

HOUSE JOURNAL

SEVENTY-NINTH LEGISLATURE, SECOND CALLED SESSION

PROCEEDINGS

SEVENTH DAY (CONTINUED) — TUESDAY, AUGUST 9, 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; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; 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; 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; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Absent, Excused — Driver; Escobar.

The invocation was offered by Representatives Crabb and Hochberg.

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

CAPITOL PHYSICIAN

The speaker recognized Representative Blake who presented Dr. Ron McMurry of Jasper as the "Doctor for the Day."

The house welcomed Dr. McMurry and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for today because of important business:

Driver on motion of Geren.

Escobar on motion of Gonzalez Toureilles.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

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.)

HR 167 - ADOPTED (by Hilderbran)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 167**.

The motion prevailed.

The following resolution was laid before the house:

HR 167, Honoring First National Bank of Baird on the occasion of its 120th year of operation.

HR 167 was adopted.

HR 168 - ADOPTED (by Alonzo)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 168**.

The motion prevailed.

The following resolution was laid before the house:

HR 168, In memory of Rene Ramos of Dallas.

HR 168 was unanimously adopted by a rising vote.

HR 169 - ADOPTED (by Flynn)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 169**.

The motion prevailed.

The following resolution was laid before the house:

HR 169, Honoring Levoy and Ola Mae Rains on the occasion of their 73rd wedding anniversary.

HR 169 was adopted.

HR 170 - ADOPTED
(by Merritt)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 170**.

The motion prevailed.

The following resolution was laid before the house:

HR 170, In memory of U.S. Air Force Major Arthur Dale Baker of San Antonio.

HR 170 was unanimously adopted by a rising vote.

HR 171 - ADOPTED
(by Merritt)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 171**.

The motion prevailed.

The following resolution was laid before the house:

HR 171, Honoring the Spring Hill 11-12 All-Star team for reaching the 2005 Dixie Youth Majors World Series.

HR 171 was adopted.

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

HB 13 ON SECOND READING
(by P. King)

HB 13, A bill to be entitled An Act relating to furthering competition in the communications industry.

HB 13 was read second time on July 25, postponed until July 26, postponed until July 27, postponed until July 29, and was again postponed until 9 a.m. August 2.

Representative P. King moved to postpone consideration of **HB 13** until 4 p.m. today.

The motion prevailed.

HOUSE AT EASE

At 10:57 a.m., the speaker announced that the house would stand at ease until 2:30 p.m. today.

The speaker called the house to order at 2:30 p.m.

HOUSE AT EASE

At 2:52 p.m., the speaker announced that the house would stand at ease until 4 p.m. today.

The speaker called the house to order at 4 p.m.

**PROCLAMATION BY THE GOVERNOR
OF THE STATE OF TEXAS**

The chair laid before the house and had read the following proclamation by the governor:

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE SEVENTY-NINTH TEXAS LEGISLATURE, SECOND CALLED SESSION:

WHEREAS, the people of Texas through their state constitution have placed the power to call the legislature into special session in the hands of the chief executive officer of the state; and

WHEREAS, the members of the Seventy-Ninth Texas Legislature, Second Called Session, have now convened to consider items presented to them by the governor;

NOW, THEREFORE, I, RICK PERRY, Governor of the State of Texas, by the authority vested in me by Article IV, Section 8 and Article III, Section 40 of the Texas Constitution, do hereby present the following subject matter to the Seventy-Ninth Texas Legislature, Second Called Session for consideration:

Legislation relating to limiting the use of eminent domain to take private property for private parties or economic development purposes.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 9th day of August, 2005.

Rick Perry
Governor of Texas

(SEAL)
Roger Williams
Secretary of State

(Luna in the chair)

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today because of important business in the district:

Anderson on motion of Miller.

Solis on motion of Uresti.

**HR 172 - ADOPTED
(by Giddings)**

Representative Giddings moved to suspend all necessary rules to take up and consider at this time **HR 172**.

The motion prevailed.

The following resolution was laid before the house:

HR 172, Commemorating the 75th anniversary of The Church of the Living God, The Pillar and Ground of the Truth, Dallas Temple No. 1.

(Speaker in the chair)

HR 172 was read and was adopted.

CSHB 62 ON SECOND READING

(by Grusendorf, Pitts, et al.)

RULES SUSPENDED

Representative Pitts moved to suspend all necessary rules to take up and consider at this time **CSHB 62**.

The motion prevailed.

The speaker laid before the house, on its second reading and passage to engrossment,

CSHB 62, A bill to be entitled An Act relating to public school instructional materials and instructional technology; making an appropriation.

CSHB 62 was read second time.

(Nixon in the chair)

CSHB 62 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE RIDDLE: On page 13, lines 13 through 18, it is talking about the circumstances by which the State Board of Education cannot approve a book. Correct me if I'm wrong, it appears that if it does not contain the essential knowledge and skills it can be turned down. Also, if it has factual errors it can be rejected. Is that the only two—that they can reject it? Is there any element of content that a book can be rejected? Or has that been taken out?

REPRESENTATIVE EISSLER: That's not part of this bill. Curriculum is reviewed every five years in an ongoing process. We do allow the board to adopt rules that pertain to that.

RIDDLE: Okay now, I'm confused on this. So tell me, if there is something in a book that does meet with the essential knowledge and skills, so on and so forth with that, and if the facts are correct, but there's something in the content of that book that would violate social mores, or something of that sort, they would not be able to accept that book? Is that correct?

EISSLER: They can't do that under current law.

RIDDLE: They can't—I thought there was something where a book was—they sent it back not too long ago because of something in the content—of a word or two.

EISSLER: It's factual content only.

RIDDLE: Was there not a word that was taken out of a book that one of the State Board of Education members, Terri Leo, had a word taken out and went back to the publisher. Would that not have to be with content?

EISSLER: I think they negotiated with the publisher to change it. I think that's what happened, is they went to the source and got that corrected.

RIDDLE: Okay, so they negotiated with the publisher?

EISSLER: Which is still a very powerful weapon—tool at their disposal.

RIDDLE: So under current law, they can currently not reject a book because of content. That is not going to change. Under this they can negotiate with the publisher now, under this, the same way as they did in that situation.

EISSLER: Which is what they did. Correct.

RIDDLE: Is there anything in this bill that is going to take away some of the authority from the State Board of Education?

EISSLER: No. Nothing that I know of.

RIDDLE: There are some members who are concerned about that.

EISSLER: And we've addressed that. Now to answer your question as factually as I can. Page 18, line 27, and we have an amendment that will address that.

RIDDLE: Okay, so—

EISSLER: So to answer your question exactly right. Yes, there is something in this bill as we speak that will diminish their influence. But we have an amendment that we are going to accept very quickly.

RIDDLE: I think Representative Delisi has an amendment that is going to correct that. That makes it a little better.

EISSLER: Which is an omission because the language in **HB 2** twice, had the correct language. When this was drafted the old language got put in.

RIDDLE: Yes, Chairman Grusendorf shared that with me.

Amendment No. 1

Representative Pitts offered the following amendment to **CSHB 62**:

Amend **CSHB 62** by inserting the following new section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION _____. Texas Education Agency Rider 78 in Article III, **SB 1**, Acts of the 79th Legislature, Regular Session, 2005 (the General Appropriations Act), as amended by **HB 1**, Acts of the 79th Legislature, 1st Called Session, 2005, is amended to read as follows:

Rider 78. Textbook Proclamations. It is the intent of the Legislature that the State Board of Education forego the issuance of all Proclamations of textbook purchases until such time as the Legislature has implemented reforms to the system by which the state and school districts procure and purchase textbooks.

Contingent upon passage and enactment of **HB 62** [2], or similar legislation relating to public school finance by the 79th Legislature, Second [First] Called Session, 2005, it is the intent of the Legislature that the State Board of Education rescind Proclamation 2004 and conduct activities related to instructional materials in accordance with the provisions of **HB 62** [2].

Amendment No. 1 was adopted.

Amendment No. 2

Representative Pitts offered the following amendment to **CSHB 62**:

Amend **CSHB 62** as follows:

(1) On page 27, line 16, strike "Section 32.0011" and substitute "Sections 32.0011 and 32.0012".

(2) On page 28, between lines 6 and 7, insert the following:

Sec. 32.0012. INSTRUCTIONAL MATERIALS AND INSTRUCTIONAL TECHNOLOGY LEGISLATIVE OVERSIGHT COMMITTEE. (a) The instructional materials and instructional technology legislative oversight committee consists of:

(1) three members of the house of representatives, appointed by the speaker of the house;

(2) three members of the senate, appointed by the lieutenant governor;

(3) three members of the public, appointed by the governor; and

(4) one member of the State Board of Education, appointed by the chair of the State Board of Education.

(b) The committee shall:

(1) monitor the changes made by **HB 62**, Acts of the 79th Legislature, 2nd Called Session, 2005, to the manner in which public school instructional materials are approved and purchased;

(2) monitor the implementation of instructional technology programs and grants under this chapter, as amended by **HB 62**, Acts of the 79th Legislature, 2nd Called Session, 2005; and

(3) not later than December 1, 2008, file a report with the legislature stating the committee's findings and recommendations for any necessary statutory changes.

(c) This section expires and the committee is abolished January 31, 2009.

Amendment No. 2 was adopted.

Amendment No. 3

Representative Naishtat offered the following amendment to **CSHB 62**:

Amend **CSHB 62** as follows:

(1) Strike page 12, lines 14-18, and substitute the following:

(2) determine whether the essential knowledge and skills identified in the submission are covered in the student version of the instructional material, as well as in the teacher version of the instructional material; and

(3) identify the degree to which the student version of the instructional material, as well as the teacher version of the instructional material, each complies with the essential knowledge and skills.

(2) On page 13, lines 12-14, strike "the instructional material does not contain the essential knowledge and skills identified by the publisher" and substitute "the student version of the instructional material, as well as the teacher version of the instructional material, do not each contain the essential knowledge and skills identified by the publisher".

(3) On page 13, line 16, between "covers" and the period, insert "in both the student and teacher versions of the instructional material".

Amendment No. 3 was adopted.

Amendment No. 4

Representative Delisi offered the following amendment to **CSHB 62**:

Amend **CSHB 62** as follows:

- (1) On page 18, line 16, strike "(a)".
- (2) Strike page 18, line 27, through page 19, line 2.

(Speaker in the chair)

Amendment No. 4 was adopted.

Amendment No. 5

Representative Eissler offered the following amendment to **CSHB 62**:

Amend **CSHB 62** as follows:

- (1) On page 31, line 16, insert "electronic" before "library"
- (2) On page 34, line 6, insert "electronic" before "library"

Amendment No. 5 was adopted.

Amendment No. 6

Representative Truitt offered the following amendment to **CSHB 62**:

Amend **CSHB 62** on page 31, line 22, between "professional development" and "for teachers", by inserting:
and support

Amendment No. 6 was adopted.

Amendment No. 7

Representative Coleman offered the following amendment to **CSHB 62**:

Amend **CSHB 62** by striking all below the enacting clause and substituting the following:

SECTION 1. (a) In addition to other amounts appropriated by the 79th Legislature, the amount of \$291,088,189 is appropriated from the state textbook fund to the Texas Education Agency for the fiscal year beginning September 1, 2005, for the purchase of public school textbooks for those grade levels specified by State Board of Education Proclamation 2002, for the following subjects, and not to exceed the following amounts:

- (1) Languages Other than English - \$40,773,895;
- (2) American Sign Language - \$257,071;
- (3) Health Education - \$107,001,442; and
- (4) Fine Arts - \$143,055,781.

(b) For the fiscal year beginning September 1, 2006, the unexpended balance of the appropriation made by Subsection (a) of this section is appropriated to the Texas Education Agency for the purpose stated in Subsection (a) of this section.

SECTION 2. This Act takes effect immediately if it 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, this Act takes effect on the 91st day after the last day of the legislative session.

Amendment No. 7 was withdrawn.

REMARKS ORDERED PRINTED

Representative Riddle moved to print remarks between Representative Eissler and Representative Riddle.

The motion prevailed.

(Hunter in the chair)

Amendment No. 8

Representative Hochberg offered the following amendment to **CSHB 62**:

Amend **CSHB 62** as follows:

(1) On page 31, strike lines 5-6 and substitute:
provide for each student and teacher assigned to a targeted campus, grade level on a campus, or specific educational program:

(2) On page 31, line 20, strike "and" and substitute "or".

(3) On page 34, line 10, strike "and" and substitute "or".

Amendment No. 8 was adopted.

(Speaker in the chair)

CSHB 62, as amended, was passed to engrossment. (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. Members registering votes are as follows: Riddle recorded voting no.)

REASONS FOR VOTE

I voted for **HB 62** because it is important to provide funds for our children's textbooks. However, I am seriously disappointed that we were forced to pass a textbook bill that gives priority only to technology funding while leaving over \$1 billion in available funds unspent that could have been used to help our children's schools this year. I am extremely disappointed that the **HB 62** process did not allow members an opportunity to keep our promise to restore health insurance funds for teachers and educational personnel, provide funds for school facilities, increase teacher pay, and provide adequate funding for other programs that would improve our neighborhood schools.

Coleman

My concern in this bill is the lack of authority with the State Board of Education to reject text books because of objectionable content. Content is an issue and this should be taken seriously in determining the text books our children read. However, I am grateful for the work Chairman Grusendorf and his committee have done and his vision for the school children of Texas.

Riddle

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

**HB 13 ON SECOND READING
(by P. King and McClendon)**

HB 13, A bill to be entitled An Act relating to furthering competition in the communications industry.

HB 13 was read second time on July 25, postponed until July 26, postponed until July 27, postponed until July 29, postponed until August 2, and was again postponed until 4 p.m. today.

(Morrison in the chair)

HB 13 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE R. COOK: From a rural perspective, we have some concerns about a provision we have on page 29 of the bill which is Section 60.202. "Applicability of Subchapter. A provision of this subchapter applies only to the extent the provision has not been preempted by federal law or a rule, regulation, or order of the Federal Communications Commission." What I want to clarify is, is it the intent of this subsection to recognize the rural exemption afforded small rural companies and cooperatives that is included as a part of the Federal Telecommunications Act in Section 251(f)?

REPRESENTATIVE P. KING: Yes, absolutely.

R. COOK: And would the rural exemption under Section 251(f) of the Federal Telecommunications Act preempt this subchapter according to this language in your legislation?

P. KING: Yes.

REMARKS ORDERED PRINTED

Representative R. Cook moved to print remarks between Representative P. King and Representative R. Cook.

The motion prevailed.

Amendment No. 1

Representative P. King offered the following amendment to **HB 13**:

Amend **HB 13** (House committee report) as follows:

(1) On page 31, line 18, between "subscribers" and the period, insert: in those service areas in which the provider is not regulated as a cable system under federal law

(2) Strike Section 25 of the bill (page 33, line 10, through page 34, line 15) and renumber subsequent sections accordingly.

(3) On page 66, lines 12-13, strike "The holder of a state-issued certificate of franchise authority" and substitute "All cable service providers and all video service providers".

(4) On page 67, line 16, between "later" and the underscored colon, insert:

and thereafter as provided by Subdivisions (1) and (2)

(5) On page 68, line 1, strike "until January 1, 2008, after which" and substitute:

. Beginning on January 1, 2008, or the expiration of the franchise agreement, whichever is later,

(Keel in the chair)

AMENDMENT NO. 1 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE MCCLENDON: I understand that Senator West has worked with you and Senator Fraser to include nondiscrimination language in the bill, and is it true that there are protections against the ability of a new cable or video provider to come in and discriminate among citizens?

REPRESENTATIVE P. KING: Yes, there are a number of protections, including some that were added to the bill on the senate floor last week. New entrants cannot discriminate against any consumer based on that consumer's level of income. That is federal language that is included also in this bill. The bill also says that if providers use alternative technologies to provide service, that the services that provider offers must be comparable in terms of content and service and functionality. And this bill goes further—it allows the PUC to make that determination as to whether an alternative technology meets the test of being comparable. That is more protection for the consumer.

MCCLENDON: In your bill, is there any other oversight by the PUC on these cable and video services?

P. KING: Absolutely. The PUC will have the authority to monitor the deployment of cable services and other video services, including alternative technologies. Thus, providing valuable insight into how companies are actually deploying these services.

MCCLENDON: Is this bill really sufficient to deter any discrimination?

P. KING: The bill is based upon federal discrimination standards. But the real protection is that competition drives deployment, which leads to consumers having better choices. Cable is already built out in most areas, so that is one choice the customer has today. With providers such as Grande, Verizon, and SBC, consumers will have another choice, and with satellite, consumers will have yet another. And other companies can come into the video market as well. This bill allows more companies to provide more service to more consumers. That's the way competition always works.

Let's remember that SBC has announced an extremely aggressive deployment schedule (50 percent of the service territory within three years). This is much faster than cable deployed its network. So, accusations that citizens will not receive these services are just scare tactics from the cable companies who do not want the competition.

MCCLENDON: Are we concerned about companies like SBC and Verizon getting into this business and then holding back service for certain areas?

P. KING: I believe that all these new entrants will move as quickly as they can to get their services to the people who will buy those services. That is the name of the game right now in telecom. I believe the new entrants will move quickly like they did with DSL service. They will get to millions of customers as fast as they can. It is their future.

MCCLENDON: SBC has an excellent record in its procurement practices, its hiring and so forth—as a company that is diverse and embraces diversity, right?

P. KING: Yes, it does.

MCCLENDON: Do you feel SBC will continue to serve the community as it moves into this new technological arena of video programming and so forth?

P. KING: Yes, I do.

REMARKS ORDERED PRINTED

Representative McClendon moved to print remarks between Representative P. King and Representative McClendon.

The motion prevailed.

Amendment No. 1 was adopted.

Amendment No. 2

On behalf of Representative Anderson, Representative Miller offered the following amendment to **HB 13**:

Amend **HB 13** (committee printing) on page 10, between lines 10 and 11, by inserting:

Sec. 43.153. PUBLIC NOTICE. (a) A BPL Internet service provider shall publish notice to the public that the provider will be providing BPL services not later than the 90th day before the provider begins providing BPL services.

(b) The notice must be published in the Texas Register and in at least one newspaper of general circulation in the area to which the BPL Internet service provider will be providing BPL services.

Representative P. King moved to table Amendment No. 2.

A record vote was requested.

The motion to table prevailed by (Record 25): 109 Yeas, 26 Nays, 5 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Castro; Chavez; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Deshotel; Dukes; Eiland; Eissler; Elkins; Farabee; Flores; Flynn; Frost; Gallego; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Hegar; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Hunter; Hupp; Isett; Jackson; Jones, D.; Keffer, B.; Keffer, J.; King, P.; King, T.; Krusee; Kuempel; Luna; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Olivo; Orr; Otto; Paxton; Peña; Pickett;

Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Turner; Van Arsdale; Veasey; Villarreal; West; Woolley; Zedler.

Nays — Allen, A.; Callegari; Campbell; Casteel; Davis, Y.; Dutton; Edwards; Farrar; Geren; Hardcastle; Herrero; Hilderbran; Howard; Jones, J.; Kolkhorst; Laney; Leibowitz; Martinez; Miller; Oliveira; Talton; Thompson; Truitt; Uresti; Vo; Wong.

Present, not voting — Mr. Speaker; Bailey; Dunnam; Keel(C); Phillips.

Absent, Excused — Anderson; Driver; Escobar; Solis.

Absent — Chisum; Dawson; Hughes; Laubenberg; Moreno, P.

STATEMENT OF VOTE

I was shown voting yes on Record No. 25. I intended to vote no.

Delisi

Amendment No. 3

Representative Talton offered the following amendment to **HB 13**:

Amend **HB 13** as follows:

(1) In the portion of SECTION 27 of the bill that adds new Section 66.004(a), Utilities Code (page 63, line 2, house committee report), strike "(b) and (c)" and substitute "(b), (c), and (d)"

(2) Following the portion of SECTION 27 of the bill that adds new Section 66.004(a) Utilities Code (on page 63, between lines 2 and 3, house committee report), add the following new subsection (b) and reletter subsequent subsections accordingly:

"(b) Any cable or video service provider with an existing franchise that complies with this chapter may elect to terminate an existing franchise beginning January 1, 2008. A cable or video service provider that elects to terminate an existing franchise shall provide written notice of such election to the commission and the affected municipality. The termination date of the municipal franchise shall be the date the commission issues a state-issued certificate of franchise authority. The termination date under this subsection shall be considered to be the expiration date of the franchise for purposes of this chapter."

(3) At the end of the portion of SECTION 27 of the bill that adds new Section 66.004(f), Utilities Code (page 65, line 11, house committee report), add the following language following "jurisdiction":

"Nothing contained in this subsection shall be deemed to abrogate, nullify or affect the authority granted to an existing cable or video service provider under Subsections (b) and (c) to elect to terminate an existing franchise or to otherwise abrogate, nullify, or affect the terms or conditions, including the expiration date, of an existing franchise."

(Speaker in the chair)

Representative P. King moved to table Amendment No. 3.

A record vote was requested.

The motion to table prevailed by (Record 26): 73 Yeas, 55 Nays, 1 Present, not voting.

Yeas — Anchia; Berman; Blake; Branch; Brown, B.; Callegari; Castro; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Elkins; Flores; Flynn; Frost; Gattis; Goodman; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Harper-Brown; Hartnett; Hegar; Hilderbran; Hope; Howard; Hunter; Hupp; Jackson; Jones, D.; Keffer, B.; King, P.; Kolkhorst; Kuempel; Madden; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Nixon; Noriega, M.; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pitts; Puente; Raymond; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Truitt; Turner; Van Arsdale; Vo; Woolley; Zedler.

Nays — Allen, A.; Allen, R.; Alonzo; Bailey; Baxter; Bohac; Brown, F.; Burnam; Campbell; Casteel; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Eiland; Eissler; Farabee; Farrar; Gallego; Geren; Gonzales; Gonzalez Toureilles; Goolsby; Hamilton; Hardcastle; Herrero; Hochberg; Hodge; Homer; Hopson; Jones, J.; Keel; Keffer, J.; Leibowitz; Luna; Martinez; Martinez Fischer; Naishtat; Oliveira; Pickett; Quintanilla; Reyna; Riddle; Ritter; Rodriguez; Talton; Taylor; Uresti; Veasey; Villarreal; Wong.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Anderson; Driver; Escobar; Solis.

Absent — Bonnen; Chisum; Dawson; Edwards; Giddings; Hill; Hughes; Isett; King, T.; Krusee; Laney; Laubenberg; Moreno, P.; Mowery; Thompson; West.

STATEMENTS OF VOTE

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

Casteel

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

Farrar

When Record No. 26 was taken, my vote failed to register. I would have voted no.

Giddings

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

Herrero

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

Hopson

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

Leibowitz

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

Uresti

Amendment No. 4

Representative Baxter offered the following amendment to **HB 13**:

Amend **HB 13** (House committee report) as follows:

(1) On page 63, line 2, strike "Subsections (b) and (c)" and substitute "Subsections (b), (c), and (d)".

(2) On page 63, between lines 23 and 24, insert:

(d) Any cable or video service provider with an existing municipal franchise may elect to terminate the franchise and apply for a state-issued certificate of franchise authority if a cable or video service provider that holds a state-issued certificate of franchise authority offers cable or video service in the municipality that issued the municipal franchise. A cable or video service provider that elects to terminate a municipal franchise under this subsection shall provide to the commission and to the municipality that issued the franchise written notice of the provider's election. The municipal franchise held by the cable or video service provider terminates on the date the commission issues to the cable or video service provider a state-issued certificate of franchise authority.

(3) On page 65, line 11, immediately following the period, insert:

This subsection does not abrogate, nullify, or otherwise affect the authority Subsection (b) or (d) grants to a cable or video service provider to terminate an existing franchise or to otherwise abrogate, nullify, or affect the terms or expiration date of an existing franchise.

(4) Re-letter the subsections of added Section 66.004, Utilities Code, accordingly.

Representative P. King moved to table Amendment No. 4.

A record vote was requested.

The motion to table prevailed by (Record 27): 89 Yeas, 47 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Anchia; Bailey; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Cook, B.; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Edwards; Eissler; Elkins; Farrar; Flores; Flynn; Frost; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hill; Hodge; Hope; Howard; Hunter; Hupp; Isett; Jackson; Jones, D.; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Nixon; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Taylor; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Vo; Woolley; Zedler.

Nays — Alonzo; Baxter; Bonnen; Burnam; Campbell; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Eiland; Farabee; Gallego; Gattis; Geren; Gonzales; Gonzalez Toureilles; Hamilton; Herrero; Hilderbran; Hochberg; Homer; Hopson; Keel; King, T.; Luna; Madden; Martinez; McCall; Mowery; Naishtat; Noriega, M.; Oliveira; Reyna; Riddle; Ritter; Rodriguez; Strama; Talton; Veasey; West; Wong.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Anderson; Driver; Escobar; Solis.

Absent — Chisum; Corte; Hughes; Jones, J.; Krusee; Moreno, P.; Seaman; Thompson.

STATEMENTS OF VOTE

I was shown voting no on Record No. 27. I intended to vote yes.

Casteel

I was shown voting no on Record No. 27. I intended to vote yes.

Hilderbran

Amendment No. 5

Representative Vo offered the following amendment to **HB 13**:

Amend **HB 13** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS as appropriate:

SECTION __. Subchapter A, Chapter 55, Utilities Code, is amended by adding Section 55.017 to read as follows:

Sec. 55.017. IDENTIFICATION REQUIRED. (a) A representative of a telecommunications provider or a video or cable service provider that has an easement in or a right-of-way over or through real property must show proof of identification to the owner of the real property when entering the property if requested by the owner.

(b) This section does not apply to regularly scheduled service readings or examinations.

Amendment No. 5 was adopted.

Amendment No. 6

Representative Vo offered the following amendment to **HB 13**:

Amend **HB 13** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION __. (a) Subchapter A, Chapter 64, Utilities Code, is amended by adding Section 64.005 to read as follows:

Sec. 64.005. NOTICE REGARDING ACCESS TO EMERGENCY SERVICES. (a) In this section:

(1)"E911" means the 9-1-1 system as defined by Section 772.001, Health and Safety Code.

(2)"VoIP provider" means an entity that offers VoIP service for a fee.

(3) "VoIP service" means voice communications to residential or business customers over a broadband network using Internet Protocol

(b) A VoIP provider may not enter into a contract to provide VoIP service unless the entity provides clear and conspicuous notice to customers disclosing whether or not the service provides access to E911.

(c) A VoIP provider that does not provide access to E911 or that requires a customer to take steps to activate access to E911 may not enter into a contract to provide VoIP service unless the VoIP provider provides:

(1) clear and conspicuous notice of the specific steps the customer must take to activate that service; and

(2) a clear and conspicuous explanation of all material differences between E911 service and the provider's system for accessing emergency services.

(d) The notice required by Subsection (c) must:

(1) be a separate document; and

(2) conspicuously state that the customer acknowledges that the customer will not be able to use the service to access E911 or that the customer must separately activate access to that service to receive it.

(e) At least annually, a VoIP provider shall send to each customer to whom it provides VoIP service a notice that includes the information required by Subsection (c). The provider shall provide the notice as a separate document.

(f) Except as specifically preempted by federal law, the commission has all jurisdiction necessary to enforce this section.

(g) A violation of this chapter is a false, misleading, or deceptive act or practice and is actionable by the attorney general under Subchapter E, Chapter 17, Business & Commerce Code.

(b) This section applies to a contract entered into or renewed on or after the effective date of this section. A contract entered into or renewed before that date is governed by the law in effect on the date the contract was entered into or renewed, and that law is continued in effect for that purpose.

(c) This section does not affect litigation pending on the effective date of this section.

Amendment No. 6 was withdrawn.

Amendment No. 7

Representative Y. Davis offered the following amendment to **HB 13**:

Amend **HB 13** as follows:

(1) On page 77, strike lines 5-7 and substitute the following:

Sec. 66.014. DISCRIMINATION PROHIBITED. (a) The purpose of this section is to prevent discrimination among potential residential subscribers on the basis of either income or geography.

(2) On page 77, lines 11-12, strike "because of the income of the residents in the local area in which such group resides" and substitute "because of the income or geographic location of the residents".

(Dutton in the chair)

Representative P. King moved to table Amendment No. 7.

A record vote was requested.

The motion to table prevailed by (Record 28): 69 Yeas, 62 Nays, 3 Present, not voting.

Yeas — Allen, R.; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Eissler; Elkins; Flynn; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hodge; Hope; Howard; Hughes; Hunter; Hupp; Keel; Keffer, B.; Keffer, J.; King, P.; Krusee; Kuempel; Madden; McClendon; Menendez; Merritt; Miller; Morrison; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Smith, T.; Smith, W.; Smithee; Strama; Straus; Swinford; Taylor; Truitt; Van Arsdale; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Burnam; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Edwards; Eiland; Farabee; Farrar; Flores; Frost; Gallego; Gattis; Giddings; Gonzales; Gonzalez Tourelles; Guillen; Hamilton; Herrero; Hochberg; Homer; Hopson; Jones, D.; Jones, J.; King, T.; Kolkhorst; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McCall; McReynolds; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Raymond; Ritter; Rodriguez; Rose; Solomons; Talton; Thompson; Turner; Uresti; Veasey; Villarreal; Vo; West; Wong.

Present, not voting — Mr. Speaker; Dutton(C); Quintanilla.

Absent, Excused — Anderson; Driver; Escobar; Solis.

Absent — Chisum; Dawson; Geren; Hilderbran; Hill; Isett; Jackson; Laubenberg; Moreno, P.; Mowery; Seaman.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 28. I intended to vote no.

Goolsby

When Record No. 28 was taken, my vote failed to register. I would have voted no.

Hilderbran

I was shown voting yes on Record No. 28. I intended to vote no.

Hodge

I was shown voting yes on Record No. 28. I intended to vote no.

Menendez

I was shown voting yes on Record No. 28. I intended to vote no.

Merritt

Amendment No. 8

Representative Vo offered the following amendment to **HB 13**:

Amend **HB 13** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION _____. (a) Subchapter A, Chapter 64, Utilities Code, is amended by adding Section 64.005 to read as follows:

Sec. 64.005. NOTICE REGARDING ACCESS TO EMERGENCY SERVICES. (a) In this section:

(1) "E911" means the 9-1-1 system as defined by Section 772.001, Health and Safety Code.

(2) "VoIP provider" means an entity that offers VoIP service for a fee.

(3) "VoIP service" means voice communications to residential or business customers over a broadband network using Internet Protocol

(b) A VoIP provider may not enter into a contract to provide VoIP service unless the entity provides clear and conspicuous notice to customers disclosing whether or not the service provides access to E911.

(c) A VoIP provider that does not provide access to E911 or that requires a customer to take steps to activate access to E911 may not enter into a contract to provide VoIP service unless the VoIP provider provides:

(1) clear and conspicuous notice of the specific steps the customer must take to activate that service; and

(2) a clear and conspicuous explanation of all material differences between E911 service and the provider's system for accessing emergency services.

(d) The notice required by Subsection (c) must:

(1) be a separate document; and

(2) conspicuously state that the customer acknowledges that the customer will not be able to use the service to access E911 or that the customer must separately activate access to that service to receive it.

(e) At least annually, a VoIP provider shall send to each customer to whom it provides VoIP service a notice that includes the information required by Subsection (c). The provider shall provide the notice as a separate document.

(f) Except as specifically preempted by federal law, the commission has all jurisdiction necessary to enforce this section.

(g) A violation of this chapter is a false, misleading, or deceptive act or practice and is actionable by the attorney general under Subchapter E, Chapter 17, Business & Commerce Code.

(b) This section applies to a contract entered into or renewed on or after the effective date of this section. A contract entered into or renewed before that date is governed by the law in effect on the date the contract was entered into or renewed, and that law is continued in effect for that purpose.

(c) This section does not affect litigation pending on the effective date of this section.

AMENDMENT NO. 8 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE GATTIS: Mr. Vo, I think you have a good amendment from the standpoint of the people of Texas—making sure that they are aware of the services they buy and what the limitations of that service is. I think what your amendment is trying to do is to make sure that if someone has VoIP and that doesn't get them directly to 911, or causes some problems with 911 service, that they ought to know about it and be informed. Is that right? Is that what your amendment does?

REPRESENTATIVE VO: Yes.

GATTIS: I believe that you and I as well as Representative King had some conversations about this and about the FCC and their recent ruling on this. I just want to read it to you, because I think you just want to be assured of what this ruling was and what the rule is currently for VoIP providers. I tried to look that up in the meantime after you pulled that down and I appreciate you pulling it down. The FCC ruling, 911 ruling, states that all VoIP service providers are required to ensure that the customer acknowledges their understanding of the differences between 911 and e911 service. That customer must read an advisory form and must acknowledge that they understand that form and send it back to the VoIP provider. If that customer does not do so, that VoIP provider is required to shut their service off until they provide an acknowledgment that they understand what those differences are. I believe that FCC ruling accomplishes exactly what you're wanting to accomplish here on this house floor today—to make sure people are aware of what that situation is. Am I right about that, Mr. Vo?

VO: Mr. Gattis, thank you for bringing it up. Since FCC already enforces these laws, I would like to make a motion to withdraw my amendment.

REMARKS ORDERED PRINTED

Representative Gattis moved to print remarks between Representative Vo and Representative Gattis.

The motion prevailed.

Amendment No. 8 was withdrawn.

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. 2.)

HB 13 - (consideration continued)

Representative P. King moved to postpone consideration of **HB 13** until 9 a.m. tomorrow.

The motion prevailed.

HR 173 - ADOPTED (by Dunnam)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 173**.

The motion prevailed.

The following resolution was laid before the house:

HR 173, Honoring the Reverend Lawrence Soler of Waco on his 50th anniversary in the priesthood.

HR 173 was adopted.

HR 174 - ADOPTED
(by Hamilton)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 174**.

The motion prevailed.

The following resolution was laid before the house:

HR 174, In memory of retired educator and tireless volunteer Nelda Ann Overstreet of Kountze.

HR 174 was unanimously adopted by a rising vote.

HR 175 - ADOPTED
(by Leibowitz)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 175**.

The motion prevailed.

The following resolution was laid before the house:

HR 175, Honoring the Harlandale High School Band on its many successes throughout the 2004-2005 school year.

HR 175 was adopted.

HR 176 - ADOPTED
(by Dutton, et al.)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 176**.

The motion prevailed.

The following resolution was laid before the house:

HR 176, Commemorating the 2005 reunion of Houston County schools sponsored by the Houston Chapter of the Crockett Colored High/Ralph J. Bunche High School Alumni, Ex-Students, and Teachers Association.

HR 176 was adopted.

HR 177 - ADOPTED
(by Dutton)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 177**.

The motion prevailed.

The following resolution was laid before the house:

HR 177, Congratulating the Reverend S. E. Harris on his 33rd anniversary as pastor of Saint Rest Missionary Baptist Church in Houston.

(Speaker in the chair)

HR 177 was adopted.

COMMITTEE GRANTED PERMISSION TO MEET

Representative P. King requested permission for the Committee on Regulated Industries to meet while the house is in session at 9 p.m. today in E2.020 for a formal meeting to consider **SB 5**.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Regulated Industries, 9 p.m. today, E2.020, for a formal meeting, to consider **SB 5**.

Land and Resource Management, upon first adjournment today, 3W.9, for a formal meeting.

ADJOURNMENT

Representative Uresti moved that the house adjourn until 7:40 p.m. today in memory of Bobby Fernandez, Jr., of San Antonio.

The motion prevailed.

The house accordingly, at 7:30 p.m., adjourned until 7:40 p.m. today.

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 63 (By Anchia, et al.), Relating to the standard service retirement annuity for service as a member of the legislature.

To Pensions and Investments.

HB 64 (By Alonzo), Relating to persons who are authorized to conduct a marriage ceremony.

To Juvenile Justice and Family Issues.

List No. 2

HB 65 (By Kolkhorst), Relating to limiting the use of eminent domain to take private property for private uses or economic development purposes.

To Land and Resource Management.

HB 66 (By Corte and Peña), Relating to the exercise of the power of eminent domain.

To Land and Resource Management.

HB 67 (By Geren), Relating to the authority of the Tarrant Regional Water District to exercise the power of eminent domain.
To Land and Resource Management.

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Monday, August 8, 2005

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 13 Gallego SPONSOR: Madla
In memory of Ernesto Sotelo Gallego of Alpine.

Respectfully,
Patsy Spaw
Secretary of the Senate

