D, Chapter 151, are added together to form a single combined tax rate, except[~~:~~

[~~(1) in a municipality that imposes the tax on gas and electricity for residential use only the rate of the municipal tax is used to determine the amount of tax on the use, storage, or other consumption of gas and electricity for residential use; and~~

[~~(2)~~] only the rate of the municipal tax is used in a situation described by Section 321.205(b).

SECTION 3_.03. Section 321.208, Tax Code, is amended to read as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter[~~, except as provided by Section 151.317(b)~~].

SECTION 3_.04. Section 323.207, Tax Code, is amended to read as follows:

Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter[~~, except as provided by Section 151.317(b)~~].

SECTION 3_.05. The following provisions of the Tax Code are repealed:

(1) Section 151.317;

(2) Section 321.207(c); and

(3) Section 323.206(c).

SECTION 3_.06. LEGISLATIVE INTENT. It is the legislature's strong intention that, though the legislature has rarely conducted a referendum on matters of statewide importance, the will of the people should be honored and take precedence over any prior constitutional rule of law given the nature of this particularly important issue in our state.

SECTION 3_.07. REFERENDUM AND BALLOT PROPOSITION. At the general election to be held on November 8, 2005, the voters shall be permitted to vote in a referendum as provided by this section. The ballot shall be printed to provide for voting for or against the proposition: "Reduction in school district maintenance and operation property tax rates through imposing the state sales and use tax on electricity and gas." The proposition shall be printed on the ballot beneath the proposed constitutional amendments under the heading: "Referendum Proposition."

SECTION 3_.08. ELECTION PROCEDURE. (a) Notice of the election shall be given in the same manner that notice of proposed constitutional amendments is given.

(b) Returns of the votes cast on the proposition shall be prepared and canvassed in the same manner as the returns on proposed constitutional amendments.

(c) Immediately after the results of the election are certified by the governor, the secretary of state shall transmit a copy of the certification to the lieutenant governor and the speaker of the house of representatives.

SECTION 3_.09. EFFECT OF ELECTION. (a) If a majority of the votes cast in the referendum oppose the proposition, Sections 3__.01-3__.05 of this part do not take effect.

(b) If a majority of the votes cast in the referendum favor the proposition, Sections 3__.01-3__.05 of this part take effect January 1, 2006.

SECTION 3_.10. CONSTRUCTION. (a) Except as provided in Subsection (b) of this section, the rules of construction stated in Section 311.032, Government Code, apply to the construction of this part.

(b) If a majority of votes cast in the referendum opposes the proposition and subsequently the sections of this part requiring a referendum are held invalid by a final judgment of a court of competent jurisdiction, this part expires on the date that the judgment of the court becomes final and the law amended by this part exists as if this part were not enacted.

SECTION 3_.11. This part takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect on the 91st day after the last day of the legislative session.

Amendment No. 44

Representative Miller offered the following amendment to Amendment No. 43:

Amend Amendment No. 43 by Miller to **CSHB 3** (page 6 of the amendment packet) on page 2 of the amendment, between lines 27 and 28 by inserting the following:

SECTION 3_.042. Section 151.318, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The exemption does not include gas or electricity.

SECTION 3_.043. Section 151.328, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) The exemption provided by this section does not apply to gas or electricity used or consumed in relation to repair, remodeling, or maintenance services otherwise exempt under this section.

Amendment No. 44 was adopted.

Amendment No. 45

Representative P. King offered the following amendment to Amendment No. 43:

Amend the Miller amendment to **CSHB 3** (beginning on page 6 of the amendment packet) as follows:

(1) On page 1 of the amendment, between lines 12 and 13, insert a new Section 3_.001 to read as follows:

SECTION 3_.001. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3175 to read as follows:

Sec. 151.3175. PARTIAL GAS AND ELECTRICITY EXEMPTION FOR RESIDENTIAL USE. (a) The first $100 of the residential use of gas and electricity during a regular monthly billing period is exempt from the taxes imposed by this chapter.

(b) In this section, "residential use" means use:

(1) in a family dwelling or in a multifamily apartment or housing complex or building or in a part of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, or building or part of the building occupied; or

(2) in a dwelling, apartment, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, house, or building or part of a building under a contract for an express initial term for longer than 29 consecutive days.

Amendment No. 45 was adopted.

Amendment No. 46

Representative Leibowitz offered the following amendment to Amendment No. 43:

Amend the Miller amendment to **CSHB 3** (beginning on page 6 of the amendment packet) as follows:

(1) On page 1 of the amendment, between lines 12 and 13, insert a new Section 3_.001 to read as follows:

SECTION 3_.001. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3175 to read as follows:

Sec. 151.3175. GAS AND ELECTRICITY EXEMPTION FOR RESIDENTIAL USE BY CERTAIN PERSONS. (a) Residential use of gas and electricity billed to an individual is exempt from the taxes imposed by this chapter if the individual who is billed is 65 years of age or older.

(b) In this section, "residential use" means use:

(1) in a family dwelling or in a multifamily apartment or housing complex or building or in a part of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, or building or part of the building occupied; or

(2) in a dwelling, apartment, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, house, or building or part of a building under a contract for an express initial term for longer than 29 consecutive days.

Amendment No. 46 was adopted.

Representative Turner moved to table Amendment No. 43.

A record vote was requested.

The motion to table prevailed by (Record 35): 129 Yeas, 10 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Morrison;

Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley.

Nays — Burnam; Callegari; Edwards; Gonzales; Hill; Jackson; Laubenberg; Miller; Quintanilla; Seaman.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Jones, D.

Absent — Anderson; Bailey; Crownover; Hughes; Mowery; Taylor; Zedler.

STATEMENTS OF VOTE

When Record No. 35 was taken, my vote failed to register. I would have voted yes.

Anderson

When Record No. 35 was taken, I was in the house but away from my desk. I would have voted yes.

Crownover

I was shown voting no on Record No. 35. I intended to vote yes.

Gonzales

I was shown voting no on Record No. 35. I intended to vote yes.

Hill

When Record No. 35 was taken, I was in the house but away from my desk. I would have voted yes.

Taylor

A record vote was requested.

The vote of the house was taken on the passage to engrossment of **CSHB 3** and the vote was announced yeas 73, nays 74.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 36): 73 Yeas, 72 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goolsby; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hill; Hope; Howard; Hughes; Hupp; Isett; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Madden; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Swinford; Talton; Taylor; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Burnam; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Griggs; Guillen; Haggerty; Hegar; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Hunter; Jones, J.; King, T.; Laney; Laubenberg; Leibowitz; Luna; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Solis; Solomons; Strama; Straus; Thompson; Truitt; Turner; Uresti; Veasey; Villarreal; Vo.

Absent, Excused — Dukes; Jones, D.

Absent — Eiland; Martinez Fischer.

The speaker stated that **CSHB 3**, as amended, was passed to engrossment by the above vote.

STATEMENT OF VOTE

When Record No. 36 was taken, I was absent because of illness in the family. Had I been present I would have voted no.

D. Jones

REASON FOR VOTE

I voted no on second reading of **HB 3** in special session because it raises taxes on almost 90 percent of Texans and does not solve the public school finance crisis; and, while reducing property taxes for a few, almost all citizens in District 65 will be adversely affected with higher taxes. **HB 3** would result in Texas having the highest sales tax in the United States; and, **HB 3** did not increase the homestead exemption for homeowners in District 65.

Solomons

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today because of illness:

Eiland on motion of McCall.

Martinez Fischer on motion of Gallego.

CSHB 1 ON SECOND READING
(by Pitts)

CSHB 1, A bill to be entitled An Act relating to appropriating money for the support of state government.

Amendment No. 1

Representative Chavez offered the following amendment to **CSHB 1**:

Floor Packet Page No. 1

Amend **CSHB 1** as follows:

(1) On page 3 in the appropriations for the Texas Education Agency reduce the Strategy B.2.4, Windham School District, by $19,000,000 for fiscal year 2006 and $19,500,000 for fiscal year 2007.

(2) Transfer to the Texas Tech University Health Sciences Center $19,000,000 for fiscal year 2006 and $19,500,000 for fiscal year 2007 for construction and operation of the El Paso medical school.

Amendment No. 1 was withdrawn.

Amendment No. 2

Representative Thompson offered the following amendment to **CSHB 1**:

Floor Packet Page No. 3

Amend **CSHB 1** as follows:

On page 4, strike SECTION 4 of the bill and substitute SECTION 4 of the bill to read as follows:

SECTION 4. Contingent on passage and enactment of **HB 2** or similar legislation by the 79th Legislature, First Called Session, relating to public education and public school finance matters and **HB 3** or similar legislation by the 79th Legislature, First Called Session, relating to property tax relief and the financing of public schools, there is hereby appropriated out of the General Revenue Fund $1,867,800,000 for the 2006-07 biennium to implement the provisions of **HB 2** or similar legislation by the 79th Legislature, First Called Session, and to fund an amount sufficient to pay the cost of textbooks under Proclamation 2002 issued by the State Board of Education. The Legislative Budget Board is directed to make all necessary adjustments to public education agencies, strategies, methods of finance, measures and rider provisions contained in **SB 1**, 79th Regulation Session, necessary to implement the legislation. The Texas Education Agency shall develop a plan, subject to prior approval of the Legislative Budget Board and the Governor, to implement the bill's provisions.

Amendment No. 2 - Point of Order

Representative Grusendorf raised a point of order against further consideration of Amendment No. 2 on the grounds that it violates the Committee on Calendars rule adopted July 5.

The speaker overruled the point of order.

Representative Pitts moved to table Amendment No. 2.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 2 and the vote was announced yeas 70, nays 67.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 37): 72 Yeas, 71 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Chisum; Cook, B.; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Harper-Brown; Hartnett; Hegar; Hill; Hope; Howard; Hunter; Hupp; Isett; Jackson; Keffer, B.; Keffer, J.; Kolkhorst; Krusee; Kuempel; Laubenberg; Luna; Madden; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Baxter; Burnam; Campbell; Casteel; Castro; Chavez; Coleman; Cook, R.; Corte; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Griggs; Guillen; Hamilton; Hardcastle; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, J.; Keel; King, P.; King, T.; Laney; Leibowitz; Martinez; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Solomons; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Eiland; Jones, D.; Martinez Fischer.

Absent — Straus.

The speaker stated that the motion to table Amendment No. 2 prevailed by the above vote.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 37. I intended to vote no.

B. Brown

When Record No. 37 was taken, I was temporarily out of the house chamber. I would have voted no.

Straus

I was shown voting yes on Record No. 37. I intended to vote no.

Truitt

Amendment No. 3

Representative Guillen offered the following amendment to **CSHB 1**:

Floor Packet Page No. 19

Amend **CSHB 1** by adding the following rider:

__. Receipt and Use of Grants, Federal Funds, and Royalties. The Commissioner of Education is authorized to apply for, receive and disburse funds in accordance with plans or applications acceptable to the responsible federal agency or other public or private entity that are made available to the State of Texas for the benefit of education and such funds are appropriated to the specific

purpose for which they are granted. It is the intent of the Legislature that when entering into any contract or plan with the federal government or other entity, prime consideration shall be given to preserving maximum local control for school districts. Any current or future contract or plan entered into by the Texas Education Agency with any entity, excluding the federal government, shall be non-exclusive. For the 2006-07 biennium, the Texas Education Agency is appropriated any royalties and license fees from the sale or use of education products developed through federal and state funded contracts managed by the agency. The Texas Education Agency shall report on a quarterly basis to the Legislative Budget Board and to the Governor on grants or earnings received pursuant to the provisions of this rider, and on the planned use of those funds.

Any grant or royalty balances as of August 31, 2006 are appropriated for the 2007 fiscal year for the same purpose.

Amendment No. 4

Representative Guillen offered the following amendment to Amendment No. 3:

Amend the Guillen amendment to **CSHB 1** at the beginning of the third sentence of the proposed rider by striking "Any" and substituting "It is also the intent of the legislature that any".

Amendment No. 4 was adopted.

Amendment No. 3, as amended, was adopted.

Amendment No. 5

Representative Dutton offered the following amendment to **CSHB 1**:

Floor Packet Page No. 13

Amend **CSHB 1** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. STUDY AND REPORT ON CREATION, CONSOLIDATION, AND ABOLITION OF SCHOOL DISTRICTS. It is the intent of the 79th Legislature, 1st Called Session, 2005, that the lieutenant governor and the speaker of the house of representatives create a select committee on education to conduct an interim study on the creation, consolidation, and abolition of school districts in this state. It is the further intent of the legislature that the governor be invited to appoint four members to the committee and to appoint one member to serve as chair of the committee. The committee's proceedings and operations shall be governed by such general rules and policies for joint interim committees as the 79th Legislature, 1st Called Session, may adopt, and the costs of the study shall be paid from amounts appropriated by the legislature that may be used for that purpose. The committee shall submit a full report, including findings and recommendations, to the 80th Legislature not later than January 15, 2007.

Amendment No. 6

Representative Dutton offered the following amendment to Amendment No. 5:

Amend Amendment No. 5 by Dutton to **CSHB 1** (amendment packet page 13) by striking lines 6 through 19 of the amendment and substituting the following:

Legislature, 1st Called Session, 2005, that the Texas Education Agency study the creation, consolidation, and abolition of school districts in this state. The costs of the study shall be paid from amounts appropriated by the legislature that may be used for that purpose. The Texas Education Agency shall submit a full report, including findings and recommendations, to the 80th Legislature not later than January 15, 2007.

Amendment No. 6 was adopted.

Representative Chisum moved to table Amendment No. 5.

A record vote was requested.

The motion to table prevailed by (Record 38): 85 Yeas, 49 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Dawson; Delisi; Driver; Dunnam; Eissler; Farabee; Flynn; Frost; Gallego; Geren; Gonzalez Toureilles; Goodman; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hegar; Hilderbran; Hill; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; McReynolds; Merritt; Miller; Morrison; Nixon; Noriega, M.; Orr; Otto; Paxton; Phillips; Pitts; Raymond; Reyna; Riddle; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Swinford; Talton; Truitt; Van Arsdale; Villarreal; West; Wong; Woolley.

Nays — Allen, A.; Castro; Chavez; Coleman; Corte; Crabb; Davis, J.; Davis, Y.; Denny; Deshotel; Dutton; Edwards; Elkins; Escobar; Farrar; Flores; Giddings; Gonzales; Goolsby; Harper-Brown; Hartnett; Herrero; Hochberg; Hodge; Homer; Jackson; Jones, J.; Keel; Leibowitz; Luna; Martinez; McClendon; Menendez; Moreno, P.; Naishtat; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Ritter; Solis; Taylor; Thompson; Turner; Uresti; Veasey; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Eiland; Jones, D.; Martinez Fischer.

Absent — Alonzo; Bailey; Burnam; Crownover; Gattis; McCall; Mowery; Seaman; Straus; Zedler.

STATEMENTS OF VOTE

When Record No. 38 was taken, I was in the house but away from my desk. I would have voted yes.

Crownover

I was shown voting no on Record No. 38. I intended to vote yes.

Homer

I was shown voting yes on Record No. 38. I intended to vote no.

Reyna

I was shown voting yes on Record No. 38. I intended to vote no.

Rodriguez

When Record No. 38 was taken, I was in the house but away from my desk. I would have voted yes.

Zedler

Amendment No. 7

Representative Dunnam offered the following amendment to **CSHB 1**:

Floor Packet Page No. 17

Amend **CSHB 1** in SECTION 1 by inserting the following appropriately-numbered rider to read as follows:

"____. UNFUNDED PUBLIC EDUCATION MANDATES. (a) From the funds appropriated by this Act, the Texas Education Agency shall publish, on or before the September 1st following a regular session of the legislature and on or before the 90th day after the last day of a special session of the legislature, a list of legislative public education mandates for which the legislature has not provided reimbursement as provided by this rider and that were enacted by the legislature during that legislative session. In preparing the list of legislative public education mandates, the Texas Education Agency shall (1) remove from the list of legislative public education mandates for a previous legislative session a legislative public education mandate for which the legislature has provided reimbursement as provided by this rider or that is no longer in effect; and (2) add to the list a legislative public education mandate from a previous legislative session for which reimbursement was provided as provided by this rider in the previous session but for which reimbursement was not provided in the most recent regular session or in any subsequent special session. A legislative public education mandate is considered to be a mandate for which the legislature has provided reimbursement if the legislature appropriates or otherwise provides funds for a state fiscal year, other than revenue of the school district, estimated to be sufficient to meet the cost incurred by all affected school districts in the fiscal year of financing the expenditure. The Texas Education Agency shall deliver the list prepared under this rider to the secretary of state for publication in the Texas Register. Additionally, from the funds appropriated by this Act, the Agency shall, before September 1st of the even-numbered year before the second

anniversary of the date of enactment of a legislative public education mandate identified by the Agency under this rider: (1) review the legislative history of the mandate; (2) conduct an evaluation on the benefits of the mandate and the costs of the mandate on affected political subdivisions; and (3) present a written report to the legislature and the governor on the Agency's findings. As used in this rider, "legislative public education mandate" means a statutory provision enacted by the legislature that requires a school district to establish, expand, or modify an activity in a way that requires an expenditure of revenue that would not have been required in the absence of the provision.

Amendment No. 7 was adopted.

A record vote was requested.

CSHB 1, as amended, was passed to engrossment by (Record 39): 142 Yeas, 1 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Rodriguez.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Eiland; Jones, D.; Martinez Fischer.

Absent — Swinford.

STATEMENT OF VOTE

I was shown voting no on Record No. 39. I intended to vote yes.

Rodriguez

HB 1 ON THIRD READING
(by Pitts)
CONSTITUTIONAL RULE SUSPENDED

Representative Pitts moved to suspend the constitutional rule requiring bills to be read on three several days and to place **HB 1** on its third reading and final passage.

The motion prevailed by (Record 40): 141 Yeas, 3 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Farrar; Moreno, P.; Thompson.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Eiland; Jones, D.; Martinez Fischer.

The speaker laid **HB 1** before the house on its third reading and final passage.

A record vote was requested.

HB 1 was read third time and was passed by (Record 41): 140 Yeas, 1 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Edwards; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee;

Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Dutton.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Eiland; Jones, D.; Martinez Fischer.

Absent — Chavez; Moreno, P.; Smithee.

The speaker stated that **HB 1** was passed subject to the provisions of Article III, Section 49a, of the Texas Constitution.

HB 1 - PRINTING RULE SUSPENDED

Representative Pitts moved to suspend House Rule 2, Section 1(a)(9) so that **HB 1** may be sent to the senate in the form of engrossed riders in lieu of a full engrossment.

The motion prevailed.

HCR 14 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Taylor called up with senate amendments for consideration at this time,

HCR 14, Granting the legislature permission to adjourn for more than three days during the period beginning on Wednesday, June 29, 2005, and ending on Tuesday, July 5, 2005.

Representative Taylor moved to concur in the senate amendments to **HCR 14**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HCR 14** at page 1, line 9 by striking "and ending on July 5, 2005." and substituting "and ending on July 6, 2005." therefor.

HB 2 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED

Representative Grusendorf called up with senate amendments for consideration at this time,

HB 2, A bill to be entitled An Act relating to public education and public school finance matters; imposing criminal penalties.

Representative Grusendorf moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2**: Grusendorf, chair; Eissler; Delisi; B. Keffer; and Branch.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Higher Education, upon adjournment today, Desk 86, for a formal meeting, to consider **HB 6**.

Natural Resources, upon adjournment today, Desk 112, for a formal meeting, to consider **HB 40**, **HB 41**, and **HB 79**.

BILLS AND JOINT RESOLUTIONS ON FIRST READING AND REFERRAL TO COMMITTEES

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

ADJOURNMENT

Representative Casteel moved that the house adjourn until 10 a.m. tomorrow in memory of Dr. Howard Benson of New Braunfels.

The motion prevailed.

The house accordingly, at 9:14 p.m., adjourned until 10 a.m. tomorrow.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HB 92 (By West), Relating to the authority of certain counties to impose a hotel occupancy tax.

To Ways and Means.