

HOUSE JOURNAL

SEVENTY-FOURTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-SECOND DAY — FRIDAY, MAY 26, 1995

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 558).

Present — Mr. Speaker; Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgenuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Absent, Excused — Stiles.

The invocation was offered by Reverend Harry Thrasher, First Assembly of God, Belton, as follows:

Our God in heaven we call upon the one who in all fullness dwell. To be present in this governing body. Adding strength to these mighty leaders and their staff. May the long hours they spend be fruitful and beneficial to all people. Grant wisdom to guide their knowledge and direction down a constructive path. We receive all that the Father has in store and rejoice in the efforts and accomplishments that a spirit of unity brings.

That the God of our Lord Jesus Christ, the Father of glory may give unto you the spirit of wisdom and revelation in the knowledge of God. Amen.

LEAVE OF ABSENCE GRANTED

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

Stiles on motion of Hightower.

MESSAGE FROM THE SENATE

Austin, Texas, May 26, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to the following and requests the appointment of a Conference Committee to adjust the differences between the two Houses:

SB 15 Conferees: Whitmire, Chair, Shapiro, Brown, West and Turner.

SB 374 Conferees: Armbrister, Chair, Moncrief, Sibley, Wentworth and Montford.

SB 667 Conferees: Madla, Chair, Haywood, Truan, Gallegos and Moncrief.

SB 673 Conferees: Madla, Chair, Moncrief, Lucio, Nixon and Galloway.

SB 913 Conferees: Lucio, Chair, Sibley, Barrientos, Luna and Henderson.

SB 1013 Conferees: Gallegos, Chair, Truan, Barrientos, Ellis and Patterson.

SB 1295 Conferees: Montford, Chair, Armbrister, Cain, Brown and Ratliff.

SB 1509 Conferees: Zaffirini, Chair, Truan, Montford, Rosson and Lucio.

SB 1542 Conferees: Turner, Chair, Gallegos, West, Moncrief and Shapiro.

SB 1683 Conferees: Nixon, Chair, Armbrister, Ratliff, Madla and Whitmire.

I am directed by the Senate to inform the House that the Senate has granted the request of the House for the appointment of a Conference Committee to adjust the differences between the two Houses on the following:

HB 369 Conferees: Patterson, Chair, Cain, Shapiro, Rosson and Ellis.

HB 3235 Conferees: Turner, Chair, Henderson, Montford, Luna and West.

Respectfully,
Betty King
Secretary of the Senate

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolutions:

HB 175, HB 238, HB 347, HB 359, HB 398, HB 553, HB 677, HB 735, HB 742, HB 768, HB 815, HB 828, HB 1048, HB 1094, HB 1127, HB 1180, HB 1200, HB 1323, HB 1366, HB 1405, HB 1441, HB 1472, HB 1479, HB 1481, HB 1487, HB 1495, HB 1586, HB 1651, HB 1698, HB 1785, HB 1900, HB 1957, HB 1991, HB 2035, HB 2042, HB 2069, HB 2162, HB 2168, HB 2216, HB 2307, HB 2313, HB 2373, HB 2401, HB 2432, HB 2540, HB 2579, HB 2686, HB 2698, HB 2781, HB 2875, HB 2943, HB 3031, HB 3072, HB 3120, HJR 68, HCR 128, HCR 186, HCR 205, HCR 227, HCR 231, SB 9, SB 20, SB 94, SB 123, SB 206, SB 212, SB 291, SB 437, SB 488, SB 533, SB 538, SB 563, SB 597, SB 609, SB 643, SB 644, SB 676, SB 956, SB 1016, SB 1037, SB 1059, SB 1660, SB 1671, SJR 1

INTRODUCTION OF GUESTS

The speaker recognized Representative Black, who introduced Frederick Carter, one of the Texas State Artists for 1995, and his family.

HCR 190, congratulating the Texas State Artists for 1994 and 1995 upon their selection, having been previously adopted, was read.

HR 95

HR 95, in memory of the Honorable Phillip LaFrance Willis, having been previously adopted, was read.

HR 1127 - ADOPTED

Representative T. Hunter moved to suspend all necessary rules to take up and consider at this time **HR 1127**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By T. Hunter,

HR 1127, Honoring the Honorable Bob Hunter for his service to Abilene Christian University.

The resolution was read and was adopted without objection.

On motion of Representative Uher, the names of all the members of the house were added to **HR 1127** as signers thereof.

(Speaker pro tempore in the chair)

HR 1140 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1140**, suspending the limitations on the conferees for **SB 550**.

HR 1141 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1141**, suspending the limitations on the conferees for **HB 1863**.

HR 1143 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1143**, suspending the limitations on the conferees for **HB 984**.

HR 1142 - ADOPTED

Representative Pitts moved to suspend all necessary rules to take up and consider at this time **HR 1142**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Pitts,

HR 1142, Congratulating Roy and Agnes Pitts on the occasion of their 60th wedding anniversary.

The resolution was read and was adopted without objection.

On motion of Representative Alexander, the names of all the members of the house were added to **HR 1142** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Pitts, who introduced his parents, Roy and Agnes Pitts.

CAPITOL PHYSICIAN

The chair presented Dr. Nick Giannone of Lake Jackson as the "Doctor for the Day."

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

HR 1139 - ADOPTED

Representative Delisi moved to suspend all necessary rules to take up and consider at this time **HR 1139**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Delisi,

HR 1139, Honoring Tucker Bonner for his contributions to the field of health care.

The resolution was adopted without objection.

HR 1132 - ADOPTED

Representative Davis moved to suspend all necessary rules to take up and consider at this time **HR 1132**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Davis,

HR 1132, Congratulating Hardin Intermediate School of Duncanville on being selected a Drug-Free School by the U.S. Department of Education.

The resolution was adopted without objection.

HR 1138 - ADOPTED

Representative Counts moved to suspend all necessary rules to take up and consider at this time **HR 1138**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Counts,

HR 1138, Honoring the Rule I.S.D. state UIL championship winners.

The resolution was adopted without objection.

HR 1146 - ADOPTED

Representative Kubiak moved to suspend all necessary rules to take up and consider at this time **HR 1146**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Kubiak,

HR 1146, Honoring Dr. Walter Hasskarl, Jr.

The resolution was adopted without objection.

On motion of Representative Edwards, the names of all the members of the house were added to **HR 1146** as signers thereof.

HCR 159 - ADOPTED

Representatives Bosse, Crabb, Talton, and Zbranek moved to suspend all necessary rules to take up and consider at this time **HCR 159**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Bosse, Talton, Crabb and Zbranek,

HCR 159, Declaring October 13-15, 1995, to be Boom Town Blow Out Days in Texas.

The resolution was adopted without objection.

HR 1148 - ADOPTED

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 1148**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Dutton,

HR 1148, Honoring John Elliott Westberry.

The resolution was adopted without objection.

HR 1145 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1145**, suspending the limitations on the conferees for **SB 1**.

(Edwards in the chair)

HR 1062 - ADOPTED

Representative Uher moved to suspend all necessary rules to take up and consider at this time **HR 1062**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Uher,

HR 1062, Honoring the Clute Little League All-Stars.

The resolution was read and was adopted without objection.

On motion of Representatives Price, Kubiak, and Hill, the names of all the members of the house were added to **HR 1062** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Uher, who introduced the Clute Little League All-Stars, 1994 Texas state champions, and their coaches, Ronnie Broaddus and Chip Melton.

HR 1149 - ADOPTED

Representative Price moved to suspend all necessary rules to take up and consider at this time **HR 1149**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Price,

HR 1149, Commemorating the reunion of old Hebert High School.

The resolution was adopted without objection.

HR 1150 - ADOPTED

Representative Saunders moved to suspend all necessary rules to take up and consider at this time **HR 1150**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Saunders,

HR 1150, Congratulating the Flatonia High School baseball team on winning the 1993 UIL Class 1A state championship.

The resolution was adopted without objection.

(Speaker pro tempore in the chair)

CONGRATULATORY AND MEMORIAL CALENDAR

The chair laid before the house the following memorial resolutions:

SCR 115 (Staples - House Sponsor), Commemorating the life of service of James Pinckney Henderson.

SCR 166 (Sadler - House Sponsor), In memory of Charles B. Smith.

By Wilson,

HCR 208, In memory of Elizabeth Hale Calderon.

By West,

HR 932, In memory of Clair V. Hall.

By Hochberg and Edwards,

HR 1000, In memory of Malcolm Bruce McNeil.

By Giddings,

HR 1001, Recognizing June 16, 1995, as the Day of the African Child.

By Hochberg,

HR 1018, In memory of Rosemary Kennedy.

By Oakley,

HR 1021, In memory of Matthew Brent Courtney.

By Brimer,

HR 1027, In memory of Iona Mae Bagwell Kloster.

By Shields,

HR 1056, In memory of Barbara Schoolcraft.

By Chisum,

HR 1057, In memory of the Honorable Max W. Boyer.

By Black,

HR 1059, In memory of former house members.

By Junell,

HR 1066, In memory of Rene Ruth Stewart.

By Gutierrez,

HR 1079, In memory of Leonelo H. Gonzalez.

By Gutierrez,

HR 1082, In memory of Rodney Ryan Perez.

By Kuempel,

HR 1091, In memory of Mary Joe Durning Carroll.

The resolutions were unanimously adopted by a rising vote.

The chair laid before the house the following congratulatory resolutions:

SCR 122 (Finnell - House Sponsor), Commending Peggy Sue Garner for her exceptional service to the State of Texas.

SCR 153 (Naishtat - House Sponsor), Applauding the efforts of Youth Advocacy, Incorporated.

SCR 156 (Naishtat - House Sponsor), Extending best wishes to D.L. "Dally" Willis on the occasion of his 75th birthday.

SCR 159 was read at the end of the congratulatory resolutions portion of the calendar.

SCR 160 (Hamric - House Sponsor), Commending the students of Klein Forest High School and designating May 19, 1995, as a Day of Hope and Healing in Texas.

SCR 162 (H. Cuellar - House Sponsor), Designating May, 1995, as "Child Focused Accident, Injury, and Illness Prevention Month."

SCR 163 (Sadler - House Sponsor), Saluting the First Baptist Church of Marshall, Texas, on its 150th anniversary.

By Jackson and Talton,

HCR 223, Honoring Chelsi Smith, Miss Universe 1995.

By Crabb,

HCR 224, Honoring Kingwood High School for its athletic championships.

By Giddings,

HCR 228, Honoring Dana Vaughn for her success in business with her sister, Denise Ward.

By Giddings,

HCR 229, Honoring Denise Ward for her success in business with her sister, Dana Vaughn.

By Junell,

HR 924, Honoring Stephen Brown on the occasion of his retirement as city manager of San Angelo.

HR 925 was read at the end of the congratulatory resolutions portion of the calendar.

By Hirschi,

HR 930, Honoring Bethania Regional Health Care Center.

By Black,

HR 933, Commending Gene Goodnight for his support of the youth of Bell County.

By Johnson,

HR 935, Recognizing the culinary and economic contributions of the mayhaw fruit.

By Alonzo,

HR 936, Congratulating Linda Maria Gutierrez on her recent birthday.

By Marchant,

HR 937, Congratulating Medco Containment Services, Inc., on the opening of its new facility, the Texas Call Center, in Carrollton.

By Marchant,

HR 938, Congratulating Bea's Kids on its receipt of a 1995 Best of Texas award from the Corporate Fund for Children.

By De La Garza,

HR 939, Congratulating the 1995 senior class of Edinburg High School on the occasion of their graduation.

By De La Garza,

HR 940, Congratulating the members of the 1995 senior class of Edinburg North High School on the occasion of their graduation.

By Wilson,

HR 941, Celebrating the birth of Luke Robert Barton and extending congratulations to his parents, Wade and Yvonne Barton.

By Davis,

HR 942, Honoring the Sickle Cell Anemia Foundation of Dallas.

By Alexander,

HR 943, Honoring Athens Brick Company for its outstanding safety record.

By Hirschi,

HR 944, Congratulating the Wichita County Heritage Society on its receipt of a grant to restore the historic Kemp and Kell Railroad Depot.

By Brady,

HR 945, Honoring David Andis on the occasion of his graduation from the University of Houston Law Center.

By McCall,

HR 950, Honoring Frank Fallon on his retirement as sports announcer for Baylor University.

By Madden,

HR 951, Honoring veterans of submarine duty during World War II.

By Bosse,

HR 959, Congratulating Kim McGruder.

By Gutierrez,

HR 965, Honoring Mayor Rubio Salinas.

By Gutierrez,

HR 966, Congratulating Matthew Charles Williams on attaining the rank of Eagle Scout.

By Gutierrez,

HR 967, Honoring the former mayor of Pharr, Quentin Newcombe, Jr.

By Gutierrez,

HR 968, Commending Sharon Christa McAuliffe Elementary School for participating in the Mentor School Network.

By Gutierrez,

HR 969, Honoring Pharr Crime Stoppers, Inc.

By T. Hunter, et al.,

HR 970, Honoring Y. C. Wang on the occasion of his visit to Texas.

By Haggerty,

HR 979, Honoring Commander Patrick L. Beatty for his military service.

By Marchant,

HR 984, Honoring Dr. W. M. Lynch on the occasion of his retirement.

By Finnell,

HR 989, Honoring the Jacksboro High School FFA Range and Pasture team.

By Park,

HR 990, Honoring Lennijo Blair on her retirement from the Hurst-Eules-Bedford School Board.

By Gallego,

HR 992, Commemorating the naming of a mountain in Big Bend National Park for the Honorable Calvin C. Huffman.

By Maxey,

HR 993, Honoring Mr. and Mrs. Beauford Gorhum on their 50th wedding anniversary.

By Coleman,

HR 1004, Honoring Jo Ann Williams.

By Walker,

HR 1009, Congratulating G. D. "Rip" Lasater on his retirement.

By Carter, et al.,

HR 1012, Commending the Bedford Mid-Cities office of the Texas Employment Commission.

By H. Cuellar,

HR 1014, Honoring Veronica Olivarez on her selection as the U.S. Border Patrol's Youth of the Year.

By Van de Putte,

HR 1015, Honoring Louis Barrios on his selection as 1995 Small Business Leader of the Year.

By Van de Putte,

HR 1016, Honoring William Arlyn Kloesel on the occasion of his retirement.

By Naishtat,

HR 1020, Honoring Erv Sandlin and designating May 27, 1995, as Erv Sandlin Appreciation Day.

By Delisi,

HR 1022, Honoring Bethel African Methodist Episcopal Church on the occasion of its 102nd anniversary.

By Greenberg,

HR 1023, Congratulating Rabbi Steven Folberg on his 10th year in the rabbinate.

By Moffat,

HR 1025, Congratulating Cathy Barthelemy on being named 1995 Teacher of the Year by the Carroll Independent School District.

By Sadler,

HR 1028, Honoring Mr. and Mrs. Joe B. Craig on their 55th wedding anniversary.

By Ogden,
HR 1029, Commending Marvin Tate on the occasion of his retirement as mayor of Bryan.

By Grusendorf,
HR 1030, Congratulating Beth Johnson on her birthday.

HR 1031 was previously adopted.

By Kuempel,
HR 1032, Honoring Sandra Beckett on her retirement.

By Kuempel,
HR 1033, Congratulating Laneta Watson on her retirement.

By Kuempel,
HR 1034, Honoring Charlene Fundis on the occasion of her retirement.

By Davis,
HR 1036, Honoring Sunday School Class No. 25 at Saint Baptist Church in Houston.

By McDonald,
HR 1037, Honoring Tom Diamond.

By Staples,
HR 1038, Honoring the Texas Scottish Rite Hospital for Children.

HR 1039 was previously adopted.

HR 1040 was previously adopted.

By Dutton,
HR 1041, Honoring Tonya Hill for her selection as Crawford Elementary School's Student of the Year.

By Dutton,
HR 1043, Honoring Michael Carty on his selection as HISD Exceptional Education Teacher of the Year.

By Finnell,
HR 1044, Commending Vernon State Hospital.

By Finnell,
HR 1045, Honoring the Midway Independent School District math teams.

By Pickett,
HR 1046, Congratulating the J. M. Hanks High School varsity golf team.

By Siebert,
HR 1047, Honoring Keith White for his business contributions and community service.

By Siebert,
HR 1048, Honoring the men and women of the American intelligence services.

By Saunders,

HR 1050, Honoring the Schulenburg High School girls' golf team on winning the UIL Class 2A state championship.

By Shields,

HR 1055, Honoring Pastor Allen Randolph.

By Black,

HR 1058, Congratulating the students of Salado High School on winning the Academic State Championship in Conference 2A.

HR 1062 was previously adopted.

By Alonzo,

HR 1063, Commending the Texas Association of Chicanos in Higher Education.

By Alonzo,

HR 1064, Commending the National Council of La Raza.

By Alonzo,

HR 1065, Honoring Lorraine Saenz-Sarabia on her election to the Grand Prairie school board.

By Marchant,

HR 1067, Congratulating Raymond K. Haynes on being awarded an honorary membership in the Texas Association of Nurserymen.

By Marchant,

HR 1068, Congratulating Reverend William Dorough and Mrs. Velma Dorough on their 50th wedding anniversary.

By Marchant,

HR 1069, Congratulating the Southern Nazarene University Lady Redskins for winning the NAIA Division I National Women's Basketball Championship.

By Marchant,

HR 1070, Honoring the Reverend Marvin McDaniel on his retirement.

By Mowery,

HR 1077, Congratulating Susan and Steve Collier on the birth of their quadruplets.

By Gutierrez,

HR 1078, Commending the work of South Texas Community College.

By Gutierrez,

HR 1081, Honoring Saraeli M. Gonzales for her community service and congratulating her on her high school graduation.

By Solis,

HR 1085, Congratulating Mr. and Mrs. Guadalupe Rodriguez on the occasion of their 40th wedding anniversary.

By Berlanga,

HR 1086, Urging dental provider organizations to follow certain guidelines.

By Van de Putte,

HR 1088, Honoring Ryan Todd Holland on attaining the rank of Eagle Scout.

By Heflin and Hamric,

HR 1089, Congratulating Joseph and Patricia Calderon on the occasion of their 50th wedding anniversary.

By Heflin,

HR 1090, Honoring and congratulating the citizens of Alief on the occasion of the 100th anniversary of the Alief Post Office.

By Gallego,

HR 1092, Honoring Dorothy M. Leavitt on her retirement from Sul Ross State University.

By Gallego,

HR 1093, Honoring Don Howard.

HR 1094 was read at the end of the congratulatory resolutions portion of the calendar.

HR 1096 was withdrawn.

By Crabb,

HR 1097, Recognizing the Kingwood High School girls' golf team for winning the state championship.

HR 1099 was read at the end of the congratulatory resolutions portion of the calendar.

By Torres,

HR 1100, Honoring Joya T. Hayes for her participation in the Texas Legislative Internship Program.

The resolutions were adopted without objection.

On motion of Representative Dukes, the names of all members of the house were added to **HR 1100** as signers thereof.

SCR 159 - ADOPTED
(Naishtat - House Sponsor)

The chair laid before the house the following resolution:

SCR 159, Commending Brenda Shelton Olds for her 27 years of service with the Texas Legislative Reference Library.

The resolution was read and was adopted without objection.

HR 925 - ADOPTED

The chair laid before the house the following resolution:

By R. Lewis,

HR 925, Honoring all spouses of the members of the Texas House of Representatives.

The resolution was read and was adopted without objection.

On motion of Speaker Laney, the names of all the members of the house were added to **HR 925** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative R. Lewis, who introduced Nelda Laney, First Lady of the Texas House.

The house welcomed Mrs. Laney and thanked her for her gracious hospitality to the members of the house, their families, and to house staff.

HR 1094 - ADOPTED

The chair laid before the house the following resolution:

By Dear,

HR 1094, Honoring Murray "Pete" Peterson for his outstanding service as doorkeeper of the house.

The resolution was read and was adopted without objection.

On motion of Representative Black, the names of all the members of the house were added to **HR 1094** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Dear, who introduced Pete Peterson, doorkeeper of the house of representatives.

HR 1099 - ADOPTED

The chair laid before the house the following resolution:

By Duncan, Laney, Junell, D. Jones, Craddick, et al.

HR 1099, Congratulating the Texas Tech University Red Raiders on their outstanding athletic accomplishments during the 1994-95 academic year.

The resolution was read and was adopted without objection.

On motion of Representative Hilderbran, the names of all the members of the house were added to **HR 1099** as signers thereof.

HR 1100

HR 1100, honoring Joya T. Hayes for her participation in the Texas Legislative Internship Program, having been previously adopted, was read.

ADDRESS BY REPRESENTATIVE OAKLEY ON A MATTER OF PERSONAL PRIVILEGE

The chair recognized Representative Oakley, who addressed the house on a matter of personal privilege, speaking as follows:

Thank you Mr. Speaker and members. I've been here for ten years, and I've never made a personal privilege speech, and I thought probably I never would. But I am today, to defend one of our colleagues who is not here to defend himself.

Bill Blackwood had a big heart; he had a big motorcycle, and he had a big dream. He wanted there to be a Law Management Institute of Texas. Bill

probably should have been a cop. He loved law enforcement. He loved serving on the public safety committee. He would ride with the Mesquite police whenever he could; he'd ride with DPS when he could. And in working with law enforcement officials, he learned that police officers in Texas who wanted to go into management and receive the training that they needed—the only place they could go was the FBI school in Quantico, Virginia, and there was a tremendous waiting list.

So he had a dream that he wanted to form the Law Management Institute of Texas, and he passed legislation four sessions ago, I believe, to take money off court cases to generate funds for a Law Management Institute of Texas. TCLOSE was supposed to build the school and run it. Well, as often happens with bureaucrats, they did what they wanted to. And TCLOSE, instead of building the school and running it as Blackwood and the legislature wished, decided that they would contract with Texas Woman's University, Texas A&M, and Sam Houston State to put on what Blackwood called "a traveling road show," so that any law enforcement officer that wanted to receive this education would have to take part of the training at Texas Woman's University, part of the training at Texas A&M, and part of the training at Sam Houston State. Well Blackwood was livid. He was very angry with TCLOSE and the director of TCLOSE for doing that. So he passed legislation. He tried to pass it session before last, was unsuccessful, and last session passed it, and you'll remember that. And we thought that we had solved this situation when we passed that bill.

During the interim I met with the folks from the Bill Blackwood Law Management Institute of Texas and I said, "How did Texas Woman's University and Texas A&M take it when they lost the contracts?" And they said, "Oh, we have not stopped the contracts." And I said, "What do you mean?" And they said, "Well the bill was written broadly enough so that we can continue contracting with those. And we received a letter from Governor Ann Richards because Texas A&M pressured her into writing Sam Houston State and saying do not cut out these contracts." And so Sam Houston State was kind of in a box. So the traveling road show continues.

I went to the dedication of the Bill Blackwood Law Management Institute at Sam Houston State; they dedicated a classroom. I put on your desks quotes from Bill Blackwood at a public safety committee meeting last session because, folks, Texas A&M is down here telling everybody now that Bill Blackwood wanted it the way it is now, that he liked part of the education taking place at TWU and part of it at A&M and part of it at Sam Houston State. That's a lie. And all of these quotes from Bill Blackwood show that that is a lie. More than anything else, Bill Blackwood wanted a single location for this Law Management Institute, and when I told Mary Blackwood that it hadn't happened, she was sick about it.

Now Texas A&M has lobbied Blackwood's widow to tell her how good this program is working. We passed a bill out of this house this session to stop this. Well, A&M got it killed in the senate, again. And I had talked with them and worked with them. They have been very, very arrogant and have told me that they have no intention of giving up this money. They seem to take pleasure in telling me that well, if the legislature wanted us to stop that,

we would. And then they kill the bill each time. This is the tail wagging the dog, and it's happened before, but when they lobbied Mary Blackwood, that was the final straw. They have been arrogant and pompous. They have enjoyed showing me how strong they are. But don't let them tell you that Bill Blackwood wanted it the way it is now, because he didn't. You know, they're telling everybody Bill Blackwood was loyal to Texas A&M, and that's true; he was. But he was very angry at Texas A&M over this, and let me tell you something: he was loyal to A&M, but they have not been loyal to him. They have desecrated his memory, and they have destroyed his dream for just a few dollars.

You know, life is very uncertain, and none of us know if we're going to be back here next session. I don't know if I'm going to be back. If I'm back, I'm going to fight this thing again, but if I'm not, one of you has to do it. Thank you.

(Stiles now present)

REMARKS ORDERED PRINTED

Representative Hill moved to print remarks by Representative Oakley.

The motion prevailed without objection.

MOTION TO SUSPEND RULES

Representative Chisum moved to suspend Rule 6, Section 16(c) (the six-hour rule) to allow the items eligible list to be placed in members' mailboxes one hour before the list may be considered by the house.

The motion was withdrawn.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Conference committee on **HB 2766** 1:30 p.m. today, speakers committee room.

RECESS

Representative Solis moved that the house recess until 2 p.m. today.

The motion prevailed without objection.

The house accordingly, at 12:01 p.m., recessed until 2 p.m. today.

AFTERNOON SESSION

The house met at 2 p.m. and was called to order by the speaker.

RULES SUSPENDED

Representative Smithee moved to suspend all necessary rules to allow all conference committees to meet while the house is in session for the remainder of the session.

The motion prevailed without objection.

HR 1153 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1153**, suspending the limitations on the conferees for **HB 2349**.

RULES SUSPENDED

Representative Chisum moved to suspend Rule 6, Section 16(c) (the six-hour rule) to allow the items eligible list to be placed in members' mailboxes one hour before the list may be considered by the house.

The motion prevailed without objection. (Maxey recorded voting no.)

HR 1155 - ADOPTED

Representative Saunders moved to suspend all necessary rules to take up and consider at this time **HR 1155**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Saunders,

HR 1155, Recognizing Capitol Police Officer Mike Harris.

The resolution was read and was adopted without objection.

On motion of Representative Gallego, the names of all the members of the house were added to **HR 1155** as signers thereof.

HCR 233 - ADOPTED

Representative Krusee moved to suspend all necessary rules to take up and consider at this time **HCR 233**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Krusee,

HCR 233

WHEREAS, **SB 421** has passed the House of Representatives and the Senate and is being prepared for enrollment; and

WHEREAS, The text set out in **SB 421** contains typographical errors; now, therefore, be it

RESOLVED, by the 74th Legislature of the State of Texas, That the enrolling clerk of the Senate be instructed to make the following correction to **SB 421**:

(1) In added Section 42.024(e), Local Government Code, strike "extraterritorial" before "jurisdiction of another municipality".

The resolution was adopted without objection.

HR 1141 - ADOPTED

The speaker laid before the house the following privileged resolution:

By Hilderbran,

HR 1141

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 1863 to consider and take action on the following specific matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add to Section 31.031(d), Human Resources Code, SECTION 2.04 of the bill, "or a child who is not enrolled in public school", so that the subsection reads as follows:

"(d) The department shall require the applicant to provide proof to the department that each child five years of age or younger, or a child who is not enrolled in public school, for whom the applicant will receive assistance."

Explanation: Proof would only have to be provided for children younger than five years of age or not enrolled in a public school because the public schools require proof of immunization.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend text in Section 31.0031(d)(4), Human Resources Code, SECTION 2.02 of the bill, to read as follows:

"(4) each adult recipient for whom a needs assessment is conducted participate in an activity to enable that person to become self-sufficient by:"

Explanation: This is a technical amendment to change the tense of the verb from past tense to present tense.

(3) House Rule 13, Section 9(a)(3), is suspended to permit the committee to add the following text to the end of Section 31.0031(d)(8), Human Resources Code, SECTION 2.02 of the bill, to read as follows: ", as determined by the needs assessment."

Explanation: This addition removes the requirement that all financial aid recipients attend parenting skills classes because not all persons who apply for assistance need the classes.

(4) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend text in Section 31.0033(a), Human Resources Code, SECTION 2.02 of the bill, to read as follows: "the person receiving the financial assistance may request a hearing to show good cause for noncompliance not later than the 13th day after the date on which notice is received under Section 31.0032."

Explanation: This amendment allows a recipient of financial assistance more time to appeal penalties or sanctions imposed by the department under Section 31.0032, Human Resources Code.

(5) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend text in Section 31.0034(3), Human Resources Code, SECTION 2.02 of the bill, to read as follows:

"(3) the number of persons who are exempt from participation under Section 31.012(c);"

Explanation: This technical change is necessary to provide the correct citation to Section 31.012, Human Resources Code.

(6) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend Section 31.0034(5)(A), Human Resources Code, as added by SECTION 2.02 of the bill, by striking the words "or marriage".

Explanation: The Department of Human Services usually is not informed by a financial aid recipient that the person no longer needs assistance because the person has married.

(7) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend SECTION 2.02(c) of the bill by changing the deadline for requiring all recipients to sign a responsibility agreement from January 1, 1996, to September 1, 1996.

Explanation: This change is necessary to enable the Texas Department of Human Services to allow a recipient of financial assistance who applied for financial assistance before the effective date of this Act to sign the responsibility agreement when the person returns to the department for the person's regularly scheduled follow-up visit. The fiscal note will increase if the date is not changed.

(8) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following text to SECTION 4.01 of the bill:

"(d) On the transfer of the program under Section 31.012, Human Resources Code, to the Texas Workforce Commission, the Texas Workforce Commission shall perform all duties assigned to the Texas Department of Human Services under Section 31.012, Human Resources Code, as amended by this section."

Explanation: Articles 4 and 11 of the bill amend the same sections of the Human Resources Code. This amendment is needed to allow those articles to work together when the workforce programs are consolidated.

(9) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following text to SECTION 4.02 of the bill:

"(c) On the transfer of the program under Section 31.0125, Human Resources Code, to the Texas Workforce Commission, the Texas Workforce Commission shall perform all duties assigned to the Texas Department of Human Services under Section 31.0125, Human Resources Code, as amended by this section."

Explanation: Articles 4 and 11 of the bill amend the same sections of the Human Resources Code. This amendment is needed to allow those articles to work together when the workforce programs are consolidated.

(10) House Rule 13, Section 9(a)(2), is suspended to permit the committee to strike the following text in SECTION 7.07(c)(2) of the bill: ", provided that the assistance may not be provided more than twice in one year unless the department has developed other appropriate limitations"

Explanation: This change is necessary to conform to federal law that allows an emergency assistance payment only once a year.

(11) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend Section 33.002(g), Human Resources Code, in SECTION 8.09 of the bill, to read as follows:

"(g) The department may, within federal limits, modify the one-day screening and service delivery requirements prescribed by Subsection (e) if the department determines that the modification is necessary to reduce fraud in the food stamp program."

Explanation: This change is necessary because the federal rules do not include emergency food stamps in the state's error rate.

(12) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following text to Section 10, Article 4413(502), Revised Statutes, in SECTION 9.01 of the bill:

"(e) Not later than January 1 of each odd-numbered year, the commission shall begin formal discussions with each health and human services agency regarding that agency's strategic plan or biennial update."

Explanation: This change is necessary to provide a set time frame within which the Health and Human Services Commission and its member agencies have to work on strategic plans and updates.

(13) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add an amendment to Section 12, Article 4413(502), Revised Statutes, in SECTION 9.02 of the bill, to read as follows:

Sec. 12. PUBLIC INPUT [INTEREST] INFORMATION AND COMPLAINTS. (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 jurisdiction of the commission.

(b) The commission shall develop and implement routine and ongoing mechanisms, in accessible formats:

(1) to receive consumer input;

(2) to involve consumers in planning, delivery, and evaluation of programs and services under the jurisdiction of the commission; and

(3) to communicate to the public the input received by the commission under this section and actions taken in response to that input.

(c) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(d) ~~(c)~~ The commissioner by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate agency personnel for the purpose of directing complaints to the commission. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of a person or entity regulated by the commission;

(2) on a sign prominently displayed in the place of business of each person or entity regulated by the commission; or

(3) in a bill for service provided by a person or entity regulated by the commission.

(e) ~~(d)~~ The commission shall keep an information file about each complaint filed with the commission relating to:

(1) a license holder or entity regulated by the commission; or

(2) a service delivered by the commission.

(f) ~~(e)~~ If a written complaint is filed with the commission relating to a license holder or entity regulated by the commission or a service delivered by the commission, the commission, at least quarterly and until final disposition

of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Explanation: This addition is necessary to ensure that the Health and Human Services Commission processes information received from the public in an orderly fashion and that the public is informed of commission actions.

(14) House Rule 13, Section 9(a)(4), is suspended to permit the committee to amend Article 4413(502), Revised Statutes, in SECTION 9.04 of the bill, by adding Section 13C to read as follows:

Sec. 13C. AUTOMATED SYSTEMS. A health and human services agency may not submit its plans to the Department of Information Resources under Subchapter E, Chapter 2054, Government Code, until those plans are approved by the commission.

Explanation: This addition is necessary to allow the Health and Human Services Commission and its member agencies to deliver human services more efficiently.

(15) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add an amendment to Section 14(a), Article 4413(502), Revised Statutes, in SECTION 9.05 of the bill, to read as follows:

(a) The commissioner shall:

(1) arbitrate and render the [a] final decision on interagency disputes;
(2) facilitate and enforce coordinated planning and delivery of health and human services, including compliance with the coordinated strategic plan, co-location of services, integrated intake, and coordinated referral and case management;

(3) request budget execution for the transfer of funds from one agency to another;

(4) establish a federal health and human services funds management system and maximize the availability of those funds;

(5) develop with the Department of Information Resources automation standards for computer systems to enable health and human services agencies to share pertinent data;

(6) establish and enforce uniform regional boundaries for all health and human services agencies;

(7) carry out statewide health and human services needs surveys and forecasting;

(8) perform independent special outcome evaluations of health and human services programs and activities;

(9) adopt rules necessary to carry out the commission's duties under this Act; and

(10) review and comment on health and human services agency formulas [~~develop a formula~~] for the distribution of funds to ensure that the formulas, to the extent permitted by federal law, consider [~~considers~~] such need factors as client base, population, and economic and geographic factors within the regions of the state.

Explanation: This amendment is necessary to ensure adequate distribution of federal funds.

(16) House Rule 13, Section 9(a)(4), is suspended to permit the committee to amend Article 4413(502), Revised Statutes, in SECTION 9.06 of the bill, by adding Section 14A to read as follows:

Sec. 14A. DELIVERY OF SERVICES. To integrate and streamline service delivery and facilitate access to services, the commissioner may request a health and human services agency to take a specific action and may recommend the manner in which the streamlining is to be accomplished, including requesting each health and human services agency to:

- (1) simplify agency procedures;
- (2) automate agency procedures;
- (3) coordinate service planning and management tasks between and among health and human services agencies;
- (4) reallocate staff resources;
- (5) adopt rules;
- (6) amend, waive, or repeal existing rules; and
- (7) take other necessary actions.

Explanation: This amendment is necessary to direct the human services agencies in the integration and streamlining of service delivery and to facilitate public access to those services.

(17) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 9.12(c) of the bill to read as follows:

- "(c) The commission shall examine cost-effective methods to address:
- (1) fraud in the assistance programs; and
 - (2) the error rate in eligibility determination."

Explanation: This amendment is necessary to assist the Health and Human Services Commission to address fraud and error in the welfare system.

(18) House Rule 13, Section 9(a)(4), is suspended to permit the committee to amend SECTION 9.14 of the bill by adding text to read as follows:

"Each health and human services agency shall enter into agreements as described by Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), and Article 1118z, Revised Statutes, to expand transportation services for persons receiving assistance for services under a federal program administered by that agency."

Explanation: This amendment is necessary because transportation is a support service under Section 31.010, Human Resources Code, and this will allow local transportation funds to be used to draw down more federal transportation funds.

(19) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 9.15 of the bill to read as follows:

SECTION 9.15. APPLICATION. The changes in law made by this article apply beginning with appropriations made for the fiscal year beginning September 1, 1995.

Explanation: This is a technical amendment to provide guidance on the applicability of the article.

(20) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend SECTION headings in Article 10 of the bill to read as follows:

- SECTION 10.02. SPOUSAL MAINTENANCE.
SECTION 10.03. TRANSITION.

Explanation: The headings were added to conform Article 10 to the style of the first nine articles of the bill.

(21) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend Section 3.9603(12), in SECTION 10.02 of the bill to read as follows:

"(12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304, Labor Code."

Explanation: This is a technical amendment to provide the correct cite to the Labor Code.

The resolution was adopted without objection.

HB 1863 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hilderbran submitted the following conference committee report on **HB 1863**:

Austin, Texas, May 23, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1863** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Zaffirini
Armbrister
Ellis
Moncrief
Patterson

Hilderbran
Denny
Maxey
Oliveira
Thompson

On the part of the Senate

On the part of the House

HB 1863, A bill to be entitled An Act relating to eligibility for and the provision of services and programs for needy people, including children; to assistance in becoming or remaining self-dependent; and to the responsibility of parents and others to assist needy people, including children, in becoming or remaining self-dependent; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL WELFARE PROVISIONS

SECTION 1.01. ASSISTANCE PRIORITY IS WORK. Section 31.001, Human Resources Code, is amended to read as follows:

Sec. 31.001. AID TO FAMILIES WITH DEPENDENT CHILDREN. The department shall provide financial assistance and services to families with dependent children in accordance with the provisions of this chapter. The department shall give first priority in administering this chapter to assisting an adult recipient of or unemployed applicant for the financial assistance and services in finding and retaining a job.

SECTION 1.02. DEPENDENT CHILD'S INCOME. (a) Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0031 to read as follows:

Sec. 31.0031. DEPENDENT CHILD'S INCOME. The department may not consider any income earned by a dependent child who is attending school and

whose income is derived from the child's part-time employment for purposes of determining:

(1) the amount of financial assistance granted to an individual under this chapter for the support of dependent children; or

(2) whether the family meets household income and resource requirements for eligibility for financial assistance under this chapter.

(b) This section takes effect September 1, 1995, and applies to income earned by the dependent child of an individual who receives financial assistance under Chapter 31, Human Resources Code, on or after the effective date of this section, regardless of the date on which eligibility for that assistance was determined.

SECTION 1.03. NEEDS ASSESSMENT. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0095 to read as follows:

Sec. 31.0095. NEEDS ASSESSMENT. The department shall assist a recipient in assessing the particular needs of that recipient and the recipient's family upon notification of entry into the JOBS program. The department and the recipient shall develop an employability plan to help the recipient achieve independence from public assistance granted to the recipient and the recipient's family.

SECTION 1.04. SUPPORT SERVICES. Section 31.010, Human Resources Code, is amended to read as follows:

Sec. 31.010. SUPPORT SERVICES. (a) Subject to the availability of funds, the [The] department shall [may] provide a recipient with support services designed to assist the recipient and the recipient's family to [needy families and individuals] attain and retain the capability of independence and self-care [if federal matching funds are available for the support of the services].

(b) The department shall consider the needs assessment and employability plan developed under Section 31.0095 in determining the support services needed.

(c) Support services include:

(1) education, using public or private schools as necessary;

(2) child care;

(3) transportation assistance;

(4) work skills and job readiness training;

(5) instruction in job search techniques; and

(6) job placement.

(d) The department by rule shall provide for implementation of the support services.

(e) The department may contract with other state agencies, community colleges, technical schools, residence training facilities, or public or private entities to provide support services under this section.

SECTION 1.05. PARENTING SKILLS TRAINING; SAFETY OF CHILDREN. Section 31.0135, Human Resources Code, is amended to read as follows:

Sec. 31.0135. PARENTING SKILLS TRAINING. (a) The department, in cooperation with the Central Education Agency, the Department of Protective and Regulatory Services, the Texas Agricultural Extension Service, or any other

public or private entity, shall develop a parenting skills training program to assist a recipient of assistance under this chapter, including a child who receives assistance on behalf of a dependent child. The program shall include nutrition education, budgeting and survival skills, and instruction on the necessity of physical and emotional safety for children.

(b) The department shall require that a caretaker relative or parent [child who is in school and] who is receiving assistance under this chapter on behalf of a dependent child receive parenting skills training as needed.

(c) In this section, "caretaker relative" means a person who is listed as a relative eligible to receive assistance under 42 U.S.C. Section 602(a).

SECTION 1.06. TEENAGE PREGNANCY. Section 31.0315, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) If the parent of a dependent child is under 17 years of age and the Title IV-D agency determines that the child's birth may be the result of sexual conduct that constitutes a criminal offense under the Penal Code, that agency shall refer the case to the appropriate law enforcement agency for further investigation.

SECTION 1.07. RESOURCE LIMITS FOR AFDC RECIPIENTS. Section 31.032, Human Resources Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In determining whether an applicant is eligible for assistance, the department shall exclude from the applicant's available resources:

(1) \$2,000 for the applicant's household or \$3,000 if there is a person with a disability or a person who is at least 60 years of age in the applicant's household; and

(2) the fair market value of the applicant's ownership interest in a motor vehicle, but not more than the amount determined according to the following schedule:

(A) \$4,550 on or after September 1, 1995, but before October 1, 1995;

(B) \$4,600 on or after October 1, 1995, but before October 1, 1996;

(C) \$5,000 on or after October 1, 1996, but before October 1, 1997; and

(D) \$5,000 plus or minus an amount to be determined annually beginning on October 1, 1997, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(e) If federal regulations governing the maximum allowable resources under the food stamp program, 7 CFR Part 273, are revised, the department shall adjust the standards that determine available resources under Subsection (d) to reflect those revisions.

ARTICLE 2. RESPONSIBILITY AGREEMENT

SECTION 2.01. APPLICATION FOR ASSISTANCE. (a) Section 31.031, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) The department shall require the applicant to provide proof to the department that each person who will receive assistance under this chapter is:

(1) a United States citizen or has a satisfactory immigration status as defined in Title IV, Social Security Act (42 U.S.C. Section 602(a)(33)), in effect as of the effective date of this Act; and

(2) a resident of this state.

(b) Section 31.031, Human Resources Code, as amended by this article, applies to a person who applies for financial assistance under Chapter 31, Human Resources Code, on or after the effective date of this article. A person who applied for financial assistance before the effective date of this article is governed by the law in effect when the person applied, and that law is continued in effect for that purpose.

SECTION 2.02. RESPONSIBILITY AGREEMENT. (a) Subchapter A, Chapter 31, Human Resources Code, is amended by adding Sections 31.0031, 31.0032, 31.0033, and 31.0034 to read as follows:

Sec. 31.0031. RESPONSIBILITY AGREEMENT. (a) The department shall require each adult recipient to sign a bill of responsibilities that defines the responsibilities of the state and of the recipient and encourages personal responsibility. The department shall explain to the applicant the work requirements and time-limited benefits in addition to the other provisions of the agreement before the applicant signs the agreement. The department shall provide each applicant with a copy of the signed agreement. The agreement shall include pertinent case information, including the case number and a listing of the state's benefits.

(b) The responsibilities of the state shall include administering programs, within available resources, that:

(1) promote clear and tangible goals for recipients;

(2) enable parents to provide for their children's basic necessities in a time-limited benefits program;

(3) promote education, job training, and workforce development;

(4) support the family structure through life and parenting skills training;

(5) are efficient, fraud-free, and easily accessible by recipients;

(6) gather accurate client information; and

(7) give communities the opportunity to develop alternative programs that meet the unique needs of local recipients.

(c) The department shall adopt rules governing sanctions and penalties under this section to or for a person who fails to comply with each applicable requirement of the responsibility agreement prescribed by this section.

(d) The responsibility agreement shall require that:

(1) the parent of a dependent child cooperate with the department and the Title IV-D agency if necessary to establish the paternity of the dependent child and to establish or enforce child support;

(2) if adequate and accessible providers of the services are available in the geographic area and subject to the availability of funds, each dependent child, as appropriate, complete early and periodic screening, diagnosis, and treatment checkups on schedule and receive the immunization series prescribed by Section 161.004, Health and Safety Code, unless the child is exempt under that section;

(3) each adult recipient, or teen parent recipient who has completed the requirements regarding school attendance in Subdivision (6), not voluntarily

terminate paid employment of at least 30 hours each week without good cause in accordance with rules adopted by the department;

(4) each adult recipient for whom a needs assessment is conducted participate in an activity to enable that person to become self-sufficient by:

(A) continuing the person's education or becoming literate;

(B) entering a job placement or employment skills training

program;

(C) serving as a volunteer in the person's community; or

(D) serving in a community work program or other work program approved by the department;

(5) each caretaker relative or parent receiving assistance not use, sell, or possess marihuana or a controlled substance in violation of Chapter 481, Health and Safety Code, or abuse alcohol;

(6) each dependent child younger than 18 years of age or teen parent younger than 19 years of age attend school regularly, unless the child has a high school diploma or high school equivalency certificate or is specifically exempted from school attendance under Section 21.033, Education Code;

(7) each recipient comply with department rules regarding proof of school attendance; and

(8) each recipient attend parenting skills training classes, as determined by the needs assessment.

(e) In conjunction with the Central Education Agency, the department by rule shall ensure compliance with the school attendance requirements of Subsection (d)(6) by establishing criteria for:

(1) determining whether a child is regularly attending school;

(2) exempting a child from school attendance in accordance with Subchapter B, Chapter 21, Education Code; and

(3) determining when an absence is excused.

(f) The department by rule may provide for exemptions from Subsection (d)(4) or for a teen parent under Subsection (d)(6). The department may not require participation in an activity under Subsection (d)(4) or for a teen parent under Subsection (d)(6) if funding for support services is unavailable.

(g) In this section, "caretaker relative" means a person who is listed as a relative eligible to receive assistance under 42 U.S.C. Section 602(a).

Sec. 31.0032. PENALTIES AND SANCTIONS. (a) If after an investigation the department determines that a person is not complying with a requirement of the responsibility agreement required under Section 31.0031, the department shall apply appropriate sanctions or penalties regarding the assistance provided to or for that person under this chapter.

(b) The department shall immediately notify the caretaker relative, second parent, or payee receiving the financial assistance whether sanctions will be applied under this section.

(c) This section does not prohibit the department from providing medical assistance, child care, or any other social or support services for an individual subject to sanctions or penalties under this chapter.

Sec. 31.0033. GOOD CAUSE NONCOMPLIANCE HEARING. (a) If the department determines that penalties and sanctions should be applied under Section 31.0032, the person determined to have not complied or, if different,

the person receiving the financial assistance may request a hearing to show good cause for noncompliance not later than the 13th day after the date on which notice is received under Section 31.0032.

(b) The department shall promptly conduct a hearing if a timely request is made under Subsection (a).

(c) If the department finds that good cause for noncompliance was not shown at a hearing, the department shall apply appropriate sanctions or penalties to or for that person until the department determines that the person is in compliance with the terms of the responsibility agreement.

(d) The department by rule shall establish criteria for good cause noncompliance and guidelines for what constitutes a good faith effort on behalf of a recipient under this section.

Sec. 31.0034. ANNUAL REPORT. The department shall prepare and submit an annual report to the legislature that contains statistical information regarding persons who are applying for or receiving financial assistance or services under this chapter, including the number of persons receiving assistance, the type of assistance those persons are receiving, and the length of time those persons have been receiving the assistance. The report also must contain information on:

(1) the number of persons to whom sanctions and time limits apply;

(2) the number of persons under each time limit category;

(3) the number of persons who are exempt from participation under Section 31.012(c);

(4) the number of persons who were receiving financial assistance under this chapter but are no longer eligible to receive that assistance because they failed to comply with the requirements prescribed by Section 31.0031;

(5) the number of persons who are no longer eligible to receive financial assistance or transitional benefits under this chapter because:

(A) the person's household income has increased due to employment; or

(B) the person has exhausted the person's benefits under this chapter; and

(6) the number of persons receiving child care, job training, or other support services designed to assist the transition to self-sufficiency.

(b) Except as provided by Subsection (c) of this section, Section 31.0032, Human Resources Code, as added by this article, applies to a person receiving financial assistance on or after the effective date of this article, regardless of the date on which eligibility for that assistance is determined.

(c) Not later than September 1, 1996, the Texas Department of Human Services shall require each recipient who applied for financial assistance before the effective date of this article to sign the responsibility agreement prescribed by Section 31.0031, Human Resources Code, as added by this article. The department may not enforce the terms of the agreement against a recipient who has not had an opportunity to sign the agreement.

SECTION 2.03. CONFIRMING AMENDMENT: MANDATORY SCHOOL ATTENDANCE. Subchapter A, Chapter 11, Education Code, is amended by adding Section 11.2094 to read as follows:

Sec. 11.2094. Attendance Records: AFDC Recipients. The Central Education Agency shall cooperate with the Texas Department of Human

Services in providing applicants for and recipients of financial assistance under Chapter 31, Human Resources Code, with the appropriate records to demonstrate satisfactory attendance and progress of dependent children and teen parents according to rules adopted by the department.

SECTION 2.04. CONFORMING AMENDMENT: IMMUNIZATIONS FOR CHILDREN. Section 31.031, Human Resources Code, is amended by adding Subsections (d), (e), (f), and (g) to read as follows:

(d) The department shall require the applicant to provide proof to the department that each child five years of age or younger, or a child who is not enrolled in public school, for whom the applicant will receive assistance:

(1) has been immunized in accordance with Section 161.004, Health and Safety Code;

(2) is currently receiving an immunization series in accordance with Section 161.004, Health and Safety Code, if the child is of sufficient age; or

(3) is exempted under Section 161.004(d), Health and Safety Code.

(e) An applicant who cannot provide the proof required by Subsection (d) at the time of application shall provide the proof not later than the 180th day after the date the department determines the applicant is eligible for financial assistance.

(f) The department shall provide the applicant with information regarding immunization services available in the applicant's residential area. If the applicant does not read or comprehend English, the department shall provide the information in a language that the applicant reads or comprehends.

(g) The department by rule shall provide sanctions for a financial assistance recipient's failure to comply with Subsection (d) or (e).

ARTICLE 3. TIME-LIMITED AND TRANSITIONAL BENEFITS

SECTION 3.01. TIME-LIMITED BENEFITS. (a) Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0065 to read as follows:

Sec. 31.0065. TIME-LIMITED BENEFITS. (a) The department may provide financial assistance under this chapter only in accordance with the time limits specified by this section. The department by rule may provide for exceptions to these time limits if severe personal hardship or community economic factors prevent the recipient from obtaining employment or if the state is unable to provide support services.

(b) The department shall limit financial assistance and transitional benefits in accordance with the following schedule:

(1) financial assistance is limited to a cumulative total of 12 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) a high school diploma, a high school equivalency certificate, or a certificate or degree from a two-year or four-year institution of higher education or technical or vocational school; or

(B) recent work experience of 18 months or more;

(2) financial assistance is limited to a cumulative total of 24 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed three years of high school; or

(B) recent work experience of not less than six or more than 18 months; and

(3) financial assistance is limited to a cumulative total of 36 months and transitional benefits of 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed less than three years of high school; and

(B) less than six months of work experience.

(c) If the recipient has completed less than three years of high school and has less than six months work experience, the department shall perform an in-depth assessment of the needs of that person and that person's family. If the recipient cooperates with the department's assessment, the time period prescribed by Subsection (b)(3) begins on the first anniversary of the date on which the department completes the assessment, as determined by the department.

(d) The computation of time limits under Subsection (b) begins when the adult or teen parent recipient receives notification under Section 31.012(b) of the availability of an opening in and eligibility for the job opportunity and basic skills (JOBS) program Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(e) In implementing the time-limited benefits program, the department:

(1) shall provide that a participant in the program may reapply with the department for financial assistance on or after the fifth anniversary of the date on which the participant is totally disqualified from receiving assistance because of the application of Subsection (b); and

(2) shall establish the criteria for determining what constitutes severe personal hardship under Subsection (a).

(f) If the department is imposing time-limited benefits on an individual, the department shall consider:

(1) the assessment of the individual's need that was conducted by the department, provided that if the needs assessment indicates discrepancies between a client's self-reported educational level and the client's functional abilities, the time limits shall be based upon the functional educational level; and

(2) the prevailing economic and employment conditions in the area of the state where the individual resides.

(b) The Texas Department of Human Services shall gradually implement Section 31.0065, Human Resources Code, as added by this article, by selecting at least one county in which to begin implementation of the program that has:

(1) a population of 250,000 or more; and

(2) low unemployment and an effective JOBS program placement rate.

(c) Section 31.0065 applies to a person receiving financial assistance on or after the date the section is implemented in the area in which the person resides, regardless of the date on which eligibility for that assistance is determined. However, the Texas Department of Human Services may not consider financial assistance provided before the implementation date in determining if a person has exhausted assistance.

(d) The department shall submit to the governor and 75th, 76th, and 77th legislatures a report concerning the effectiveness of the program. Each report must include an analysis of the characteristics and demographics of recipients

and any recommendation for expansion of the program including a timetable for expansion. The department shall notify members of the 75th, 76th, and 77th legislatures and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

SECTION 3.02. TRANSITIONAL CHILD-CARE SERVICES. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0035 to read as follows:

Sec. 31.0035. TRANSITIONAL CHILD-CARE SERVICES. (a) The department shall provide necessary transitional child-care services, in accordance with department rules and federal law, to a person who was receiving financial assistance under this chapter but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or

(2) the person has exhausted the person's benefits under Section 31.0065.

(b) Except as provided by Section 31.012(c), the department may provide the child-care services only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

(c) The department by rule shall adopt a system of co-payments in order to have a person who receives child-care services under this section contribute an amount toward the cost of the services according to the person's ability to pay.

(d) The department by rule shall provide for sanctions for a person who is financially able to contribute the amount required by Subsection (c) but fails to pay.

SECTION 3.03. TRANSITIONAL MEDICAL ASSISTANCE. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0255 to read as follows:

Sec. 32.0255. TRANSITIONAL MEDICAL ASSISTANCE. (a) The state shall provide transitional medical assistance, in accordance with state rules and federal law, to a person who was receiving financial assistance under Chapter 31 but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or

(2) the person has exhausted the person's benefits under Section 31.0065.

(b) Except as provided by Section 31.012(c), the state may provide the medical assistance only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

ARTICLE 4. WORK PROGRAMS

SECTION 4.01. EMPLOYMENT OR VOLUNTEER WORK PROGRAM.

(a) Section 31.012, Human Resources Code, is amended to read as follows:

Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT ACTIVITIES THROUGH THE JOB OPPORTUNITIES AND BASIC SKILLS PROGRAM. (a) The department shall require that, during any one-month period in which an adult is receiving financial assistance under this chapter, the adult shall during that period:

(1) work not less than 30 hours a week; or

(2) participate for not less than 20 hours a week in an activity established under the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682) [~~In the event the federal job opportunities and basic skills program for recipients of Aid to Families with Dependent Children is discontinued or is inadequate to meet the recipients' needs, the state shall operate a program to provide employment, education, and training opportunities, subject to available funds].~~

(b) The department by rule shall establish criteria for good cause noncompliance and for notification procedures regarding participation in work or employment activities under this section.

(c) A person who is the caretaker of a physically or mentally disabled child who requires the caretaker's presence is not required to participate in a program under this section. Effective September 1, 1995, a person is not required to participate in a program under this section until the person's youngest child at the time the person first became eligible for assistance reaches the age of five. Effective September 1, 1997, a person is exempt until the person's youngest child at the time the person first became eligible for assistance reaches the age of four. Notwithstanding Sections 31.0035(b) and 32.0255(b), the department shall provide to a person who is exempt under this subsection and who volunteers to participate in a program under Subsection (a)(2) six months of transitional benefits in addition to the applicable limit prescribed by Section 31.0065.

(b) This section applies to a person receiving assistance on or after September 1, 1995, regardless of the date on which eligibility for that assistance is determined.

(c) The Texas Department of Human Services shall adopt the rules required by Section 31.012(b), Human Resources Code, as amended by this article, not later than December 1, 1995.

(d) On the transfer of the program under Section 31.012, Human Resources Code, to the Texas Workforce Commission, the Texas Workforce Commission shall perform all duties assigned to the Texas Department of Human Services under Section 31.012, Human Resources Code, as amended by this section.

SECTION 4.02. VOLUNTEER WORK EXPERIENCE. (a) Section 31.0125, Human Resources Code, is amended to read as follows:

Sec. 31.0125. VOLUNTEER [COMMUNITY] WORK EXPERIENCE PROGRAM. (a) Subject to the availability of appropriations for client support services, the department by rule shall develop and implement a volunteer [community] work experience program in accordance with federal law as a part of the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(b) In adopting rules under this section, the department shall:

(1) establish the criteria for determining which recipients of financial assistance under this chapter who are eligible to participate in the JOBS training

program will be required to participate in the volunteer [community] work experience program;

(2) ensure that participation in the volunteer [community] work experience program will not result in the displacement of an employee from an existing position or the elimination of a vacant position;

(3) ensure that the volunteer [community] work experience program will not impair an existing service contract or collective bargaining agreement;

(4) ensure that an entity or agency that enters into an agreement with the department under this section provides to a participant, without paying the participant a salary, job training and work experience in certain areas within the entity or agency;

(5) require that each entity or agency that enters into a cooperative agreement with the department under this section identify positions within the entity or agency that will enable a participant to gain the skills and experience necessary to be able to compete in the labor market for comparable positions; and

(6) amend the service delivery system of the JOBS training program to require a participant in the JOBS training program who is unemployed after completing the JOBS readiness activities outlined in the participant's employability plan, including job search, to participate in the volunteer [community] work experience program.

(c) To implement the volunteer [community] work experience program, the department shall enter into written nonfinancial cooperative agreements with entities that receive funds under a federal Head Start program, ~~[and with]~~ state agencies, including institutions of higher education, ~~[or]~~ other entities of state or local government, or private sector or nonprofit organizations or foundations. ~~[To be eligible to enter into a contract under this section, the entity or agency must employ at least 250 persons. The department and the entity or agency may waive this requirement by mutual agreement.]~~

(d) The department and an entity or agency that enters into an agreement under this section must establish participation requirements for the entity or agency under the volunteer [community] work experience program. The requirements must be contained in the agreement.

(b) This section applies to a person receiving assistance on or after September 1, 1995, regardless of the date on which eligibility for that assistance is determined.

(c) On the transfer of the program under Section 31.0125, Human Resources Code, to the Texas Workforce Commission, the Texas Workforce Commission shall perform all duties assigned to the Texas Department of Human Services under Section 31.0125, Human Resources Code, as amended by this section.

SECTION 4.03. EMPLOYMENT PROGRAMS. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0126 to read as follows:

Sec. 31.0126. EMPLOYMENT PROGRAMS. (a) In cooperation with the state agency charged with primary responsibility for job training, employment, and workforce development in this state, the department by rule shall develop the following programs to assist recipients of financial assistance and services under this chapter in finding and retaining employment:

(1) a work first program that provides a participant job readiness training and employment information and services that will motivate the participant to find and apply for a job through job clubs, job readiness activities, and job search activities;

(2) a business internship program that provides a participant the opportunity to obtain marketable job skills through an internship in a participating business;

(3) a Texas works program that:

(A) is operated by a nonprofit group or local governmental entity;

(B) provides to a participant motivational and job readiness training by placing the participant in a job for a period of several months;

(C) ensures that the participant is visited at work and receives counseling and help in resolving any work-related or personal problems; and

(D) receives funding on the basis of participants who are successfully hired for employment;

(4) a community work experience program that provides a participant job training and work experience through a temporary job in the public sector;

(5) a subsidized employment program that provides to a participant job training and work experience through a job in the private sector that pays the participant a subsidized salary; and

(6) a self-employment assistance program that provides to a participant entrepreneurial training, business counseling, and technical and financial assistance so that the participant can establish a business and become self-employed.

(b) The department shall develop the programs prescribed by this section in accordance with federal law as a part of the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(c) In adopting rules governing a program prescribed by this section, the department shall:

(1) establish the criteria for determining which recipients who are eligible to participate in the JOBS training program may be required to participate in a particular program;

(2) ensure that a recipient who is incapable of participating in a particular program is not required to participate in that program; and

(3) provide technical assistance to local workforce development boards.

(d) A local workforce development board may implement in a workforce development area one or more programs prescribed by this section.

(e) The department shall submit a waiver application or a renewal waiver application that a federal agency may require before a local workforce development board can implement one or more of the programs prescribed by this section in a workforce development area.

(f) In this section, a "local workforce development board" means a local workforce development board created under Section 4.01, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes).

SECTION 4.04. DEMONSTRATION PROJECTS; FUND. Article 4, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended by adding Sections 4.055-4.057 to read as follows:

Sec. 4.055. DEMONSTRATION PROJECTS. (a) In this section and Section 4.056:

(1) "Board" means a local workforce development board.

(2) "Workforce development agency" means the state agency charged with primary responsibility for the implementation and consolidation of labor, employment, and job training programs in this state.

(b) In addition to the functions performed under Section 4.04 of this Act and the local plan required under Section 4.05 of this Act, each board may establish and operate localized programs to expand education, training, and employment in the workforce development area administered by the board. The board may design creative programs that fit the unique characteristics and needs of its workforce development area.

(c) A board that designs a program under this section shall submit a written proposal for approval of the program to the workforce development agency. The workforce development agency shall approve any program that clearly demonstrates the ability to:

(1) draw on and unite the resources of the local community; and

(2) determine and meet the needs of the local service populations, businesses, and industries.

(d) A board shall implement and administer a program approved by the workforce development agency under this section as a local demonstration project. The board shall report to the workforce development agency on a quarterly basis regarding the administration of the project and the effectiveness of the project in serving the workforce development needs of the community.

(e) A board shall submit any proposed changes in the program to the workforce development agency in writing. The workforce development agency must approve the proposed changes before the changes may be adopted and implemented by the board.

Sec. 4.056. CERTAIN PROGRAMS FOR AFDC RECIPIENTS. (a) In addition to the programs established under Section 4.055 of this Act, each local workforce development board shall adopt programs to enhance the ability of recipients of financial assistance and services under Chapter 31, Human Resources Code, who are eligible to participate in the JOBS training program to obtain and retain gainful employment. On request of a board, the workforce development agency shall provide technical assistance to the board in adopting programs under this section.

(b) In adopting programs under this section, the board shall consider the programs established under Section 31.0126, Human Resources Code. Within the parameters established by that section, the board may adapt a program to serve more effectively the needs of the recipients described by Subsection (a) who are residing in the workforce development area.

(c) The workforce development agency must approve a program adopted by the board under this section, including a program established under Section 31.0126, Human Resources Code, before the board can implement the program in the workforce development area.

(d) In this section, "JOBS training program" means the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

Sec. 4.057. REVOLVING FUND ACCOUNT. (a) A special revolving fund account is established in the state treasury to be known as the local workforce development board demonstration project account. The account may be used only for:

(1) loans for the initial implementation costs of a demonstration project approved under Section 4.055 of this Act; and

(2) small loans for new education, training, and employment programs created by a local workforce development board under a demonstration project.

(b) The account consists of:

(1) money the legislature appropriates to the account;

(2) donations made to the account;

(3) repayment of small loans made under the provisions of a demonstration project;

(4) revenue received from state and federal education, training, and job programs; and

(5) depository interest and investment income earned on amounts in the account.

(c) Money drawn from the revolving fund account for the operation of education, training, and job programs shall be paid back to the account as permanent revenues from state and federal education, training, and job programs become available.

(d) Sections 403.094 and 403.095, Government Code, do not apply to the account.

SECTION 4.05. TEEN-JOBS PILOT PROGRAM. (a) Using funds available from the job opportunities and basic skills training program (JOBS) under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682), the Central Education Agency, in conjunction with the Texas Department of Human Services and the comptroller, shall allow not fewer than four school districts or areas within school districts to establish pilot programs designed to encourage teenage parents to stay in school and advance toward independence.

(b) Services in the program may include the parenting program services provided under Section 21.114, Education Code, child care, transportation, tutorial services, guidance and counseling services, career counseling, mentor programs, on-the-job training based on the unique needs of participants and the local labor market, and any other allowable relevant services.

(c) The agency shall report to the governor regarding the effectiveness of this program. The agency shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the agency of the filing of the report.

(d) This section expires January 1, 1999.

SECTION 4.06. WORK HISTORY AND 100-HOUR RULE WAIVER. Not later than December 1, 1995, the Texas Department of Human Services shall reapply for a federal waiver to eliminate the work history and 100-hour rules for two-parent families and to enable the department to fully implement Section 31.014, Human Resources Code.

ARTICLE 5. CHILD SUPPORT ENFORCEMENT

SECTION 5.01. CONFORMING AMENDMENT. Chapter 76, Human Resources Code, is amended by designating Sections 76.001-76.011 as

Subchapter A, Chapter 76, Human Resources Code, and adding a subchapter heading to read as follows:

SUBCHAPTER A. TITLE IV-D CHILD SUPPORT SERVICES

SECTION 5.02. INTERVENTION ASSISTANCE FOR UNEMPLOYED NONCUSTODIAL PARENTS. Subchapter A, Chapter 76, Human Resources Code, as designated by this Act, is amended by adding Section 76.012 to read as follows:

Sec. 76.012. UNEMPLOYED NONCUSTODIAL PARENTS. (a) The Title IV-D agency shall refer to appropriate state and local entities that assist unemployed noncustodial parents in gaining employment any unemployed noncustodial parent who is in arrears in court-ordered child support payments to a child who:

(1) receives financial assistance under Chapter 31; or

(2) is otherwise eligible to receive financial assistance under Chapter 31 and for whom the Department of Protective and Regulatory Services is providing substitute care.

(b) A referral under Subsection (a) may include:

(1) skills training and job placement through the:

(A) Texas Employment Commission;

(B) Texas Job Training Partnership Act, Chapter 301, Labor

Code; or

(C) agency responsible for the food stamp employment and training program (7 U.S.C. Section 2015(d));

(2) referrals to education and literacy classes; and

(3) counseling regarding:

(A) substance abuse;

(B) parenting skills;

(C) life skills; and

(D) mediation techniques.

(c) The Title IV-D agency may require an unemployed noncustodial parent to complete the training, classes, or counseling the parent is referred to under this section. The agency shall suspend under Subchapter B the license of a parent who fails to comply with the requirements of this subsection.

SECTION 5.03. LICENSE SUSPENSION. Subtitle D, Title 5, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Chapter 232 to read as follows:

CHAPTER 232. SUSPENSION OF LICENSE FOR FAILURE TO PAY CHILD SUPPORT

Sec. 232.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by the issuing licensing authority; and

(C) is necessary for a person to:

(i) practice or engage in a particular business, occupation, or profession;

(ii) operate a motor vehicle; or

(iii) engage in any other regulated activity, including hunting, fishing, or other recreational activity for which a license or permit is required.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or of a political subdivision of the state that issues a license.

(3) "Order suspending license" means an order issued by the Title IV-D agency or a court directing a licensing authority to suspend a license.

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO SUBCHAPTER. The following state agencies are licensing authorities subject to this subchapter:

(1) Department of Agriculture;

(2) Texas Commission on Alcohol and Drug Abuse;

(3) Texas Alcoholic Beverage Commission;

(4) Texas Appraiser Licensing and Certification Board;

(5) Texas Board of Architectural Examiners;

(6) State Board of Barber Examiners;

(7) Texas Board of Chiropractic Examiners;

(8) Comptroller of Public Accounts;

(9) Texas Cosmetology Commission;

(10) Court Reporters Certification Board;

(11) State Board of Dental Examiners, if the 74th Legislature, at its regular session, enacts legislation that becomes law authorizing a state agency to regulate the practice of dentistry;

(12) Texas State Board of Examiners of Dietitians;

(13) Texas Funeral Service Commission;

(14) Texas Department of Health;

(15) Texas Board of Professional Land Surveying;

(16) Texas Department of Licensing and Regulation;

(17) Texas State Board of Examiners of Marriage and Family

Therapists;

(18) Texas State Board of Medical Examiners;

(19) Midwifery Board;

(20) Texas Natural Resource Conservation Commission;

(21) Board of Nurse Examiners;

(22) Texas Board of Nursing Facility Administrators;

(23) Texas Board of Occupational Therapy Examiners;

(24) Texas Optometry Board;

(25) Parks and Wildlife Department;

(26) Texas State Board of Examiners of Perfusionists;

(27) Texas State Board of Pharmacy;

(28) Texas Board of Physical Therapy Examiners;

(29) Texas State Board of Plumbing Examiners;

(30) Texas State Board of Podiatry Examiners;

(31) Polygraph Examiners Board;

(32) Texas Board of Private Investigators and Private Security

Agencies;

(33) Texas State Board of Examiners of Professional Counselors;

- (34) State Board of Registration for Professional Engineers;
- (35) Department of Protective and Regulatory Services;
- (36) Texas State Board of Examiners of Psychologists;
- (37) Texas State Board of Public Accountancy;
- (38) Department of Public Safety of the State of Texas;
- (39) Public Utility Commission of Texas;
- (40) Railroad Commission of Texas;
- (41) Texas Real Estate Commission;
- (42) State Bar of Texas;
- (43) Texas State Board of Social Worker Examiners;
- (44) State Board of Examiners for Speech-Language Pathology and

Audiology;

- (45) Texas Structural Pest Control Board;
- (46) Board of Tax Professional Examiners;
- (47) Secretary of State;
- (48) Supreme Court of Texas;
- (49) Texas Transportation Commission;
- (50) State Board of Veterinary Medical Examiners;
- (51) Board of Vocational Nurse Examiners;
- (52) Texas Ethics Commission;
- (53) Advisory Board of Athletic Trainers;
- (54) State Committee of Examiners in the Fitting and Dispensing of

Hearing Instruments;

- (55) Texas Board of Licensure for Professional Medical Physicists; and
- (56) Texas Department of Insurance.

Sec. 232.003. SUSPENSION OF LICENSE. A court or the Title IV-D agency shall issue an order suspending license as provided by this chapter if an obligor:

(1) has an arrearage equal to or greater than the total support due for 90 days under a support order;

(2) has been provided an opportunity to make payments toward the child support arrearage under an agreed or court-ordered repayment schedule; and

(3) has failed to comply with the repayment schedule.

Sec. 232.004. PETITION FOR SUSPENSION OF LICENSE. (a) A child support agency or obligee may file a petition to suspend a license.

(b) In a Title IV-D case, the petition shall be filed with the Title IV-D agency.

(c) In a case other than a Title IV-D case, the petition shall be filed in the court of continuing jurisdiction or the court in which a child support order has been registered under Chapter 159.

(d) A proceeding in a case filed with the Title IV-D agency under this chapter is governed by the contested case provisions in Chapter 2001, Government Code, except that Section 2001.054 does not apply to the proceeding. The director of the Title IV-D agency is responsible for rendering a final decision in the contested case proceeding.

Sec. 232.005. CONTENTS OF PETITION. (a) A petition under this chapter must state that license suspension is required under Section 232.003 and allege:

- (1) the name and, if known, social security number of the obligor;
- (2) the type of license the obligor is believed to hold and the name of the licensing authority; and
- (3) the amount owed under the child support order, the amount of support paid, and the amount of arrearages.

(b) A petition under this chapter may include as an attachment a copy of the record of child support payments maintained by the Title IV-D registry or local registry.

Sec. 232.006. NOTICE. (a) On the filing of a petition under Section 232.004, the court or Title IV-D agency shall issue to the obligor:

- (1) notice of the obligor's right to a hearing before the court or agency;
- (2) notice of the deadline for requesting a hearing; and
- (3) a hearing request form if the proceeding is in a Title IV-D case.

(b) Notice under this section may be served as in civil cases generally.

(c) The notice must state that an order suspending license shall be rendered on the 60th day after the date of service of the notice unless by that date:

- (1) the court or Title IV-D agency receives proof that all arrearages and the current month's child support obligation have been paid;
- (2) the child support agency or obligee files a certification that the obligor is in compliance with a reasonable repayment schedule; or
- (3) the obligor appears at a hearing before the court or Title IV-D agency and shows that the request for suspension should be denied or stayed.

Sec. 232.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A request for a hearing and motion to stay suspension must be filed with the court or Title IV-D agency by the obligor not later than the 20th day after the date of service of the notice under Section 232.006.

(b) If a request for a hearing is filed, the court or Title IV-D agency shall:

- (1) promptly schedule a hearing;
- (2) notify each party of the date, time, and location of the hearing; and
- (3) stay suspension pending the hearing.

(c) A record of child support payments made by the Title IV-D agency or a local registry is evidence of whether the payments were made. A copy of the record appearing regular on its face shall be admitted as evidence at a hearing under this chapter, including a hearing on a motion to revoke a stay. Either party may offer controverting evidence.

Sec. 232.008. ORDER SUSPENDING LICENSE. (a) On making the findings required by Section 232.003, the court or Title IV-D agency shall render an order suspending the license unless the obligor proves that all arrearages and the current month's support have been paid.

(b) The court or Title IV-D agency may stay an order suspending a license conditioned on the obligor's compliance with a reasonable repayment schedule that is incorporated in the order. An order suspending license with a stay of suspension may not be served on the licensing authority unless the stay is revoked as provided in this chapter.

(c) A final order suspending license rendered by a court or the Title IV-D agency shall be forwarded to the appropriate licensing authority.

(d) If the court or Title IV-D agency renders an order suspending license, the obligor may also be ordered not to engage in the licensed activity.

(e) If the court or Title IV-D agency finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice, and an order suspending license may not be rendered.

Sec. 232.009. DEFAULT ORDER. The court or Title IV-D agency shall consider the allegations of the petition for suspension to be admitted and shall render an order suspending license if the obligor fails to:

- (1) respond to a notice issued under Section 232.006;
- (2) request a hearing; or
- (3) appear at a hearing.

Sec. 232.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An order issued by a Title IV-D agency under this chapter is a final agency decision and is subject to review under the substantial evidence rule as provided by Chapter 2001, Government Code.

Sec. 232.011. ACTION BY LICENSING AUTHORITY. (a) On receipt of a final order suspending license, the licensing authority shall immediately determine if the authority has issued a license to the obligor named on the order and, if a license has been issued:

- (1) record the suspension of the license in the licensing authority's records;
- (2) report the suspension as appropriate; and
- (3) demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order suspending license without additional review or hearing. The authority may provide notice as appropriate to the license holder or to others concerned with the license.

(c) A licensing authority may not modify, remand, reverse, vacate, or stay an order suspending license issued under this chapter and may not review, vacate, or reconsider the terms of a final order suspending license.

(d) An obligor who is the subject of a final order suspending license is not entitled to a refund for any fee or deposit paid to the licensing authority.

(e) An obligor who continues to engage in the business, occupation, profession, or other licensed activity after the implementation of the order suspending license by the licensing authority is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended as any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for any act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending license or dismissing a petition for the suspension of a license does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license.

(h) The denial or suspension of a driver's license under this chapter is governed by this chapter and not by the general licensing provisions of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

Sec. 232.012. MOTION TO REVOKE STAY. (a) The obligee, support enforcement agency, court, or Title IV-D agency may file a motion to revoke

the stay of an order suspending license if the obligor does not comply with the terms of a reasonable repayment plan entered into by the obligor.

(b) Notice to the obligor of a motion to revoke stay under this section may be given by personal service or by mail to the address provided by the obligor, if any, in the order suspending license. The notice must include a notice of hearing. The notice must be provided to the obligor not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the obligor failed to comply with the repayment plan.

(d) If the court or Title IV-D agency finds that the obligor is not in compliance with the terms of the repayment plan, the court or agency shall revoke the stay of the order suspending license and render a final order suspending license.

Sec. 232.013. VACATING OR STAYING ORDER SUSPENDING LICENSE. (a) The court or Title IV-D agency may render an order vacating or staying an order suspending license if the obligor has paid all delinquent child support or has established a satisfactory payment record.

(b) The court or Title IV-D agency shall promptly deliver an order vacating or staying an order suspending license to the appropriate licensing authority.

(c) On receipt of an order vacating or staying an order suspending license, the licensing authority shall promptly issue the affected license to the obligor if the obligor is otherwise qualified for the license.

(d) An order rendered under this section does not affect the right of the child support agency or obligee to any other remedy provided by law, including the right to seek relief under this chapter. An order rendered under this section does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license as otherwise provided by law.

Sec. 232.014. FEE BY LICENSING AUTHORITY. A licensing authority may charge a fee to an obligor who is the subject of an order suspending license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

Sec. 232.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND TITLE IV-D AGENCY. (a) The Title IV-D agency may request from each licensing authority the name, address, social security number, license renewal date, and other identifying information for each individual who holds, applies for, or renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in the manner agreed to by the Title IV-D agency and the licensing authority.

(c) The Title IV-D agency may enter into a cooperative agreement with a licensing authority to administer this subchapter in a cost-effective manner.

(d) The Title IV-D agency may adopt a reasonable implementation schedule for the requirements of this section.

(e) The Title IV-D agency, the comptroller and the Texas Alcoholic Beverage Commission shall by rule specify additional prerequisites for the suspension of licenses relating to state taxes collected under Title 2 of the Tax Code. Such joint rules shall be promulgated not later than March 1, 1996.

Sec. 232.016. RULES, FORMS, AND PROCEDURES. The Title IV-D agency by rule shall prescribe forms and procedures for the implementation of this chapter.

SECTION 5.04. STATEMENT REGARDING PAYMENT OF CHILD SUPPORT. Subchapter A, Chapter 1, Family Code, is amended by adding Section 1.045 to read as follows:

Sec. 1.045. STATEMENT REGARDING PAYMENT OF CHILD SUPPORT. (a) An applicant for a marriage license shall submit to the county clerk a statement witnessed by two credible persons and verified before a person authorized to take oaths stating that as of the date the application for a marriage license is filed the applicant does not owe delinquent court-ordered child support.

(b) A child support payment is considered delinquent for purposes of Subsection (a) if the child support obligee under a child support order that applies to the applicant is entitled to seek enforcement of an arrearage under Subchapter B, Chapter 14.

(c) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning, the person submits a false statement under this section.

(d) An offense under this section is a state jail felony.

SECTION 5.05. ISSUANCE OF MARRIAGE LICENSE. Section 1.07(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (b) of this section, the county clerk may not issue a license to the applicants if:

(1) either applicant fails to provide information as required by Sections 1.02, 1.045, and 1.05 of the code;

(2) either applicant fails to submit proof of age and identity;

(3) either applicant is under 14 years of age and has not received a court order under Section 1.53 of this code;

(4) either applicant is 14 years of age or older but under 18 years of age and has received neither parental consent nor a court order under Section 1.53 of this code;

(5) either applicant checks "false" in response to a statement in the application, except as provided in Subsection (b) of this section, or fails to make a required declaration in an affidavit required of an absent applicant; or

(6) either applicant indicates that he or she has been divorced by a decree of a court of this state within the last 30 days, unless:

(A) the applicants were divorced from each other; or

(B) the prohibition against remarriage was waived under Section 3.66 of this code.

ARTICLE 6. FINANCIAL ASSISTANCE RECIPIENTS AND OTHERS WHO ARE ELIGIBLE FOR FEDERAL PROGRAMS

SECTION 6.01. AFDC RECIPIENTS ELIGIBLE FOR FEDERAL PROGRAMS. (a) Article 4413(502), Revised Statutes, is amended by adding Section 22 to read as follows:

Sec. 22. AFDC RECIPIENTS ELIGIBLE FOR FEDERAL PROGRAMS. (a) The commission shall assist recipients of financial assistance under Chapter 31, Human Resources Code, who are eligible for assistance under federal programs to apply for benefits under those federal programs. The commission may delegate this responsibility to one of the health and human services agencies listed under Section 19, contract with a unit of local government, or

use any other cost-effective method to assist financial assistance recipients who are eligible for federal programs.

(b) The commission shall organize a planning group involving the Texas Department of Human Services, the Central Education Agency, and the Texas Rehabilitation Commission to:

(1) improve workload coordination between those agencies as necessary to administer this section; and

(2) provide information and help train employees to correctly screen applicants under this section as requested by the commission.

(b) Not later than January 15, 1997, the planning group required by Section 22, Article 4413(502), Revised Statutes, as added by this section, shall submit to the governor a report on the progress the state has made in transferring recipients of state financial assistance to federal programs. The commission shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the commission of the filing of the report.

SECTION 6.02. EMPLOYMENT OPPORTUNITIES FOR PERSONS WITH DISABILITIES. (a) Chapter 121, Human Resources Code, is amended by adding Sections 121.0014 and 121.0015 to read as follows:

Sec. 121.0014. VISION STATEMENT. (a) The Health and Human Services Commission, each health and human services agency, and each state agency that administers a workforce development program shall adopt the following statement of vision:

The State of Texas shall ensure that all Texans with disabilities have the opportunity and support necessary to work in individualized, competitive employment in the community and to have choices about their work and careers.

(b) In this section, "health and human services agency" means an agency listed by Section 19, Article 4413(502), Revised Statutes.

Sec. 121.0015. INTERAGENCY WORK GROUP. (a) An interagency work group is created to implement the action plan adopted at the 1994 Supported Employment Summit.

(b) The work group is composed of a representative of the:

(1) Central Education Agency, appointed by the commissioner of education;

(2) Texas Commission for the Blind, appointed by the commissioner of that agency;

(3) Texas Department of Mental Health and Mental Retardation, appointed by the commissioner of mental health and mental retardation;

(4) Texas Rehabilitation Commission, appointed by the commissioner of that agency; and

(5) Texas Commission for the Deaf and Hearing Impaired, appointed by the executive director of that agency.

(c) A member of the work group serves at the will of the appointing agency.

(d) The work group shall elect a presiding officer and any other necessary officers.

(e) The work group shall meet at the call of the presiding officer.

(f) The appointing agency is responsible for the expenses of a member's service on the work group. A member of the work group receives no additional compensation for serving on the work group.

(g) The comptroller shall monitor the work group and the implementation of the action plan.

(b) Not later than November 15, 1996, the comptroller shall submit to the governor and the legislature a report describing the progress made toward implementing the action plan adopted at the 1994 Supported Employment Summit. The comptroller shall notify members of the 74th Legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the comptroller of the filing of the report.

SECTION 6.03. WORK INCENTIVES. Subchapter B, Chapter 111, Human Resources Code, is amended by adding Section 111.0205 to read as follows:

Sec. 111.0205. WORK INCENTIVES AND SUPPLEMENTAL SECURITY INCOME (SSI). The commission shall employ a person at the commission's central office to:

(1) train counselors to understand and use work incentives; and

(2) review cases to ensure that commission clients are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

SECTION 6.04. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS AND MENTAL RETARDATION. Section 533.008, Health and Safety Code, is amended by amending the heading and Subsection (a) and adding Subsection (e) to read as follows:

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS AND MENTAL RETARDATION [PATIENTS AND CLIENTS]. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals [patients] with mental illness and [clients with] mental retardation in the facility's or center's service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

SECTION 6.05. DONATED PURCHASE AGREEMENTS. Chapter 22, Human Resources Code, is amended by adding Section 22.030 to read as follows:

Sec. 22.030. AGREEMENTS FOR PURCHASE OF SERVICES FOR CHILDREN. (a) To ensure the maximum use of available federal matching funds for child care services and other support services under Section 31.010, the Department of Human Services shall enter into agreements with the appropriate local community organizations to receive donations to be used for the purchase of services for which matching federal funds are available.

(b) The Department of Human Services shall cooperate with each local community organization to develop guidelines for the use of that community's donation to provide the services described in Subsection (a) of this section.

SECTION 6.06. COMPETITIVE EMPLOYMENT. (a) Section 21.510(e), Education Code, is amended to read as follows:

(e) Each school district shall develop and annually review an individual transition plan (ITP) for each student enrolled in a special education program who is at least 16 years of age. The ITP shall include a goal of competitive employment. The ITP shall be developed in a separate document from the individualized education program (IEP) and shall not be considered a part of the IEP. The school district shall coordinate development of the ITP with any participating agency as provided in the memorandum of understanding in order to provide continuity and coordination of services among the various agencies and between the ITP and IEP. The district shall request the participation in the development of the ITP of any participating agency recommended by school personnel or requested by the student or the student's parent. The district shall invite the student and the student's parents or guardians to participate in the development of the ITP. Only those components of the ITP which are the responsibility of the district shall be incorporated into the student's IEP. Only the failure to implement those components of a student's ITP which are included in the IEP and are the responsibility of the school district shall be subject to the due process procedures of the Education of the Handicapped Act, Public Law 94-142 (20 U.S.C. Section 1400 et seq.) or to Central Education Agency complaint procedures. The failure of the district to develop and annually review an ITP for a student shall be subject only to the Central Education Agency complaint procedures and not to the due process procedures of the Education of the Handicapped Act, Public Law 94-142 (20 U.S.C. Section 1400 et seq.). A monitoring visit under Section 21.509 of this code shall include a review of the transition planning requirements under this section. A school district is not liable for the failure of another agency to implement those components of the ITP that are designated as the responsibility of that agency under the memorandum of understanding.

(b) Section 21.510(e), Education Code, as amended by this section, applies to an individual transition plan developed for each school year beginning with the 1995-1996 school year.

(c) The Central Education Agency shall study the possible effects of amending Section 21.510, Education Code, to require the development of an individual transition plan for each child who is at least 14 years of age. Not later than November 15, 1996, the agency shall submit to the governor and the legislature a report on the effects of changing the age requirement.

SECTION 6.07. FEDERAL FUNDING: MENTAL HEALTH SERVICES. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.046 to read as follows:

Sec. 533.046. FEDERAL FUNDING FOR MENTAL HEALTH SERVICES FOR CHILDREN AND FAMILIES. (a) The department shall enter into an interagency agreement with the Texas Department of Human Services to:

(1) amend the eligibility requirements of the state's emergency assistance plan under Title IV-A, Social Security Act (42 U.S.C. Section 601 et seq.), to include mental health emergencies; and

(2) prescribe the procedures the agencies will use to delegate to the department and to local mental health and mental retardation authorities the administration of mental health emergency assistance.

(b) The interagency agreement must provide that:

(1) the department certify to the Texas Department of Human Services the nonfederal expenditures for which the state will claim federal matching funds; and

(2) the Texas Department of Human Services retain responsibility for making final eligibility decisions.

(c) The department shall allocate to local mental health and mental retardation authorities 66 percent of the federal funds received under this section.

SECTION 6.08. FEDERAL FUNDING: CHEMICAL DEPENDENCY SERVICES. (a) Article 4413(502), Revised Statutes, is amended by adding Section 10A to read as follows:

Sec. 10A. FEDERAL FUNDING FOR CHEMICAL DEPENDENCY SERVICES. The commission shall coordinate with the Texas Commission on Alcohol and Drug Abuse and the Texas Department of Human Services to amend the eligibility requirements of the state's emergency assistance plan under Title IV-A, Social Security Act (42 U.S.C. Section 601 et seq.), to include either a child or a significant adult in a child's family who needs chemical dependency treatment.

(b) The Texas Department on Alcohol and Drug Abuse shall continue to study the feasibility of amending the state's Medicaid plan to include chemical dependency treatment as an allowable service.

SECTION 6.09. FEDERAL FUNDS; SUBSTITUTE CARE. (a) Article 4413(503), Revised Statutes, is amended by adding Section 12A to read as follows:

Sec. 12A. FEDERAL FUNDING FOR CERTAIN CHILDREN. (a) For purposes of Medicaid eligibility only, the department shall classify as a "child in substitute care" each child who is in the conservatorship of the state and placed in the home of a relative. A child classified as a "child in substitute care" under this subsection is not automatically eligible to receive foster care payments because of that classification.

(b) The department shall ensure that each time study used to allocate costs identifies all costs incurred on behalf of a child if the child's case plan clearly indicates that substitute care is the planned arrangement for that child.

(c) The department shall claim federal financial participation under Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), for all nonrecurring adoption expenses at the highest rate authorized by federal law. The department shall include all charges from state attorneys and state courts and any applicable overhead. The department may claim the expenses as either administrative or training expenses, depending on which classification results in a higher federal match.

(b) The Department of Protective and Regulatory Services shall file an adjustment to its previous quarterly claims under Title IV-E, Social Security Act

(42 U.S.C. Section 670 et seq.), to claim retroactive federal financial participation for the incremental difference for each quarter in which nonrecurring adoption expenses have been identified as a legitimate expense.

(c) The department shall request a waiver from the federal two-year limitation on the period in which the state can file certain claims in accordance with Section 1132(b), Social Security Act (42 U.S.C. Section 1320b-2(b)). If the waiver is denied, the department shall exhaust all administrative remedies and, if necessary, seek judicial review to obtain a court order reducing the claim to judgment and mandating retroactive payment.

SECTION 6.10. FEDERAL TAX CREDIT. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.024 to read as follows:

Sec. 403.024. FEDERAL EARNED INCOME TAX CREDIT. (a) The comptroller's office is the lead state agency in promoting awareness of the federal earned income tax credit program for working families.

(b) The comptroller shall recruit other state agencies and the governor's office to participate in a coordinated campaign to increase awareness of the federal tax program.

(c) State agencies that otherwise distribute information to the public may use existing resources to distribute information to persons likely to qualify for federal earned income tax credits and shall cooperate with the comptroller in information distribution efforts.

SECTION 6.11. FEDERAL FUNDING; PROGRAMS TO BENEFIT VICTIMS OF FAMILY VIOLENCE. Chapter 51, Human Resources Code, is amended by adding Section 51.0051 to read as follows:

Sec. 51.0051. MAXIMIZING FEDERAL FUNDING FOR PROGRAMS TO BENEFIT VICTIMS OF FAMILY VIOLENCE. To maximize the state's receipt of federal matching funds for emergency assistance under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.), the department shall:

(1) ensure that a contract made under Section 51.003 includes provisions necessary to maximize federal funding for services for victims of family violence;

(2) file amendments to the state's plan for aid and services to needy families with children under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.), that are necessary to maximize federal funding; and

(3) establish by rule any reporting procedures that federal law requires as a condition of receiving federal matching funds.

ARTICLE 7. EDUCATION; PILOT PROGRAMS

SECTION 7.01. ADULT LEARNING LABS FOR AFDC CLIENTS. Subchapter A, Chapter 11, Education Code, is amended by adding Section 11.2093 to read as follows:

Sec. 11.2093. EDUCATE TEXAS PROGRAM. (a) The Educate Texas Program is created to provide adult education services to clients of Aid to Families with Dependent Children who are referred to the program under Section 31.0124, Human Resources Code.

(b) The Central Education Agency, the Texas Higher Education Coordinating Board, and the state agency charged with primary responsibility for job training, employment, and workforce development shall jointly develop a system of adult education learning laboratories in public schools, community

colleges, and other publicly owned facilities under this program to provide the following emergency services, as needed, to a person eligible to receive Aid to Families with Dependent Children:

(1) development of literacy in English and proficiency in oral and written language skills;

(2) preparation for a high school equivalency examination;

(3) training in parenting skills;

(4) training in principles of family dynamics and family responsibility;

(5) family counseling and case management;

(6) employment readiness training in such areas as work ethics and interview skills; and

(7) on-site child-care services as necessary to allow a person to participate in the training and education services under this subsection.

SECTION 7.02. ELIGIBILITY FOR ADULT LEARNING LABS. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0124 to read as follows:

Sec. 31.0124. REFERRAL TO EDUCATIONAL PROGRAMS. The department shall determine whether a person who registers to participate in the job opportunities and basic skills training program needs and is eligible for adult education services provided under Section 11.2093, Education Code. If the person is eligible for the adult education services, the department shall determine the person's needs and goals and refer the person to the appropriate adult education service provided under Section 11.2093, Education Code.

SECTION 7.03. ADULT LITERACY AND LEARNING PROGRAMS. Chapter 88, Education Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. TEXAS CENTER FOR
ADULT LITERACY AND LEARNING

Sec. 88.541. DUTIES OF TEXAS CENTER FOR ADULT LITERACY AND LEARNING. (a) The Texas Center for Adult Literacy and Learning shall evaluate instructional videotapes or similar recorded materials generally available for use in providing adult literacy instruction and from time to time shall publish a guide describing and evaluating those videotapes and materials. The center shall encourage cable companies and other appropriate entities to use the guide in selecting materials to use in broadcasting and may take other action to promote the broadcast or dissemination of workbooks and other materials the center considers effective in teaching adult literacy.

(b) The center shall develop voluntary standards for the curriculum and workbooks and other materials used in adult literacy programs, including programs for teaching English as a second language. To develop the standards, the center shall organize an advisory group and shall encourage the participation of major providers of adult literacy programs in this state, including private nonprofit organizations, institutions of education, and correctional facilities. The Texas Department of Criminal Justice shall designate an employee of the department to participate in the initial development of the standards.

(c) In connection with the standards developed under Subsection (b), the center shall develop workbooks and other materials to be used by teachers and students in adult literacy programs to track the progress of the student and to

allow the student to understand and maintain a record of the student's progress and proficiency.

(d) The center shall develop and update as necessary informational brochures, promotional posters, workbooks, or similar materials suitable for distribution to state employees or the general public describing the need for adult literacy and education services in this state and encouraging qualified persons to support or volunteer to assist programs that provide those services. As the center determines is appropriate, the center may provide samples of those workbooks and other materials to the governing boards or chief executive officers of state agencies, including institutions of higher education, and to other employers and institutions in this state and shall encourage those entities to distribute or make available the workbooks and other materials to their employees.

SECTION 7.04. LITERACY: ENGLISH AS A SECOND LANGUAGE. Subchapter B, Chapter 13, Education Code, is amended by adding Section 13.044 to read as follows:

Sec. 13.044. ADULT LITERACY AND ENGLISH AS A SECOND LANGUAGE CURRICULUM. (a) Each general academic teaching institution, as defined by Section 61.003, that conducts an approved teacher education program shall include in the curriculum of at least one course in the program a unit that introduces the students to the fundamentals of teaching adult literacy and English as a second language courses.

(b) If the institution operates a center for professional development and technology in connection with its teacher education program, the institution through the center may provide interested students in the education program with opportunities for internships or other field-based training and experience in teaching adult literacy or English as a second language.

SECTION 7.05. INTERAGENCY WORK GROUP ON EARLY CHILD CARE AND EDUCATION PROGRAMS. (a) Not later than September 1, 1995, the administrative heads of the Central Education Agency, Texas Higher Education Coordinating Board, Texas Department of Health, Texas Department of Human Services, Department of Protective and Regulatory Services, Interagency Council on Early Childhood Intervention Services, and Texas Head Start Collaboration Project shall each designate a representative to an interagency work group on early child care and education programs.

(b) The representative of the Texas Head Start Collaboration Project shall serve as the chair.

(c) The interagency work group shall study:

(1) the quality of training programs for early childhood education workers;

(2) the need for, design of, and potential funding sources for a statewide professional training and certification program for those workers; and

(3) potential sources of local, state, federal, and private funding and technical assistance to support collaboration and cooperation of local early child care and education programs.

(d) The interagency work group shall complete the study and report its findings to the legislature not later than December 1, 1997.

(e) This section expires March 1, 1998.

SECTION 7.06. PILOT PROGRAM TO ASSIST AFDC CLIENTS IN ACHIEVING SELF-SUFFICIENCY. (a) The Texas Department of Human Services shall establish a pilot program to extend the period of supported employment for families who receive financial assistance under Chapter 31, Human Resources Code, to help those families become self-sufficient. In establishing this program the department may:

- (1) use a form of fill-the-gap budgeting; or
- (2) extend transitional benefits to 24 months.

(b) If the department chooses to extend transitional benefits to 24 months, the department shall determine whether purchasing medical coverage for participants through the state's Texas Employees Uniform Group Insurance Program is more cost-effective than Medicaid coverage.

(c) The department shall report to the governor regarding the program's success in assisting families in becoming more self-sufficient. The department shall notify members of the 75th and 76th legislatures and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

(d) In this section, "fill-the-gap budgeting" means a system of budgeting in which benefits are gradually lowered using a percentage of the difference between the standard of need and the countable income to calculate the grant benefit.

(e) This section expires September 1, 1999.

SECTION 7.07. PILOT PROGRAM: EMERGENCY ASSISTANCE FOR NON-AFDC FAMILIES IN A CRISIS. (a) The Texas Department of Human Services shall seek federal funding that would allow the department to establish an emergency assistance pilot program to support families who are not receiving financial assistance under Chapter 31, Human Resources Code, who are in a crisis, and who would otherwise be eligible for financial assistance.

(b) The department shall establish the pilot program in a high-employment area of the state or an area that uses the electronic benefits transfer system.

(c) The department by rule shall develop guidelines to administer the program, including:

- (1) eligibility guidelines;
- (2) guidelines specifying whether the assistance is a one-time cash payment to a family; and
- (3) guidelines specifying whether an applicant who receives the emergency assistance must agree to forgo applying for financial assistance under Chapter 31, Human Resources Code, for one year, or another appropriate limitation determined by the department.

(d) The department shall report to the governor regarding the program's success in helping families in a crisis avoid becoming AFDC clients. The department shall notify members of the 75th and 76th legislatures and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

(e) This section expires September 1, 1999.

SECTION 7.08. PILOT PROGRAM: SAVINGS ACCOUNTS FOR AFDC RECIPIENTS. (a) In conjunction with the state treasurer, the Texas Department of Human Services shall establish a pilot program to create

individual development accounts for individuals who are receiving financial assistance under Chapter 31, Human Resources Code, to encourage recipients to achieve self-sufficiency.

(b) The department by rule may provide for:

(1) the number of financial assistance recipients who may participate in the program; and

(2) the maximum amount that may be saved by a participant.

(c) The department shall encourage private sector employers to provide matching funds for employed recipients of financial assistance who are participating in this program.

(d) The expenditures from an individual's development account are limited to educational and medical expenses, work-related expenditures, including a self-employment enterprise, and housing or moving expenses for the individual and an individual who is a member of the AFDC certified group.

(e) The department shall report to the governor regarding the success of the program. The department shall notify members of the 75th and 76th legislatures and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

(f) This section expires September 1, 1999.

ARTICLE 8. PRIVATIZATION; TASK FORCE; FRAUD AND ERROR PREVENTION; EBT USE

SECTION 8.01. PRIVATIZATION STUDY. (a) The State Council on Competitive Government shall analyze the costs and benefits of contracting with private entities to perform certain functions of the Texas Department of Human Services' financial assistance program under Chapter 31, Human Resources Code. The council shall study the program's methods of:

(1) determining eligibility;

(2) assisting a financial aid recipient who is seeking a job; and

(3) detecting fraud in the system.

(b) Other state agencies shall cooperate with the State Council on Competitive Government as necessary to implement this section.

(c) The State Council on Competitive Government shall complete its study regarding privatization of some of the functions of the Texas Department of Human Services not later than September 1, 1996. Not later than January 15, 1997, the council shall submit to the governor a report on its findings. The council shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the council of the filing of the report.

(d) This section expires February 1, 1997.

SECTION 8.02. PUBLIC ASSISTANCE FRAUD OVERSIGHT TASK FORCE. Chapter 21, Human Resources Code, is amended by adding Section 21.0145 to read as follows:

Sec. 21.0145. PUBLIC ASSISTANCE FRAUD OVERSIGHT TASK FORCE. (a) The Public Assistance Fraud Oversight Task Force is created to advise and assist the department and the department's office of the inspector general in improving the efficiency of fraud investigations and collections.

(b) The task force is composed of a representative of the:

- (1) attorney general's office, appointed by the attorney general;
- (2) comptroller's office, appointed by the comptroller;
- (3) Department of Public Safety, appointed by the public safety director;
- (4) state auditor's office, appointed by the state auditor; and
- (5) Texas Department of Human Services, appointed by the commissioner of human services.

(c) The comptroller or the comptroller's designee serves as the presiding officer of the task force. The task force may elect any other necessary officers.

(d) The task force shall meet at least once each fiscal quarter at the call of the presiding officer.

(e) The appointing agency is responsible for the expenses of a member's service on the task force. Members of the task force receive no additional compensation for serving on the task force.

(f) At least once each fiscal quarter, the department's office of the inspector general shall provide to the task force:

(1) information detailing:

(A) the number of fraud referrals made to the office and the origin of each referral;

(B) the time spent investigating each case;

(C) the number of cases investigated each month, by program and region;

(D) the dollar value of each fraud case that results in a criminal conviction; and

(E) the number of cases the office rejects and the reason for rejection, by region; and

(2) any additional information the task force requires.

SECTION 8.03. FRAUD DETECTION THROUGH DATA MATCHING. Chapter 22, Human Resources Code, is amended by adding Section 22.029 to read as follows:

Sec. 22.029. PROJECT FOR FRAUD DETECTION AND PREVENTION THROUGH DATA MATCHING. (a) In order to enhance the state's ability to detect and prevent fraud in the payment of claims under federal and state entitlement programs, the Health and Human Services Commission may implement a data matching project as described by Subsection (b).

(b) The project shall involve the matching of database information among participating agencies. The commission shall contract through a memorandum of understanding with each agency participating in the project. After the data has been matched, the commission shall furnish each participating agency with a list of potential fraudulent occurrences or administrative errors.

(c) Each agency participating in a matching cycle shall document actions taken to investigate and resolve fraudulent issues noted on the list provided by the commission. The commission shall compile the documentation furnished by participating agencies for each matching cycle, and shall report the results of the project to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board not later than December 1, 1996.

(d) Agencies participating under Subsection (b) shall cooperate fully with the commission in the prompt provision of data in the requested format, for the

identification of suspected fraudulent occurrences, or administrative errors as the commission may otherwise reasonably request in order to carry out the intent of this section.

(e) The commission and participating agencies providing source data for the project shall take all necessary steps to protect the confidentiality of information provided as part of this project, in compliance with all existing state and federal privacy guidelines.

SECTION 8.04. FRAUD PREVENTION. (a) Chapter 22, Human Resources Code, is amended by adding Sections 22.027 and 22.028 to read as follows:

Sec. 22.027. FRAUD PREVENTION. (a) The department's office of the inspector general shall compile and disseminate accurate information and statistics relating to:

(1) fraud prevention; and

(2) post-fraud referrals received and accepted or rejected from the department's case management system.

(b) The department shall:

(1) aggressively publicize successful fraud prosecutions; and

(2) establish and promote a toll-free hotline for reporting suspected fraud in programs administered by the department.

(c) The department shall develop a cost-effective method of identifying applicants for public assistance in counties bordering other states and in metropolitan areas selected by the department who are already receiving benefits in other states. If economically feasible, the department may develop a computerized matching system.

(d) The department shall:

(1) verify automobile information that is used as criteria for eligibility;

and

(2) establish a computerized matching system with the Texas Department of Criminal Justice to prevent an incarcerated individual from illegally receiving public assistance benefits administered by the department.

Sec. 22.028. ELECTRONIC BENEFITS TRANSFER: MONITORING.

(a) The private electronic benefits transfer (EBT) operator with which the department contracts to administer the EBT system, shall establish procedures to maintain records that monitor all debit transactions relating to EBT client accounts under this section. The EBT operator shall deliver copies of the records to the department and the comptroller not later than the first day of each month. The department shall immediately review the records and assess the propriety of the debit transactions.

(b) After reviewing the records under Subsection (a), the department shall take necessary or advisable action to ensure compliance with EBT rules by the EBT operator, retailers, and clients.

(c) No later than the first day of each month, the department shall send the comptroller a report listing the accounts on which enforcement actions or other steps were taken by the department in response to the records received from the EBT operator under this section, and the action taken by the department. The comptroller shall promptly review the report and, as appropriate, may solicit the advice of the Public Assistance Fraud Oversight Task Force regarding the results of the department's enforcement actions.

(b) The Texas Department of Human Services shall:

(1) evaluate the costs and benefits of the five-day time limit the department prescribes for the investigation of fraud prevention referrals; and

(2) consider lowering the criteria for acceptance by the department's office of the inspector general of post-fraud referrals.

(c) If the department lowers the criteria for accepting post-fraud referrals, the department shall require each department office to apply that criteria.

SECTION 8.05. PREVENTING FRAUD THROUGH CERTIFICATE OF TITLE. The Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) is amended by adding Section 27a to read as follows:

Sec. 27a. In a county in which the department's automated registration and title system has been implemented, the department shall require an individual applying for a certificate of title to give the applicant's social security number. The department or county shall enter an applicant's social security number in the department's electronic database but may not print the number on the certificate of title.

SECTION 8.06. PREVENTING FRAUD THROUGH VEHICLE REGISTRATION DATABASE. Section 17A, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-17A, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) This section does not apply to the release of information to:

(1) a peace officer, as that term is defined in Article 2.12, Code of Criminal Procedure, if the officer is acting in an official capacity; or

(2) an official of the state, a city, town, county, special district, or other political subdivision of the state if the official is requesting the information for tax purposes or for the purpose of determining eligibility for a state public assistance program.

(c) The Texas Department of Transportation shall provide a dedicated line to its vehicle registration record database for use by other state agencies. Access to records and transmission of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

SECTION 8.07. ELECTRONIC IMAGING PROGRAM. (a) Subchapter B, Chapter 31, Human Resources Code, is amended by adding Section 31.0325 to read as follows:

Sec. 31.0325. ELECTRONIC IMAGING PROGRAM. (a) In conjunction with other appropriate agencies, the department by rule shall develop a program to prevent welfare fraud by using a type of electronic fingerprint-imaging or photo-imaging of adult and teen parent applicants for and adult and teen parent recipients of financial assistance under this chapter.

(b) In adopting rules under this section, the department shall ensure that any electronic imaging performed by the department is strictly confidential and is used only to prevent fraud by adult and teen parent recipients of assistance.

(c) The department shall:

(1) establish the program in conjunction with an electronic benefits transfer program;

(2) use an imaging system; and

(3) provide for gradual implementation of this section by selecting specific counties or areas of the state as test sites.

(d) Each fiscal quarter, the department shall submit to the governor and the legislature a report on the status and progress of the programs in the test sites selected under Subsection (c)(3).

(b) The Texas Department of Human Services shall establish the initial electronic imaging program required by Section 31.0325, Human Resources Code, as added by this section, not later than January 1, 1996.

SECTION 8.08. ERROR-RATE REDUCTION. (a) Chapter 22, Human Resources Code, is amended by adding Sections 22.025 and 22.026 to read as follows:

Sec. 22.025. ERROR-RATE REDUCTION. (a) The department shall:

(1) set progressive goals for improving the department's error rates in the aid to families with dependent children and food stamp programs; and

(2) develop a specific schedule to meet those goals.

(b) Each fiscal quarter, the department shall prepare a report detailing the progress the department has made in reaching its goals. The report must include an analysis by region of the department's goals and performance relating to error-rate reduction. The department shall send a copy of the report to the governor's office, the legislative budget office, and any appropriate interagency task force having oversight responsibility over welfare fraud.

(c) As appropriate, the department shall include in its employee evaluation process a rating system that emphasizes error-rate reduction and workload.

(d) The department shall take appropriate action if a region has a higher than average error rate and that rate is not reduced in a reasonable period.

Sec. 22.026. REDUCTION OF CLIENT FRAUD. The department shall:

(1) ensure that errors attributed to client fraud are appropriate; and

(2) take immediate and appropriate action to limit any client fraud that occurs.

(b) Not later than November 1, 1995, the Texas Department of Human Services shall develop a concentrated and effective plan for the city of Houston region to reduce the department's error rates in the aid to families with dependent children and food stamp programs.

(c) The Texas Department of Human Services shall make the first progress report required by Section 22.025, Human Resources Code, as added by this article, not later than September 1, 1995.

SECTION 8.09. MODIFICATION OF SCREENING AND SERVICE DELIVERY REQUIREMENTS. Section 33.002, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The department may, within federal limits, modify the one-day screening and service delivery requirements prescribed by Subsection (e) if the department determines that the modification is necessary to reduce fraud in the food stamp program.

SECTION 8.10. TASK FORCE: ELECTRONIC BENEFITS TRANSFERS. Article 4413(502), Revised Statutes, is amended by adding Section 10B to read as follows:

Sec. 10B. INTERAGENCY TASK FORCE ON ELECTRONIC BENEFITS TRANSFERS. (a) An interagency task force is created to advise

and assist the commission in adding new benefit programs to the statewide electronic benefits transfer (EBT) system.

(b) The task force is composed of:

(1) a representative of:

(A) the attorney general's office, appointed by the attorney general;

(B) the comptroller's office, appointed by the comptroller;

(C) the commission, appointed by the commissioner;

(D) the Texas Department of Health, appointed by the commissioner of public health;

(E) the Texas Department of Human Services, appointed by the commissioner of human services;

(F) the Texas Employment Commission, appointed by the presiding officer of that agency; and

(G) the Texas Rehabilitation Commission, appointed by the commissioner of that agency; and

(2) two representatives of each of the following groups, appointed by the comptroller:

(A) retailers who maintain EBT point-of-sale equipment;

(B) banks or owners of automatic teller machines; and

(C) consumer or client advocacy organizations.

(c) A member of the task force serves at the will of the appointing agency.

(d) The representative of the comptroller's office serves as presiding officer. The task force may elect any other necessary officers.

(e) The task force shall meet at the call of the presiding officer.

(f) The appointing agency is responsible for the expenses of a member's service on the task force. A member of the task force receives no additional compensation for serving on the task force.

(g) The task force shall:

(1) serve as the state counterpoint to the federal EBT task force;

(2) identify benefit programs that merit addition to the state's EBT system;

(3) identify and address problems that may occur if a program is added;

(4) pursue state-federal partnerships to facilitate the development and expansion of the state's EBT system;

(5) track and distribute federal legislation and information from other states that relate to EBT systems;

(6) ensure efficiency and planning coordination in relation to the state's EBT system;

(7) develop a plan utilizing the experience and expertise of the Department of Public Safety of the State of Texas for the use of a photograph or other imaging technology on all EBT cards and, if proven to be effective in reducing fraud and misuse, begin using the new cards starting with replacement cards for cards currently used in the program; and

(8) review current and potential fraud problems with EBT and propose methods to prevent or deter fraud.

(h) In determining which benefit programs can be added to the state's EBT system, the task force shall consider, at a minimum:

- (1) the savings to the state;
- (2) the ease of addition to existing infrastructure; and
- (3) the number of clients served.

SECTION 8.11. FARMERS MARKET EBT PROGRAM. Article 4413(502), Revised Statutes, is amended by adding Section 10C to read as follows:

Sec. 10C. FARMERS MARKET EBT PILOT PROGRAM. (a) The Texas Department of Human Services by rule shall establish an electronic benefits transfer (EBT) pilot program for farmers markets. In adopting rules under this section, the department shall:

(1) follow the recommendations of the working group created by this section; and

(2) ensure that the pilot program is designed so that:

(A) EBT technology can be used at each farmers market that currently accepts or is interested in accepting food stamps in each county included in the program; and

(B) each farmer who currently accepts food stamps at a farmers market in a county included in the program is afforded the opportunity to participate in the EBT program.

(b) The department shall select two or more counties in which to establish the pilot program. In selecting each county, the department shall follow the recommendations of the working group created by this section. The department shall also follow the recommendations of the working group in determining which technology option to test in each location so as to ensure that the working group has sufficient information to make a responsible recommendation to the department regarding appropriate permanent adoption of EBT to farmers markets.

(c) An interagency working group is created as part of the interagency task force on electronic benefits transfers created under Section 10B of this article. The working group shall advise and assist the Texas Department of Human Services in:

(1) developing an EBT pilot program for farmers markets; and

(2) selecting two or more counties in which to establish the program.

(d) The working group is composed of:

(1) a representative of:

(A) the comptroller's office, appointed by the comptroller;

(B) the Department of Agriculture, appointed by the commissioner of agriculture;

(C) the Texas Department of Human Services, appointed by the commissioner of human services;

(D) nonprofit organizations that work with farmers markets and low-income communities, appointed by the commissioner of human services; and

(E) each company with whom the department contracts for the installation and operation of the EBT system, appointed by the commissioner of human services; and

(2) a farmer who accepts food stamps at a Central Texas farmers market, appointed by the Department of Agriculture.

(e) A member of the working group serves at the will of the appointing agency.

(f) The working group shall elect a presiding officer and any other necessary officers.

(g) The working group shall meet at least quarterly and at other times as necessary at the call of the presiding officer. The working group shall hold its first meeting not earlier than September 1, 1995, and not later than December 31, 1995, at the call of the commissioner of human services.

(h) The appointing agency is responsible for the expenses of a member's service on the working group. A member of the working group receives no compensation for serving on the working group.

(i) The working group shall:

(1) establish goals for the pilot program;

(2) develop and submit to the Texas Department of Human Services recommendations on the design and implementation of the pilot program;

(3) recommend to the Texas Department of Human Services two or more counties in which to establish the program; and

(4) submit to the interagency task force on electronic benefits transfers a report on the activities of the working group.

(j) Not later than January 15, 1997, the interagency task force on electronic benefits transfers shall submit to the governor and the 75th Legislature a report concerning the effectiveness of the pilot program.

(k) The appointing agencies shall appoint the members of the working group established by this section not later than September 1, 1995. The Texas Department of Human Services shall establish the pilot program required by this section not later than January 1, 1996.

(l) This section expires September 1, 1997.

ARTICLE 9. GENERAL PROVISIONS:

HEALTH AND HUMAN SERVICES COMMISSION

SECTION 9.01. STRATEGIC PLANS AND BIENNIAL UPDATES.

Section 10, Article 4413(502), Revised Statutes, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) All health and human services agencies shall submit strategic plans and biennial updates to the commission on a date to be determined by commission rule. The commission shall review and comment on the strategic plans and biennial updates.

(e) Not later than January 1 of each even-numbered year, the commission shall begin formal discussions with each health and human services agency regarding that agency's strategic plan or biennial update.

SECTION 9.02. INFORMATION AND COMPLAINTS. Section 12, Article 4413(502), Revised Statutes, is amended to read as follows:

Sec. 12. PUBLIC INPUT [~~INTEREST~~] INFORMATION AND COMPLAINTS. (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 jurisdiction of the commission.

(b) The commission shall develop and implement routine and ongoing mechanisms, in accessible formats:

(1) to receive consumer input;

(2) to involve consumers in planning, delivery, and evaluation of programs and services under the jurisdiction of the commission; and

(3) to communicate to the public the input received by the commission under this section and actions taken in response to that input.

(c) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(d) [(c)] The commissioner by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate agency personnel for the purpose of directing complaints to the commission. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of a person or entity regulated by the commission;

(2) on a sign prominently displayed in the place of business of each person or entity regulated by the commission; or

(3) in a bill for service provided by a person or entity regulated by the commission.

(e) [(d)] The commission shall keep an information file about each complaint filed with the commission relating to:

(1) a license holder or entity regulated by the commission; or

(2) a service delivered by the commission.

(f) [(e)] If a written complaint is filed with the commission relating to a license holder or entity regulated by the commission or a service delivered by the commission, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

SECTION 9.03. LEGISLATIVE APPROPRIATIONS REQUEST APPROVAL. Section 13, Article 4413(502), Revised Statutes, is amended by adding Subsection (d) to read as follows:

(d) A health and human services agency may not submit to the legislature or the governor its legislative appropriations request until the commission reviews and comments on the legislative appropriations request.

SECTION 9.04. APPROPRIATIONS, TRANSFERS, CASELOAD ESTIMATES, AND REPORTING. Article 4413(502), Revised Statutes, is amended by adding Sections 13A, 13B, 13C, and 13D to read as follows:

Sec. 13A. HEALTH AND HUMAN SERVICES AGENCIES OPERATING BUDGETS. (a) In addition to the provisions of the General Appropriations Act, the commission shall review and comment on:

(1) the annual operating budget of each health and human services agency; and

(2) the transfer of funds between budget strategies made by each health and human services agency prior to the transfer of the funds.

(b) The commission shall issue a report, on a quarterly basis, regarding the projected expenditures by budget strategy of each health and human services agency compared to each agency's operating budget.

Sec. 13B. FEDERAL FUNDS. Notwithstanding any other state law and to the extent permitted by federal law, the commission may review and comment on an operational or funding plan or a modification to that plan prepared by a health and human services agency designated as the single state agency to administer federal funds.

Sec. 13C. AUTOMATED SYSTEMS. A health and human services agency may not submit its plans to the Department of Information Resources under Subchapter E, Chapter 2054, Government Code, until those plans are approved by the commission.

Sec. 13D. COORDINATION AND APPROVAL OF CASELOAD ESTIMATES. (a) The commission shall coordinate and approve caseload estimates made for programs administered by health and human services agencies.

(b) To implement this section, the commission shall:

(1) adopt uniform guidelines to be used by health and human services agencies in estimating their caseloads, with allowances given for those agencies for which exceptions from the guidelines may be necessary;

(2) assemble a single set of economic and demographic data and provide that data to each health and human services agency to be used in estimating its caseloads; and

(3) seek advice from health and human services agencies, the Legislative Budget Board, the governor's budget office, the comptroller, and other relevant agencies as needed to coordinate the caseload estimating process.

(c) The commission shall assemble caseload estimates made by health and human services agencies into a coherent, uniform report and shall update the report quarterly, with assistance from those agencies. The commission shall publish the report and make it readily available to state and local agencies and interested private organizations.

(d) In the report prepared under Subsection (c) of this section, the commission shall explain the caseload estimates using monthly averages, annual unduplicated recipients, annual service usage, and other commonly used measures.

(e) The commission shall attach a copy of the report prepared under Subsection (c) of this section to the consolidated health and human services budget recommendation submitted to the Legislative Budget Board under Section 13 of this article and shall also submit the report to the legislature when it convenes in regular session.

SECTION 9.05. ACTIVITIES OF COMMISSIONER. Section 14, Article 4413(502), Revised Statutes, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The commissioner shall:

(1) arbitrate and render the [a] final decision on interagency disputes;
(2) facilitate and enforce coordinated planning and delivery of health and human services, including compliance with the coordinated strategic plan, co-location of services, integrated intake, and coordinated referral and case management;

(3) request budget execution for the transfer of funds from one agency to another;

(4) establish a federal health and human services funds management system and maximize the availability of those funds;

(5) develop with the Department of Information Resources automation standards for computer systems to enable health and human services agencies to share pertinent data;

(6) establish and enforce uniform regional boundaries for all health and human services agencies;

(7) carry out statewide health and human services needs surveys and forecasting;

(8) perform independent special outcome evaluations of health and human services programs and activities;

(9) adopt rules necessary to carry out the commission's duties under this Act; and

(10) review and comment on health and human services agency formulas [develop a formula] for the distribution of funds to ensure that the formulas, to the extent permitted by federal law, consider [considers] such need factors as client base, population, and economic and geographic factors within the regions of the state.

(d) Not later than the end of the first month of each fiscal year, the commissioner shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, and the Legislative Budget Board a work plan outlining the activities of the commission for that fiscal year. The work plan must establish priorities for the commission's activities based on available resources.

SECTION 9.06. DELIVERY OF SERVICES. Article 4413(502), Revised Statutes, is amended by adding Section 14A to read as follows:

Sec. 14A. DELIVERY OF SERVICES. To integrate and streamline service delivery and facilitate access to services, the commissioner may request a health and human services agency to take a specific action and may recommend the manner in which the streamlining is to be accomplished, including requesting each health and human services agency to:

(1) simplify agency procedures;

(2) automate agency procedures;

(3) coordinate service planning and management tasks between and among health and human services agencies;

(4) reallocate staff resources;

(5) adopt rules;

(6) amend, waive, or repeal existing rules; and

(7) take other necessary actions.

SECTION 9.07. AGENCY STAFF. Article 4413(502), Revised Statutes, is amended by adding Section 23 to read as follows:

Sec. 23. USE OF AGENCY STAFF. To the extent requested by the commission, a health and human services agency shall assign existing staff to perform a function under this article.

SECTION 9.08. REPORTS. Article 4413(502), Revised Statutes, is amended by adding Section 24 to read as follows:

Sec. 24. REPORTS ON DELIVERY OF SERVICES. (a) Each executive head of a health and human services agency shall report quarterly to the

governing body of that agency on that agency's efforts to streamline and simplify the delivery of services. The agency shall submit a copy of the report to the commission.

(b) The commission shall prepare and deliver a semiannual report to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, and appropriate legislative committees on the efforts of the health and human services agencies to streamline the delivery of services provided by those agencies.

(c) The commissioner shall adopt rules relating to the reports required by Subsection (a) of this section, including rules specifying when and in what manner an agency must report and what information must be included in the report. Each agency shall follow the rules adopted by the commissioner under this section.

SECTION 9.09. LOCATION OF OFFICES. Section 3.08, Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 4413(505), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.08. LOCATION [~~CO-LOCATION~~] OF OFFICES AND FACILITIES. (a) As leases on office space expire, the commission shall determine the needs for space and the location of health and human services agency offices to enable the commission to achieve a cost-effective one-stop or service center method of health and human service delivery. [The administrative heads of the health and human service agencies shall review the agencies' current office and facility arrangements and study the feasibility of co-locating offices or facilities located in the same geographic area and shall report back to the commission not later than September 1, 1992.]

~~(b) [On receiving approval from the commission, the administrative heads of two or more health and human service agencies with offices or facilities located in the same geographic region shall co-locate the offices or facilities if the results of the study conducted under this section show that client access would be enhanced, the cost of co-location is not greater than the combined operating costs of the separate offices or facilities of those agencies, and the co-location would improve the efficiency of the delivery of services.~~

~~[(c)] In this section, "health and human service agencies" includes the:~~

- ~~(1) Interagency Council on Early Childhood Intervention Services;~~
- ~~(2) Texas Department on Aging;~~
- ~~(3) Texas Commission on Alcohol and Drug Abuse;~~
- ~~(4) Texas Commission for the Blind;~~
- ~~(5) Texas Commission for the Deaf and Hearing Impaired;~~
- ~~(6) Texas Department of Health;~~
- ~~(7) Texas Department of Human Services;~~
- ~~(8) Texas Juvenile Probation Commission;~~
- ~~(9) Texas Department of Mental Health and Mental Retardation;~~
- ~~(10) Texas Rehabilitation Commission; and~~
- ~~(11) Department of Protective and Regulatory Services.~~

SECTION 9.10. LEASING OFFICE SPACE. Section 6.031(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Notwithstanding any other provision of this article, the [The] commission may not lease office space to service the needs of any [a single]

health and human service agency unless the Health and Human Services Commission has approved the office space for the agency [~~agency can provide the commission with a reason for not sharing the office space with one or more other health and human service agencies~~].

SECTION 9.11. INTEGRATED PILOT: HARRIS COUNTY HOSPITAL DISTRICT AND THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON. (a) The Health and Human Services Commission shall expand its existing integrated eligibility pilot programs to include the Harris County Hospital District and The University of Texas Medical Branch at Galveston.

(b) A contract with the Harris County Hospital District or The University of Texas Medical Branch at Galveston shall:

(1) specify performance-based measures to ensure error rates are kept within acceptable federal limits;

(2) assure that the contractor assumes all liability for any penalty incurred as a result of failure to meet federal standards; and

(3) authorize the district and the medical branch to simplify processes as much as possible and to use proprietary software.

(c) Subject to approval by the Health and Human Services Commission, the Texas Department of Human Services shall establish standards for other automated systems to allow other entities to file information directly.

(d) The Health and Human Services Commission shall study the feasibility of enabling contractors or agencies other than the Texas Department of Human Services to provide or assist in the provision of client eligibility studies, determinations, and certifications. In determining feasibility, the commission shall consider:

(1) error rates;

(2) the state's potential liability;

(3) expansion of the client population; and

(4) the federal single state agency restrictions.

SECTION 9.12. INTEGRATED ELIGIBILITY DETERMINATION. (a) Not later than September 1, 1996, the Health and Human Services Commission, subject to the availability of funds to the commission and to health and human services agencies, shall have completed the development and substantial implementation of a plan for an integrated eligibility determination and service delivery system for health and human services at the local and regional levels. The plan shall specify the dates by which all elements of the plan must be implemented.

(b) The integrated eligibility determination and service delivery system shall be developed and implemented to achieve at least a one-percent savings in the cost of providing administrative and other services and staff resulting from streamlining and eliminating duplication of services. The commission shall use the resulting savings to further develop the integrated system and to provide other health and human services.

(c) The commission shall examine cost-effective methods to address:

(1) fraud in the assistance programs; and

(2) the error rate in eligibility determination.

(d) In consultation and coordination with the State Council on Competitive Government, the commission shall make and implement recommendations on

services or functions of the integrated eligibility determination and service delivery system that could be provided more effectively through the use of competitive bidding or by contracting with local governments and other appropriate entities. If the commission determines that private contracting may be effective, the commission may automate the determination of client eligibility by contracting with a private firm to conduct application processing.

(e) Not later than October 1, 1996, the commission shall develop a plan to consolidate administrative and service delivery functions in addition to the integrated eligibility determination and service delivery system in order to minimize duplication. The commission shall prepare a report of the plan for submission to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, and the 75th Legislature when it convenes.

SECTION 9.13. INTEGRATED SERVICE DELIVERY. (a) Not later than September 1, 1997, the Health and Human Services Commission shall develop, using existing state, local, and private resources, an integrated approach to the health and human service delivery system that includes a cost-effective one-stop or service center method of delivery to a client. The commission shall determine the feasibility of using hospitals, schools, mental health and mental retardation centers, health clinics, commercial locations in malls, and other appropriate locations to achieve this integrated approach.

(b) The health and human services agencies shall cooperate with the commission in developing the integrated eligibility determination and service delivery system.

(c) This section expires September 1, 1997.

SECTION 9.14. MAXIMIZING FEDERAL FUNDING. The state shall make an effort to maximize funding for the health and human services agencies in order to draw down federal money to which the state could possibly be entitled to receive for child care, employment, and other health and human services related programs. Each health and human services agency shall enter into agreements as described by Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), and Article 1118z, Revised Statutes, to expand transportation services for persons receiving assistance for services under a federal program administered by that agency.

SECTION 9.15. APPLICATION. The changes in law made by this article apply beginning with appropriations made for the fiscal year beginning September 1, 1995.

ARTICLE 10. SPOUSAL MAINTENANCE

SECTION 10.01. PURPOSE. (a) It is the intent of the legislature in this article to provide spousal maintenance primarily as a temporary rehabilitative measure for a divorced spouse whose ability for self-support is lacking or has deteriorated through the passage of time while the spouse was engaged in homemaking activities and whose capital assets are insufficient to provide support.

(b) It is the intent of the legislature in this article that spousal support should be terminated in the shortest reasonable time, not to exceed three years, in which the former spouse is able to be employed or to acquire the necessary

skills to become self-supporting. Only in circumstances in which the former spouse cannot become self-supporting by reason of incapacitating physical or mental disability should maintenance be extended beyond this period.

SECTION 10.02. SPOUSAL MAINTENANCE. Chapter 3, Family Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. MAINTENANCE

Sec. 3.9601. Definition. In this subchapter, "maintenance" means an award in a divorce, annulment, or suit to declare a marriage void of periodic payments from the future income of one spouse for the support of the other spouse.

Sec. 3.9602. Eligibility for Maintenance. In a suit for divorce, annulment, to declare a marriage void, or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if:

(1) the spouse from whom maintenance is sought was convicted of, or received deferred adjudication for, a criminal offense that also constitutes an act of family violence under Section 71.01, Family Code, and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage was filed; or

(B) during the pendency of the suit; or

(2) the duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by Section 3.9605, and the spouse seeking maintenance:

(A) is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability;

(B) is the custodian of a child who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home; or

(C) clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 3.9605.

Sec. 3.9603. Factors to Determine Maintenance. A court that determines that a spouse is eligible to receive maintenance under Section 3.9602 shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

(1) the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet his or her needs independently;

(2) the education and employment skills of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the feasibility of that education or training;

(3) the duration of the marriage;

(4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

(5) the ability of the spouse from whom maintenance is sought to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;

(6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;

(7) the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;

(8) the contribution by one spouse to the education, training, or increased earning power of the other spouse;

(9) the property brought to the marriage by either spouse;

(10) the contribution of a spouse as homemaker;

(11) any marital misconduct of the spouse seeking maintenance; and

(12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304, Labor Code.

Sec. 3.9604. PRESUMPTION. (a) Except as provided by Subsection (b), it is presumed that maintenance is not warranted unless the spouse seeking maintenance has exercised diligence in:

(1) seeking suitable employment; or

(2) developing the necessary skills to become self-supporting during any period of separation and during the pendency of the divorce suit.

(b) This section does not apply to a spouse who is not able to satisfy the presumption in Subsection (a) because of an incapacitating physical or mental disability.

Sec. 3.9605. DURATION OF MAINTENANCE ORDER. (a) Except as provided by Subsection (b), a court:

(1) may not enter a maintenance order that remains in effect for more than three years after the date of the order; and

(2) shall limit the duration of a maintenance order to the shortest reasonable period of time that allows the spouse seeking maintenance to meet the spouse's minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the ability of the spouse to provide for the spouse's minimum reasonable needs through employment is substantially or totally diminished because of:

(A) physical or mental disability;

(B) duties as the custodian of an infant or young child; or

(C) another compelling impediment to gainful employment.

(b) If a spouse seeking maintenance is unable to support himself or herself through appropriate employment because of incapacitating physical or mental disability, the court may order maintenance for an indefinite period for as long as the disability continues. The court may order periodic review of its order, on the request of either party or on its own motion, to determine whether the disability is continuing. The continuation of spousal maintenance under these circumstances is subject to a motion to modify as provided by Section 3.9608.

Sec. 3.9606. AMOUNT OF MAINTENANCE. (a) A court may not enter a maintenance order that requires a spouse to pay monthly more than the lesser of:

(1) \$2,500; or

(2) 20 percent of the spouse's average monthly gross income.

(b) The court shall set the amount that a spouse is required to pay in a maintenance order to provide for the minimum reasonable needs of the spouse receiving the maintenance under the order, considering any employment or property received in the divorce or annulment or otherwise owned by the spouse receiving the maintenance that contributes to the minimum reasonable needs of that spouse.

(c) Veterans Administration service-connected disability compensation, social security benefits and disability benefits, and workers' compensation benefits are excluded from maintenance.

Sec. 3.9607. TERMINATION. (a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the party receiving maintenance.

(b) After a hearing, the court shall terminate the maintenance order if the party receiving maintenance cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

Sec. 3.9608. Modification of Maintenance Order. (a) The amount of maintenance specified in a court order or the portion of a decree that provides for the support of a former spouse may be reduced by the filing of a motion in the court that originally entered the order. A party affected by the order or the portion of the decree to be modified may file the motion.

(b) Notice of a motion to modify maintenance and the response, if any, are governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Notice must be given by service of citation, and a response must be in the form of an answer due at or before 10 a.m. of the first Monday after 20 days after the date of service. A court shall set a hearing on the motion in the manner provided by Rule 245, Texas Rules of Civil Procedure.

(c) After a hearing, the court may modify an original or modified order or portion of a decree providing for maintenance on a proper showing of a material and substantial change in circumstances of either party. The court shall apply the modification only to payments accruing after the filing of the motion to modify.

(d) A loss of employment or circumstances that render a former spouse unable to support himself or herself through appropriate employment by reason of incapacitating physical or mental disability that occurs after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse.

Sec. 3.9609. Enforcement of Maintenance Order. (a) The court may enforce by contempt its maintenance order or an agreement for the payment of maintenance voluntarily entered into between the parties and approved by the court.

(b) On the motion of a party entitled to receive maintenance payments, the court may render judgment against a defaulting party for an amount unpaid and owing after notice by service of citation, answer, if any, and a hearing finding

that the defaulting party has failed or refused to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for debts.

(c) It is an affirmative defense to an allegation of contempt of court or of the violation of a condition of probation requiring payment of court-ordered maintenance that the obligor:

(1) lacked the ability to provide maintenance in the amount ordered;

(2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3) attempted unsuccessfully to borrow the needed funds; and

(4) did not know of a source from which the money could have been borrowed or otherwise legally obtained.

(d) The issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an obligor must prove the affirmative defense by a preponderance of the evidence.

Sec. 3.9610. Putative Spouse. In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded maintenance if otherwise qualified to receive maintenance under this subchapter.

Sec. 3.9611. Unmarried Cohabitants. An order for maintenance is not authorized between unmarried cohabitants under any circumstances.

SECTION 10.03. TRANSITION. (a) Except as provided by Subsection (b) of this section, Sections 10.01 and 10.02 of this article take effect September 1, 1995, and apply only to an action filed on or after that date.

(b) Section 10.02 of this article does not apply to an action filed on or before January 1, 1997, if a prior suit for dissolution of a marriage between the parties was nonsuited by the spouse seeking maintenance on or after January 1, 1995, and on or before August 31, 1995.

(c) An action to which Section 10.02 of this article does not apply is governed by the law in effect at the time the action was filed, and that law is continued in effect only for that purpose.

ARTICLE 11. WORKFORCE DEVELOPMENT

SECTION 11.01. The heading of Subtitle B, Title 4, Labor Code, is amended to read as follows:

SUBTITLE B. TEXAS WORKFORCE COMMISSION; WORKFORCE DEVELOPMENT; [ADDITIONAL] EMPLOYMENT SERVICES

SECTION 11.02. (a) Chapter 301, Labor Code, is repealed.

(b) Subchapters A-E and G, Chapter 202, Labor Code, are moved from Subtitle A, Title 4, Labor Code, to Subtitle B of that title, redesignated as Chapter 301, Labor Code, and amended to read as follows:

CHAPTER 301 [202]. TEXAS WORKFORCE [EMPLOYMENT] COMMISSION

SUBCHAPTER A. ORGANIZATION OF COMMISSION

Sec. 301.001. PURPOSE; AGENCY GOALS; DEFINITIONS. (a) The Texas Workforce Commission is a state agency established to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related educational

programs available in this state, and to administer the unemployment compensation insurance program in this state.

(b) The commission shall meet the needs of:

(1) the businesses of this state for the development of a highly skilled and productive workforce;

(2) the workers of this state for education, skills training, and labor market information to enhance their employability, earnings, and standard of living and for an efficient unemployment compensation system;

(3) the people of this state who are making a transition into the workforce, particularly persons receiving public assistance, displaced homemakers, and students making the transition from school to work;

(4) the communities of this state to provide economic incentive programs for job creation, attraction, and expansion; and

(5) the taxpayers of this state to ensure that tax revenues for workforce development are spent efficiently and effectively.

(c) A reference in this code or another law to the Texas Employment Commission means the Texas Workforce Commission.

(d) In this title:

(1) "Chair" means the chair of the commission.

(2) "Commission" means the Texas Workforce Commission.

(3) "Council" means the Council on Workforce and Economic Competitiveness.

(4) "Employment service" means the commission or the entity designated by the commission to implement duties imposed under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.).

(5) "Executive director" means the executive director of the commission.

(6) "Local workforce development board" means an entity formed under Section 4.01, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes).

Sec. ~~301.002~~ [202-001]. MEMBERSHIP REQUIREMENTS. (a) The ~~commission~~ [Texas Employment Commission] is composed of three members:

(1) one of whom shall be a representative of labor;

(2) one of whom shall be a representative of employers; and

(3) one of whom [~~shall be impartial and~~] shall represent the public.

(b) The governor shall appoint the members and make the appointments without regard to the race, color, disability [~~creed~~], sex, religion, age, or national origin of the appointees.

Sec. ~~301.003~~ [202-002]. MEMBER RESTRICTIONS. (a) A member of the commission may not engage in any other business, vocation, or employment during the member's term on the commission.

(b) The public member of the commission may not be an officer, employee, or paid consultant of a labor-oriented or employer-oriented trade association while the member serves on the commission.

Sec. ~~301.004~~ [202-003]. EFFECT OF LOBBYING ACTIVITY. A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the commission or act as the general counsel to the commission while so registered. If the person ceases to engage in

lobbying activity and files a notice of termination as prescribed by Section 305.008, Government Code, the person may serve as a member of the commission or act as the general counsel to the commission.

Sec. 301.005 [~~202.004~~]. TERMS; VACANCY. (a) Members of the commission are appointed for staggered six-year terms, with one member's term expiring on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy shall hold office for the remainder of that term.

Sec. 301.006 [~~202.005~~]. CHAIR [~~CHAIRMAN~~]. (a) The governor shall designate [member representing the public is] the chair [chairman] of the commission from among the members of the commission. The chair shall serve in that capacity for a two-year term. The governor may redesignate the same member to serve consecutive terms.

(b) Notwithstanding Subsection (a), the member of the commission who represents the public shall serve as chair:

- (1) when the commission acts under Subchapter D, Chapter 212; and
- (2) in commission hearings involving unemployment insurance issues regarding tax coverage, contributions, or reimbursements.

Sec. 301.007 [~~202.006~~]. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission by impeachment that a member:

- (1) during any 60-day period, is absent from each commission meeting for which the member received at least 48 hours' notice;
 - (2) is unable to discharge the member's duties for the remainder of the term for which the member was appointed because of illness or other disability;
- or

(3) violates a prohibition established by Section 301.003 [~~202.002~~] or 301.004 [~~202.003~~].

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for the removal of a member of the commission existed.

Sec. 301.008. APPLICATION OF SUNSET ACT. The Texas Workforce Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 1999.

Sec. 301.009. COMMISSION DIVISIONS. (a) The commission shall have:

- (1) a division of workforce development; and
- (2) a division of unemployment compensation.

(b) In addition to the divisions listed in Subsection (a), the executive director may establish additional divisions within the commission for effective administration and performance of commission functions.

(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director.

[Sections 301.010-301.020 reserved for expansion]

[~~Sections 202.007-202.020 reserved for expansion~~]

SUBCHAPTER B. COMMISSION ADMINISTRATION

Sec. 301.021 [~~202.021~~]. DONATIONS. The commission may accept a donation of services, money, or property from an organization listed in Section

501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)) that the commission determines furthers the lawful objectives of the commission. The donation must be accepted in an open meeting by a majority of the voting members of the commission and must be reported in the public records of the commission with the name of the donor and the purpose of the donation.

Sec. 301.022 [~~202.022~~]. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 301.023 [~~202.023~~]. COMPLAINTS. (a) The commission shall keep an information file about each complaint filed with the commission that relates to a service provided by the commission.

(b) If a written complaint is filed with the commission that relates to a service provided by the commission, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint.

Sec. 301.024 [~~202.024~~]. OFFICIAL SEAL; USE OF FACSIMILES. (a) The commission has an official seal. A court shall take judicial notice of the seal.

(b) The commission may execute, certify, authenticate, or sign, with a facsimile signature and seal, any instrument authorized under this subtitle to be issued by the commission or by an authorized representative of the commission, including a claim, statement, or audit report relating to the establishment or collection of delinquent contributions or penalties.

~~[Sec. 202.025. STATE ADVISORY COUNCIL; LOCAL COUNCILS. (a) The commission may appoint a state advisory council composed of 15 persons representing employers, employees, and the public. Each member of the commission may appoint five persons to the advisory council.~~

~~[(b) The advisory council shall meet regularly.~~

~~[(c) As permitted by commission rule, a member of the advisory council is entitled to reimbursement for necessary travel and subsistence expenses and to a per diem allowance for attending meetings of the council, but is not a state employee for any purpose.~~

~~[(d) The commission shall determine the composition and prescribe the duties of the advisory council.~~

~~[(e) The advisory council shall prepare an annual report describing the advisory council's work during the preceding year and detailing any recommendations.~~

~~[(f) The commission may appoint and pay local advisory councils and consultants under the same conditions as provided in this section for the state advisory council.]~~

~~[Sections 301.025-301.040 reserved for expansion]~~

~~[[Sections 202.026-202.040 reserved for expansion]]~~

SUBCHAPTER C. EXECUTIVE DIRECTOR;
AGENCY [~~ADMINISTRATOR AND~~] PERSONNEL

Sec. 301.041 [~~202.041~~]. EXECUTIVE DIRECTOR; AGENCY [~~ADMINISTRATOR;~~] PERSONNEL. (a) The commission shall appoint an executive director [~~agency administrator on the basis of merit~~] to administer the

daily operations of the commission in compliance [~~and may prescribe any specific qualifications for the position of agency administrator that are necessary to comply~~] with federal law. [~~The position of agency administrator is subject to the merit principles of Chapter 492, Acts of the 69th Legislature, Regular Session, 1985 (Article 6252-11g, Vernon's Texas Civil Statutes).~~]

(b) A reference in this code or another law to the "agency administrator" of the commission means the executive director.

(c) The executive director [~~agency administrator~~] may:

(1) appoint and prescribe the powers and duties of all commission staff, including officers, accountants, attorneys, experts, and other persons as necessary in the performance of the commission's duties;

(2) delegate authority to a person appointed under this section as the executive director [~~agency administrator~~] considers reasonable and proper for the effective administration of this title [~~subtitle~~]; and

(3) employ and terminate the employment of commission staff members; and

(4) bond any person that handles money or signs checks under this title [~~subtitle~~].

(d) [~~(e)~~] The executive director [~~agency administrator~~] or a person designated by the executive director [~~agency administrator~~] shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

Sec. 301.042 [202.042]. ACCESS TO CERTAIN CRIMINAL HISTORY RECORD INFORMATION[~~;- OFFENSE; PENALTY~~]. (a) The commission may request [~~and receive criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to investigate an applicant for employment in a security sensitive position.~~]

[~~(b) The commission shall adopt a uniform method of obtaining criminal history information that requires the commission to submit to the Department of Public Safety or another law enforcement agency either a complete set of fingerprints or the complete name, driver's license number, and social security number of the person being investigated. If the commission does not obtain relevant information from state or local law enforcement agencies in response to a submission under this subsection, the commission may submit either the fingerprints or the required information to the Federal Bureau of Investigation Identification Division.~~]

[~~(c) The commission may request~~] an applicant for a security sensitive position to provide either a complete set of fingerprints or the applicant's complete name, driver's license number, and social security number. The executive director [~~commission~~] may deny employment in a security sensitive position to an applicant who fails to provide the requested fingerprints or information.

(b) [~~(d) All information received by the commission under this section is privileged and confidential and is for the exclusive use of the commission. The information may not be released or otherwise disclosed to any other person except on court order or with the written consent of the person being investigated.~~]

~~[(e) After the commission hires an applicant for a security sensitive position, the commission shall seal the criminal history record information regarding the applicant and shall deliver the information to the custody of the agency administrator or the person designated by the agency administrator, who shall maintain the information as provided by commission rule. The commission shall destroy the criminal history record information of an applicant who is not hired.~~

~~[(f) The commission shall adopt rules governing the custody and use of information obtained under this section.~~

~~[(g) The executive director [commission] may use information obtained under this section only to evaluate an applicant for employment in a security sensitive position. A security sensitive position must be so identified in the job description and in the announcement of the position.~~

~~[(c) [(h)] In this section, "security sensitive position" means a position of employment that requires as an incident of the employment:~~

~~(1) the performance of duties in:~~

~~(A) the automated data processing, controller, or fiscal department; or~~

~~(B) a position designated to handle receipts or disbursements of cash in a local or regional office;~~

~~(2) access to a computer terminal, if the information available from the terminal is required by law to be confidential;~~

~~(3) access to a master key for access to the premises other than during regular working hours; or~~

~~(4) the performance of duties considered to be security sensitive by the state auditor or the Inspector General of the United States Department of Labor.~~

~~[(i) A person commits an offense if the person releases or discloses any information received under this section in violation of Subsection (d). An offense under this subsection is a Class A misdemeanor.]~~

Sec. 301.043 [202.043]. STANDARDS OF CONDUCT INFORMATION. The executive director [commission] shall provide to the [its] members of the commission and employees of the commission, as often as necessary, information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 301.044. CAREER LADDER. The executive director shall develop an intra-agency career ladder program for employees of the commission. The program shall require the intra-agency posting of all nonentry-level positions concurrently with any public posting.

Sec. 301.045. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive director shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with Chapter 21;

(2) a comprehensive analysis of the commission's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission's workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement under Subsection (a) must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a), and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

[Sections 301.046-301.060 reserved for expansion]

[Sections 202.044-202.060 reserved for expansion]

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR

Sec. 301.061 ~~[202.061]~~. GENERAL POWERS AND DUTIES. (a) The commission shall ~~[administer this subtitle and may]~~ adopt rules as necessary for the administration of this title~~[- make expenditures, require reports, conduct investigations, and take other action it considers necessary or suitable to fulfill that duty]~~.

(b) The executive director ~~[commission]~~ shall:

(1) administer this title as provided by rules adopted by the commission;

(2) determine the [its own] organization of the agency and methods of procedure of the agency in accordance with this title; and

(3) make expenditures necessary for the operation of this title [subtitle].

(c) Both the commission and the executive director may require reports, conduct investigations, and take other actions the commission or the executive director considers necessary or suitable to fulfill the duties imposed under this title.

Sec. 301.062 ~~[202.062]~~. FINDINGS. Both the [The] commission and the executive director may [shall] make findings and determine issues under this title [subtitle] as necessary to administer this title [subtitle].

Sec. 301.063 ~~[202.063]~~. STATE AND FEDERAL COOPERATION. (a) The commission is designated as the agency of this state for implementation in this state of:

(1) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.); and

(2) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(b) In administering this title [subtitle] the commission and executive director shall:

(1) cooperate with the secretary under the Social Security Act (42 U.S.C. Section 301 et seq.) to the fullest extent consistent with this title [subtitle];

(2) make reports in the form and containing information required by the secretary and comply with provisions the secretary finds necessary to ensure that the reports are correct and verified;

(3) comply with the regulations prescribed by the secretary governing the expenditures of funds allotted and paid to the state under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) to assist in the administration of this title [~~subtitle~~]; and

(4) cooperate with any official or agency of the United States having powers or duties under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) and take all actions necessary to secure to this state the benefits of that Act and necessary to perform the commission's duties under Chapter 307 [~~Subchapter F~~].

(c) The commission may provide reasonable cooperation to each agency of the United States charged with the administration of any unemployment insurance law.

(d) On request, the commission shall furnish to an agency of the United States responsible for the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and shall inform the agency of the recipient's right to further benefits under Subtitle A [~~this subtitle~~].

(e) In this section, "secretary" means the United States secretary of labor.

Sec. 301.064 [~~202.064~~]. INTERPRETER SERVICES; BILINGUAL FORMS. (a) The executive director [~~commission~~] shall provide language interpreters for agency programs through a comprehensive language services program for persons whose primary language is Spanish and may provide language interpreters through the program for agency programs for persons whose primary language is other than Spanish or English.

(b) The language services program must provide services, including translation services, both to employers and to employees or prospective employees.

(c) The executive director [~~commission~~] shall print essential agency forms and instructional information in both English and Spanish. A form shall be written in Spanish only when revised or when new or additional forms are printed or prepared.

Sec. 301.065 [~~202.065~~]. ANNUAL REPORT. (a) As soon as practicable after the close of each fiscal year, the commission shall submit to the governor and the legislature a report on the administration and operation of the commission's activities under this title [~~subtitle~~] during the preceding fiscal year, including each recommendation of the commission for amendments to this title [~~subtitle~~].

(b) The annual report must include:

(1) a balance sheet of the money in the compensation fund;

(2) [~~the annual report prepared by the state advisory council under Section 202.025(e);~~

~~(3)~~ the commission's long-term and short-term objectives; and

(3) [~~(4)~~] any other information requested by the legislature or the Legislative Budget Board.

Sec. 301.066 [~~202.066~~]. PUBLICATIONS. (a) The executive director [~~commission~~] shall print:

(1) the text of Subtitle A [~~this subtitle~~];

(2) the commission's rules; and

(3) the commission's annual report to the governor and the legislature.

(b) The executive director [~~commission~~] shall prepare information describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission.

(c) The executive director [~~commission~~] shall make the information required to be printed or prepared under this section and any other material that the executive director [~~commission~~] determines to be relevant and suitable for distribution available to the public and appropriate state agencies.

[Sections 301.067-301.070 reserved for expansion]

[Sections 202.067-202.070 reserved for expansion]

SUBCHAPTER E. INVESTIGATIVE AND SUBPOENA POWERS

Sec. 301.071 [~~202.071~~]. INVESTIGATIVE AND SUBPOENA POWERS.

(a) In discharging duties imposed under Subtitle A [~~this subtitle~~], an appeal tribunal established under Section 212.101, a member of the commission, or a representative authorized by the commission may:

(1) administer oaths;

(2) take depositions;

(3) certify to official acts; and

(4) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a disputed claim or the administration of Subtitle A [~~this subtitle~~].

(b) The commission's authority to conduct an investigation, assemble information, or require the submission of documentary or oral testimony is limited to the power necessary to properly administer Subtitle A [~~this subtitle~~].

(c) Notwithstanding Section 154.004, Local Government Code, or any other law, the executive director [~~commission~~] shall pay the fee of a sheriff or constable who serves a subpoena under this section. The fee shall be paid from the commission's administrative funds, and the comptroller shall issue a warrant for the fee as directed by the executive director [~~commission~~].

Sec. 301.072 [~~202.072~~]. ENFORCEMENT OF SUBPOENA; OFFENSE; PENALTIES. (a) If a person is guilty of contumacy or refuses to obey a subpoena issued by a member of the commission or an authorized representative of the commission, a county or district court, on application by the commission or its authorized representative, may order the person to appear before a member of the commission, the commission, or its authorized representative to produce evidence or give testimony regarding the matter under investigation or in question. Only a court within the jurisdiction where the commission conducts the inquiry or where the person is found, resides, or transacts business may issue the order.

(b) Failure to obey a court order issued under Subsection (a) is punishable as contempt.

(c) A person commits an offense if the person, without just cause, does not obey a subpoena of the commission. An offense under this subsection is punishable by a fine of not less than \$200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

Sec. 301.073 [~~202.073~~]. SELF-INCRIMINATION. (a) In any cause or proceeding before the commission, a person is not excused from attending and

testifying, from producing books, papers, correspondence, memoranda, and other records, or from obeying a subpoena of the commission, a member of the commission, or a representative of the commission on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a penalty or forfeiture.

(b) A person may not be prosecuted or subjected to penalty or forfeiture for or because of a transaction or thing for which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination except for perjury.

Sec. ~~301.074~~ [202-074]. DEFAMATION. An oral or written statement made to the commission or to an employee of the commission in connection with the discharge of the commission's or the employee's duties under Subtitle A [~~this subtitle~~] may not be the basis for an action for defamation of character.

[Sections 301.075-301.080 reserved for expansion]

[Sections 202.075-202.080 reserved for expansion]

SUBCHAPTER F [G]. RECORDS

Sec. ~~301.081~~ [202-091]. EMPLOYEE RECORDS OF EMPLOYING UNIT; OFFENSE; PENALTY. (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title [~~subtitle~~]. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title [~~subtitle~~].

(c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title [~~subtitle~~].

(d) A person commits an offense if the person is an employee or member of the commission who violates any provision of this section. An offense under this subsection is punishable by a fine of not less than \$20 nor more than \$200, confinement in jail for not more than 90 days, or both fine and confinement.

Sec. ~~301.082~~ [202-092]. COPIES OF RECORDS. (a) The executive director [~~commission~~] may furnish a photostatic or certified copy of a record in the commission's [~~its~~] possession to a person entitled to receive a copy of the record on application by the person.

(b) The executive director [~~commission~~] shall charge a reasonable fee in an amount set by the commission for a copy of a record furnished under this section.

Sec. ~~301.083~~ [202-093]. ACCESS TO RECORDS BY RAILROAD RETIREMENT BOARD. (a) The executive director [~~commission~~] may make state records relating to the administration of Subtitle A [~~this subtitle~~] available to the Railroad Retirement Board.

(b) The executive director [~~commission~~] may furnish the Railroad Retirement Board with copies of the records requested by the board at the board's expense.

Sec. 301.084 [202.094]. DESTRUCTION OF RECORDS. The executive director [commission] may destroy any of the [its] records of the agency under safeguards that protect the confidential nature of the records if the executive director [commission]:

- (1) determines that the records no longer serve a legal, administrative, or other useful purpose; or
- (2) has made an authentic reproduction of the records to be destroyed.
[Sections 301.085-301.090 reserved for expansion]

SUBCHAPTER G. LEGISLATIVE OVERSIGHT

Sec. 301.091. DEFINITION; SUNSET DATE. (a) In this subchapter, "committee" means the workforce development legislative oversight committee.

(b) The committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished September 1, 1999.

Sec. 301.092. COMPOSITION OF COMMITTEE; PRESIDING OFFICER.

(a) The committee is composed of:

(1) two members of the senate and one public member, appointed by the lieutenant governor; and

(2) two members of the house of representatives and one public member, appointed by the speaker of the house of representatives.

(b) A member of the committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

Sec. 301.093. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

(1) meet at the call of the presiding officer;

(2) receive information about rules proposed or adopted by the commission; and

(3) review specific recommendations for legislation proposed by the commission.

(b) The committee shall monitor the implementation and efficiency of the workforce development system of this state.

(c) The committee may request reports and other information from the chair and the executive director relating to the operation of the commission.

Sec. 301.094. REPORT. (a) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(b) The report must include:

(1) identification of significant problems in the workforce development system, with recommendations for action by the chair, the executive director, and the commission;

(2) the status of the effectiveness of the workforce development system to provide necessary services to workers and employers of this state, with recommendations for any necessary research; and

(3) recommendations for legislative action.

SECTION 11.03. Subtitle B, Title 4, Labor Code, is amended by adding new Chapters 302 and 303 to read as follows:

CHAPTER 302. DIVISION OF WORKFORCE DEVELOPMENT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Director" means the director of the division.

(2) "Division" means the division of workforce development of the commission.

Sec. 302.002. GENERAL WORKFORCE DEVELOPMENT POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR. (a) The executive director shall:

(1) to the extent feasible under federal law, consolidate the administrative and programmatic functions of the programs under the authority of the commission to achieve efficient and effective delivery of services;

(2) administer each program and implement corresponding federal and state legislation consolidated under the authority of the commission under this chapter and other applicable state law;

(3) determine the organization and methods of procedure of the division in accordance with applicable state and federal legislation;

(4) appoint and prescribe the duties of all officers, administrators, accountants, attorneys, experts, and other employees as necessary in the performance of the division's duties;

(5) delegate authority to persons appointed under this section as the executive director considers reasonable and proper for the effective administration of the division;

(6) bond any person who handles money or signs checks for the division;

(7) implement workforce training and services policies and programs, consistent with recommendations from the council and as approved by the governor;

(8) serve as an advocate at the state and federal levels for local workforce development boards;

(9) contract with local workforce development boards for program planning and service delivery;

(10) provide training and professional development services for division staff, local workforce development boards, and the staff of those boards;

(11) support research and demonstration projects designed to develop new programs and approaches to service delivery;

(12) provide technical assistance and support to local workforce development boards;

(13) prepare an annual agency performance report for submission to the governor, the legislature, the commission, and the council;

(14) design and administer a statewide comprehensive labor market information system;

(15) serve as the chair of the State Occupational Information Coordinating Committee; and

(16) perform other functions and duties as may be required by law or assigned by the commission.

(b) The executive director may make expenditures, enter into contracts with public, private, and nonprofit organizations, require reports, conduct investigations, and take other action the executive director or commission considers necessary or suitable to fulfill the division's administrative duties.

(c) The executive director may enter interagency contracts and memoranda of understanding with other state agencies for the performance of administrative functions of the agency.

(d) The commission shall adopt rules in accordance with Chapter 2001, Government Code, as necessary for the proper administration of the division.

(e) The executive director may obligate funds from the skills development fund in a manner consistent with the rules adopted by the commission for that program. The executive director shall report to the governor, the legislature, the commission, and the council on a quarterly basis regarding actions taken under this subsection.

[Sections 302.003-302.020 reserved for expansion]

SUBCHAPTER B. JURISDICTION OF DIVISION OF WORKFORCE DEVELOPMENT

Sec. 302.021. CONSOLIDATION OF WORKFORCE DEVELOPMENT PROGRAMS. (a) The following job-training, employment, and employment-related educational programs and functions are consolidated under the authority of the division:

- (1) adult education programs under Section 11.18, Education Code;
- (2) proprietary school programs under Chapter 32, Education Code;
- (3) apprenticeship programs under Chapter 33, Education Code;
- (4) postsecondary vocational and technical job-training programs that are not a part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 108, 130, and 135, Education Code, and Subchapter E, Chapter 88, Education Code;
- (5) employment programs under Chapter 31, Human Resources Code;
- (6) the senior citizens employment program under Chapter 101, Human Resources Code;
- (7) the work and family policies program under Chapter 81;
- (8) job-training programs funded under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);
- (9) the job counseling program for displaced homemakers under Chapter 304;
- (10) the Communities in Schools program under Chapter 305;
- (11) the reintegration of offenders program under Chapter 306;
- (12) the inmate employment counseling program under Section 499.051(f), Government Code;
- (13) the continuity of care program under Section 501.095, Government Code;
- (14) a literacy program from funds available to the state under Section 481.026, Government Code;
- (15) the employment service;
- (16) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
- (17) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(18) the Job Opportunities and Basic Skills program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682);

(19) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d); and

(20) the functions of the State Occupational Information Coordinating Committee.

(b) In addition to the programs consolidated under the authority of the division under Subsection (a), the division shall administer:

(1) programs in this state to enhance the employment opportunities of veterans of the armed services of the United States, including the employment program funded under Chapters 41 and 42, Title 38, United States Code;

(2) child-care services provided under Chapter 44, Human Resources Code; and

(3) programs established in this state through federal funding to conduct full service career development centers and school-to-work transition services.

(c) To the extent permitted under federal law, the division shall administer the programs funded through the education coordination funds under Section 123, Job Training Partnership Act (29 U.S.C. Section 1533).

Sec. 302.022. CLIENT ACCESSIBILITY. The director shall develop a uniform, statewide client application and enrollment process to determine an applicant's eligibility for workforce training and services funded through the division.

Sec. 302.023. DELEGATION OF FUNCTIONS. The executive director shall delegate all or part of the administration of a program listed under Section 302.021 that is eligible for block grant funding under Section 302.062 to a local workforce development board in an area in which a board has been certified and a local plan approved by the governor, or to another appropriate state or local entity in an area in which a local workforce development board has not been certified and a local plan approved by the governor.

[Sections 302.024-302.040 reserved for expansion]

SUBCHAPTER C. STATE-LOCAL PLANNING; LOCAL WORKFORCE DEVELOPMENT BOARDS

Sec. 302.041. STATE-LOCAL PLANNING PROCESS. The director shall design and implement a state-local planning process for workforce training and services provided through the programs under the jurisdiction of the division.

Sec. 302.042. REVIEW OF LOCAL PLANS; RECOMMENDATIONS. The commission shall review the local workforce training and services plans developed under Section 4.05, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), and shall make recommendations to the council regarding the implementation of those plans.

Sec. 302.043. TRAINING FOR LOCAL WORKFORCE DEVELOPMENT BOARD MEMBERS. (a) The division shall provide management and board development training for all members of local workforce development boards that includes information regarding the importance of high-quality workforces to the economic prosperity of their communities and encourages board members to be advocates in their communities for effective and efficient workforce development programs. If a member of a local workforce development board

does not receive training under this section before the 91st day after the date on which the member begins service on the board, the person is ineligible to continue serving on the board unless the training required under this subsection was requested by the member but not provided by the division.

(b) Training may be provided directly by the division or by a third party that has demonstrated experience in providing training to local workforce development or similar boards.

[Sections 302.044-302.060 reserved for expansion]

SUBCHAPTER D. ALLOCATION OF FUNDS:

BLOCK GRANT PROGRAM

Sec. 302.061. ADMINISTRATION FUNDING. Unless superseded by federal law, the commission may use an amount not to exceed 20 percent of the amount of funds available to the commission for workforce training and services to implement state-level responsibilities, including administration, research and planning, system design and development, and training and technical assistance.

Sec. 302.062. BLOCK GRANTS TO LOCAL WORKFORCE DEVELOPMENT AREAS. (a) Effective July 1, 1996, the commission shall provide to the local workforce development areas in which local workforce development boards have been certified and local plans approved by the governor, through a block grant process, funds available to the commission for workforce training and employment services, unless superseded by federal law. Administrative costs under this subsection may not exceed five percent of the total amount of funds available to the commission for block grants for workforce training and services.

(b) In the case of funds that are allocated to this state or regions of this state through the application of established formulas, the commission shall allocate amounts across the state using the same formula that was used to provide the funds to the state or that region.

(c) In the case of funds that are not allocated by formula to this state or regions of this state, the commission shall develop a need-based formula that will equitably allocate funds among local workforce development areas throughout this state.

(d) Contingent on the availability of funds, in any state fiscal biennium, the commission may not allocate to a local workforce development area less than 90 percent or more than 125 percent of the amount received by that area during the preceding state fiscal biennium.

(e) In each area of the state not yet designated as a local workforce development area or that has been so designated but in which a local workforce development board has not been certified and a local plan approved by the governor, the executive director shall:

(1) provide workforce training and services in that area to the extent allowed by federal law; and

(2) specify an entity, which may be the commission, for the performance of employment services in that area.

(f) At least 80 percent of the funds available to the commission for workforce training and services in an area shall be provided to the local workforce development board under Subsection (a) or, in an area in which a

local workforce development board has not been certified and a local plan approved by the governor, to the entity specified by the executive director under Subsection (e). If a local workforce development board has been certified and a local plan approved by the governor, the funds shall be provided through the block grant process described by this section. Unless superseded by federal law, total administrative costs for local workforce training and services may not exceed 15 percent of the funds allocated under this subsection, whether the training and services are provided through a local workforce development board or through the commission or other entity specified under Subsection (e).

(g) Block grant funding under this section does not apply to:

- (1) the work and family policies program under Chapter 81;
- (2) a program under the skills development fund created under Chapter 303;
- (3) the job counseling program for displaced homemakers under Chapter 304;
- (4) the Communities in Schools program under Chapter 305;
- (5) the reintegration of offenders program under Chapter 306;
- (6) apprenticeship programs under Chapter 33, Education Code;
- (7) the inmate employment counseling program under Section 499.051(f), Government Code;
- (8) the continuity of care program under Section 501.095, Government Code;
- (9) employment programs under Chapter 31, Human Resources Code;
- (10) the senior citizens employment program under Chapter 101, Human Resources Code;
- (11) the programs described by Section 302.021(b)(3);
- (12) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
- (13) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);
- (14) the programs to enhance the employment opportunities of veterans; and
- (15) the functions of the State Occupational Information Coordinating Committee.

Sec. 302.063. WAIVERS. The commission shall develop objective criteria for the granting of waivers allowed under this chapter.

CHAPTER 303. SKILLS DEVELOPMENT FUND

Sec. 303.001. PURPOSE; DEFINITION. (a) The purpose of this chapter is to remove administrative barriers that impede the response of public community and technical colleges to industry and workforce training needs and to develop incentives for public community and technical colleges to provide customized assessment and training in a timely and efficient manner.

(b) For purposes of this chapter, "assessment" means the evaluation of an employer's workforce needs and requirements.

Sec. 303.002. WAIVER. (a) The commission may review and recommend to the legislature the waiver of any requirements set forth in Title 3, Education Code, as they may apply to public community and technical colleges, that impede the ability of such a college to develop in a timely manner customized

training for demand occupations in particular industries, including statutes or regulations limiting costs that may be recovered by a public community or technical college from state funds.

(b) A public community or technical college may recover customized assessment and training costs incurred by the college if:

(1) there is an actual or projected labor shortage in the occupation in which training is provided that is not being met by an existing institution or program in the area; and

(2) the wages at the time of job placement for individuals who successfully complete customized training at the public community or technical college are equal to the prevailing wage for that occupation in the local labor market area.

Sec. 303.003. SKILLS DEVELOPMENT FUND. (a) To achieve the purposes of this chapter, the skills development fund is created from money in the general revenue fund.

(b) The skills development fund may be used by public community and technical colleges as start-up or emergency funds for the following job-training purposes:

(1) developing customized training programs for businesses and trade unions; and

(2) sponsoring small and medium-sized business networks and consortiums.

(c) Money from the skills development fund may not be used to pay the training costs and other related costs of an employer who relocates the employer's worksite from one location in this state to another in-state location.

(d) The executive director, or a person appointed by the executive director who is knowledgeable in the administration of grants, is responsible for the distribution of money from the skills development fund.

(e) It is the intent of the legislature that, to the greatest extent practicable, money from the skills development fund shall be spent in all areas of this state.

Sec. 303.004. FUND REVIEW. The Texas Higher Education Coordinating Board shall review all customized training programs biennially to verify that state funds are being used appropriately by public community and technical colleges under this chapter.

SECTION 11.04. Chapter 302, Labor Code, is redesignated as Chapter 304, Labor Code, and amended to read as follows:

CHAPTER 304 [302]. EMPLOYMENT
COUNSELING FOR DISPLACED HOMEMAKERS

Sec. 304.001. DEFINITION [302.001. DEFINITIONS]. In this chapter, "displaced[-

(1) "Commission" means the Texas Employment Commission;

(2) "Displaced] homemaker" means a person who:

(1) [(A)] has worked without pay as a homemaker for the person's family;

(2) [(B)] is not gainfully employed;

(3) [(C)] has had, or would have, difficulty in obtaining employment;

and

(4) [(D)] has depended on:

(A) [(†)] the income of a family member for financial support and has lost that income; or

(B) [(††)] government assistance as the parent of dependent children and is no longer eligible for that assistance.

Sec. 304.002 [302.002]. JOB COUNSELING PROGRAM. (a) The commission, through a special assistance job counseling program, shall:

- (1) provide counseling for displaced homemakers;
- (2) assist displaced homemakers in obtaining training and education;

and

- (3) place displaced homemakers in suitable employment.

(b) The counseling must:

- (1) consider and build on the skills and experiences of the homemaker;

and

(2) prepare the person, through employment counseling, to reenter the paid work force and develop and improve job skills.

(c) The commission shall design the program specifically for persons reentering the paid work force after a number of years as homemakers to enable them to assume or resume a valuable role in the paid work force commensurate with the homemakers' talents and abilities.

(d) The commission may not charge a fee for participation in the program by a displaced homemaker.

Sec. 304.003 [302.003]. PERSONNEL; OFFICE. The commission shall use its personnel, services, facilities, and equipment to operate the job counseling program.

Sec. 304.004 [302.004]. COOPERATION BY STATE AGENCIES AND POLITICAL SUBDIVISIONS. State agencies and political subdivisions of the state shall cooperate with the commission in obtaining suitable employment for displaced homemakers counseled by the commission.

SECTION 11.05. Chapter 216, Labor Code, is moved from Subtitle A, Title 4, Labor Code, to Subtitle B of that title, redesignated as Chapter 305, Labor Code, and amended to read as follows:

CHAPTER 305 [216]. COMMUNITIES IN SCHOOLS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 305.001 [216.001]. DEFINITIONS. In this chapter:

- (1) "Agency" means the Central Education Agency.
- (2) "Communities in Schools program" means an exemplary youth dropout prevention program.

Sec. 305.002 [216.002]. STATEWIDE OPERATION OF PROGRAM. It is the intent of the legislature that the Communities in Schools program operate throughout this state.

[Sections 305.003-305.010 [216.003-216.010]
reserved for expansion]

SUBCHAPTER B. OPERATION OF PROGRAM

Sec. 305.011 [216.011]. STATE COORDINATOR. The executive director [administrator of the commission] shall appoint a state coordinator for the Communities in Schools program.

Sec. 305.012 [216.012]. DUTIES OF STATE COORDINATOR. The state coordinator shall:

(1) coordinate the efforts of social service organizations and agencies and of public school personnel to provide services to students who are at risk of dropping out of school or engaging in delinquent conduct;

(2) set standards for the Communities in Schools program;

(3) obtain information from each participating school district to determine necessary program changes;

(4) promote and market the program in communities in which the program is not established;

(5) help communities that want to participate in the program establish a local funding base; and

(6) train a program director for each participating community.

Sec. 305.013 [~~216.013~~]. AGENCY COOPERATION; MEMORANDUM OF UNDERSTANDING. (a) The agency and the commission shall work together to maximize the effectiveness of the Communities in Schools program.

(b) The agency and the commission shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of each agency under this chapter. The memorandum must address:

(1) the role of the commission in encouraging local business to participate in local Communities in Schools programs;

(2) the role of the agency in obtaining information from participating school districts;

(3) the use of federal or state funds available to the agency or the commission for programs of this nature; and

(4) other areas identified by the agency and the commission that require clarification.

(c) The agency and the commission shall adopt rules to implement the memorandum and shall update the memorandum and rules annually.

[Sections 305.014-305.020 [~~216.014-216.020~~]
reserved for expansion]

SUBCHAPTER C. PARTICIPATION IN PROGRAM
BY CERTAIN SCHOOLS

Sec. 305.021 [~~216.021~~]. DESIGNATION OF PARTICIPATING SCHOOLS. (a) The state coordinator, in cooperation with the program directors in the counties or cities in which a Communities in Schools program is located [~~was established on September 1, 1991~~], shall designate for participation [~~not more than 32 elementary schools and 76 secondary schools in those counties to participate~~] in the program in the first year of the 1996-97 state fiscal biennium the campuses that were participating in the program as of August 31, 1995, for continuation in the program, and additional campuses if the coordinator determines that funding is available for participation in the program by additional campuses. This subsection expires August 31, 1996.

(b) To determine participation in the second year of the 1996-97 state fiscal biennium and subsequently, the [~~The~~] state coordinator[~~, in cooperation with the program directors in four additional counties designated by the state coordinator,~~] shall implement a formula for the funding of Communities in Schools campuses that reduces, over a five-year period beginning September 1, 1996, the funds annually contributed by the state to an amount not less than 50 percent of the amount contributed by the state for funding of the program

in the first year of the 1996-97 state fiscal biennium [designate additional elementary and secondary schools to participate in the Communities in Schools program]. The formula must consider the financial resources of individual communities and school districts. Savings accomplished through the implementation of the formula may be used to extend participation in the program to additional campuses in counties or cities that are participating in the program and to campuses in counties and cities that have not previously participated in the program.

(c) Each local Communities in Schools program shall develop a five-year funding plan for campuses located in the county or city that participate in the program under which levels of service to those campuses are maintained as the proportion of state funding is reduced [The designation of secondary schools to participate in the Communities in Schools program must be distributed among high schools and junior high or middle schools].

(d) A Communities in Schools program may accept federal funds, state funds, private contributions, grants, and public and school district funds to support a campus participating in the program.

Sec. 305.022 [216.022]. PARTICIPATION IN PROGRAM. An elementary or secondary school designated under Section 305.021 [216.021] shall participate in the Communities in Schools program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by the agency.

[Sections 305.023-305.030 [216.023-216.030]
reserved for expansion]

SUBCHAPTER D. PROGRAM FUNDING

Sec. 305.031 [216.031]. DONATIONS TO PROGRAM. (a) The commission may accept a donation of services or money or other property that the commission determines furthers the lawful objectives of the commission in connection with the Communities in Schools program.

(b) Donations must be accepted in an open meeting by a majority of the voting members of the commission. The donation, with the name of the donor and the purpose of the donation, must be reported in the public records of the commission.

SECTION 11.06. Chapter 217, Labor Code, is moved from Subtitle A, Title 4, Labor Code, to Subtitle B of that title, redesignated as Chapter 306, Labor Code, and amended to read as follows:

CHAPTER 306 [217]. PROJECT RIO (REINTEGRATION OF OFFENDERS)

Sec. 306.001 [217.001]. DEFINITIONS. In this chapter:

- (1) "Department" means the Texas Department of Criminal Justice.
- (2) "Institutional division" means the institutional division of the department.
- (3) "Project RIO" means the project for reintegration of offenders.

Sec. 306.002 [217.002]. PROJECT RIO. The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons formerly confined in the institutional division.

Sec. 306.003 [217.003]. ADMINISTRATION. The department and the commission shall cooperate to maximize the effectiveness of Project RIO. For that purpose, the commission shall administer the project.

Sec. ~~306.004~~ [217-004]. MEMORANDUM OF UNDERSTANDING—ADOPTION. (a) The department and the commission shall adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the department.

(b) The commission shall coordinate the development of the memorandum of understanding. The department shall adopt rules as necessary to implement the memorandum and may amend the memorandum and those rules as necessary.

Sec. ~~306.005~~ [217-005]. MEMORANDUM OF UNDERSTANDING—CONTENTS. [~~a~~] The memorandum of understanding must establish the role of:

(1) the institutional division in ascertaining and encouraging an inmate's chances for employment by:

(A) providing vocational and educational assessment for the person while incarcerated in the division;

(B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental, educational, and private entities, using available public or private financial resources authorized by statute; and

(C) referring the person on release to the project through the person's parole officer;

(2) the community justice assistance division and the pardons and paroles division of the department in:

(A) encouraging and referring persons to the project; and

(B) ensuring that those persons participate in the project and avail themselves of its services; and

(3) the commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by project participants and in helping those participants to secure employment.

~~[(b) The memorandum also must establish the methods by which the commission shall coordinate its efforts under this chapter with the operations of service providers operating under Chapter 301 (Texas Job-Training Partnership Act).]~~

Sec. ~~306.006~~ [217-006]. PROJECT DIRECTOR. (a) The executive director [~~administrator of the commission~~] shall designate the director of Project RIO to coordinate the efforts of the affected state agencies and expedite the delivery of services to participants in the project, including prospective employers.

(b) The project director shall:

(1) propose, for adoption by the commission, standards and guidelines for the operation of the project;

(2) obtain information from appropriate state agencies and offices affiliated with the project to determine any necessary changes in the project;

(3) disseminate information statewide about the project; and

(4) train commission staff to assist in the operation of affiliated services.

SECTION 11.07. Subchapter F, Chapter 202, Labor Code, is moved from Chapter 202, Labor Code, to Subtitle B, Title 4, Labor Code, redesignated as Chapter 307, and amended to read as follows:

CHAPTER 307. [SUBCHAPTER F:] EMPLOYMENT SERVICE

Sec. 307.001 [202.081]. [TEXAS STATE] EMPLOYMENT SERVICE.

[(a)] The commission [Texas State Employment Service] is [a division of] the agency of this state designated to cooperate with the United States Employment Service [commission].

[(b)] The commission, through the division, shall establish and maintain free public employment offices] as necessary to perform the [commission's] duties of this state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) required to establish and maintain free[. —The number and locations of the] public employment offices [shall be determined by the commission as necessary for the proper administration of this subtitle].

Sec. 307.002 [202.082]. EMPLOYMENT SERVICES AGREEMENTS. (a) To ensure the establishment and maintenance of [establish and maintain] public employment offices under this chapter [subchapter], the executive director [commission] may enter into an agreement with any political subdivision of the state or with a private or nonprofit organization, including a local workforce development board, and, as a part of the agreement, accept money, services, or quarters as a contribution to the employment service account.

(b) Except as provided by Subsection (c), to [To] establish and maintain, or assist in the establishment and maintenance of, public employment offices within a county or other political subdivision of this state, the commissioners court of the county or the governing body of the other political subdivision may enter into agreements with the employment service [Texas State Employment Service] on terms and conditions agreed to by the commissioners court or other governing body and the employment service [Texas State Employment Service]. The county or other political subdivision may employ means and appropriate and spend funds as necessary to establish and operate the public employment offices, and may provide, as part of the agreement, payment for:

- (1) the rent of premises;
- (2) services rendered;
- (3) the purchase of equipment; and
- (4) any other purpose considered advisable by the commissioners court or other governing body.

(c) In an area in which a local workforce development board has been certified and a local plan approved by the governor, that board shall provide employment services in its local workforce development area, and a person employed by the commission to provide employment services on the day before the approved local plan takes effect shall be given preference in employment at a career development center administered by that board [The penalty provisions of this subtitle, including the provisions of Chapters 213 and 214, do not apply to an action or omission under Subsection (b)].

[[Sections 202.083-202.090 reserved for expansion]]

SECTION 11.08. Section 203.153, Labor Code, is moved from Chapter 203, Labor Code, to Subtitle B, Title 4, Labor Code, redesignated as Section 307.003, and amended to read as follows:

Sec. 307.003 [203.153]. EMPLOYMENT SERVICE FINANCING. Money received by the state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) shall be deposited to the credit of the employment service account in the

general revenue [~~of the administration~~] fund. The money in the account may be used by the commission as provided by this chapter [~~Subchapter F of Chapter 202~~] and the Wagner-Peyser Act.

SECTION 11.09. Section 209.001, Labor Code, is amended by adding Subdivision (6) to read as follows:

(6) "Employment service" has the meaning assigned by Section 301.001.

SECTION 11.10. Section 1.03, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. APPLICATION OF SUNSET ACT. The Council on Workforce and Economic Competitiveness is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished September 1, 1999 [~~2001~~].

SECTION 11.11. Section 1.04, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.04. DEFINITIONS. In this Act:

(1) "Council" means the Council on Workforce and Economic Competitiveness.

(2) "Division" means the division of workforce development of the Texas Workforce Commission.

(3) "Human resource investment council" means a human resource investment council under the Job Training Reform Amendments Act of 1992 (Pub. L. No. 102-367, Section 701 et seq.).

(4) "Local labor market" means an economically integrated geographical area within which individuals may reside and find employment within a reasonable distance.

(5) [~~3~~] "Program year" means July 1 to June 30.

(6) [~~4~~] "Workforce development" includes workforce education programs and workforce training and services.

(7) [~~5~~] "Workforce education" means articulated career-path programs and the constituent courses of those programs that lead to initial or continuing licensure or certification or associate degree-level accreditation and that:

(A) are subject to:

(i) [~~A~~] initial and ongoing state approval or regional or specialized accreditation;

(ii) [~~B~~] a formal state evaluation that provides the basis for program continuation or termination;

(iii) [~~C~~] state accountability and performance standards; and

(iv) [~~D~~] regional or statewide employer-driven labor market demand documentation; or

(B) are subject to approval by the Texas Higher Education Coordinating Board as adult vocational or continuing education courses.

(8) [~~6~~] "Workforce training and services" means training and services programs that are not included within the definition of workforce education.

SECTION 11.12. Section 2.01, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.01. CREATION OF COUNCIL. (a) The Council on Workforce and Economic Competitiveness is created [as a state agency] to act as a human resources investment council.

(b) The council is attached for administrative purposes to the office of the governor.

SECTION 11.13. Section 2.02(b), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The council shall be composed of:

(1) three [the following ex officio voting members:

[~~(A)~~ the commissioner of education;

[~~(B)~~ the commissioner of higher education;

[~~(C)~~ the commissioner of health and human services;

[~~(D)~~ the executive director of the Texas Department of Commerce; and

[~~(E)~~ the administrator of the Texas Employment Commission;

[~~(2)~~ six] voting members appointed by the governor who represent education, [at least] one of whom represents local public education, one of whom represents public postsecondary education, [one of whom represents secondary vocational education,] and one of whom represents [postsecondary] vocational education;

(2) five [~~(3)~~ seven] voting members who represent organized labor appointed by the governor based on recommendations made by recognized labor organizations;

(3) five [~~(4)~~ seven] voting members appointed by the governor who represent business and industry, including business members serving on local workforce development boards or private industry councils;

(4) two [~~(5)~~ one] voting members [~~member~~] appointed by the governor who represent [~~represents a~~] community-based organizations and who are not providers of services [~~organization~~]; and

(5) [~~(6)~~ one] voting member appointed by the governor who represents a joint-sponsored apprenticeship program as defined by the United States Department of Labor's Bureau of Apprenticeship and Training appointed from a list of three nominees submitted to the governor by the Apprenticeship and Training Association of Texas;

[~~(7)~~ one] voting member appointed by the governor who represents a community-based adult literacy organization;

[~~(8)~~ one] voting member appointed by the governor who represents adult basic and continuing education programs;

[~~(9)~~ six] voting members appointed by the governor each of whom represents not more than one of the following categories:

[~~(A)~~ literacy groups;

[~~(B)~~ local welfare or public housing agencies;

[~~(C)~~ units of local government;

[~~(D)~~ adult education organizations;

- ~~[(E) teachers or counselors;~~
- ~~[(F) local service delivery organizations;~~
- ~~[(G) special needs populations;~~
- ~~[(H) rural and agricultural organizations;~~
- ~~[(I) proprietary schools;~~
- ~~[(J) members of the state legislature; and~~
- ~~[(K) other groups and organizations; and~~

[(10)] the following ex officio voting [~~nonvoting~~] members:

- (A) the chair of the State Board of Education;
- (B) the chair of the Texas Higher Education Coordinating Board;
- (C) the presiding officer of the Texas Board of Human Services;
- (D) the presiding officer of the policy advisory [~~governing~~] board of the Texas Department of Commerce; and
- (E) the chair of the Texas Workforce [~~Employment~~] Commission[;
- ~~[(F) the commissioner of the Texas Rehabilitation Commission; and~~
- ~~[(G) the executive director of the Texas Commission for the Blind].~~

SECTION 11.14. Section 2.06(a), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The council shall:

- (1) promote the development of a well-educated, highly skilled workforce in this state [~~through literacy, adult basic education, community education, apprenticeship, and state-of-the-art occupational skills education and training programs~~];
- (2) [~~serve as an~~] advocate [~~for~~] the development of an integrated workforce development system to provide quality services addressing the needs of business and workers in this state;
- (3) [~~promote and assist in the development of an industry-based skills standards and certification system for occupations requiring less than a baccalaureate-level education and training~~];
- ~~[(4) promote the development of high productivity workplaces in this state;~~
- ~~[(5) recommend to the governor the components of a school and training-to-work transition process;~~
- ~~[(6)] develop and recommend to the governor a single strategic plan that establishes the framework for the budgeting and operation of all workforce development programs, including school to work transition programs, administered by agencies represented on the council;~~
- (4) [(7)] recommend to the governor the designation or redesignation of workforce development areas for the local planning and delivery of workforce development programs;
- (5) [(8)] identify and recommend to the governor incentives to encourage the consolidation, on a regional labor market basis, of:

(A) local boards, councils, and committees; and

(B) service delivery areas authorized under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

~~(6) [(9) design and implement a state-local planning process for the state's workforce training and services programs;~~

~~[(10)] review local workforce training and services plans and make recommendations to the governor for approval;~~

~~(7) evaluate [(11) implement a statewide system for evaluating] the effectiveness of all workforce development programs using the administrative records of the state's unemployment compensation program and other sources as appropriate;~~

~~(8) [(12)] support research and demonstration projects designed to develop new programs and approaches to service delivery;~~

~~(9) recommend measures to [(13) provide for training and professional development for council members, local chief elected officials, workforce development boards and staff, and private industry councils and staff;~~

~~[(14) serve as an advocate at the state and federal levels for the local workforce development boards;~~

~~[(15) establish and operate a comprehensive labor market information system that serves employers, students, workers, and state and local planning organizations;~~

~~[(16)] ensure that occupational skills training is provided in occupations that are currently in demand at the local level and is directed toward high-skill and high-wage jobs;~~

~~(10) monitor [(17) develop and recommend to the governor and legislature not later than November 15, 1994, a plan for consolidating all workforce development programs in this state;~~

~~[(18) oversee] the operation of the state's workforce development programs to assess the degree to which the programs are effective in achieving state and local goals and objectives;~~

~~(11) [(19)] develop and recommend to the governor criteria for the establishment of local workforce development boards; and~~

~~(12) [(20) develop objective criteria for granting waivers allowed under this Act;~~

~~[(21) develop and recommend to the governor a plan to ensure client accessibility to workforce programs that includes a uniform statewide client application system for determining an applicant's eligibility for a workforce program for which state or federal financial assistance is available; and~~

~~[(22)] carry out the federal and state mandated duties and responsibilities for all advisory councils under applicable federal and state workforce development programs.~~

SECTION 11.15. Section 2.09(d), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) At least annually, the council shall issue an occupation-specific analysis by provider of the job placement performance of each workforce education program for the previous one-year, three-year, and five-year periods to:

(1) each provider of a workforce education program or workforce training and services program;

(2) the Texas Higher Education Coordinating Board for each provider of a workforce education program approved and administered by the board; ~~and~~

(3) each local workforce development board for each provider of workforce training and services within the workforce development area; and

(4) the division of workforce development of the Texas Workforce Commission.

SECTION 11.16. Section 2.10, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.10. SUBCOMMITTEES; TECHNICAL ADVISORY COMMITTEES. (a) The presiding officer of the council may appoint subcommittees consisting of members of the council for any purpose consistent with the duties and responsibilities of the council under this Act.

(b) The presiding officer of the council may appoint ~~other~~ technical advisory committees composed of council members or persons who are not council members, or both members and nonmembers.

SECTION 11.17. Section 2.11, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.11. DISSOLUTION OF STATE ADVISORY COUNCILS AND TRANSFER OF ~~[STATE ADVISORY COUNCIL]~~ RESPONSIBILITIES.

(a) The council shall assume the responsibilities assigned to the state advisory council under the following federal laws:

- (1) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);
- (2) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. Section 2301 et seq.);
- (3) the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
- (4) the Adult Education Act (20 U.S.C. Section 1201 et seq.);
- (5) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.);
- (6) Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 681 et seq.);
- (7) the employment program established under Section 6(d)(4), Food Stamp Act of 1977 (7 U.S.C. Section 2015(d)(4)); and
- (8) the National Literacy Act of 1991 (Pub. L. 102-73 et seq.).

(b) The following state advisory councils, boards, and committees are dissolved and the council shall assume the responsibilities formerly exercised by the following state advisory councils, boards, and committees:

- (1) the State Job Training Coordinating Council;
- (2) the Texas Council on Vocational Education;
- (3) ~~[the technical advisory committee to the State Occupational Information Coordinating Council;~~
- ~~[(4)]~~ the Texas Literacy Council; and
- (4) ~~[(5)]~~ the Apprenticeship and Training Advisory Committee.

SECTION 11.18. Section 2.12, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.12. FISCAL AGENT. The office of the governor shall ~~[council may designate another state agency to]~~ serve as the council's fiscal agent ~~[if the designated agent agrees to the designation].~~

SECTION 11.19. Section 2.13(c), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The executive director shall ~~[may]~~ adopt the administrative and personnel procedures of the council's fiscal agent rather than adopting new procedures for the council.

SECTION 11.20. Section 2.17(d), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) State agencies that are responsible for the administration of human resources and workforce development programs in this state shall implement the recommendations if the recommendations do not violate an existing federal or state law~~[-regulation, or rule].~~

SECTION 11.21. Section 2.18, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.18. FUNDING. (a) Federal funding for the operation of the council shall be allocated according to federal requirements.

~~(b) [The council shall develop a budget to carry out the council's duties and responsibilities under this Act. The budget must be submitted to the governor and the Legislative Budget Board for approval. The budget shall identify funds appropriated for the biennium ending August 31, 1995, for planning and evaluation of a workforce development program administered by an agency represented on the council and shall recommend the transfer of those funds to the functions being assumed by the council.]~~

~~[(c)]~~ A state agency represented on the council shall provide funds for the support of the council in proportion to the agency's financial participation in the workforce development system.

SECTION 11.22. Section 4.01, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. CREATION OF LOCAL WORKFORCE DEVELOPMENT BOARDS. (a) The chief elected officials in a workforce development area designated by the governor under Section 3.01 of this Act may form, in accordance with rules established by the Texas Workforce Commission ~~[council]~~, a local workforce development board to plan and oversee the delivery of all workforce training and services programs and evaluate all workforce development programs in the workforce development area. The authority granted under this subsection does not give a local workforce development board any direct authority or control over workforce funds and programs in its workforce development area, other than programs funded through that board.

(b) Before a local workforce development board may be created, at least three-fourths of the chief elected officials in the workforce development area who represent units of general local government must agree to the creation of the board, including all of the chief elected officials who represent units of

general local government having populations of at least 200,000. The elected officials agreeing to the creation of the board must represent at least 75 percent of the population of the workforce development area.

(c) On agreement regarding the formation of a local workforce development board, the chief elected officials shall reduce the agreement to writing. The local government agreement shall include:

- (1) the purpose for the agreement;
- (2) the process that will be used to select the chief elected official who will act on behalf of the other chief elected officials;
- (3) the process that will be followed to keep those chief elected officials informed regarding local workforce development activities;
- (4) the initial size of the local workforce development board;
- (5) how resources allocated to the local workforce development area will be shared among the parties to the agreement;

(6) [~~(4)~~] the process to be used to appoint the board members, which must be consistent with applicable federal and state laws; and

(7) [~~(5)~~] the terms of office of the members of the board.

(d) [~~(c)~~] The chief elected officials shall consider the views of all affected local organizations, including private industry councils and quality workforce planning committees, before making a final decision regarding the formation of a local workforce development board.

(e) [~~(d)~~] None of the powers and duties granted a workforce development board under this Act may be exercised in a workforce development area until the chief elected officials in that area reach an agreement providing for the establishment of a local workforce development board as provided by Subsection (b) of this section and the board is certified by the governor.

(f) [~~(e)~~] A private industry council in an area in which a local workforce development board is not created or in which the chief elective officers are unable to negotiate the establishment of a local workforce development board may not exercise any of the powers granted a local workforce development board by this Act, except for a power granted under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(g) A member or former member of a local workforce development board may not be held personally liable for any claim, damage, loss, or repayment obligation of federal or state funds that arises from this Act unless the act or omission that causes the claim, damage, loss, or repayment obligation constitutes official misconduct on the part of the board member, wilful disregard of the requirements of this Act on the part of the board member, or gross negligence on the part of the board member.

(h) In a state planning area in which there is more than one local workforce development area, the quality workforce planning committee of that state planning area shall continue in existence to provide labor market information for the entire area until local workforce development boards are certified in each workforce development area in the state planning area.

SECTION 11.23. Section 4.04, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (c), and (d) and by adding Subsection (f) to read as follows:

(a) A board is directly responsible and accountable to the division [council] for the planning and oversight of all workforce training and services and the

evaluation of all workforce development programs in the workforce development area. A workforce development board shall ensure effective outcomes consistent with statewide goals, objectives, and performance standards approved by the governor. The ~~division~~ ~~council~~ shall assist workforce development boards in designing effective measures to accomplish this responsibility. A board is directly responsible to the division for the operational planning and administration of all workforce training and services funded through the Texas Workforce Commission to the local area.

(c) A board shall:

(1) serve as a single point of contact for local business to communicate their skill needs and influence the direction of all workforce development programs in the workforce development area;

(2) serve as a private industry council under the federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(3) develop a local plan for addressing the workforce development needs of the workforce development area that:

(A) is responsive to the goals, objectives, and performance standards established by the governor;

(B) targets services to meet local needs, including the identification of industries and employers likely to employ workers who complete job training programs; and

(C) ensures that the workforce development system, including the educational system, has the flexibility to meet the needs of local businesses;

(4) ~~[(3)]~~ designate the board or some other entity as the board's fiscal agent to be responsible and accountable for the management of all workforce development funds available to the board;

(5) ~~[(4)]~~ create local career ~~[workforce]~~ development centers as established in Article 5 of this Act;

(6) ~~[(5)]~~ review plans for workforce education to ensure that the plans address the needs of local businesses and recommend changes in the delivery of education services as appropriate;

(7) ~~[(6)]~~ assume the functions and responsibilities of local workforce development advisory boards, councils, and committees authorized by federal or state laws, including private industry councils, quality workforce planning committees, job service employer committees, and local general vocational program advisory committees;

(8) ~~[(7)]~~ monitor and evaluate the effectiveness of the career ~~[workforce]~~ development centers, state agencies and other contractors providing workforce training and services, and vocational and technical education programs operated by local education agencies and institutions of higher education to ensure that performance is consistent with state and local goals and objectives; and

(9) ~~[(8)]~~ promote cooperation and coordination among public organizations, community organizations, and private business providing workforce development services[; and (9) review applications as consistent with rules developed by the Texas Department of Commerce for funds under the smart jobs fund program under Subchapter J, Chapter 481, Government Code].

(d) The board shall ensure that employment services are provided for persons seeking employment in the local workforce development area. The

board shall contract with an appropriate entity for the provision of the services, or, if all necessary waivers are granted, the board may provide the services directly. The board may provide relevant labor market information and information regarding the availability of existing workforce development programs to the division [department] in performing the board's duties under [Subsection (c)(9) of] this section.

(f) The chief elected officials designated under Section 4.01(b) of this Act shall enter into a partnership agreement with the local workforce development board to select the grant recipient and the administrative entity for the local workforce development area and to determine procedures for the development of the local workforce development plan.

SECTION 11.24. Section 4.05, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.05. LOCAL PLAN. (a) A local workforce development board shall develop a single plan that includes the components specified in this section.

(b) The plan must include a strategic component that:

(1) assesses the labor market needs of the local workforce development area;

(2) identifies existing workforce development programs;

(3) evaluates the effectiveness of existing programs and services; and

(4) sets broad goals and objectives for all workforce development programs in the local area consistent with statewide goals, objectives, and performance standards.

(c) The plan must include an operational component that specifies how all of the resources available to the local workforce development area from the Texas Workforce Commission will be used to achieve the goals and objectives of the plan for the area. At a minimum, this component must establish:

(1) the goals, objectives, and performance measures to be used in overseeing and evaluating the operation of all workforce training and services;

(2) the segments of the population targeted for various services;

(3) the mix of services to be provided and how they are to be provided; and

(4) the structure of the local service delivery system.

(d) Program resources included in the operational component are those under [for the delivery of all workforce training and services in the board's service area under the following programs]:

(1) job training programs funded under the [Texas] Job-Training Partnership Act (29 U.S.C. Section 1501 et seq.) [(Article 4413(52), Vernon's Texas Civil Statutes)];

(2) postsecondary vocational and technical job training programs that are not part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 108, 130, and 135, and Subchapter E, Chapter 88, Education Code;

(3) adult education programs under Section 11.18, Education Code;

(4) employment services programs [apprenticeship programs under Chapter 33, Education Code];

(5) [the trade adjustment assistance program under Part 2, Subchapter H, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

~~[(6) the senior citizens employment program under Chapter 101, Human Resources Code;~~

~~[(7) the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes);~~

~~[(8)] literacy funds available to the state under the National Literacy Act of 1991 (Pub. L. 102-73 et seq.);~~

~~[(6)] [(9) the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);~~

~~[(10)] the job opportunities and basic skills program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682); and~~

~~[(7)] [(11)] the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d).~~

~~[(b) A local plan shall identify:~~

~~[(1) goals, objectives, and performance measures;~~

~~[(2) the population to be served;~~

~~[(3) the mix of services to be provided;~~

~~[(4) the service providers; and~~

~~[(5) the structure of the delivery system.]~~

SECTION 11.25. Sections 4.06(a) and (f), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A board shall review, verify, modify, and use local labor market information developed through the state's ~~[in conjunction with the council shall establish and operate an automated, interactive employer-driven]~~ labor market information system to identify occupation-specific labor demand in each workforce development area.

(f) A public community college shall promptly provide workforce training and services that are requested:

(1) by the workforce development board based on the ~~[board's]~~ labor market ~~[demand]~~ information system available for the area;

(2) by employers located in the college's taxing district when the request is presented directly to the college by the employers or through the workforce development board; or

(3) as part of an economic development incentive package designed to attract or retain an employer, including a package offered under the smart jobs fund program under Subchapter J, Chapter 481, Government Code.

SECTION 11.26. Section 4.08(a), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A board shall establish a budget for the board that must be included in the local workforce development plan submitted to the division ~~[Council on Workforce and Economic Competitiveness]~~. A board may employ professional, technical, and support staff as necessary to carry out its ~~[strategie]~~ planning, oversight, and evaluation functions. A board's staff shall be separate from and independent of any organization providing workforce education or workforce training and services in the workforce development area.

SECTION 11.27. Article 5, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

ARTICLE 5. LOCAL DELIVERY SYSTEM

Sec. 5.01. COMPONENTS. The local workforce development system is composed of two major components as follows:

(1) an employer services component that provides labor market information and services and other services as appropriate to local employers; and

(2) an integrated service delivery system composed of a network of career development centers serving the people of this state based on a "one-stop for service" approach and supported by electronic access to comprehensive labor market information.

Sec. 5.02. CAREER [WORKFORCE] DEVELOPMENT CENTERS. (a) A local workforce development board shall establish career [workforce] development centers accessible to students and [;] workers[,-and-employers] throughout the workforce development area. Each center shall provide access to information and services available in the workforce development area, including employment services, and shall address the individual needs of students and [;] workers[,-and-employers]. The services [available at a center] shall be tailored to meet individual needs and shall include the following:

(1) labor market information, including [the skills of the area workforce,] available job openings[;] and the education and and [;-] training[,-and-employment] opportunities in the local area, in the state, and as feasible, in the nation;

(2) a common intake and eligibility determination process for all workforce training [development programs] and services;

(3) independent assessment of individual needs and the development of an individual service strategy;

(4) centralized and continuous case management and counseling;

(5) individual referral for services including basic education, classroom skills training, on-the-job training, and customized training; and

(6) supportive services, including child care, student loans, and other forms of financial assistance required to participate in and complete training.

(b) Except as provided by Subsection (c) of this section, a person that provides one-stop services may not also provide developmental services, such as basic education and skills training.

(c) The division may develop a waiver process for a person subject to Subsection (b) of this section. The request for a waiver must include a detailed justification based on the lack of an existing qualified alternative for delivery of developmental services in the applicable workforce development area.

(d) The Texas Workforce Commission, in cooperation with local workforce development boards, shall provide for the filing of unemployment insurance claims through career development centers in each local workforce development area.

Sec. 5.03. [Sec. 5.02:] RIGHT TO KNOW. A local career [workforce] development center shall provide each person, before the person participates in a vocational or technical training program, a written document that informs the person of current employment prospects, [and] the current wage level for a person who completes the vocational or technical training program in which the person is considering participating, and the most recent information available

on the performance of institutions providing that training in the local workforce development area.

SECTION 11.28. The Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes) is amended by adding Article 7 to read as follows:

ARTICLE 7. SKILL STANDARDS BOARD

Sec. 7.01. TEXAS SKILL STANDARDS BOARD. (a) The Texas Skill Standards Board is created as an advisory board to the governor and the legislature on the development of a statewide system of industry-defined and industry-recognized skill standards and credentials for all major skilled occupations that:

(1) provide strong employment and earnings opportunities in this state; and

(2) require less than a baccalaureate degree.

(b) The board is composed of 11 members appointed by and serving at the pleasure of the governor. The board consists of the following members:

(1) seven members representing business, two of whom must be from business entities that employ fewer than 50 employees;

(2) two members representing labor;

(3) one member representing secondary education; and

(4) one member representing postsecondary education.

(c) The governor shall appoint the presiding officer of the board from the members representing business.

(d) The board shall:

(1) validate nationally established skill standards to guide curriculum development, training, assessment, and certification of workforce skills;

(2) convene industry groups to develop skill standards and certification procedures for industries and occupations in which standards have not been established or adopted;

(3) review standards developed by other states and nations and enter into agreements for mutual recognition of credentials to enhance portability of skills; and

(4) promote the use of standards and credentials among employers.

(e) The board shall meet at the call of the presiding officer as often as necessary to accomplish its work.

(f) A member of the board is not entitled to compensation for service on the board but is entitled to reimbursement for reasonable expenses incurred in performing board duties, subject to any applicable limitation in the General Appropriations Act.

(g) The council shall provide staff support for the board as necessary.

(h) The board shall report periodically to the governor and shall provide annual reports to the governor, the division, and the legislature.

(i) Article 6252-33, Revised Statutes, does not apply to the board.

SECTION 11.29. The following are repealed:

(1) Section 2.08, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes);

(2) Section 2.13(e), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes);

(3) Section 2.14, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes);

(4) Section 2.16, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes); and

(5) Section 2.17(f), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes).

SECTION 11.30. In making appointments to the Council on Workforce and Economic Competitiveness, as that council is reestablished under Section 2.02(b), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), as amended by this Act, the governor shall reappoint to the council at least seven of the members who served on that council in a non-ex officio capacity on the day before the effective date of this Act.

SECTION 11.31. Section 11.18, Education Code, as amended by Chapter 463, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 11.18. ADULT EDUCATION. (a) As used in this section, the following words and phrases shall have the indicated meanings:

(1) "Adult education" means services and instruction provided below the college level for adults by public local education agencies, public nonprofit agencies, or community-based organizations [~~below the college credit level for adults~~].

(2) "Adult" means any individual who is over the age of compulsory school attendance as set forth in Section 21.032 of this code.

(3) "Community-based organization" has the meaning assigned by 20 U.S.C. Section 1201a, including any future amendments.

(4) "Community education" means the concept which involves the people of the community in a program designed to fulfill their educational needs, while promoting more effective use of public education facilities and other public facilities for the purpose of providing recreational, cultural, and other related community services.

(b) The Texas Workforce Commission [~~Central Education Agency~~] shall:

(1) manage this program with adequate staffing to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for education and training of adults;

(2) develop, implement, and regulate a comprehensive statewide program for community level education services to meet the special needs of adults;

(3) develop the mechanism and guidelines for coordination of comprehensive adult education and related skill training services for adults with other agencies, both public and private, in planning, developing, and implementing related programs, including community education programs;

(4) administer all state and federal funds for adult education and related skill training in Texas, except in programs where another entity is specifically authorized to do so under other law;

(5) prescribe and administer standards and accrediting policies for adult education;

(6) prescribe and administer rules and regulations for teacher certification for adult education; and

(7) accept and administer grants, gifts, services, and funds from available sources for use in adult education.

(c) Adult education programs shall be provided by public school districts, public junior colleges, ~~and~~ public universities, public nonprofit agencies, and community-based organizations approved in accordance with state statute and the regulations and standards adopted by the Texas Workforce Commission in conjunction with the State Board of Education. The programs shall be designed to meet the education and training needs of adults to the extent possible within available public and private resources. Bilingual education may be the method of instruction for students who do not function satisfactorily in English whenever it is appropriate for their optimum development.

(d) The Texas Workforce Commission [~~State Board of Education~~] may establish or designate an adult education advisory committee composed of no more than 21 members representing public and private nonprofit education, business, labor, minority groups, and the general public for the purpose of advising the commission [~~board~~] on needs, priorities, and standards of adult education programs conducted in accordance with this section of the Texas Education Code.

(e) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in Texas and to implement and support a statewide program to meet the total range of adult needs for adult education, related skill training, and pilot programs to demonstrate the effectiveness of the community education concept. The Texas Workforce Commission shall ensure that public local education agencies, public nonprofit agencies, and community-based organizations have direct and equitable access to those funds. An additional sum of money may be appropriated to the Texas Workforce Commission [~~Department of Commerce~~] for the purpose of skill training in direct support of industrial expansion and start-up, and those locations, industries, and occupations designated by the Texas Workforce Commission [~~Department of Commerce~~], when such training is also in support of the basic purposes of this section. To fulfill the basic purposes of this section, an additional sum of money may be appropriated for skill training that is conducted to support the expansion of civilian employment opportunities on United States military reservations. The Central Education Agency, in conjunction with the Texas Workforce Commission [~~Department of Commerce~~], may adopt rules to administer such skill training programs for which the Central Education Agency is responsible, and the Texas Workforce Commission [~~Department of Commerce~~] may adopt rules to administer such skill training programs for which the Texas Workforce Commission [it] is responsible.

SECTION 11.32. Section 16.152, Education Code, is amended by adding Subsection (p) to read as follows:

(p) From the total amount of funds appropriated for allotments under this section, the commissioner of education shall, in each year of the 1996-97 state fiscal biennium, withhold \$16.3 million or a greater amount as determined in the General Appropriations Act and distribute that amount for the Communities in Schools program under Chapter 305, Labor Code. After deducting the amount withheld under this subsection from the total amount appropriated for

the allotment under Subsection (a) of this section, the commissioner of education shall reduce each district's tier one allotments in the same manner described for a reduction in allotments under Section 16.254 of this code. This subsection expires August 31, 1997.

SECTION 11.33. Section 32.11(5), Education Code, is amended to read as follows:

(5) "Administrator" means the executive director of the Texas Workforce Commission [~~State Commissioner of Education~~] or a person, knowledgeable in the administration of regulating proprietary schools, designated by that executive director [~~the Commissioner~~] to administer the provisions of this chapter.

SECTION 11.34. Section 32.12(c), Education Code, is amended to read as follows:

(c) If a State agency that issues a license or other authorization for the practice of an occupation elects not to regulate or approve course hours that exceed the minimum education requirements for the issuance of the license or other authorization, the licensing agency shall enter into a memorandum of understanding with the Texas Workforce Commission [~~Central Education Agency~~] for the regulation of those excess course hours under this chapter. Any course taught under a letter of approval or other written authorization issued by the licensing agency before the effective date of the memorandum is authorized under State law until the course is reviewed by the Texas Workforce Commission [~~Central Education Agency~~]. The licensing agency may terminate the memorandum of understanding on notice to the Texas Workforce Commission [~~Central Education Agency~~].

SECTION 11.35. Section 32.21, Education Code, is amended to read as follows:

Sec. 32.21. WORKFORCE COMMISSION [~~CENTRAL EDUCATION AGENCY~~]. (a) The Texas Workforce Commission [~~Central Education Agency~~] shall exercise jurisdiction and control of the system of schools, and it shall be the duty of the executive director of that commission [~~Commissioner of Education~~] to carry out supervision of the provisions of this chapter, and to enforce minimum standards for approval of schools under the operating regulations and policies hereinafter set forth and as may from time to time be adopted pursuant to the provisions of this chapter.

(b) The executive director of the Texas Workforce Commission [~~Central Education Agency~~] shall prepare a comparison of the cost to a student of courses of instruction or training programs at proprietary schools to the cost to a student of similar courses or programs at schools that are exempt from this chapter under Section 32.12 of this code.

(c) The executive director of the Texas Workforce Commission [~~agency~~] may consult a recognized expert in a field of study for assistance in determining minimum program standards under this chapter for that field.

(d) The executive director of the Texas Workforce Commission [~~Central Education Agency~~] and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding which develops guidelines for coordinating the regulation of proprietary schools and courses that are subject to Sections 61.301 through 61.317 and Chapter 32 of this code. The memorandum shall include provisions which:

(1) clearly identify the responsibilities of each agency in regulating proprietary schools;

(2) ensure that the rules adopted by both agencies pursuant to the memorandum of understanding are not duplicative or in conflict; and

(3) establish procedures for ensuring that information affecting the proprietary school regulatory activities of both agencies is shared between the agencies.

SECTION 11.36. Section 32.24, Education Code, is amended to read as follows:

Sec. 32.24. DUTIES OF WORKFORCE COMMISSION AND EXECUTIVE DIRECTOR. [~~ADMINISTRATOR.~~ (a)] The executive director of the Texas Workforce Commission [~~administrator~~] shall carry out the policies of this chapter and enforce the rules and regulations adopted by that commission [~~the State Board of Education~~]. The executive director [~~He~~] shall also certify the names of those schools meeting the requirements for a certificate of approval.

[~~(b) The administrator may adopt and enforce temporary rules and regulations pursuant to the provisions of this chapter but the temporary rules and regulations are valid only until the next meeting of the State Board of Education.~~]

SECTION 11.37. Section 32.25, Education Code, is amended to read as follows:

Sec. 32.25. MEMORANDUM OF UNDERSTANDING FOR REGULATION OF PROPRIETARY SCHOOLS. (a) The executive director of the Texas Workforce Commission [~~Central Education Agency~~] shall develop, in consultation with the Texas Guaranteed Student Loan Corporation and each state agency that regulates proprietary schools in this state, a comprehensive strategy to reduce default rates at the regulated proprietary schools and to improve the overall quality of the programs operated by these schools.

(b) The executive director of the commission [~~Central Education Agency~~] shall execute a memorandum of understanding outlining the strategy with the corporation and each state agency regulating proprietary schools and shall adopt rules to carry out its duties under this section. The Texas Guaranteed Student Loan Corporation shall adopt the memorandum of understanding as procedures of the corporation, and each agency by rule shall adopt the memorandum of understanding.

(c) The memorandum of understanding shall:

(1) require the development and monitoring of indicators that identify schools that have excessive loan default rates, poor program performance, or both;

(2) require the sharing of specific information relating to the indicators between the Texas Workforce Commission [~~Central Education Agency~~] and the Texas Guaranteed Student Loan Corporation or other agency; and

(3) require the application of specific sanctions by the commission [~~Central Education Agency~~] or by the Texas Guaranteed Student Loan Corporation or other agency, as appropriate, to lower the default rates, improve program performance, or both.

(d) If the executive director of the commission [~~Central Education Agency~~] enters a memorandum of understanding with the Texas Guaranteed Student

Loan Corporation related to the regulation of proprietary schools, the commission [~~agency~~] may require each proprietary school governed by this chapter to provide information to the commission [~~agency~~] that is necessary for the purposes of the memorandum of understanding.

SECTION 11.38. Section 32.32, Education Code, is amended to read as follows:

Sec. 32.32. APPLICATION FOR CERTIFICATE OF APPROVAL. Every proprietary school desiring to operate in the State of Texas or do business in the State shall make written application to the administrator for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the Texas Workforce Commission [~~State Board of Education~~], and shall furnish the administrator such information as the executive director of the commission [~~he~~] may require.

SECTION 11.39. Section 32.321(a), Education Code, is amended to read as follows:

(a) The Texas Workforce Commission [~~State Board of Education~~] after consultation with the Proprietary School Advisory Commission may establish rules that waive, alter, suspend, or replace any of the following provisions governing small proprietary schools:

(1) the fee schedule authorized under Section 32.71 of this code, provided that fees under a fee schedule established by rule may not be less than the reasonable administrative cost for regulation or more than the amount that a small proprietary school would otherwise pay if it were not classified as a small proprietary school;

(2) participation in the proprietary school tuition protection fund required by Section 32.91 of this code;

(3) the refund policy provisions of Section 32.39 of this code;

(4) the bonding requirements of Section 32.38 of this code;

(5) the examination of a school for compliance under Section 32.34(f) of this code;

(6) the reporting requirements of Section 32.33(15) [~~32.33(e)~~] of this code; and

(7) the term for which a certificate of approval is issued under Section 32.34(b) of this code, provided that a rule adopted under this section may not provide for a term that exceeds three years or is less than one year.

SECTION 11.40. Section 32.33, Education Code, is amended to read as follows:

Sec. 32.33. CRITERIA. The administrator may approve the application of a [~~such~~] proprietary school if [~~when~~] the school is found, on [~~upon~~] investigation at the premises of the school, to have met the following criteria:

(1) the [~~(a) The~~] courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum or instruction are offered; provided that before [~~Before~~] a school conducts a course of instruction in court reporting, the school must produce evidence that the school has obtained approval for the curriculum from the Court Reporters Certification Board;[:]

(2) the [~~(b) There is in the~~] school has adequate space, equipment, instructional material and instructor personnel to provide training of good quality;[:]

(3) educational [~~(e) Educational~~] and experience qualifications of directors, administrators and instructors are adequate;[-]

(4) the [~~(d) The~~] school maintains a written record of the previous education and training of the applicant student and clearly indicates that appropriate credit has been given by the school for previous education and training, with the new training period shortened where warranted through use of appropriate skills or achievement tests and the student so notified;[-]

(5) a [~~(e) A~~] copy of the following information is furnished to a student before enrollment:

(A) a course outline;

(B) a schedule of tuition, fees, [~~refund policy;~~] and other charges;

(C) a statement of the school's refund policy;

(D) a copy of regulations relating [~~pertaining~~] to absence, grading policy, [~~and~~] rules of operation and conduct, [~~and~~;~~regulations pertaining to~~] incomplete grades;

(E) the name, mailing address, and telephone number of the Texas Workforce Commission [~~Central Education Agency~~] for the purpose of directing complaints to the commission [~~agency~~];

(F) the current rates of job placement and employment of students issued a certificate of completion; and

(G) notification of the availability of the cost comparison information prepared under Section 32.21(b) of this code through the Texas Workforce Commission; [~~Central Education Agency will be furnished the student prior to enrollment.~~]

(6) except [~~(f) Except~~] as provided by Section 32.40 of this code, on completion of training, the student is given a certificate by the school indicating the course and that training was satisfactorily completed;[-]

(7) adequate [~~(g) Adequate~~] records as prescribed by the administrator are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress and conduct are enforced;[-]

(8) the [~~(h) The~~] school complies with all local, city, county, municipal, state and federal regulations, such as fire, building and sanitation codes, and provides[- ~~The administrator may require such~~] evidence of compliance to the administrator as considered [~~is deemed~~] necessary by the administrator;[-]

(9) the [~~(i) The~~] school is financially sound and capable of fulfilling its commitments for training;[-]

(10) the [~~(j) The~~] school's administrators, directors, owners, and instructors are of good reputation and character;[-]

(11) the [~~(k) The~~] school has, maintains, and publishes in its catalogue and enrollment contract[-] the proper policy for the refund of the unused portion of tuition, fees, and other charges in the event the student enrolled by the school fails to take the course or withdraws or is discontinued therefrom at any time prior to completion;[-]

(12) the [~~(l) The~~] school does not utilize erroneous or misleading advertising, either by actual statement, omission, or intimation as determined by the Texas Workforce Commission; [~~State Board of Education~~;-]

(13) additional [~~(m) Such additional~~] criteria as [~~may be~~] required by the Texas Workforce Commission or the executive director of that commission; [~~State Board of Education.~~]

(14) the [~~(n) The~~] school does not use a name like or similar to an existing tax supported school in the same area;[-]

(15) the [~~(o) The~~] school furnishes to the Texas Workforce Commission [~~Central Education Agency~~] the current rates of students who receive a certificate of completion and of job placement and employment of students issued a certificate of completion;[-]

(16) the [~~(p) The~~] school furnishes to the Texas Workforce Commission [~~Central Education Agency~~] for approval or disapproval student admission requirements for each course or program offered by the school;[-]

(17) the [~~(q) The~~] school furnishes to the Texas Workforce Commission [~~Central Education Agency~~] for approval or disapproval the course hour lengths and curriculum content for each course offered by the school; and[-]

(18) the [~~(r) The~~] school does not owe a civil penalty under Section 32.611 of this code.

SECTION 11.41. Sections 32.34(a) and (d), Education Code, are amended to read as follows:

(a) The executive director of the Texas Workforce Commission [~~administrator~~], upon review of an application for a certificate of approval duly submitted in accordance with the provisions of Section 32.32 and meeting the requirements of Section 32.33 of this chapter, shall issue a certificate of approval to the applicant school. The certificate of approval shall be in a form [~~recommended by the commission and~~] approved by the executive director [~~State Board of Education~~] and shall state in a clear and conspicuous manner at least the following information:

- (1) date of issuance, effective date, and term of approval;
- (2) correct name and address of the school;
- (3) authority for approval and conditions of approval, if any, referring specifically to the approved catalogue or bulletin published by the school;
- (4) signature of the administrator or such person as may have been designated by the executive director [~~him~~] to administer the provisions of this chapter; and

(5) any other fair and reasonable representations that are consistent with this chapter and deemed necessary by the administrator.

(d) At least thirty (30) days prior to expiration of a certificate of approval, the school shall forward to the administrator an application for renewal. The administrator shall reexamine the school at the premises of the school and either renew or cancel the school's certificate of approval. If a school fails to file a complete application for renewal at least thirty (30) days before the expiration date of the certificate of approval, the school, as a condition of renewal, must pay, in addition to the annual renewal fee, a late renewal fee in an amount established by rule by the Texas Workforce Commission [~~State Board of Education rule~~] of at least \$100.

SECTION 11.42. Section 32.38(e), Education Code, is amended to read as follows:

(e) The administrator, for good cause shown, [~~as recommended by the commission and approved by the State Board of Education,~~] may waive and suspend the requirements set forth in Subsections (a) and (c) of this Section with respect to schools operating wholly or in part under a federal grant where no tuition fee is charged to the student.

SECTION 11.43. Sections 32.39(c) and (e), Education Code, are amended to read as follows:

(c) In lieu of the refund policy herein set forth, for programs of instruction not regularly offered to the general public, the Texas Workforce Commission [~~State Board of Education~~] may, for good cause shown, amend, modify, substitute and/or alter the terms of such policy due to the specialized nature and objective of the subject school's course of instruction.

(e) If a refund is not made within the period required by this section, the school shall pay a penalty. If the refund is made to a lending institution, the penalty shall also be paid to that institution and applied against the student's loan. The executive director of the commission [~~commissioner of education~~] annually shall establish the level of the penalty at a level sufficient to provide a deterrent to the retention of student funds. The executive director of the commission [~~Central Education Agency~~] may exempt a school from the payment of the penalty if the school makes a good faith effort to refund the tuition, fees, and other charges but is unable to locate the student. The school shall provide to the executive director of the commission [~~the agency~~] on request documentation of the effort to locate the student.

SECTION 11.44. Section 32.401(b), Education Code, is amended to read as follows:

(b) A proprietary school may offer an applied technology degree, an occupational studies degree, or other degree approved by the Texas Workforce Commission in conjunction with the Central Education Agency. The commission may not [~~Central Education Agency shall have no authority to~~] approve a degree title that uses "associate," "bachelor's," "master's," or "doctor's" in the title and shall consult with the Texas Higher Education Coordinating Board to ensure that the titles of degrees approved by the commission [~~agency~~] are distinctly different from the titles of degrees approved by the board.

SECTION 11.45. Section 32.402(d), Education Code, is amended to read as follows:

(d) The authority of a school to operate under a small proprietary school certificate of approval terminates on the final determination of issuance or denial of an initial certificate of approval. If a school fails to file a complete application within the period required by Subsection (b) of this section, the school, as a condition of issuance, must pay a late fee in an amount established by rule by the Texas Workforce Commission [~~State Board of Education rule~~] of at least \$100.

SECTION 11.46. Section 32.42(d), Education Code, is amended to read as follows:

(d) Upon the filing of the lawsuit, citation shall be served upon the administrator. Whereupon, the administrator shall cause to be made a complete record of all proceedings had before the administrator, and shall certify a copy of the proceedings to the Court. Trial before the Court shall be upon the basis

of the record made before the administrator, and the Court shall make its decision based upon the record. The administrator's decision shall be affirmed by the Court if the Court finds substantial evidence in the record to justify the decision, unless the Court finds the order to be:

- (1) arbitrary and capricious, or
- (2) in violation of the Constitution or laws of the State of Texas, or
- (3) in violation of rules adopted by the Texas Workforce Commission

under this chapter [~~and regulations promulgated by the State Board of Education pursuant to the provisions of the Act~~].

SECTION 11.47. Section 32.612, Education Code, is amended to read as follows:

Sec. 32.612. COMPETITIVE BIDDING; ADVERTISING. The Texas Workforce Commission [~~State Board of Education~~] may not adopt rules to restrict competitive bidding or advertising by a proprietary school except to prohibit false, misleading, or deceptive competitive bidding or advertising practices. Those rules may not restrict:

- (1) the use of an advertising medium;
- (2) the size or duration of an advertisement; or
- (3) advertisement under a trade name.

SECTION 11.48. Section 32.63(b), Education Code, is amended to read as follows:

(b) The attorney general, at the request of the Texas Workforce Commission [~~Central Education Agency~~], may bring a civil action to collect a civil penalty under this section.

SECTION 11.49. Section 32.64, Education Code, is amended to read as follows:

Sec. 32.64. SANCTIONS. (a) If the Texas Workforce Commission [~~Central Education Agency~~] has reasonable cause to believe that a proprietary school has violated this chapter or a rule adopted under this chapter, the commission or the executive director of the commission [~~agency~~] may:

- (1) order a peer review of the school; or
- (2) suspend the admission of students to the school.

(b) A peer review ordered under this section shall be conducted by a peer review team composed of knowledgeable persons selected by the executive director of the commission [~~agency~~]. The executive director [~~agency~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states. The team shall provide the commission and the executive director [~~agency~~] with an objective assessment of the content of the school's curriculum and its application. The costs of providing a peer review team shall be paid by the school.

SECTION 11.50. Sections 32.71(a)-(e), Education Code, are amended to read as follows:

(a) Certificate and registration fees, except those charged pursuant to Subsection (d) of this section, shall be collected by the executive director of the Texas Workforce Commission [~~Administrator~~] and deposited with the State Treasurer. Each fee shall be in an amount set by the executive director [~~Administrator~~] and approved by the commission [~~State Board of Education~~] in an amount not to exceed 150 percent of each fee in the following schedule:

- (1) the initial fee for a school:
- (A) for a certificate of approval is \$2,000; or
 - (B) for a small proprietary school certificate of approval is \$1,000;
- (2) the first renewal fee and each subsequent renewal fee for a school is the greater of:
- (A) an amount that is determined by applying a percentage, not to exceed 0.3 percent, to the gross tuition and fees, excluding refunds as provided by Section 32.39 of this code, of the school; or
 - (B) \$500;
- (3) the initial registration fee for a representative is \$60;
- (4) the annual renewal fee for a representative is \$30;
- (5) the fee for a change of a name of a school or owner is \$100;
- (6) the fee for a change of an address of a school is \$180;
- (7) the fee for a change in the name or address of a representative or a change in the name or address of a school that causes the reissuance of a representative permit is \$10;
- (8) the application fee for an additional course is \$150, except for seminar and workshop courses, for which the fee is \$25;
- (9) the application fee for a director, administrative staff member, or instructor is \$15;
- (10) the application fee for the authority to grant degrees is \$2,000;
- (11) the application fee for an additional degree course is \$250; and
- (12) the fee for an inspection required by rule of the commission [~~State Board of Education~~] of classroom facilities that are separate from the main campus is \$250.

(b) The executive director [~~commissioner of education~~] shall periodically review and recommend adjustments in the level of fees to the [~~State Board of Education and the~~] legislature.

(c) For purposes of this section, the gross amount of annual student fees and tuition for a proprietary school is the amount determined by the executive director [~~State Board of Education~~] based on any report submitted by the school to the commission [~~Central Education Agency~~] or other information obtained by the commission [~~agency~~].

(d) In connection with the regulation of any school or course through a memorandum of understanding pursuant to Section 32.12(c) of this code, the executive director [~~Administrator~~] shall set an application and annual renewal fee, not to exceed \$2,000. The fee shall be approved by the commission [~~State Board of Education~~] to be an amount reasonably calculated to cover the administrative costs associated with assuming the additional regulation.

(e) The fee for an investigation at a school to resolve a complaint filed against the school is \$400. The fee may be charged only if:

- (1) the complaint could not have been resolved by telephone or written correspondence only;
- (2) a representative of the commission [~~Central Education Agency~~] visits the school as a part of the complaint resolution process; and
- (3) the school is found to be at fault.

SECTION 11.51. Section 32.81(a), Education Code, is amended to read as follows:

(a) The cost of administration of this Chapter shall be included in the State budget allowance for the Texas Workforce Commission [~~State Board of Education~~].

SECTION 11.52. Sections 32.91(a), (c), and (d), Education Code, are amended to read as follows:

(a) Except as provided by Subsection (e) of this section, at the time that each school pays its annual renewal fee, in the years provided by Subsection (c) of this section, the Texas Workforce Commission [~~State Board of Education~~] shall also collect a fee from the school for deposit to the credit of a special fund in the state treasury to be called the proprietary school tuition protection fund.

(c) [~~Beginning on January 1, 1990, the board shall collect the fee for two years.~~] If on January 1, 1993, or any subsequent year the amount in the fund is less than \$200,000, the Texas Workforce Commission [~~board~~] shall collect a fee during that year by applying a percentage to each school's annual renewal fee at a rate that will bring the balance of the fund to \$250,000.

(d) The state treasurer shall invest the fund in the same manner as other state funds. Sufficient funds from the tuition protection fund shall be appropriated to the Texas Workforce Commission [~~Central Education Agency administration~~] for the purpose outlined in this section.

SECTION 11.53. Section 32.92(a), Education Code, is amended to read as follows:

(a) If a proprietary school closes, the Texas Workforce Commission [~~Central Education Agency~~] shall attempt to arrange for students of the closed school to attend another proprietary school.

SECTION 11.54. Section 33.01(7), Education Code, is amended to read as follows:

(7) "Commission" means the Texas Workforce Commission [~~"CEA" means the Central Education Agency~~].

SECTION 11.55. Section 33.02(a), Education Code, is amended to read as follows:

(a) Pursuant to the provisions of this chapter, the Texas Workforce Commission [~~commissioner of education~~] may allocate state funds for the support of apprenticeship training programs that meet the criteria set forth in this chapter.

SECTION 11.56. Section 33.04, Education Code, is amended to read as follows:

Sec. 33.04. NOTICE OF AVAILABLE FUNDS. In order to ensure [~~insure~~] that all citizens of this state [~~Texas~~] have an equal opportunity to benefit from apprenticeship training programs, the commission [~~State Board of Vocational Education~~] shall provide for statewide publication in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors of the amount of funds that will be available to support apprenticeship training programs during the current and following fiscal years, the qualifications required of program sponsors and apprenticeship committees, and the procedures to be followed in applying for state funds. The notice may also include other information recommended by the advisory committee and approved by the State Board of Vocational Education.

Notwithstanding the foregoing, the commission [~~State Board of Vocational Education~~] shall publish any information concerning available funds given to a particular program sponsor in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors statewide.

SECTION 11.57. Sections 33.07(a) and (d), Education Code, are amended to read as follows:

(a) The commission [~~CEA~~] shall maintain a clear audit trail of all funds appropriated for the apprenticeship system of adult vocational education. For each course that is funded, the audit trail in the commission [~~CEA~~] shall include the following records:

(1) the name of the sponsoring public school district or state postsecondary institution;

(2) the name of the instructor;

(3) the number of students enrolled;

(4) the place and schedule of class meetings; and

(5) certification by the BAT for preparatory and related instruction courses that the students enrolled were registered apprentices.

(d) All state funds appropriated to the commission under [~~Central Education Agency pursuant to~~] this chapter are subject to audit by the state auditor in accordance with Chapter 321, Government Code. Funds received under [~~pursuant to~~] this chapter by a school district or postsecondary institution are subject to audit as otherwise provided by law.

SECTION 11.58. Section 33.08, Education Code, is amended to read as follows:

Sec. 33.08. APPROPRIATION AND DISTRIBUTION OF FUNDS.

(a) On recommendation of the advisory committee the State Board of Vocational Education, in conjunction with the commission, shall adopt formulas and administrative procedures to be used in requesting appropriations of state funds as a budgetary line item for the Apprenticeship System of Adult Vocational Education.

(b) The commission [~~CEA~~] shall prepare an update to the Apprenticeship Related Instruction Cost Study adopted by the State Board of Education on February 10, 1973, prior to each biennial session of the legislature.

(c) On recommendation of the advisory committee the State Board of Vocational Education, in conjunction with the commission, shall adopt forms, formulas, and administrative procedures for the distribution of available funds to apprenticeship training programs. Distribution formulas must be uniform in application to all local program sponsors.

(d) On recommendation of the advisory committee the State Board of Vocational Education, in conjunction with the commission, shall reserve until December 1 of each year a percentage of the funds appropriated under the line item described in this section to be used solely for apprenticeship-related instruction programs. This percentage shall be established by the formulas required by this section. Reserved funds that are not obligated on December 1 may be used for preparatory and supplementary instruction programs as well as related instruction programs.

(e) No funds shall be distributed to a public school district or state postsecondary institution until the district or institution has filed all reports

required by this chapter, ~~and by~~ the State Board of Vocational Education, and the commission.

SECTION 11.59. Section 33.09, Education Code, is amended to read as follows:

Sec. 33.09. RULES. The State Board of Vocational Education, in conjunction with the commission, shall promulgate rules necessary to implement the provisions of this chapter.

SECTION 11.60. Section 33.10(a), Education Code, is amended to read as follows:

(a) Recommendations of the advisory committee submitted to the State Board of Vocational Education or the commission must be acted on, and either accepted or rejected.

SECTION 11.61. Section 481.026, Government Code, is amended to read as follows:

Sec. 481.026. ~~[DUTIES OF] LITERACY [COUNCIL; INTERAGENCY WORK GROUP].~~ (a) In this section, "council" means the Council on Workforce and Economic Competitiveness.

(b) The council ~~[Texas Literacy Council]~~ shall:

(1) advise the governor, the Texas Workforce Commission ~~[State Job Training Coordinating Council]~~, the State Board of Education, the Texas Higher Education Coordinating Board, and any group interested in literacy on policy, planning, research, and program development;

(2) coordinate the development and maintenance of a literacy services delivery system;

(3) oversee the attainment of the state's literacy goals;

(4) build a partnership with the private sector in order to inform the objectives-setting process and to gain acceptance of the services of a functional literacy program;

(5) provide state leadership to encourage and support local and statewide literacy efforts;

(6) ~~[advise the State Board of Education on needs, priorities, and standards of adult literacy education programs conducted in accordance with Section 11.18, Education Code;~~

~~[(7)]~~ advocate the importance of literacy to ensure that all in need of assistance understand the benefits of increased functional literacy and to ensure that the necessary resources are available;

~~[(7)] [(8)]~~ make literacy instruction available to adults and out-of-school youth by ensuring that a comprehensive literacy instruction capacity is present in every Texas community;

~~[(8)] [(9)]~~ coordinate and improve local literacy instruction to ensure the most efficient and effective use of resources to meet adult education goals;

~~[(9)] [(10)]~~ identify state and local literacy programs and enter them in a directory for centralized referral and communication;

~~[(10)] [(11)]~~ continue oversight of literacy needs analysis;

~~[(11)] [(12)]~~ continue to develop an awareness campaign;

~~[(12)] [(13)]~~ develop a timetable and objectives for reaching the proposed goals and subgoals; and

~~[(13)] [(14)]~~ make recommendations to the governor, lieutenant governor, and speaker of the house of representatives or other state officials or

organizations that it considers appropriate regarding the expenditure of funds and the administration of programs.

~~[(b) An interagency work group is created to advise the council. The advisory work group is composed of representatives from the Central Education Agency, Texas State Library and Archives Commission, Texas Higher Education Coordinating Board, Texas Employment Commission, Texas Department of Corrections, Texas Department of Human Services, Texas Rehabilitation Commission, Advisory Council for Technical Vocational Education, and State Job Training Coordinating Council.~~

~~[(c) The council shall, with advice from the advisory work group, develop, adopt, and present to the 72nd Legislature a five-year strategic plan for comprehensive Texas literacy efforts. The plan must include:~~

~~[(1) identification of all money from private, local, and federal sources available for investment in state and community literacy programs;~~

~~[(2) proposals for acquiring local, state, and federal money identified in A Guide to Adult Literacy Funds and Resources to provide maximum support for state and community programs;~~

~~[(3) proposals for coordination of state government resources, planning, and personnel among the agencies advising the council, to ensure, within budget constraints and consistent with existing missions, general access to state support services for community programs;~~

~~[(4) identification of program shortages and gaps in service delivery, and proposals to establish a comprehensive service delivery system for all regions of the state and all target populations;~~

~~[(5) an appropriate balance in recommended funding and support services for both adult literacy training and early student intervention, to ensure development of a continuum of literacy training services targeted at family needs;~~

~~[(6) a discussion of evaluation tools used to measure student and program performance, in order to assure policymakers of concrete achievements and accountability for public funds; and~~

~~[(7) other items that should be included in the judgment of the council.]~~

~~(c) [(d)]~~ The department may award literacy grants out of state, local, federal, and private money available to the department for that purpose. Grants shall be awarded under guidelines set by the Texas Workforce Commission ~~[council]~~. The guidelines shall include a competitive request for proposal process ~~that includes[, designed by the council with the assistance of its advisory work group. The process shall include]~~ criteria for evaluating the proposals.

~~(d) [(e)]~~ The department ~~[council]~~ may establish a Texas literacy trust fund for the purpose of collecting private funds for distribution to community literacy programs. The fund must meet all applicable requirements under state and federal law necessary for qualification as a nonprofit trust. The fund, if established, shall be a separate fund kept and held in escrow and in trust by the state treasurer for and on behalf of the department ~~[council]~~ as funds held outside the treasury under Section 404.073. Unless prohibited by other law, the state treasurer may invest and reinvest the money, pending its use, in the

fund in investments authorized by law for state funds that the state treasurer considers appropriate. The department shall distribute money from the fund under guidelines set by the Texas Workforce Commission [council].

SECTION 11.62. Section 501.095(b), Government Code, is amended to read as follows:

(b) An agency of the state not listed in this section [subsection] that determines that it may provide services to inmates with a history of chronic unemployment may participate in the development of the memorandum, if the parties listed in this section [subsection] approve the agency's participation.

SECTION 11.63. Section 31.012, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) A state program operated under this section shall be administered by the division of workforce development of the Texas Workforce Commission when the program is transferred to that commission.

SECTION 11.64. Section 44.001, Human Resources Code, is amended to read as follows:

Sec. 44.001. DESIGNATED AGENCY. The Texas Workforce Commission [department] is the state agency designated to administer a day-care program established by federal law and financed partially or totally by federal funds.

SECTION 11.65. Sections 44.002(a), (c), and (d), Human Resources Code, are amended to read as follows:

(a) The Texas Workforce Commission [commissioner] shall promulgate rules to carry out the administrative provisions of the program consistent with federal law and regulations.

(c) The rules must establish procedures for input by the parents of the children in a day-care center into the operation of the center. Where programs have more than 30 percent of their licensed capacity purchased by the commission [department], these procedures must include the establishment of ongoing parent advisory committees that regularly meet and review day-care center operations.

(d) The executive director of the commission [commissioner] may promulgate eligibility standards for admittance into the program, but the standards must allow for exceptions where necessary to maintain family self-sufficiency and integrity. The exceptions must be reviewed biannually by the commission [department] with opportunity provided for public input. The initial exceptions and any revisions must be published in the Texas Register.

SECTION 11.66. Section 44.003, Human Resources Code, is amended to read as follows:

Sec. 44.003. ADMINISTRATION OF FEDERAL-LOCAL PROGRAM.

(a) If the program is to be funded through political subdivisions of the state or local agencies approved by the commission [department] matching federal grants, the commission [department] shall promulgate procedures for effective delivery of services consistent with this section and with federal law and regulations.

(b) If the services are provided through contracting with operators of day-care programs on request from political subdivisions or local agencies, the commission [department] may not promulgate standards for selection of the type of programs more restrictive than required by federal law or regulations.

(c) The executive director of the commission [department] shall establish an accounting system consistent with federal law and regulations which will provide that an operator of a day-care program contracting with the commission [department]:

(1) shall receive prepayment in accordance with policies and procedures mutually agreed on by the state comptroller of public accounts and the commission [department]; and

(2) shall be paid on the basis of legitimate and reasonable expenses, insofar as possible, given federal regulations and department policy, instead of being paid on the basis of the number of children attending or the number of children enrolled in the program, provided that on being monitored by the commission [department], the contracting operator can substantiate that there were sufficient preparations in the development of the services offered.

(d) The executive director of the commission [department] shall establish procedures for hearing complaints by operators of day-care programs contracting with the commission [department] relating to the failure of the commission [department] to comply with Subsection (c) of this section.

SECTION 11.67. Section 44.031, Human Resources Code, is amended to read as follows:

Sec. 44.031. ESTABLISHMENT. (a) The commission [department] may establish day-care centers for all children who qualify for services under Section 44.032 of this code. Where in the opinion of the executive director of the commission [department] it appears feasible for the furtherance of the objectives of this legislation, the commission [department] may establish cooperative agreements with other state agencies.

(b) The commission [department] is not required to establish a day-care center or to provide services under this subchapter unless funds are appropriated for that purpose.

SECTION 11.68. Sections 44.032(a) and (b), Human Resources Code, are amended to read as follows:

(a) Except as provided by Subsection (b) of this section, to be eligible for admission to a day-care center authorized under this subchapter, a child must be at least six weeks of age and:

(1) the child must be eligible for state assistance under the aid to families with dependent children program and the child's caretaker must be employed, enrolled in a [~~department-authorized~~] job training program authorized by the Texas Workforce Commission, registered to work by that commission [~~the Texas Employment Commission~~], or permanently and totally disabled; or

(2) the child must be from a family eligible under federal law or regulations to participate in a partially or totally federally funded welfare or social services program.

(b) Additional children of the same age group may also be admitted to a center under additional standards established by the commission [commissioner].

SECTION 11.69. Section 44.034, Human Resources Code, is amended to read as follows:

Sec. 44.034. STANDARDS; RECOMMENDATIONS. (a) If the Texas Workforce Commission [department] establishes day-care centers under this subchapter, the department shall prescribe standards of operation and

performance for the centers that will ensure proper nutrition, social adjustment, health services, and appropriate growth and development for children admitted.

(b) The executive director of the commission [department] shall [also] prescribe procedures for receiving recommendations relating to the operation of the centers from parents, guardians, or custodians of children admitted to the centers, operators of the centers, and other interested persons.

SECTION 11.70. Sections 44.035(a), (c), and (d), Human Resources Code, are amended to read as follows:

(a) The executive director of the Texas Workforce Commission [department] may contract for services authorized under this subchapter with an individual, organization, association, or corporation meeting the standards established under Section 44.034 of this code and the standards for child-care facilities licensed by the department.

(c) The executive director of the commission [department] shall terminate a contract with a day-care center that fails to maintain the department's standards.

(d) When the executive director of the commission [department] intends to cancel a [its] contract with a day-care center, the executive director [department] shall give the center reasonable notice and an opportunity for a hearing if one is requested. The commission [department] shall adopt rules consistent with Chapter 2001, Government Code, [the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)] to implement this section. Hearings under this section are contested cases under that chapter [Act].

SECTION 11.71. Section 44.036, Human Resources Code, is amended to read as follows:

Sec. 44.036. ANNUAL EVALUATION OF DAY-CARE CENTERS. If the commission [department] establishes day-care centers or provides services under this subchapter, the commission, with the assistance of the department, shall evaluate the performance of the centers each state fiscal year. This evaluation shall be sent to the governor and to the Legislative Budget Board not later than the 100th day after the last day of the state fiscal year covered by the evaluation.

SECTION 11.72. Sections 44.061(f) and (g), Human Resources Code, are amended to read as follows:

(f) The committee shall advise and assist the department and the Texas Workforce Commission in developing coordinated state policies for the use of federal and state funds in child-care programs, including policies relating to the:

- (1) review of any state plan required for the use of federal or state funds;
- (2) development of a coordinated and comprehensive training program for child-care providers;
- (3) establishment of guidelines providing technical assistance to child-care providers, including loans, grants, or training;
- (4) development of a quality improvement program for federal and state funded child-care services;
- (5) review of public access to current child-care services, with special emphasis placed on special needs populations and localities of the state with limited child-care programs;

(6) development of consumer education programs related to the access and selection of child-care services;

(7) review of appropriations to child-care programs;

(8) review of expenditures of child-care programs; and

(9) review of state efforts to maximize access to federal child-care funding.

(g) The committee shall review child-care policies and programs for compliance with applicable guidelines and shall advise the board, the commission, and the department on the results of the review.

SECTION 11.73. Sections 101.023(b) and (c), Human Resources Code, are amended to read as follows:

(b) The Texas Workforce Commission [~~department~~] may establish and administer a community program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The Texas Workforce Commission [~~department~~] may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The Texas Workforce Commission [~~department~~] may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

SECTION 11.74. The following are repealed:

(1) Section 11.18(b)(4), Education Code, as amended by Chapter 812, Acts of the 71st Legislature, Regular Session, 1989; and

(2) Section 32.22, Education Code.

SECTION 11.75. (a) The three-member Texas Employment Commission is abolished on September 1, 1995. A person serving as a member of the Texas Employment Commission on August 31, 1995, serves as a member of the Texas Workforce Commission until the date on which the governor appoints a person with the corresponding proper qualifications to the Texas Workforce Commission. A person serving as a member of the Texas Employment Commission on August 31, 1995, is eligible for appointment by the governor to the Texas Workforce Commission. The governor shall appoint the initial members of the Texas Workforce Commission not later than September 30, 1995, as follows:

(1) the member who represents employers for a term expiring February 1, 1997;

(2) the member who represents labor for a term expiring February 1, 1999; and

(3) the member who represents the public for a term expiring February 1, 2001.

(b) The executive director of the Texas Workforce Commission shall determine, on a program-by-program basis, the date on which a program administered by the Texas Employment Commission on August 31, 1995, shall be transferred to the Texas Workforce Commission, and the date on which a program listed under Section 302.021, Labor Code, as added by this article, and

administered by another state agency on August 31, 1995, shall be transferred to the Texas Workforce Commission. The transfer under this subsection may begin on the date on which the executive director is appointed.

(c) The programs administered by the Texas Employment Commission as of August 31, 1995, shall remain administratively distinct from the programs operated by the Texas Workforce Commission until those employment agency programs are transferred to the Texas Workforce Commission as provided by Subsection (b) of this section. The Texas Workforce Commission shall operate the employment agency programs as programs of the Texas Employment Commission until the transfer is completed and may refer to itself as the "Texas Employment Commission" with regard to those programs and actions taken in relation to those programs until the transfer of all Texas Employment Commission programs is completed.

(d) All money, records, property, and equipment in the custody of a program administered by the Texas Employment Commission on August 31, 1995, or otherwise transferred under Section 302.021, Labor Code, as added by this article, shall be transferred to the custody of the Texas Workforce Commission on the earlier of the 30th day after the date on which the program is transferred to the Texas Workforce Commission or September 30, 1996, or September 30, 1997, for the child-care services program operated under Chapter 44, Human Resources Code, as amended by this article. A person employed by a program becomes an employee of the Texas Workforce Commission on the date on which the transfer of the program to the Texas Workforce Commission is completed.

(e) A reference in a law or administrative rule to an agency that as of August 31, 1995, administered a program transferred to the Texas Workforce Commission means the Texas Workforce Commission.

(f) The transfer of all affected programs shall be made as soon as practicable. The transfer of the child-care services program operated under Chapter 44, Human Resources Code, as amended by this article, shall be completed not later than September 1, 1997. The transfer of all other affected programs shall be completed not later than September 1, 1996.

(g) Any appropriation made to the Texas Employment Commission or to another state agency for the administration of a program transferred under this section for the state fiscal biennium ending August 31, 1997, is transferred to the Texas Workforce Commission on the date on which the program is transferred to the Texas Workforce Commission.

(h) On and after September 1, 1995, a reference in any law to the Texas Employment Commission means the Texas Workforce Commission, except as provided by this section.

SECTION 11.76. (a) The comptroller shall conduct a management study to review the smart jobs fund program created under Subchapter J, Chapter 481, Government Code, and the programs to be transferred to the Texas Workforce Commission. If the adult education program under Section 11.18, Education Code, is not transferred to the Texas Workforce Commission because of the passage of alternative requirements in Senate Bill 1, Acts of the 74th Legislature, Regular Session, 1995, the comptroller shall include that program in the study. Based on the study, the comptroller shall develop and make

recommendations to the governor, lieutenant governor, and speaker of the house of representatives for the integrated structure of the Texas Workforce Commission.

(b) Each state agency affected by the transfer of program jurisdiction shall cooperate with the comptroller in formulating and implementing a transition plan, including the development of program transition plans and an interim operating budget and the temporary assignment of staff as necessary to ensure an orderly transition.

(c) The comptroller's report and recommendations for the structure of the commission and transition of the programs affected under this article shall be filed with the governor, lieutenant governor, and speaker of the house of representatives not later than December 1, 1995.

(d) After review by the governor, lieutenant governor, and speaker of the house of representatives of the comptroller's plan, the Texas Workforce Commission shall, to the extent practicable, implement the program transition in a manner consistent with the comptroller's plan.

(e) The transition oversight committee is created to assist the transition of programs to the jurisdiction of the Texas Workforce Commission and to assist that commission in implementation of the comptroller's recommendations. The committee is composed of:

- (1) the executive director of the Texas Workforce Commission;
- (2) the agency administrator of the Texas Employment Commission;
- (3) the executive director of the Council on Workforce and Economic

Competitiveness;

- (4) the commissioner of education;
- (5) the commissioner of human services;
- (6) the executive director of the Texas Department on Aging;
- (7) the executive director of the Texas Department of Commerce;
- (8) a representative of the governor;
- (9) a representative of the lieutenant governor; and
- (10) a representative of the speaker of the house of representatives.

(f) The representative of the governor shall serve as presiding officer of the committee.

(g) Each state agency affected by the transfer of program jurisdiction shall cooperate with the comptroller, the committee, and the Texas Workforce Commission in formulating and implementing a transition plan.

(h) The committee may:

- (1) appoint a full-time staff person with clerical assistance as necessary to assist in implementing the duties of the committee;
- (2) adopt interim rules and procedures as necessary to implement this section, consistent with this article and the laws of this state; and
- (3) transfer staff from the affected state agencies to the committee to assist the committee in the implementation of its duties.

(i) The committee shall hold its initial meeting not later than the 30th day after the effective date of this article.

(j) This section expires and the committee is abolished September 1, 1997.

SECTION 11.77. The executive director of the Texas Workforce Commission shall report to the legislature and the governor not later than

December 1, 1996, the results of an analysis conducted by that commission as to whether block grant funding under Section 302.062, Labor Code, as added by this article, should be extended to the programs exempted from block grant funding under Subsection (g) of that section.

SECTION 11.78. (a) The state auditor shall evaluate the management and fiscal control systems of the Texas Workforce Commission and make any recommendations for improvement to the governor, the legislature, and the commission.

(b) The state auditor shall report to the governor and the legislature not later than December 1, 1996, the results of the evaluation conducted under Subsection (a) of this section.

SECTION 11.79. (a) In addition to the new changes in law made by this article relating to job training and school dropout prevention, this article conforms Sections 305.021(a) and (b), Labor Code, as added by this article, to changes made by Section 1, Chapter 183, Acts of the 73rd Legislature, Regular Session, 1993.

(b) Section 1, Chapter 183, Acts of the 73rd Legislature, Regular Session, 1993, is repealed.

SECTION 11.80. The lieutenant governor shall appoint the initial presiding officer to the oversight committee created under Subchapter G, Chapter 301, Labor Code, as added by this article.

SECTION 11.81. The changes in law made by this article are not intended to supersede the authority of the State Board of Education, the Central Education Agency, or local school boards over the curriculum of kindergarten through eighth grade.

ARTICLE 12. REPEALER; WAIVERS; EFFECTIVE DATE; EMERGENCY

SECTION 12.01. REPEALER. Sections 31.011 and 31.013, Human Resources Code, are repealed.

SECTION 12.02. WAIVERS. If before implementing any provision of this Act, the Texas Department of Human Services, the Title IV-D agency, or another agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the department or the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted. In order to implement Section 31.014, Human Resources Code, providing benefits to certain two-parent families, the department shall reapply for any needed waiver or authorization whether or not implementation of the program would be cost-neutral.

SECTION 12.03. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect September 1, 1995.

SECTION 12.04. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

(Harris in the chair)

(Speaker in the chair)

Representative Hilderbran moved to adopt the conference committee report on **HB 1863**.

A record vote was requested.

The motion prevailed by (Record 559): 128 Yeas, 19 Nays, 2 Present, not voting.

Yeas — Alexander; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Clemons; Combs; Conley; Cook; Counts; Crabb; Craddock; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Ehrhardt; Eiland; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hirschi; Hochberg; Holzheuser; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Marchant; Maxey; McCall; McCoulskey; McDonald; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Nays — Allen; Carona; Chisum; Corte; Dutton; Edwards; Elkins; Hartnett; Hill; Horn; Howard; Krusee; Madden; Moffat; Reyna; Swinford; Talton; Wilson; Wohlgemuth.

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

Absent — Coleman.

MESSAGE FROM THE SENATE

Austin, Texas, May 26, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the house that the Senate has adopted the Conference Committee Report on the following: **SB 1** by 30 Yeas, 1 Nay.

I am directed by the Senate to inform the House that the Senate has granted the request of the House for the appointment of a Conference Committee to adjust the differences between the two Houses on **HB 2766**.

The following have been appointed on the part of the Senate: Senator Turner, Chair, Senator Sibley, Senator Madla, Senator Patterson, and Senator Henderson.

Respectfully,
Betty King
Secretary of the Senate

COMMITTEE GRANTED PERMISSION TO MEET

Representative Berlanga moved to suspend all necessary rules to allow the Committee on Public Health to meet while the house is in session.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Public Health, 3:10 p.m. today, speakers committee room.

SB 1231 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Telford submitted the conference committee report on **SB 1231**.

Representative Telford moved to adopt the conference committee report on **SB 1231**.

The motion prevailed. (Finnell recorded voting no)

SB 1445 - RECOMMITTED

Representative Siebert submitted the conference committee report on **SB 1445**.

Representative Siebert moved to adopt the conference committee report on **SB 1445**.

Representative Smithee offered a substitute motion that the house not adopt the conference committee report on **SB 1445** and that the bill be recommitted to the conference committee.

Representative Siebert moved to table the substitute motion.

A record vote was requested.

The motion to table was lost by (Record 560): 36 Yeas, 104 Nays, 1 Present, not voting.

Yeas — Alexander; Alonzo; Bailey; Brady; Carona; Corte; Craddick; Danburg; Davis; Duncan; Dutton; Farrar; Goolsby; Hamric; Heflin; Hernandez; Hill; Hochberg; Hunter, B.; King; Kubiak; Luna; Moreno; Oliveira; Pitts; Place; Puente; Rangel; Raymond; Shields; Siebert; Solis; Tillery; Uher; Walker; Wolens.

Nays — Allen; Alvarado; Averitt; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Combs; Conley; Cook; Counts; Crabb; Cuellar, H.; Cuellar, R.; Culberson; Davila; De La Garza; Dear; Delisi; Denny; Driver; Edwards; Ehrhardt; Eiland; Elkins; Finnell; Gallego; Glaze; Goodman; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Harris; Hartnett; Hawley; Hilbert; Hilderbran; Hirschi; Holzheuser; Horn; Howard; Hudson; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; Krusee; Kuempel; Lewis, G.; Lewis, R.; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Park; Patterson; Pickett; Price; Rabuck; Ramsay; Reyna; Rhodes; Rodriguez; Romo; Rusling;

Sadler; Saunders; Serna; Smithee; Solomons; Staples; Swinford; Talton; Telford; Torres; Turner, B.; Turner, S.; Van de Putte; West; Williamson; Willis; Wohlgemuth; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Coleman; Dukes; Giddings; Hightower; Longoria; Seidlits; Stiles; Thompson; Wilson.

The motion to recommit prevailed.

HB 325 - STATEMENT BY SPEAKER LANEY

The speaker made the following statement regarding **HB 325**:

Members, the next item eligible on the list is **HB 325**. This morning, Representative Walker presented the chair with a brief on the germaneness of the senate amendments. In order to have the time for staff and myself to review that brief, it is the intent of the chair to pass over **HB 325** at this time.

HB 466 - WITH SENATE AMENDMENTS

Representative Brimer called up with senate amendments for consideration at this time,

HB 466, A bill to be entitled An Act relating to the compilation and use of information pertaining to criminal combinations; providing a penalty.

Representative Brimer 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 the bill.

The motion prevailed without objection.

HB 466 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 466**: Brimer, chair, Goodman, Talton, Nixon, and Cook.

HB 632 - WITH SENATE AMENDMENT

Representative Oakley called up with a senate amendment for consideration at this time,

HB 632, A bill to be entitled An Act relating to safety standards for public playgrounds and limits on the civil liability of a person who provides and maintains a safe playground.

On motion of Representative Oakley, the house concurred in the senate amendment to **HB 632**.

HB 632 - TEXT OF SENATE AMENDMENT

CSHB 632, A bill to be entitled An Act relating to the expenditure of public funds for certain playground facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 756, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. PUBLICLY FUNDED PLAYGROUNDS

Sec. 756.061. COMPLIANCE WITH SAFETY STANDARDS. (a) Except as provided by Subsection (b), on or after September 1, 1997, public funds may not be used:

(1) to purchase playground equipment that does not substantially comply with each applicable provision of the Handbook for Public Playground Safety published in 1994 by the United States Consumer Product Safety Commission (Publication No. 325);

(2) to purchase surfacing for the area under and around playground equipment if the surfacing will not substantially comply, on completion of installation of the surfacing, with each applicable provision of the handbook described by Subdivision (1); or

(3) to pay for installation of playground equipment or surfacing if the installation will not substantially comply, on completion of the installation, with each applicable provision of the handbook described by Subdivision (1).

(b) Public funds may be used for maintenance of playground equipment or surfacing for the area under and around playground equipment that was purchased before September 1, 1997, even if the equipment or surfacing does not substantially comply, on completion of the maintenance, with each applicable provision of the handbook described by Subsection (a)(1).

(c) This section:

(1) does not create, increase, decrease, or otherwise affect a person's liability for damages for injury, death, or other harm caused by playground equipment, surfacing, or the installation of the equipment or surfacing; and

(2) is not a waiver of sovereign immunity of any governmental entity.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 883 - WITH SENATE AMENDMENT

Representative McDonald called up with a senate amendment for consideration at this time,

HB 883, A bill to be entitled An Act relating to the regulation of certain nursing practices.

On motion of Representative McDonald, the house concurred in the senate amendment to **HB 883**.

HB 883 - TEXT OF SENATE AMENDMENT

CSHB 883, A bill to be entitled An Act relating to the regulation of certain nursing practices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2(a), Article 4513, Revised Statutes, is amended to read as follows:

(a) The members of the board shall hold office for staggered terms of six years, with the terms of one practicing registered nurse, one professional nurse engaged in nurse education, and one public member expiring on January 31 of odd-numbered years. A [The] professional nurse member [members] must be actually engaged [employed] in the nursing profession for at least three of the five years preceding the [before their] appointment.

SECTION 2. Section 3, Article 4518, Revised Statutes, is amended to read as follows:

Sec. 3. Every applicant for registration as a registered nurse shall present to the Board evidence of good professional character, successful completion of an accredited program of professional nursing education, and a sworn application and shall, upon payment of required fees, be entitled to take the examination prescribed by the Board. Upon passing the examination, the applicant shall be entitled to receive from said Board a certificate attested by the seal of said Board, entitling such person to practice as a registered nurse in the State of Texas. The Board shall determine the criteria, not to exceed the criteria required by a majority of the states, that constitutes passing the examination.

SECTION 3. Section 1, Article 4525b, Revised Statutes, is amended to read as follows:

Sec. 1. DEFINITIONS. In this article:

(1) "Nursing [Professional nursing] peer review committee" means a committee established under the authority of the governing body of a national, state, or local [~~professional~~] nursing association, a school of [~~professional~~] nursing, the nursing staff of a hospital, health science center, nursing home, home health agency, temporary nursing service, or other health-care facility, or state agency or political subdivision for the purpose of conducting peer review. A [~~professional~~] nursing peer review committee includes the employees and agents of the committee, including assistants, investigators, intervenors, attorneys, and any other person or organization that is employed by or serves the committee in any capacity.

(2) "Peer review" means the evaluation of [~~professional~~] nursing services, the qualifications of [~~professional~~] nurses, the quality of patient care rendered by [~~professional~~] nurses, the merits of complaints concerning [~~professional~~] nurses and [~~professional~~] nursing care, and determinations or recommendations regarding complaints, including:

(A) the accuracy of nursing assessments and observations;

(B) appropriateness and quality of the care rendered by a [~~professional~~] nurse;

(C) reports made to a [~~professional~~] nursing peer review committee concerning activities under the committee's review authority;

(D) reports by a [~~professional~~] nursing peer review committee to other committees or to the board as permitted or required by law; and

(E) implementation of the duties of a [~~professional~~] nursing peer review committee by its members, agents, or employees.

(3) "Nurse" means a registered nurse or a licensed vocational nurse.

(4) "Nursing" means professional nursing or vocational nursing.

SECTION 4. Section 1A, Article 4525b, Revised Statutes, is amended to read as follows:

Sec. 1A. MEMBERSHIP OF COMMITTEE; DUE PROCESS; REBUTTAL STATEMENT. A [~~professional~~] nursing peer review committee that conducts a review [~~must~~]:

(1) that only involves the practice of professional nursing shall:

(A) have registered nurses as three-fourths of its members;

and

(B) [~~(2)~~] have only registered nurses as voting members;

(2) that involves only the practice of vocational nursing shall:

(A) have registered nurses and licensed vocational nurses as three-fourths of its members;

(B) [~~(3)~~] to the extent feasible, include licensed vocational nurses as members; and

(C) have only registered nurses and licensed vocational nurses as voting members;

(3) that involves the practice of both professional nursing and licensed vocational nursing shall:

(A) have registered nurses and licensed vocational nurses as four-fifths of its members;

(B) have registered nurses as three-fifths of its members;

(C) to the extent feasible, include licensed vocational nurses as members;

(D) have only registered nurses and licensed vocational nurses as voting members when a licensed vocational nurse is being reviewed; and

(E) have only registered nurses as voting members when a registered nurse is being reviewed;

(4) to the extent feasible, shall consist of at least one [~~registered~~] nurse who has a working familiarity with the area of nursing practice in which the nurse being reviewed practices;

(5) shall [~~(4)~~] afford the nurse being reviewed minimum due process, including notice and opportunity for hearing; and

(6) shall [~~(5)~~] afford the nurse the opportunity to file a rebuttal statement as provided by Section 3(c) of this article.

SECTION 5. Section 1B, Article 4525b, Revised Statutes, is amended to read as follows:

Sec. 1B. EMPLOYMENT BY TWO ENTITIES; PEER REVIEW BY BOTH. A [~~registered~~] nurse who, as a temporary agency nurse, faculty member, or similar personnel, practices [~~professional~~] nursing for a person, educational institution, or health-care facility, agency, or entity other than the one that employs or directly compensates the nurse shall be subject to peer review by both. For the purposes of exchange of information, the peer review committee reviewing the nurse's conduct is considered as established under the authority of both. The two entities may contract with respect to which entity will conduct peer review of the nurse.

SECTION 6. Section 2, Article 4525b, Revised Statutes, is amended to read as follows:

Sec. 2. CONFIDENTIAL NATURE OF PROCEEDINGS. (a) Except as otherwise provided by this article, all proceedings of a [~~professional~~] nursing peer review committee are confidential and all communications made to a

[professional] nursing peer review committee are privileged. A member, agent, or employee of a [professional] nursing peer review committee or a participant in any proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.

(b) A person who attends a proceeding of a [professional] nursing peer review committee may not disclose or be required to disclose any information acquired in connection with or in the course of the proceeding or disclose any opinion, recommendation, or evaluation of the committee or any member of the committee.

(c) The members of a [professional] nursing peer review committee and the persons who provide information to the committee may not be questioned about their testimony before the committee or about opinions formed as a result of the committee proceedings.

(d) Except as otherwise permitted by this article, all information made confidential by this section is not subject to subpoena or discovery in any civil matter, is not admissible as evidence in any judicial or administrative proceeding, and may not be introduced into evidence in a [professional] nursing liability suit arising out of the provision of or a failure to provide [professional] nursing services.

SECTION 7. Sections 3(a)-(c), Article 4525b, Revised Statutes, are amended to read as follows:

(a) A [professional] nursing peer review committee shall disclose on request written or oral communications made to the committee and the records and proceedings of the committee to:

- (1) the state board of registration or licensure of any state; or
- (2) a law enforcement authority investigating a criminal matter.

(b) A [professional] nursing peer review committee may disclose written or oral communications made to the committee and the records and proceedings of the committee to:

- (1) the state board of registration or licensure of any state;
- (2) a law enforcement authority investigating a criminal matter;
- (3) the association, school, agency, facility, or other organization under whose authority the committee is established;
- (4) another [professional] nursing peer review committee;
- (5) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
- (6) appropriate state or federal agencies or accrediting organizations which accredit health-care facilities or schools of nursing or which survey facilities for quality of care; or
- (7) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) If a [professional] nursing peer review committee discloses information under Subsection (a) of this section that could result in the reprimand, suspension, termination, or other disciplinary action of a [professional] nurse, or itself recommends or takes such action, the committee shall provide the nurse with a detailed summary of information disclosed or the basis of its action or recommendation. The nurse shall be permitted an opportunity to offer rebuttal

information and to submit a rebuttal statement of reasonable length. The rebuttal statement shall be included with the information disclosed.

SECTION 8. Section 4(a), Article 4525b, Revised Statutes, is amended to read as follows:

(a) A member of a [professional] nursing peer review committee or a person participating in peer review under this article who is named as a defendant in a civil action or subjected to other retaliatory action as a consequence of the person's participation in peer review may use information that is confidential under this article in defense of the civil action or in a civil action based on an allegation of retaliation for the person's participation in peer review.

SECTION 9. Section 5, Article 4525b, Revised Statutes, is amended to read as follows:

Sec. 5. CIVIL LIABILITY. A cause of action does not accrue against the members, agents, or employees of a [professional] nursing peer review committee or against a school of [professional] nursing, hospital, nursing home, home health agency, health science center, other health-care facility, the nursing staff of such a facility, [professional] nursing association, or other organization from any act, statement, determination or recommendation made, or act reported, without malice, in the course of peer review as defined in this article. A person who, without malice, furnishes records, information, or assistance to a [professional] nursing peer review committee is not liable in a civil action based on the person's participation or assistance in peer review and may not be subjected to retaliatory action as a result of such act.

SECTION 10. Section 6, Article 4525b, Revised Statutes, is amended to read as follows:

Sec. 6. RETALIATORY ACTIONS; COUNTERCLAIMS. A [professional] nursing peer review committee, a person participating in peer review, or an organization, named as a defendant in any civil action or subjected to other retaliatory action as a result of participation in peer review, may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, reasonable attorney's fees, and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.

SECTION 11. Section 7(a), Article 4525b, Revised Statutes, is amended to read as follows:

(a) A court may not enjoin the activities of a [professional] nursing peer review committee under this article.

SECTION 12. Article 4525b, Revised Statutes, is amended by adding Section 8 to read as follows:

Sec. 8. CONSULTATION IN ADOPTION OF RULES. In adopting rules under this article, the board shall consult with the Board of Vocational Nurse Examiners.

SECTION 13. Chapter 7, Title 71, Revised Statutes, is amended by adding Article 4525d to read as follows:

Art. 4525d. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline

or discriminate against a registered nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Article 4525a, Revised Statutes, if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes grounds for reporting the nurse to the board or is a violation of this chapter or a rule of the board.

(b) An act by a person under Subsection (a) does not constitute a violation of this article if:

(1) a nursing peer review committee under Article 4525b, Revised Statutes, finds that the act or omission the nurse refused to commit was not conduct that is reportable to the board under Section 1A, Article 4525a, Revised Statutes; or

(2) a nursing peer review committee under Article 4525b, Revised Statutes, finds that the act or omission the nurse refused to commit was conduct that is reportable to the board and the person rescinds any disciplinary or discriminatory action taken against the nurse, compensates the nurse for lost wages, and restores to the nurse any lost benefits.

(c) An appropriate licensing agency may take action against a person who violates this article.

(d) In this article, "person" includes an individual, organization, agency, facility, or other entity.

SECTION 14. Subsection (a), Article 4527d, Revised Statutes, is amended to read as follows:

(a) The board may impose an administrative penalty against a person licensed or regulated under this chapter [~~article~~] who violates this chapter [~~article~~] or a rule or order adopted under this chapter [~~article~~].

SECTION 15. Section 5, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by amending Subsection (g) and adding Subsection (u) to read as follows:

(g) The Board shall employ a full-time Director of Education, who shall have had at least five (5) years experience in teaching nursing in an accredited school of nursing or an approved program in vocational nursing. The Board may select either a Licensed Vocational Nurse or a Registered Nurse as the Director of Education. The duties of the Director of Education shall be to visit and inspect all schools of vocational nursing to determine whether the Board's minimum requirements for vocational nursing programs are being met. The Board, by rule, may establish a separate fee for the survey of approved programs, which may be allocated to cover the cost of implementing the survey. The Board shall prescribe such methods and rules of visiting, and such methods of reporting as may in its judgment be deemed proper.

(u) The Board shall disseminate, at least twice a year and at other times as determined necessary by the Board, information that is of significant interest to Licensed Vocational Nurses and employers of Licensed Vocational Nurses in this state. The information shall include summaries of final disciplinary action taken against Licensed Vocational Nurses by the Board since its last dissemination of information.

SECTION 16. Sections 6(a) and (d), Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided in Section 7 of this Act, every person desiring to be licensed as a Licensed Vocational Nurse or use the abbreviation L.V.N. in the State of Texas, shall be required to pass the examination approved by the Board of Vocational Nurse Examiners. The applicant shall make application by presenting to the Board, on forms furnished by the Board, satisfactory sworn evidence that the applicant holds a high school diploma issued by an accredited secondary ~~has had at least two (2) years of high~~ school [education] or [its] equivalent educational credentials and has completed an approved course in an approved school for educating vocational nurses. An approved school as used herein shall mean one approved by the Board or by another state. ~~[Application for examination by the Board or its delegate shall be made at least thirty (30) days prior to the date set for the examination.]~~

(d) If an applicant has graduated from an approved educational program in vocational nursing in this state, another state, or the District of Columbia, or successfully completed an acceptable level of education in a professional nursing program in this state, another state, or the District of Columbia, the Board may issue to the applicant, pending the results of the licensing examination, a temporary permit to practice vocational nursing under the direct supervision of a licensed vocational nurse, registered professional nurse, or licensed physician. A permit issued to an applicant who fails the examination expires on the date the examination result is reported to the Board ~~indicated on the permit~~. A permit issued to an applicant who passes the examination expires on the applicant's receipt of a permanent license from the Board. A permit may not be issued to an applicant who has previously failed an examination administered by the Board or by another state.

SECTION 17. Section 7, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. QUALIFICATION FOR LICENSING BY ENDORSEMENT. (a) To qualify for a temporary license to practice as a licensed vocational nurse by endorsement, an applicant for licensing must:

(1) submit to the Board an application fee as determined by the Board and a completed application given under oath, in the form prescribed by the Board;

(2) have possessed at the time of initial licensing as a licensed vocational nurse the qualifications necessary to have been eligible for licensing at that time in this state; and

(3) have presented to the Board proof of initial licensing by examination and proof that the current active license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; ~~and~~

~~[(4) submit to the Board a notice of sponsorship of the applicant by the holder of a Texas health care professional license under whom the applicant will practice].~~

(b) A holder of a temporary license under this section shall receive a permanent license if the applicant:

(1) has submitted official verification of the academic and professional credentials of the applicant; and

(2) satisfies any other requirement set by statute.

(c) The Board shall either grant or deny an application for a permanent license within 180 days after the date of the Board's receipt of all required forms or information. The Board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

~~(d) [The Board shall adopt rules relating to the conditions of sponsorship under Subsection (a)(4) of this section, including waiver of the requirement in the event of a hardship.~~

~~(e)~~ The Board shall specify training, education, or examination requirements that an applicant may complete in lieu of the requirements of Subsection (a)(2) of this section.

(e) The Board shall adopt rules to address the practice of vocational nursing by a vocational nurse who holds a license issued by another state who is in this state on a nonroutine basis for a period not to exceed five days or 120 hours to provide care to a patient who is being transported into, out of, or through this state.

SECTION 18. Section 10, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) Article 6252-13c, Revised Statutes, applies to the Board, and the Board is a licensing agency for purposes of that article.

SECTION 19. Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Section 10G to read as follows:

Sec. 10G. TEMPORARY SUSPENSION OF LICENSE. (a) If the majority of the Board or a three-member committee of Board members designated by the Board determines from the evidence or information presented to it that a licensed vocational nurse, by continuation in the practice of vocational nursing, would constitute a continuing and imminent threat to the public welfare, the Board or the three-member committee shall temporarily suspend the license of the licensed vocational nurse.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) proceedings for a hearing before the State Office of Administrative Hearings are initiated simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this Act and Chapter 2001, Government Code (Administrative Procedure Act).

(c) The State Office of Administrative Hearings shall conduct a preliminary hearing not later than the 21st day after the date of the temporary suspension order to determine if probable cause exists that a continuing and imminent threat to the public welfare is still occurring. That office shall conduct a final hearing on the matter not later than the 91st day after the date of the temporary suspension order.

SECTION 20. Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Section 10H to read as follows:

Sec. 10H. INFORMATION; SUBPOENAS. (a) Each person shall respond promptly and fully to any request for information from the Board and to any subpoena issued by the Board and may not refuse, deny, or resist the request or subpoena unless the request or subpoena requests information subject to the attorney-client privilege of confidentiality. No other privilege applies to a proceeding of the Board.

(b) Each subpoena issued by the Board may be served personally by a Board investigator, by certified mail, or by any other manner authorized by law.

(c) The Board may pay a reasonable fee for photocopies subpoenaed at the request of the Board in an amount not to exceed the amount that the Board charges for a copy of a Board record.

(d) To the extent possible, the Board shall protect the identity of patients named in information received by the Board.

SECTION 21. Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Section 10I to read as follows:

Sec. 10I. PEER REVIEW. A vocational nurse licensed under this Act is subject to peer review under Article 4525b, Revised Statutes.

SECTION 22. (a) Section 6, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), as amended by this Act, applies only to an application for a license as a licensed vocational nurse that is filed with the Board of Vocational Nurse Examiners on or after September 1, 1995. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) Sections 10G and 10H, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), as added by this Act, take effect January 1, 1996. Not later than December 31, 1995, the Board of Vocational Nurse Examiners shall adopt rules as necessary to implement those sections.

SECTION 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 958 - WITH SENATE AMENDMENTS

Representative B. Turner called up with senate amendments for consideration at this time,

HB 958, A bill to be entitled An Act relating to the authority of certain counties to impose a county hotel occupancy tax.

Representative B. Turner 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 the bill.

The motion prevailed without objection.

HB 958 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 958**: B. Turner, chair, Finnell, Counts, Oliveira, and Cook.

(Black in the chair)

HB 960 - WITH SENATE AMENDMENT

Representative Puente called up with a senate amendment for consideration at this time,

HB 960, A bill to be entitled An Act relating to authorizing counties to sell county-developed computer software.

On motion of Representative Puente, the house concurred in the senate amendment to **HB 960**.

HB 960 - TEXT OF SENATE AMENDMENT

CSHB 960, A bill to be entitled An Act relating to authorizing counties to sell county-developed computer software.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 270, Local Government Code, is amended by adding Section 270.007 to read as follows:

Sec. 270.007. SALE OF COMPUTER SOFTWARE. (a) A county may sell or license a computer software application or software system developed by the county for use by the county. A county may sell or license a computer software application or software system developed for the county by a person under contract unless the contract specifically prohibits the county from selling or licensing the application or system.

(b) Notwithstanding the provisions of subsections (f) and (g), a county may exclusively contract with a person to market the application or system. A contract under this subsection shall be awarded only in compliance with Section 262.030, Local Government Code, concerning the Alternative Competitive Procedure for Insurance or High Technology Items.

(c) The provisions of the open records law, Chapter 552, Government Code, governing the cost of making copies of public records do not apply to a software application or software system subject to this section.

(d) In this section, "computer software application or software system" includes documentation of the application or system, and does not include any hardware or equipment associated with the application or system.

(e) Notwithstanding any other provision of this section, the provisions of this section apply only to (1) the sale or licensure of a software application or software system by a county or (2) a request under Chapter 552, Government Code, for a computer software application or software system itself, and do not apply to the cost of production for public inspection or copying of information collected, assembled, or maintained through the use of such software, including on-line instructions on computer searches or information necessary to obtain records from county computer systems, which cost shall be governed by Subchapter F, Chapter 552, Government Code, without regard to the cost of

developing the software. Nothing in this section shall preclude header or record information, necessary for conversion and interpretation of electronic images, being made available for electronic images of public records.

(f) Except as provided by subsection (b), upon request of any person, a county shall sell or license software under this section for a price negotiated between the county and the person, not to exceed the developmental cost to the county. Developmental cost shall only include costs incurred under a contract to procure the software or direct employee costs incurred to develop the software. This subsection does not apply to any county software that protects county computer systems from unauthorized use or access.

(g) Except as provided by subsection (b), a county shall sell or license software under subsection (f) to any person for the same consideration that the county has sold or licensed the software to another person.

(h) The provisions of this section shall not authorize the development by a county of any software application or software system not otherwise authorized by law.

(i) A county may not develop a computer application or software system for the purpose of selling, licensing, or marketing the software application or software system.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 1065 - WITH SENATE AMENDMENT

Representative Brimer called up with a senate amendment for consideration at this time,

HB 1065, A bill to be entitled An Act relating to the practice of property tax consulting.

On motion of Representative Brimer, the house concurred in the senate amendment to **HB 1065**.

HB 1065 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1065** (as engrossed) in SECTION 2 on Page 2, Line 26, after "Statutes" and before the "." by adding the following: "providing property tax consultant services in connection with single-family residences".

HB 1089 - WITH SENATE AMENDMENTS

Representative Brimer called up with senate amendments for consideration at this time,

HB 1089, A bill to be entitled An Act relating to the continuation and functions of the Texas Workers' Compensation Commission; providing penalties.

On motion of Representative Brimer, the house concurred in the senate amendments to **HB 1089**.

HB 1089 - TEXT OF SENATE AMENDMENTS**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 1089** by adding the following language to subsection (b) of Sec. 408.122 (page 17, line 1):

To the extent possible, a designated doctor must be in the same discipline and licensed by the same board of examiners as the employee's doctor of choice.

Senate Amendment No. 2 (Senate Committee Amendment No. 2)

Amend **HB 1089**, on page 35, lines 1 through 8, by striking SECTION 1.49 in its entirety and renumbering subsequent subsections accordingly.

Senate Amendment No. 3 (Senate Committee Amendment No. 3)

Amend **HB 1089** as engrossed as follows:

(1) on Page 13, Line 15, after the word "self-insurer", insert the phrase "in the previous year for administration of self-insurance".

Senate Amendment No. 4

Amend **HB 1089**, Sec. 408.125, Labor Code (on Page 7, between lines 68 and 69, committee printing) by adding the following:

(g) A violation of subsection (f) is a Class C administrative violation.

Senate Amendment No. 5

Amend **HB 1089**, Sec. 409.041(b), Labor Code (on Page 9, between lines 14 and 15, committee printing), by adding the following:

(5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Senate Amendment No. 6

Amend **HB 1089**, Sec. 413.031(d), Labor Code (on Page 11, line 63, committee printing) after the words Office of Administrative Hearings, add "within 90 days of receipt of a request for a hearing"

Senate Amendment No. 7

Add the following new subsections to Section 402.092 of **HB 1089** on page 5 between lines 47-48:

(e) The Commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

(1) The complaint was groundless or made in bad faith, or

(2) The complaint lacks any basis in fact or evidence, or

(3) The complaint is frivolous, or

(4) The complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

HB 1091 - WITH SENATE AMENDMENTS

Representative Brimer called up with senate amendments for consideration at this time,

HB 1091, A bill to be entitled An Act relating to the consolidation of the Texas Workers' Compensation Research Center and the Legislative Oversight Committee for workers' compensation and to the functions of the new entity.

Representative Brimer moved to discharge the conferees and concur in the senate amendments to **HB 1091**.

The motion prevailed without objection.

HB 1091 - TEXT OF SENATE AMENDMENTS**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 1091**, as engrossed, on page 8, by striking the language on lines 7 and 8 and substituting the following: "vice chairman, with the lieutenant governor designating the first chairman and the speaker the first vice chairman."

Senate Amendment No. 2 (Senate Committee Amendment No. 2)

Amend **HB 1091** as follows:

(1) In SECTION 3, subsection (a), strike "August 31, 1995" (house engrossment printing page 16, line 9) and substitute "August 30, 1995" in lieu thereof.

(2) In SECTION 6, strike "September 1, 1995" (house engrossment printing page 16, line 26) and substitute "August 30, 1995" in lieu thereof.

HB 1243 - WITH SENATE AMENDMENT

Representative Smithee called up with a senate amendment for consideration at this time,

HB 1243, A bill to be entitled An Act relating to requirements for certain insurers and health maintenance organizations concerning financial solvency.

On motion of Representative Smithee, the house concurred in the senate amendment to **HB 1243**.

HB 1243 - TEXT OF SENATE AMENDMENT**Senate Amendment No. 1**

Amend **HB 1243**, as engrossed, by inserting a new SECTION 18(c) of the bill (house engrossment printing, page 17, between lines 20 and 21) to read as follows:

(c) Article 21.49-8, Insurance Code, as added by this Act, takes effect only on certification by the commissioner of insurance that the National Association of Insurance Commissioners has provided to the commissioner in writing a total budgetary disclosure as to the use by that association of funds received by that association from states that are members of the association. The commissioner shall issue a finding regarding the certification, and shall publish the finding in the Texas Register.

HB 1379 - WITH SENATE AMENDMENT

Representative Allen called up with a senate amendment for consideration at this time,

HB 1379, A bill to be entitled An Act relating to the registration, release, and supervision of sex offenders.

On motion of Representative Allen, the house concurred in the senate amendment to **HB 1379**.

HB 1379 - TEXT OF SENATE AMENDMENT

CSHB 1379, A bill to be entitled An Act relating to the registration, release, and supervision of sexual offenders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Article 6252-13c.1, Revised Statutes, is amended by amending Subsections (a) and (b) and by adding Subsection (d) to read as follows:

(a) A person who has a reportable conviction or adjudication shall register or verify registration with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. If [or, if] the person does not reside or intend to reside in a municipality, the person shall register or verify registration in any county where the person resides or intends to reside for more than seven days. The person shall satisfy the requirements of this subsection ~~register~~ not later than the seventh day after the person's arrival in the municipality or county.

(b) The department shall provide the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and each local law enforcement authority and court with a form for registering persons required by this article to register. The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, and home address;

(2) the type of offense the person was convicted of, the date of conviction, and the punishment received; and

(3) any other information required by the department.

(d) On the day a court pronounces a sentence of imprisonment, deferred adjudication, community supervision, juvenile probation, fine only, or other disposition for a person who is subject to registration under this article, the court shall:

(1) inform the person of the person's duty to register under this article and require the person to sign a written statement that the person was informed of the duty, or if the person refuses to sign the statement, certify that the person was informed of the duty;

(2) complete the registration form for the person and send the form to the department and:

(A) if the person is sentenced to a penal institution and imposition of sentence is not suspended, to the penal institution; or

(B) if the person is sentenced to a penal institution and the imposition of the sentence is suspended or the person receives other disposition, to the local law enforcement authority in the municipality or unincorporated area of the county in which the person expects to reside.

SECTION 2. Section 9, Article 6252-13c.1, Revised Statutes, is amended to read as follows:

Sec. 9. EXPIRATION OF DUTY TO REGISTER. (a) The duty to register for a person with a reportable adjudication under Section 1(5)(D) of this article ends on the 10th anniversary of the date on which:

(1) the person ceases to be under the supervision of the Texas Youth Commission, if the person was committed to the Texas Youth Commission other than under a determinate sentence;

(2) the person is discharged from the Texas Youth Commission or the Texas Department of Criminal Justice, whichever date is later, if the person was committed to the Texas Youth Commission under a determinate sentence; or

(3) the disposition is made or the person completes the terms of the disposition, whichever date is later, if the person received a disposition that did not include a commitment to the Texas Youth Commission [~~person's 21st birthday~~].

(b) The duty to register for a person with a reportable conviction, other than a conviction for a violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code, ends on the 10th anniversary of the date on which the person is released from the institutional division of the Texas Department of Criminal Justice or [~~day that~~] the person discharges parole or community supervision, whichever date is later [~~probation~~].

(c) The duty to register for a person with a reportable conviction or adjudication based on an order of deferred adjudication under Section 1(5)(E) of this article, other than an order of deferred adjudication for a violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code, [~~Act~~] ends on the 10th anniversary of the date on which:

(1) the court dismisses the criminal proceedings against the person and discharges the person; or

(2) the person is released from the institutional division of the Texas Department of Criminal Justice or the person discharges parole or community supervision [~~probation~~], if the court proceeded [~~proceeds~~] to final adjudication in the case.

SECTION 3. The change in law made by this Act applies only to a reportable conviction or adjudication as defined by Article 6252-13c.1, Revised Statutes, that occurs on or after the effective date of this Act or to an order of deferred adjudication for a person required to register under that article that is entered by the court on or after the effective date of this Act. A reportable conviction or adjudication that occurs before the effective date of this Act or an order of deferred adjudication that is entered before the effective date of this Act is covered by the law in effect when the conviction or adjudication occurred or the order was entered, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1995.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 1483 - WITH SENATE AMENDMENTS

Representative Tillery called up with senate amendments for consideration at this time,

HB 1483, A bill to be entitled An Act relating to the regulation of certain practices by funeral directors, embalmers, and mortuary schools.

Representative Tillery 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 the bill.

The motion prevailed without objection.

HB 1483 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1483**: Tillery, chair, Hirschi, Glaze, Janek, and Davis.

HR 1133 - ADOPTED

Representative Hamric moved to suspend all necessary rules to take up and consider at this time **HR 1133**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Hamric,

HR 1133, Honoring Nancy Thompson.

The resolution was read and was adopted without objection.

On motion of Representative B. Hunter, the names of all the members of the house were added to **HR 1133** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Hamric, who introduced Nancy Thompson.

HR 1170 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1170**, suspending the limitations on the conferees for **HB 466**.

HB 1662 - WITH SENATE AMENDMENTS

Representative Maxey called up with senate amendments for consideration at this time,

HB 1662, A bill to be entitled An Act relating to the powers and duties of the Department of Protective and Regulatory Services; providing penalties.

Representative Maxey 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 the bill.

The motion prevailed without objection.

HB 1662 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1662**: Hilderbran, chair, J. Jones, Naishtat, Swinford, and Krusee.

HB 1687 - WITH SENATE AMENDMENT

Representative Alonzo called up with a senate amendment for consideration at this time,

HB 1687, A bill to be entitled An Act relating to the notification of school personnel of the arrest or detention of a student.

On motion of Representative Alonzo, the house concurred in the senate amendment to **HB 1687**.

HB 1687 - TEXT OF SENATE AMENDMENT**Senate Amendment No. 1**

In SECTION 1 of **HB 1687**, amend Article 15.27(A), Code of Criminal Procedure, after the word "student." and before the word "Within" (page 1, line 17), add the following language:

All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection.

HB 1783 - WITH SENATE AMENDMENTS

Representative Yarbrough called up with senate amendments for consideration at this time,

HB 1783, A bill to be entitled An Act relating to the authority to charge a fee for installing or replacing water, sewer lines or other devices.

On motion of Representative Yarbrough, the house concurred in the senate amendments to **HB 1783**.

HB 1783 - TEXT OF SENATE AMENDMENTS

CSHB 1783, A bill to entitled An Act relating to the authority to charge a fee for installing or replacing water, sewer lines or other devices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.256 to read as follows:

Sec. 13.256. COUNTY FEE. (a) Notwithstanding any other provision of law, a county with a population of more than 2.8 million may not charge a water and sewer utility a fee for the privilege of installing or replacing a water or sewer line in the county's right-of-way.

(b) This section does not affect a franchise agreement or other contract entered into before September 1, 1995.

SECTION 2. Chapter 13, Water Code, is amended by adding Subchapter o to read as follows: SUBCHAPTER O. NON-COMSUMPTIVE WATER SERVICE FEE.

(a) A retail public utility may provide non-consumptive water service for the operation of a geothermal heat pump that circulates the water in a closed loop and returns it to the water main.

(b) A retail public utility that provides water service may adopt reasonable rules and procedures for the installation, operation, and removal of a geothermal heat pump.

(c) A retail public utility that provides water service to a geothermal heat pump may charge a reasonable fee for the installation, inspection, and operation of the heat pump.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 1783** by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.256 to read as follows:

Sec. 13.256. COUNTY FEE. (a) Notwithstanding any other provision of law, a county with a population of more than 2.8 million may not charge a water and sewer utility a fee for the privilege of installing or replacing a water or sewer line in the county's right-of-way.

(b) This section does not affect a franchise agreement or other contract entered into before September 1, 1995.

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 2129 - WITH SENATE AMENDMENTS

Representative Grusendorf called up with senate amendments for consideration at this time,

HB 2129, A bill to be entitled An Act relating to state, county, and municipal hotel occupancy taxes.

On motion of Representative Grusendorf, the house concurred in the senate amendments to **HB 2129**.

HB 2129 - TEXT OF SENATE AMENDMENTS

CSHB 2129, A bill to be entitled An Act relating to state, county, and municipal hotel occupancy taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 156.001, Tax Code, is amended to read as follows:

Sec. 156.001. DEFINITION. In this chapter, "hotel" means a building in which members of the public obtain sleeping accommodations for consideration.

The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, ~~[or]~~ rooming house, or bed and breakfast. The term ~~[-but]~~ does not include:

(1) a hospital, sanitarium, or nursing home; or

(2) a dormitory or other housing facility owned and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.

SECTION 2. Section 156.103, Tax Code, is amended to read as follows:
Sec. 156.103. EXCEPTION—STATE AND FEDERAL GOVERNMENT.

(a) Subject to this section, this [This] chapter does not impose a tax on:

(1) the United States, this state, or an agency, institution, board, or commission of this state other than an institution of higher education;[-]

(2) ~~[(b) This chapter does not impose a tax on]~~ an officer or employee of a state governmental entity described by Subdivision (1) [Subsection (a)] when traveling on or otherwise engaged in the course of official duties for the governmental entity; or

(3) an officer or employee of a governmental entity of the United States when traveling on or otherwise engaged in the course of official duties for the governmental entity if the governmental entity directly pays to the hotel the price for the room.

(b) A governmental entity otherwise excepted under this section shall pay the tax imposed by this chapter and is entitled to a refund of the amount of tax paid in accordance with Section 156.154.

(c) A state officer or employee described by Subsection (a)(2) who is entitled to reimbursement for the cost of lodging and for whom a special provision or exception to the general rate of reimbursement under the General Appropriations Act is not applicable shall pay the tax under this chapter as if it were imposed by this chapter. The state governmental entity with whom the person is associated is entitled under Section 156.154 to a refund of the tax paid.

(d) A state officer or employee described by Subsection (a)(2) for whom a special provision or exception to the general rate of reimbursement under the General Appropriations Act applies and who is provided with photo identification verifying the identity and exempt status of the person is not required to pay the tax and is not entitled to a refund. The photo identification of a state officer or employee described by this section may be modified for the purposes of this section.

(e) ~~[(c)]~~ In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

SECTION 3. Subchapter D, Chapter 156, Tax Code, is amended by adding Section 156.154 to read as follows:

Sec. 156.154. REFUND. (a) A governmental entity that is entitled under Section 156.103 to a refund of taxes paid under this chapter must file a refund claim with the comptroller.

(b) The claim must be filed on a form provided by the comptroller and contain the information required by the comptroller.

(c) A claim for a refund may be filed only for each calendar quarter for all reimbursements accrued during that quarter.

SECTION 4. Subchapter F, Chapter 156, Tax Code, is amended by adding Section 156.2511 to read as follows:

Sec. 156.2511. ALLOCATION OF CERTAIN REVENUE. (a) Not later than the last day of the month following a calendar quarter, the comptroller shall:

(1) compute the amount of revenue derived from the collection of taxes imposed under this chapter at a rate of two percent and received from hotels located in an eligible coastal municipality that has created a park board of trustees to administer public beaches under Chapter 306, Local Government Code; and

(2) issue to the eligible coastal municipality a warrant drawn on the general revenue fund in the amount computed under Subdivision (1).

(b) An eligible coastal municipality may use money received under this section only to clean and maintain public beaches in that municipality.

(c) Section 403.094(h), Government Code, does not apply to funds described by Subsection (a).

(d) In this section:

(1) "Eligible coastal municipality" has the meaning assigned by Section 351.001.

(2) "Clean and maintain" has the meaning assigned by Section 61.063, Natural Resources Code.

SECTION 5. Section 351.001(8), Tax Code, is amended to read as follows:

(8) "Eligible central municipality" means a municipality with a population of more than 440,000 that is located in a county with a population of one million or more and [850,000] that has adopted a capital improvement plan for the expansion of an existing convention center facility.

SECTION 6. Section 351.006, Tax Code, is amended to read as follows:

Sec. 351.006. EXEMPTION. (a) A governmental entity excepted from the tax imposed by Chapter 156 under Section 156.103(a)(1) or (a)(3) shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid.

(b) A person who is described by Section 156.103(d) is exempt from the payment of the tax authorized by this chapter.

(c) A person who is described by Section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid.

(d) To receive a refund of tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the municipality and containing the information required by the municipality. The comptroller by rule shall prescribe the form that must be used and the information that must be provided.

(e) A governmental entity may file a refund claim with the municipality under this chapter only for each calendar quarter for all reimbursements accrued during that quarter. The municipality may adopt an ordinance to enforce this section. [A person or entity excepted from the tax imposed by Chapter 156 under Section 156.103 is exempt from the tax authorized by this chapter.]

SECTION 7. Section 351.105, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) Money received under Section 156.2511 and used to clean and maintain beaches is included in determining whether the municipality has met the funding obligation prescribed by Subsections (c) and (d), and the municipality may credit that money against the funding requirements prescribed by Subsections (c) and (d).

SECTION 8. Section 352.007, Tax Code, is amended to read as follows:

Sec. 352.007. EXEMPTION. (a) A governmental entity excepted from the tax imposed by Chapter 156 under Section 156.103(a)(1) or (a)(3) shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid.

(b) A person who is described by Section 156.103(d) is exempt from the payment of the tax authorized by this chapter.

(c) A person who is described by Section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid.

(d) To receive a refund of a tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the county and containing the information required by the county. The comptroller by rule shall prescribe the form that must be used and the information that must be provided.

(e) A governmental entity may file a refund claim with the county under this chapter only for each calendar quarter for all reimbursements accrued during that quarter. The county may adopt a resolution to enforce this section. [A person or entity excepted from the tax imposed by Chapter 156 under Section 156.103 is exempt from the tax authorized by this chapter.]

SECTION 9. Section 61.076, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of determining the maximum amount of money a municipality may receive under Subsection (a), money received under Section 156.2511, Tax Code:

(1) is not included in determining the amount the municipality spends to clean and maintain public beaches during the state fiscal year for which reimbursement is sought; and

(2) is included as part of the state share.

SECTION 10. This Act takes effect September 1, 1995.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 2129** as follows:

Amend SECTION 1, Sec. 156.001(2), by inserting between "owned and" the words or leased.

HB 2256 - WITH SENATE AMENDMENTS

Representative Shields called up with senate amendments for consideration at this time,

HB 2256, A bill to be entitled An Act relating to viatical settlements.

Representative Shields 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 the bill.

The motion prevailed without objection.

HB 2256 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2256**: Shields, chair, Smithee, Counts, G. Lewis, and Duncan.

HB 2289 - WITH SENATE AMENDMENT

Representative Hirschi called up with a senate amendment for consideration at this time,

HB 2289, A bill to be entitled An Act relating to the representation of certain indigent persons by public defenders in Wichita County.

On motion of Representative Hirschi, the house concurred in the senate amendment to **HB 2289**.

HB 2289 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 2289** by striking Section 1 and replacing it with the following: SECTION 1. Article 26.043(g), Code of Criminal Procedure, is amended to read as follows:

(g) The public defender or an assistant public defender

(1) shall represent each indigent person in Wichita County who is:

(a) charged with a criminal offense in the county; or Wichita

County and

(b) a each indigent minor who is a party to a juvenile delinquency proceeding in the county; and

(2) may represent each indigent person in Wichita County who is entitled to representation under:

(a) Chapter 462, Health and Safety Code;

(b) Subtitle C, Title 7, Health and Safety Code; or

(c) Subtitle D, Title 7, Health and Safety Code.

HB 2294 - WITH SENATE AMENDMENTS

Representative Yost called up with senate amendments for consideration at this time,

HB 2294, A bill to be entitled An Act relating to the regulation of groundwater; granting the power of eminent domain.

Representative Yost 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 the bill.

The motion prevailed without objection.

HB 2294 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2294**: Yost, chair, Walker, R. Lewis, Combs, and Puente.

HB 2315 - WITH SENATE AMENDMENT

Representative Saunders called up with a senate amendment for consideration at this time,

HB 2315, A bill to be entitled An Act relating to the regulation of energy and material recovery and of gas recovery.

Representative Saunders moved that the house concur in the senate amendment to **HB 2315**.

The motion was withdrawn.

HB 2377 - WITH SENATE AMENDMENT

Representative Delisi called up with a senate amendment for consideration at this time,

HB 2377, A bill to be entitled An Act relating to the provision and administration of mental health and mental retardation services.

On motion of Representative Delisi, the house concurred in the senate amendment to **HB 2377**.

HB 2377 - TEXT OF SENATE AMENDMENT

CSHB 2377, A bill to entitled An Act relating to the provision and administration of mental health and mental retardation services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 531.001, Health and Safety Code, is amended by amending Subsections (a), (b), and (e) and adding Subsection (h) to read as follows:

(a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and mental retardation services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving the mentally disabled exists, it is the purpose of this subtitle to ensure that ~~[provide for]~~ a continuum of services is provided. The continuum of services includes facilities operated by the Texas Department of Mental Health and Mental Retardation and community services provided by the department and other entities through contracts with the department.

(e) It is the public policy of this state that mental health and mental retardation services be the responsibility of local agencies and organizations to the greatest extent possible. The department shall assist the local agencies and organizations by coordinating the implementation of a statewide system of services. The department shall ensure that ~~[provide state-administered]~~ mental health and mental retardation services are provided. The department shall ~~[and]~~ provide technical assistance for and regulation of the programs that receive funding through contracts with the department.

(h) It is the policy of this state that the board serves as the state's mental health and mental retardation authority and is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and mental retardation services in this state. It is the policy of this state that, when appropriate and feasible, the board may delegate the board's authority to a single entity in each region of the state that may function as the local mental health or mental retardation authority for one or more service areas in the region.

SECTION 2. Sections 531.002(8) and (9), Health and Safety Code, are amended to read as follows:

(8) "Local mental health authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental health [a local service provider selected by the department to plan, facilitate, coordinate, or provide] services to persons with mental illness in one or more [a] local service areas [area].

(9) "Local mental retardation authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental retardation [a local service provider selected by the department to plan, facilitate, coordinate, or provide] services to persons with mental retardation in one or more [a] local service areas [area].

SECTION 3. Section 532.001(a), Health and Safety Code, is amended to read as follows:

(a) The Texas Department of Mental Health and Mental Retardation is composed of:

- (1) the Texas Board of Mental Health and Mental Retardation;
- (2) the commissioner of mental health and mental retardation; and
- (3) ~~the medical director;~~
- ~~[(4) the deputy commissioner for mental health services;~~
- ~~[(5) the deputy commissioner for mental retardation services; and~~
- ~~[(6) a staff under the direction of the commissioner[, medical director, and deputy commissioners].~~

SECTION 4. Section 532.003(b), Health and Safety Code, is amended to read as follows:

(b) The members must be representatives of the public who have demonstrated interest in mental health, mental retardation, developmental disabilities, or the health and human services system.

SECTION 5. Sections 532.011(e) and (g), Health and Safety Code, are amended to read as follows:

(e) The commissioner shall:

(1) establish qualifications for ~~[assistant deputy commissioners and important]~~ department personnel that balance clinical and programmatic knowledge and management experience; and

(2) standardize qualifications for personnel positions throughout the department.

(g) The commissioner is responsible for implementation of the board's planning, policy, resource development and allocation, and oversight related to [the state] mental health [authority] and [the state] mental retardation services [authority].

SECTION 6. Sections 532.012(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The commissioner shall appoint a medical director~~[-subject to board approval].~~

(c) The medical director reports to the commissioner and is responsible for:

(1) oversight of the quality and appropriateness of clinical services [by developing policies relating to clinical services regulated by the department and those services] delivered in department facilities or under contract to the department; and

(2) leadership in [directing the standards and quality assurance program, a utilization review program, a] physician recruitment and retention [program;] and [a] peer review [program for physicians and other clinical staff employed by or under contract to the department].

SECTION 7. Section 532.014(a), Health and Safety Code, is amended to read as follows:

(a) The [With the board's approval, the] commissioner shall appoint the head of each facility the department administrators.

SECTION 8. Sections 533.035(a)-(c), Health and Safety Code, are amended to read as follows:

(a) The commissioner shall designate a local mental health authority and a local mental retardation authority in one or more [each] local service areas. The board may delegate to the local authorities the board's authority and responsibility for the planning, policy development, coordination, resource allocation, and resource development for and oversight of [area to plan; facilitate, coordinate, and provide] mental health and mental retardation services in that service area. The commissioner may designate a single entity as the mental health authority and the mental retardation authority for a service area.

(b) The department by contract or other method of allocation may disburse to a local mental health and mental retardation authority department federal ~~[mental health funds]~~ and department state funds to be spent in the local service area for:

(1) community mental health and mental retardation services; and

(2) chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or mental retardation.

(c) A local mental health and mental retardation authority, with the department's approval, shall use the funds received under Subsection (b) to ensure [provide] mental health, mental retardation, and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers; and

(2) determining whether to become a provider of a service or to contract that service to another organization [or to subcontract for those services].

SECTION 9. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0355 to read as follows:

Sec. 533.0355. AUTHORITY STRUCTURE PILOT PROJECT. (a) Notwithstanding other law, the board may implement a pilot project to study an authority structure for service delivery at the local or regional level through a pilot local mental health or mental retardation authority. The project shall provide an organizational separation between the pilot local mental health or mental retardation authority and service providers. The board may delegate to a pilot local mental health or mental retardation authority the responsibility for the distribution, allocation, and coordination of mental health or mental retardation service resources in one or more service areas, including the responsibility to make policy determinations, develop resources, enter service contracts, and plan to meet future needs for services in each service area.

(b) The board may establish one or more pilot local mental health and mental retardation authorities under this section.

(c) If the board establishes a pilot program, the department shall:

(1) evaluate the pilot project at least annually to determine the feasibility of employing the authority structure in other areas of the state or statewide;

(2) prepare a report on the success of the pilot project that includes a list of statutory restrictions that would impair the permanent implementation of the authority structure in other areas of the state and suggested legislative changes; and

(3) submit the report to the 75th and 76th legislatures on January 15, 1997, and January 15, 1999, respectively.

(d) This section expires September 1, 1999.

SECTION 10. Subchapter D, Chapter 533, Health and Safety Code, is amended by adding Section 533.087 to read as follows:

Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department may lease real property, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The department shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department may lease real property or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the board determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The board shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The board may reject any bid.

(f) This section does not authorize the department to close or consolidate a facility used to provide mental health or mental retardation services without legislative approval.

SECTION 11. Section 534.022, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to interlocal contract may create a public facility corporation to act on behalf of one or more community centers pursuant to the Public Facility Corporation Act (Article 717s, Revised Statutes). Such counties or municipalities may exercise the powers of a sponsor under that Act, and any such corporation may exercise the powers of a corporation under that Act (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall one community center ever be liable to pay the debts or obligation or be liable for the acts, actions, or undertakings of another community center.

SECTION 12. Sections 534.054(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The department shall identify and contract with a local mental health or mental retardation authority for each service area to ensure that [provide] services are provided to patient and client populations determined by the department. A local mental health or mental retardation authority shall ensure that [provide, directly or by subcontract,] services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(d) The department shall ensure that [provide] the required services are provided in a service area directly through the community services division of a department facility [~~outreach program~~] or contract with another agency, entity [provider], or organization as the local mental health or mental retardation authority if the department cannot identify and contract with a community center in that service area.

SECTION 13. Sections 534.055(d) and (e), Health and Safety Code, are amended to read as follows:

(d) The department shall design a competitive procurement or similar system that a mental health or mental retardation authority shall use in awarding an initial contract under this section. [~~To facilitate continuity of services and to prevent disruption of services, a mental health or mental retardation authority may not require competitive bidding on the renewal of a contract.]~~

(e) The system must require that each mental health or mental retardation authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) ~~(2)~~ review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

SECTION 14. Section 534.064, Health and Safety Code, is amended to read as follows:

Sec. 534.064. CONTRACT RENEWAL. The commissioner may refuse to renew a contract with a local mental health or mental retardation authority and may select other agencies, entities ~~[providers]~~, or organizations to be the local mental health or mental retardation authority if the department's evaluation of the authority's performance indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

SECTION 15. Section 534.065(b), Health and Safety Code, is amended to read as follows:

(b) The mental health or mental retardation authority shall renew the contract if the authority finds that:

(1) funding is available;

(2) the authority plans to continue the services;

(3) the provider is in substantial compliance with each material provision of the contract, unless the authority determines that the provision is not legal and enforceable under applicable state and federal law;

(4) the provider is providing a reasonably adequate level of service in accordance with the contract and at a reasonable cost;

(5) the provider agrees to a renewal contract that is substantially in compliance with a model contract developed by the department under Section 534.055;

(6) the provider was during the term of any contract with the authority and is at the time of renewal in compliance with applicable laws governing the subject matter of the contract; and

(7) neither the provider nor any of its officers, directors, or principal employees has been convicted or found by a final administrative decision to have been guilty of fraud or abuse in the provision of health care services under a contract with a state or federal agency.

SECTION 16. Section 534.066(b), Health and Safety Code, is amended to read as follows:

(b) The department shall establish, for community services divisions of department facilities ~~[facility outreach programs]~~ that provide community-based services required under this subchapter, a local match requirement that is consistent with the requirements applied to other local mental health or mental retardation authorities.

SECTION 17. Sections 551.022(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The superintendent shall:

(1) oversee the admission and discharge of ~~[admit and discharge]~~ patients and clients;

(2) keep a register of all patients and clients admitted to or discharged from the facility;

(3) supervise repairs and improvements to the facility;

(4) ensure that facility money [~~entrusted to the superintendent~~] is spent judiciously and economically;

(5) keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6) keep a full record of the facility's operations.

(d) In accordance with board rules and departmental operating procedures, the [The] superintendent may:

(1) establish policy [rules] to govern the facility that the superintendent considers will best promote the patients' and clients' interest and welfare;

(2) appoint subordinate officers, teachers, [~~attendants,~~] and other employees and set their salaries, in the absence of other law; and

(3) remove an officer, teacher, or employee for good cause [~~and with the board's consent~~].

SECTION 18. Sections 532.013, 533.064, 534.062, 551.021, and 551.023, Health and Safety Code, are repealed.

SECTION 19. (a) The changes in law made by this Act apply only to an action taken by the Texas Board of Mental Health and Mental Retardation, the Texas Department of Mental Health and Mental Retardation, or the commissioner of mental health and mental retardation or to an appointment made by the governor on or after September 1, 1995.

(b) An action taken or appointment made before September 1, 1995, is governed by the law in effect when the action was taken or appointment was made, and that law is continued in effect for that purpose.

(c) The change in law made by this Act in the qualifications of members of the Texas Board of Mental Health and Mental Retardation does not affect the entitlement of a member of that board who was appointed before September 1, 1995, to continue to hold office for the term to which the member was appointed. The change in qualifications applies only to a member appointed on or after September 1, 1995.

SECTION 20. Nothing in this Act authorizes the department to privatize the administration of state facilities.

SECTION 21. This Act takes effect September 1, 1995.

SECTION 22. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 2843 - WITH SENATE AMENDMENTS

Representative R. Lewis called up with senate amendments for consideration at this time,

HB 2843, A bill to be entitled An Act relating to the adoption of rules by the Texas Natural Resource Conservation Commission.

Representative R. Lewis 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 the bill.

The motion prevailed without objection.

HB 2843 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2843**: R. Lewis, chair, Saunders, Counts, Yost, and Corte.

HB 2936 - WITH SENATE AMENDMENT

Representative Hochberg called up with a senate amendment for consideration at this time,

HB 2936, A bill to be entitled An Act relating to financing of certain projects for certain counties.

On motion of Representative Hochberg, the house concurred in the senate amendment to **HB 2936**.

HB 2936 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 2936** by inserting "owned by a county" after "improvements" and before "that" on line 9, page 4.

HB 3049 - WITH SENATE AMENDMENTS

Representative Junell called up with senate amendments for consideration at this time,

HB 3049, A bill to be entitled An Act making appropriations for and directing payment of certain miscellaneous claims and judgments out of funds designated by this Act and requiring approval of the claims in the manner specified in this Act before payment is made.

Representative Junell 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 the bill.

The motion prevailed without objection.

HB 3049 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3049**: Junell, chair, Black, Brimer, Gallego, and Ogden.

HB 3050 - WITH SENATE AMENDMENTS

Representative Junell called up with senate amendments for consideration at this time,

HB 3050, A bill to be entitled An Act relating to exemption of certain funds from consolidation, re-creation of certain consolidated funds, preservation

of certain dedications of revenue, and exemption of certain unappropriated amounts from use for general governmental purposes.

On motion of Representative Junell, the house concurred in the senate amendments to **HB 3050**.

HB 3050 - TEXT OF SENATE AMENDMENTS

CSHB 3050 A bill to entitled An Act relating to exemption of certain funds from consolidation, re-creation of certain funds, preservation and creation of certain dedications of revenue, and exemption of certain unappropriated amounts from use for general governmental purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Effective August 30, 1995, the following funds and special accounts in the state treasury are exempt from Sections 403.094 and 403.095, Government Code, and are re-created as special accounts in the general revenue fund to be used only for the purposes designated by law:

- (1) attorney general law enforcement account;
- (2) Advisory Commission on Emergency Communications account;
- (3) governor's office disaster contingency account;
- (4) governor's office criminal justice planning account;
- (5) Texas preservation trust fund;
- (6) Capitol fund;
- (7) Inaugural Account, 472;
- (8) crippled children's fund;
- (9) sexual assault program fund;
- (10) Texas capital trust fund;
- (11) Texas collegiate license plate program;
- (12) medical school tuition set-aside fund;
- (13) scholarship for fifth-year accounting students;
- (14) coastal protection fund;
- (15) traffic safety fund account;
- (16) aviation trust fund account;
- (17) public transportation account fund;
- (18) Texas highway beautification fund account;
- (19) Department of Insurance operating fund;
- (20) Texas Racing Commission fund account, 597;
- (21) Workers' Compensation Research Center fund;
- (22) governor's endowment fund account;
- (23) lieutenant governor's endowment fund account;
- (24) alternative fuels research and education fund account;
- (25) Texas exporters loan fund;
- (26) coastal protection fund account, 27;
- (27) food and drug registration fund;
- (28) home health services fund;
- (29) asbestos removal licensure fund;
- (30) workplace chemical lists fund;
- (31) certification of mammography systems fund;
- (32) oyster sales fund;

- (33) crippled children's refund fund;
- (34) hospital licensing fund;
- (35) emergency medical services fund;
- (36) public health services fund;
- (37) food service establishment fund;
- (38) motorcycle education fund account, 501; and
- (39) minority doctoral incentive program account.

SECTION 2. Effective September 1, 1995, the following funds and special accounts in the state treasury are exempt from Section 403.094, Government Code, and are created or re-created, as appropriate, as special accounts in the general revenue fund to be used only for the purposes designated by law:

- (1) small business air compliance fund account;
- (2) small business environmental compliance fund account;
- (3) accounts authorized by the Parks and Wildlife Code;
- (4) Texas housing depository fund;
- (5) workers' compensation insurance fund guaranty account;
- (6) Texas Water Development Board administrative fund, 041;
- (7) Air Control Board fund, 102;
- (8) radioactive substance fee fund, 304;
- (9) unemployment compensation special administration fund account, 165; and
- (10) TERRA fund.

SECTION 3. Effective September 1, 1995, the state lease fund in the state treasury is exempt from Section 403.094, Government Code, and is re-created as a special account in the general revenue fund to be used only for the purposes designated by law. Any unencumbered balances in the state lease fund in excess of amounts needed for debt service shall be transferred to the credit of the general revenue fund at the end of each biennium.

SECTION 4. Effective August 30, 1995, the following funds are exempt from Section 403.094, Government Code, and are created or re-created, as appropriate, as special funds in the state treasury outside the general revenue fund to be used only for the purposes designated by law:

- (1) university bonds for education of Texans;
- (2) prepaid postsecondary education expense fund;
- (3) Texas Youth Commission industries program fund;
- (4) telecommunications infrastructure fund;
- (5) regulator transition fund;
- (6) proprietary school tuition protection fund; and
- (7) cosmetology school tuition protection fund.

SECTION 5. Effective September 1, 1995, the following funds are exempt from Section 403.094, Government Code, and are created or re-created, as appropriate, as trust funds in the state treasury outside the general revenue fund to be used only for the purposes designated by law:

- (1) ICF/MR trust fund; and
- (2) auctioneer public protection recovery trust fund.

SECTION 6. Effective September 1, 1995, the Water Development Board operating fund for state revolving funds is exempt from Section 403.094, Government Code, and is created as a special fund outside the state treasury to be used only for the purposes designated by law.

SECTION 7. Effective August 30, 1995, the following revenue is exempt from Section 403.094, Government Code, and may be used only for the purposes designated by law:

- (1) revenue dedicated to the children's trust fund;
- (2) revenue statutorily dedicated to the Department of Insurance operating fund;
- (3) revenue statutorily dedicated to the state highway fund; and
- (4) revenue dedicated to the Texas Racing Commission for operation and allocation as provided by statute.

SECTION 8. Effective August 30, 1995, revenue collected as court costs and dedicated to the following funds and special accounts is exempt from Section 403.094, Government Code, and may be used only for the purposes designated by law:

- (1) abused children's counseling account;
- (2) crime stoppers assistance account;
- (3) breath alcohol testing account;
- (4) Bill Blackwood Law Enforcement Management Institute of Texas account;
- (5) law enforcement officers standards and education fund account;
- (6) comprehensive rehabilitation fund account;
- (7) operator's and chauffeur's license fund account;
- (8) criminal justice planning fund account; and
- (9) compensation to victims of crime fund account.

SECTION 9. Effective August 30, 1995, revenue collected as maintenance tax imposed under the Insurance Code and allocated for the operation of the Department of Insurance is exempt from Section 403.094, Government Code, and may be used only for the purposes designated by law.

SECTION 10. Effective August 30, 1995, bond proceeds from bonds authorized by or as provided by the 74th Legislature, Regular Session, 1995, are exempt from Sections 403.094 and 403.095, Government Code.

SECTION 11. Effective August 30, 1995, revenue in excess of 1994 levels, as determined by the comptroller, from the Safe Drinking Water Act fee deposited in account 524 is exempt from Section 403.094, Government Code, and may be used only for the purpose of financing the Texas Department of Health's laboratory facility as established by House Bill No. 2022, Acts of the 74th Legislature, Regular Session, 1995.

SECTION 12. Effective August 30, 1995, revenue in excess of 1994 levels, as determined by the comptroller, from the early and periodic screening, diagnosis, and treatment fee deposited in account 273 is exempt from Section 403.094, Government Code, and may be used only for the purpose of financing the Texas Department of Health's laboratory facility as established by House Bill No. 2022, Acts of the 74th Legislature, Regular Session, 1995.

SECTION 13. Effective September 1, 1995, revenue collected as fees by the attorney general under Article 9023d, Revised Statutes, may be used only for the purposes designated by that article.

SECTION 14. Effective August 30, 1995, Section 40.151(c), Natural Resources Code, is repealed.

SECTION 15. Effective August 30, 1995, Section 40.155, Natural Resources Code, is amended to read as follows:

Sec. 40.155. DETERMINATION OF FEE. (a) Except as otherwise provided in this section, the rate of the fee shall be two cents per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached \$25 million. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$25 million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds \$25 million.

(b) If the unencumbered balance in the fund falls below \$14 million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

- (1) the unencumbered balance in the fund is less than \$25 million;
- (2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and
- (3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches \$25 million or any lesser amount that the commissioner determines is necessary to pay response costs and damages without substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$25 million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

(e) For purposes of this section, the unencumbered balance of the fund shall be determined by the unencumbered cash balance of the fund at the end of each month or on the date of a finding under Subsection (c) of this section.

SECTION 16. This Act prevails over any other Act of the 74th Legislature, Regular Session, regardless of the relative dates of enactment, that purports to create or re-create a special fund or account in or outside of the general revenue fund or to dedicate or rededicate revenue to a particular purpose, including any fund or revenue dedication abolished under Section 403.094, Government Code. The creation of a special fund or account or the dedication of revenue in such an Act is of no force or effect unless the fund is created or the revenue is dedicated or rededicated by this Act. Revenues that, under the terms of such an Act, would be deposited to the credit of a special fund or account shall be deposited to the credit of the unobligated portion of the general revenue fund.

SECTION 17. Effective September 1, 1995, Section 403.094, Government Code, is repealed.

SECTION 18. Effective September 1, 1995, Section 403.095, Government Code, is reenacted and amended to read as follows:

Sec. 403.095. USE OF DEDICATED REVENUE. (a) Revenue [~~Notwithstanding any action taken by the comptroller under Section 403.094,~~

revenue] that has been set aside by law for a particular purpose or entity is available for that purpose or entity to the extent money is appropriated for that purpose or entity. Expenditures made in furtherance of the dedicated purpose or entity shall be made from money received from the dedicated revenue source to the extent those funds are appropriated.

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, on August 31, 1997 [~~at the end of a biennium~~], exceed the amount appropriated are available for general governmental purposes. The comptroller shall develop accounting and revenue estimating procedures so that each dedicated account maintained in the general revenue fund can be separately identified as to balances of cash and other assets and the amounts of revenues and expenditures and appropriations for each fiscal year. Following certification of the General Appropriations Act and other appropriations measures, the comptroller shall reduce each dedicated account by the amount by which estimated revenues and unobligated balances exceed appropriations. The reductions may be made in the amounts and at the times necessary so that cash flow considerations allow all the dedicated accounts to maintain adequate cash balances to transact routine business. The legislature may authorize, in the General Appropriations Act, the temporary delay of the excess balance reduction required for accounts under this subsection that exceed the amount appropriated for the dedicated purposes. This subsection does not apply to revenues in:

(1) funds outside the treasury;

(2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;

(3) funds created by the constitution or a court; or

(4) funds for which separate accounting is required by federal law.

(c) The availability of revenues for general governmental purposes conferred by Subsection (b) expires on September 1, 1997 [~~the first day of the subsequent biennium~~].

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Senate Amendment No. 1

Amend **CSHB 3050**:

(5) On page 1 of the Senate Committee Report, delete subsection (35) on line 57 and subsection (37) on line 59 and insert new subsections (35) and (37) as follows:

(35) Bureau of Emergency Management Fund, 512;

(37) Food and Drug Retail Fee Fund, 341.

(6) On page 2, line 10, delete the number "304," and add the number "340."

(7) On page 2, delete subsection (2) on line 27, and renumber subsequent subsections accordingly.

Senate Amendment No. 2

Amend **CSHB 3050** as follows:

Insert "; (40) compensation to victims of crime fund account and the compensation to victims of crime auxiliary fund account" between "account" and "." in SECTION 1 on page 3, line 3.

Senate Amendment No. 3

Amend **CSHB 3050** as follows:

(1) On page 3 of the Senate committee report, lines 27-28, strike all of SECTION 14 and substitute the following:

"SECTION 14. (a) Effective August 30, 1995, Section 40.151(c), Natural Resources Code, is repealed.

(b) The value of all extant investments are transferred into the coastal protection account to be used for the purposes designated in Chapter 40, Natural Resources Code."

(2) On page 2 of the Senate committee report, lines 31 and 32, delete the following:

"(6) proprietary school tuition protection fund; and

(7) cosmetology school tuition protection fund."

(3) On page 1 of the Senate committee report, add the following after line 61:

"(40) proprietary school tuition protection fund;

(41) cosmetology school tuition protection fund;

(42) rural economic development fund no. 425; and

(43) vital statistics records fund."

(4) On page 2 of the Senate committee report, add the following after line 69:

"(10) compensation to victims of crime auxiliary fund account."

(5) On page 3 of the Senate committee report, delete existing SECTION 11 at lines 9-15 and substitute the following:

"SECTION 11. Effective August 30, 1995, revenue in excess of 1994 levels, as determined by the comptroller, from receipts for laboratory analysis deposited to account 524 is exempt from Section 403.094, Government Code, and may be used only for the purpose of financing the Texas Department of Health's laboratory facility as established by HB 2022, Acts of the 74th Legislature, Regular Session, 1995."

Senate Amendment No. 4

Amend **CSHB 3050** as follows:

Add the appropriately numbered new sections to read as follows:

SECTION _____. The appropriations made to the Department of Public Safety out of the General Revenue Fund-Consolidated in HB 1, Seventy-fourth Legislature, Regular Session, are hereby reduced by the amount of \$13,104,518 for fiscal year 1996 and by the amount of \$13,104,518 for fiscal year 1997. In addition, the appropriations made to the Department of Public Safety out of the State Highway Fund in HB 1, Seventy-fourth Legislature, Regular Session, are hereby increased by the amount of \$13,104,518 for fiscal year 1996 and by the amount of \$13,104,518 for fiscal year 1997.

HB 3073 - WITH SENATE AMENDMENTS

Representative Gallego called up with senate amendments for consideration at this time,

HB 3073, A bill to be entitled An Act relating to the power of the courts of appeals to issue writs of mandamus.

Representative Gallego 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 the bill.

The motion prevailed without objection.

HB 3073 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3073**: Gallego, chair, Alonzo, Zbranek, Solis, and Willis.

HB 3193 - WITH SENATE AMENDMENTS

Representative Saunders called up with senate amendments for consideration at this time,

HB 3193, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Southwest Travis County Water District.

On motion of Representative Saunders, the house concurred in the senate amendments to **HB 3193** by (Record 561): 81 Yeas, 54 Nays, 5 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Averitt; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Crabb; Craddick; Cuellar, H.; Culberson; Dear; Delisi; Denny; Driver; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hightower; Hilbert; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Jones, D.; Kamel; King; Krusee; Kuempel; Lewis, R.; Madden; Marchant; McCall; McCoulskey; Moffat; Mowery; Nixon; Oakley; Ogden; Park; Patterson; Pitts; Place; Rabuck; Ramsay; Reyna; Rusling; Saunders; Shields; Siebert; Smithee; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Turner, B.; Uher; Williamson; Wilson; Wohlgeomuth; Woolley; Yost.

Nays — Bailey; Berlanga; Bosse; Conley; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dukes; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Gallego; Giddings; Glaze; Gray; Greenberg; Hernandez; Hirschi; Hochberg; Hudson; Jones, J.; Junell; Kubiak; Lewis, G.; Longoria; Luna; Maxey; McDonald; Moreno; Naishtat; Oliveira; Price; Puente; Rangel; Raymond; Rhodes; Rodriguez; Romo; Sadler; Seidlits; Serna; Solis; Tillery; Torres; Van de Putte; Walker; West; Willis; Wolens.

Present, not voting — Mr. Speaker; Black(C); Finnell; Gutierrez; Turner, S.

Absent — Alvarado; Brady; Counts; Duncan; Janek; Johnson; Munoz; Pickett; Yarbrough; Zbranek.

HB 3193 - TEXT OF SENATE AMENDMENTS**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amending **HB 3193** by striking Section 2.03 and substituting the following:

SECTION 2.03. TERMS OF DIRECTORS AND APPOINTMENT PROCEDURES. (a) Other than initial directors, directors are appointed for staggered terms of six years with three members' terms expiring September 1 of each odd numbered year.

(b) Appointment of initial directors shall be made promptly after this Act takes effect. The governor shall appoint three initial directors to serve a term expiring September 1, 1997, three initial directors to serve a term expiring September 1, 1999, and three initial directors to serve a term expiring September 1, 2001.

(c) When a director's term expires, the governor shall appoint a successor.

(d) When a director dies, resigns, or is otherwise removed, the governor shall appoint a successor to serve for the unexpired term.

Senate Amendment No. 2

Amend **HB 3193** as follows:

On page 2, line 12, delete "five" and substitute "seven".

Senate Amendment No. 3

Amend **HB 3193** as follows:

1. On page 5, strike lines 59 through 64 and renumber all subsequent sections appropriately.

Senate Amendment No. 4

Amend **HB 3193** as follows:

1. On page 3, line 51, strike "solid waste disposal".

2. On page 4, line 19, strike "solid waste disposal".

Senate Amendment No. 5

Amend **HB 3193** as follows:

1. On page 7, between lines 63 and 64, insert the following: "(c) The district may not exercise the power of eminent domain to acquire property for any purpose not expressly granted to the district by this Act, and may not exercise the power of eminent domain to acquire property adjacent to and outside the district for any purpose other than the purposes set forth in Sections 3.01(a)(3) and 3.01(a)(4) of this Act."

Senate Amendment No. 6

Amend **HB 3193** as follows:

1. On page 5, lines 16 and 17, strike "and in effect on January 1, 1995".

2. On page 5, line 22, strike "and in effect on January 1, 1995".

3. On page 5, line 47, strike "and in effect on January 1, 1995".

Senate Amendment No. 7.

Amend **HB 3193** as follows:

1. On page 2, line 35, before "51.078", insert "51.0721",.

2. On page 8, between lines 50 and 51, insert "(e) Notwithstanding any provision of this Act, any contract of the district shall meet the requirements of Chapter 171, Local Government Code."

Senate Amendment No. 8

Amend **HB 3193**

On page 1, by deleting the following sentence on lines 32 and 33 that reads: "A confirmation election is not necessary."

Senate Amendment No. 9

Amend **HB 3193** as follows:

(1) On page 3, lines 61 through 62, strike "and of a groundwater conservation district in existence on the effective date of this Act that is composed in whole or in part of the territory of the district".

(2) On page 3, lines 66 through 67, strike "except a groundwater conservation district in existence on the effective date of this Act,".

(3) On page 4, lines 11 through 14, strike "and of a groundwater conservation district in existence on the effective date of this Act that is composed in whole or in part of the territory of the district".

(4) On page 4, lines 15 through 17, strike "except a groundwater conservation district in existence on the effective date of this Act,".

(5) On page 22, strike lines 2 through 8.

Senate Amendment No. 10

Amend **HB 3193** on third reading as follows:

(1) In SECTION 3.01(c), add "and of groundwater conservation district in existence on the effective date of this Act that is composed in whole or in part of the territory of the district" in the place from which it was struck by Amendment No. 8 on Second Reading.

(2) In SECTION 3.01(c), add "except a groundwater conservation district in existence on the effective date of this Act," in the place from which it was struck by Amendment No. 8 on Second Reading.

(3) In SECTION 3.01(d), add "and of groundwater conservation district in existence on the effective date of this Act that is composed in whole or in part of the territory of the district" in the place from which it was struck by Amendment No. 8 on Second Reading.

(4) In SECTION 3.01(d), add "except a groundwater conservation district in existence on the effective date of this Act," in the place from which it was struck by Amendment No. 8 on Second Reading.

(5) Reinsert SECTION 7.021 in the place from which it was struck by Amendment No. 8 on Second Reading.

HB 2510 - WITH SENATE AMENDMENTS

Representative Wilson called up with senate amendments for consideration at this time,

HB 2510, A bill to be entitled An Act relating to regulation of certain irrigators and irrigation system installers.

On motion of Representative Wilson, the house concurred in the senate amendments to **HB 2510**.

HB 2510 - TEXT OF SENATE AMENDMENTS

CSHB 2510, A bill to be entitled An Act relating to regulation of certain irrigators and irrigation system installers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 34.001 and 34.002, Water Code, are amended to read as follows:

Sec. 34.001. DEFINITIONS. In this chapter:

(1) "Person" means a natural person.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Council" means the Texas irrigators advisory council.

(4) [~~3~~] "Executive director" means the executive director of the Texas Natural Resource Conservation Commission or the executive director's designee.

[~~4~~] "Department" means the Texas Natural Resource Conservation Commission.]

(5) "Irrigation system" means an assembly of component parts permanently installed for the controlled distribution and conservation of water for the purpose of irrigating any type of landscape vegetation in any location or for the purpose of dust reduction or erosion control.

(6) "Irrigator" means a person who sells, designs, consults, installs, maintains, alters, repairs, or services an irrigation system including the connection of such system in and to a private or public, raw or potable water supply system or any water supply. The term does not include:

(A) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of a licensed irrigator; or

(B) an owner of a business that regularly employs a licensed irrigator who directly supervises the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems.

(7) "Licensed irrigator" means an irrigator who has prequalified and is licensed under this chapter.

(8) "Installer" means a person who actually connects an irrigation system to a private or public, raw or potable water supply system or any water supply.

(9) "Licensed installer" means an installer who has prequalified and is licensed under this chapter.

Sec. 34.002. EXEMPTIONS. (a) The licensure requirements of this [~~This~~] chapter do [~~does~~] not apply to:

(1) any person licensed by the Texas State Board of Plumbing Examiners;

(2) a registered professional engineer or architect or landscape architect if his or her acts are incidental to the pursuit of his or her profession;

(3) irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him or her as his or her home;

(4) irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system, done by a maintenance person incidental to and on premises owned by

the business in which he or she is regularly employed or engaged and who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(5) irrigation or yard sprinkler work done on the premises or equipment of a railroad by a regular employee of the railroad who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(6) irrigation and yard sprinkler work done by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state on public property;

(7) ~~[a temporary or portable water device such as]~~ a garden hose, hose sprinkler, hose-end product, soaker hose, or agricultural irrigation system;

(8) a portable or solid set or other type of commercial agricultural irrigation system; or

(9) irrigation or yard sprinkler work done by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by himself or herself.

(b) A person who is exempt from the licensure requirements of this chapter shall comply with the standards established by this chapter and the rules adopted under this chapter.

SECTION 2. Subsections (a), (d), (g), (h), and (k), Section 34.003, Water Code, are amended to read as follows:

(a) The Texas irrigators advisory council is composed of nine members appointed by the commission ~~[department]~~. Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(d) A council member or an employee of the commission ~~[department]~~ connected with the administration of this chapter may not be an officer, employee, or paid consultant of a trade association in the irrigation industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the irrigation industry.

(g) The members ~~[A member]~~ of the council serve ~~[serves a]~~ six-year terms ~~[term]~~, with the terms of two members expiring February 1 of each odd-numbered year ~~[term expiring September 15]~~.

(h) A member of the council is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the council. ~~[A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses.]~~ A member is entitled to reimbursement for travel expenses, including expenses for meals and lodging, as provided for in ~~[compensation for transportation expenses as prescribed by]~~ the General Appropriations Act.

(k) The council shall elect a chairman by a majority vote at the first meeting each fiscal year.

SECTION 3. Subsections (b) and (c), Sections 34.004, Water Code, are amended to read as follows:

(b) The executive director shall provide necessary services to assist the commission [~~department~~] in conducting investigations and examinations, holding hearings, and performing other duties and functions under this chapter.

(c) The commission [~~department~~] shall hear all contested cases as defined in Chapter 2001, Government Code, [~~the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~] arising under this chapter. The commission [~~department~~] is subject to Chapters 551 and 2001, Government Code [~~the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

SECTION 4. Sections 34.005, 34.006, 34.007, and 34.008, Water Code, are amended to read as follows:

Sec. 34.005. Commission [~~Department~~] FINANCES. (a) Money paid to the commission [~~department~~] under this chapter shall be deposited in the state treasury in a special fund known as the Texas irrigators fund.

(b) The Texas irrigators fund shall be used to pay only expenses approved by the commission [~~department~~] that are incurred in the administration and enforcement of this chapter.

(c) The executive director shall file annually with the governor and with the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed under this chapter during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 34.006. RULES. (a) The commission [~~department~~] shall adopt only those rules consistent with this chapter to govern the conduct of its business and proceedings authorized under this chapter and shall adopt standards governing connections to public or private water supplies by a licensed irrigator or a licensed installer. The commission [~~department~~] may adopt standards for landscape irrigation that include water conservation, irrigation system design and installation, and conformance with municipal codes by a licensed irrigator or a licensed installer. The commission [~~department~~] may not adopt any standard or rule that requires or prohibits the use of any irrigation system, component part, or equipment of any particular brand or manufacturer.

(b) The commission [~~department~~] does not have authority to amend or enlarge by rule on any provision of this chapter, to change the meaning of this chapter by rule in any manner, to adopt a rule that is contrary to the underlying and fundamental purposes of this chapter, or to make a rule that is unreasonable, arbitrary, capricious, illegal, or unnecessary.

(c) The commission [~~department~~] may not adopt rules restricting competitive bidding or advertising by a person regulated by the commission [~~department~~] except to prohibit false, misleading, or deceptive practices by the person.

(d) The commission [~~department~~] may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission [~~department~~] a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the person's personal appearance or 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 person's advertisement under a trade name.

(e) The commission [~~department~~] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission [~~department~~] and to speak on any issue under the jurisdiction of the commission [~~department~~].

(f) The commission [~~department~~] shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's [~~department's~~] programs.

(g) The commission [~~department~~] shall prepare information of public interest describing the functions of the commission [~~department~~] and the commission's [~~department's~~] procedures by which complaints are filed with and resolved by the commission [~~department~~]. The commission [~~department~~] shall make the information available to the public and appropriate state agencies.

(h) The commission [~~department~~] by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission [~~department~~] for the purpose of directing complaints to the commission [~~department~~]. The commission [~~department~~] may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each individual regulated under this chapter; or

(3) in a bill for service provided by an individual regulated under this chapter.

(i) The commission shall establish criteria for accreditation of training courses and continuing education programs for licensed landscape irrigators and installers [~~department may recognize, prepare, or administer continuing education programs for landscape irrigation. Participation in the programs is voluntary~~].

(j) The commission shall establish criteria for accreditation and approval of [~~department may certify~~] instructors and establish standards for instructional course studies designed to prepare applicants for an examination administered by the commission [~~department~~]. Certification will be voluntary and based on compliance of the instructor with the standards of the commission [~~department~~]. The commission [~~department~~] may provide a list containing the names of all commission [~~department~~] certified instructors [~~and all known uncertified instructors to each applicant for an examination administered by the department~~].

Sec. 34.007. REGISTRATION REQUIREMENT. (a) No person may act as a licensed [~~an~~] irrigator or installer unless he or she has a valid certificate of registration under this chapter.

(b) The commission [~~department~~] shall issue certificates of registration to persons [~~of good moral character~~] who have prequalified [~~shown themselves fit, competent, and qualified~~] to act as licensed irrigators or licensed installers by passing a uniform, reasonable examination which will include the principles of

cross connections and safety devices to prevent contamination of potable water supplies.

(c) The commission [~~department~~] shall provide in its rules for the preparation, administration, and grading of examinations to acquire certificates of registration under this chapter. The fee for taking the examination shall be set by the commission [~~department~~] not to exceed \$200 [~~\$100~~] for the irrigator certificate of registration and not to exceed \$150 [~~\$75~~] for the installer certificate of registration.

(d) A person holding a certificate of registration under this chapter shall not be required to comply with any other licensing requirements of other state agencies to perform any function within the scope of the certificate issued under this chapter [~~connections to private or public raw or potable water supply systems~~].

(e) Not later than the 45th [~~30th~~] day after the day on which a person completes an examination administered by the commission [~~department~~], the commission [~~department~~] shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the commission [~~department~~] shall send to the person not later than the 60th [~~30th~~] day after the day on which the written request is received by the commission [~~department~~] an analysis of the person's performance on the examination.

(f) The commission shall adopt rules establishing classes of certificates and fees.

Sec. 34.008. RECIPROcity. (a) The commission [~~department~~] may certify for registration without examination an applicant who is registered as a licensed irrigator or licensed installer in another state or country that has requirements for registration that are at least substantially equivalent to the requirements of this state and that extends the same privilege of reciprocity to licensed irrigators or licensed installers registered in this state.

(b) The application for registration under this section shall be accompanied by a fee of not to exceed \$200 [~~\$100~~] for a licensed irrigator or \$150 [~~\$75~~] for a licensed installer as determined by the commission [~~department~~].

SECTION 5. Section 34.009, Water Code, is amended by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f) to read as follows:

(b) Not later than the 30th day before the date on which a person's certificate of registration expires, the commission shall send a written notice of the impending expiration to the person at the person's last known address as shown on the records of the commission [~~The department or the executive director shall notify every person registered under this chapter of the date of expiration of his or her certificate and the amount of the fee that is required for renewal for one year. The notice shall be mailed at least two months in advance of the date of expiration of the certificate~~].

(c) A person may renew an unexpired certificate of registration by paying to the commission the required renewal fee [~~A person may renew his or her certificate at any time during the months of July and August of each year by payment of the fee adopted by the department in an amount of not more than \$150 for a licensed irrigator or \$100 for a licensed installer~~].

(d) If a person's certificate of registration has been expired for 90 days or less, the person may renew the certificate by paying to the commission the

required renewal fee and a penalty fee that is equal to one-half of the examination fee.

(e) If a person's certificate of registration has been expired for longer than 90 days, the person may not renew the certificate. The person may obtain a new certificate of registration by submitting to reexamination and complying with the requirements and procedures for obtaining an original certificate of registration.

(f) The commission by rule may adopt a system under which certificates of registration expire on various dates during the year. For the year in which the expiration date is changed, renewal fees payable on August 31 shall be prorated on a monthly basis so that each registrant will pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total renewal fee is due.

SECTION 6. Section 34.010, Water Code, is amended to read as follows:

Sec. 34.010. ENFORCEMENT. (a) The commission [department] may suspend or revoke a certificate of registration, place on probation a person whose certificate has been suspended, or reprimand a registrant for:

(1) a violation of this chapter or of a rule of the commission [department];

(2) fraud or deceit in obtaining a certificate of registration; or

(3) gross negligence, incompetency, or misconduct while acting as a licensed irrigator or licensed installer.

(b) If the commission [department] proposes to suspend or revoke a person's certificate of registration, the person is entitled to a hearing before the commission [department] or a hearings officer appointed by the commission [department]. The commission [department] shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission [department].

(c) If a registrant's suspension is probated, the commission [department] may require the registrant:

(1) to report regularly to the commission [department] on matters that are the basis of the probation;

(2) to limit activities to the areas prescribed by the commission [department]; or

(3) to continue or renew professional education until the registrant attains a degree of skill satisfactory to the commission [department] in those areas that are the basis of the probation.

(d) Any person may file a complaint with the commission [department]. The complaint must be in writing [~~must be notarized~~], and must set forth the facts alleged. One copy must be sent by certified mail to the alleged violator.

(e) The commission [department] shall keep an information file about each complaint filed with the commission [department] that the commission [department] has authority to resolve.

~~(f) [If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.]~~

~~(g)~~ If the executive director determines through investigation that evidence exists of a violation, the executive director may refer such evidence to the commission ~~[department]~~ and may request the setting of a hearing.

~~(g)~~ ~~(h)~~ The commission ~~[department]~~ may compel the attendance of witnesses before it as in civil cases in the district court by issuance of a subpoena.

SECTION 7. Sections 34.011, 34.012, and 34.013, Water Code, are amended to read as follows:

Sec. 34.011. ADMINISTRATIVE PENALTY. (a) If a person licensed under this chapter, a person who is required to be licensed under this chapter, or a person who is exempt from licensure but who is subject to the standards of this chapter and rules adopted ~~[or registered]~~ under this chapter violates an applicable provision of this chapter or an applicable ~~a~~ rule or order adopted by the commission ~~[department]~~ under this chapter, the commission ~~[department]~~ may assess an administrative penalty against the person as provided by this section. Each day a violation continues may be considered a separate violation.

(b) The penalty for each violation shall be set in an amount not to exceed \$1,000.

(c) In determining the amount of the penalty, the commission ~~[department]~~ shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, duration, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director determines that a violation has occurred, the executive director may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by the consideration of the factors set forth in Subsection (c) of this section.

(e) Not later than the 30th ~~[14th]~~ day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 30th ~~[20th]~~ day after the date on which notice is received, the person charged may accept the determination of the executive director made under Subsection (d) of this section, including the recommended penalty, or may make a written request for a hearing on the determination.

(g) If the person charged with the violation accepts the determination of the executive director, the commission ~~[department]~~ shall issue an order

approving the determination and ordering the payment of the recommended penalty.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the executive director shall set a hearing and give notice of the hearing to the person charged. The hearing may be before the commission [~~department~~] or a hearings examiner appointed by the commission [~~department~~]. The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the commission [~~department~~] a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the commission [~~department~~] by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code [~~the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

(i) The executive director shall give notice of the commission's [~~department's~~] order to the person charged. The notice shall include:

- (1) the findings of fact and conclusions of law separately stated;
- (2) the amount of the penalty ordered, if any;

(3) a statement of the right of the person charged to judicial review of the commission's [~~department's~~] order, if any; and

- (4) other information required by law.

(j) Within the 30-day period immediately following the date on which the commission's [~~department's~~] order is final, as provided by Section 2001.144, Government Code [~~16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~], the person charged with the penalty shall:

- (1) pay the penalty in full; [~~or~~]

(2) pay the penalty and file [~~if the person files~~] a petition for judicial review, contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty[-

~~](A) forward the amount of the penalty to the executive director for placement in an escrow account; or~~

~~](B) in lieu of payment into escrow, post with the executive director a supersedeas bond in a form approved by the executive director for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.~~

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

- (1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the executive director by certified mail [If a person charged is financially unable to either forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subsection (j)(2) of this section by filing with the executive director an affidavit sworn by the person charged, stating that the person is financially unable to either forward the amount of the penalty or post a bond].

(l) If the executive director receives a copy of an affidavit under Subsection (k)(2) of this section, the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or give the supersedeas bond. [Failure to forward the money to or to post the bond or file the affidavit with the executive director within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subsection (j)(1) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (j) or (k) of this section, the executive director may forward the matter to the attorney general for enforcement.]

(m) Judicial review of the order or decision of the commission [department] assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code [Section 19; Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)].

(n) If the person paid the penalty and if the penalty is reduced or not assessed by the court, the executive director shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the executive director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the executive director under Subsection (j) of this section and ending on the day the penalty is remitted.

(o) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 34.012. [Penalty;] INJUNCTION. (a) [A person who represents himself or herself as a licensed irrigator or licensed installer in this state without being licensed or exempted under this chapter, who presents or attempts to use as his or her own the certificate of registration or the seal of another person who is a licensed irrigator or licensed installer, or who gives false or forged

evidence of any kind to the department in obtaining or assisting in obtaining for another a certificate of registration shall be guilty of a Class C misdemeanor. Each day a violation of this subsection occurs constitutes a separate offense.

~~(b)~~ A person, including a person who is not licensed under this chapter, who violates this chapter or a rule or order of the commission ~~[department]~~ adopted under this chapter is subject to a civil penalty of not to exceed \$1,000 for each offense. Each day a violation is committed is a separate offense.

~~(b)~~ ~~(c)~~ An action to recover the civil penalty ~~[under Subsection (b) of this section]~~ may be brought by the commission ~~[department]~~ in any court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

~~(c)~~ ~~(d)~~ The commission ~~[department]~~ may enforce this chapter or a valid rule or order of the commission ~~[department]~~ by injunction or other appropriate remedy. The action may be brought by the commission ~~[department]~~ in a court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

~~(d)~~ ~~(e)~~ At the request of the commission ~~[department]~~, the attorney general shall institute and conduct a suit in the name of the state to recover the civil penalty as provided under Subsection ~~(a)~~ ~~(b)~~ of this section] or for injunctive relief or other appropriate remedy, or for both.

~~(e)~~ A party to an action brought under this section may appeal a final judgment in the manner provided for other civil cases.

Sec. 34.013. ENFORCEMENT OF ACT. The executive director with the assistance of the attorney general shall enforce this chapter and the rules adopted by the commission ~~[department]~~.

SECTION 8. The term of a member of the Texas irrigators advisory council who is serving on the effective date of this Act and whose term is to expire on September 15 of a year in accordance with Section 34.003, Water Code, as it existed before the effective date of this Act, is extended to February 1 of the year following the year in which that member's term is to expire.

SECTION 9. This Act takes effect September 1, 1995.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 2510** on page 2, line 18 (Committee Printing) by adding new sentence to read as follows:

"Irrigation system does not include a system used on or by an agricultural operation as defined in Section 251.002, Agriculture Code."

(Speaker in the chair)

HR 1172 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1172**, suspending the limitations on the conferees for **HB 1718**.

HB 3021 - WITH SENATE AMENDMENT

Representative Kuempel called up with a senate amendment for consideration at this time,

HB 3021, A bill to be entitled An Act relating to the regulation of bingo; providing penalties.

Representative Kuempel moved that the house concur in the senate amendment to **HB 3021**.

Representative Kubiak offered a substitute motion that the house not concur and that a conference committee be requested to adjust the differences between the two houses on the bill.

LEAVE OF ABSENCE GRANTED

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

Denny on motion of Park.

HB 3021 - (consideration continued)

Representative Kuempel moved to table the substitute motion.

A record vote was requested.

The motion to table was lost by (Record 562): 6 Yeas, 130 Nays, 3 Present, not voting.

Yeas — Kuempel; Moreno; Rangel; Saunders; Thompson; Wilson.

Nays — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Davila; Davis; De La Garza; Dear; Delisi; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goolsby; Gray; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Munoz; Naishtat; Nixon; Oakley; Ogdin; Oliveira; Park; Patterson; Pitts; Place; Price; Puente; Rabuck; Ramsay; Raymond; Reyna; Rhodes; Romo; Rusling; Sadler; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C); Danburg; Greenberg.

Absent, Excused — Denny.

Absent — Dukes; Goodman; Harris; Hightower; Holzheuser; Jones, D.; Mowery; Pickett; Rodriguez; Telford.

The substitute motion that the house not concur and that a conference committee be requested prevailed.

(Speaker pro tempore in the chair)

HB 2315 - WITH SENATE AMENDMENT

Representative Saunders called up with a senate amendment for consideration at this time,

HB 2315, A bill to be entitled An Act relating to the regulation of energy and material recovery and of gas recovery.

On motion of Representative Saunders, the house concurred in the senate amendment to **HB 2315**. (Conley recorded voting no)

HB 2315 - TEXT OF SENATE AMENDMENT**Senate Amendment No. 1**

Amend **HB 2315**, Section 1., Sec. 361.0661, line 10 by adding after the word recovery, or transfer and on line 14 after the word recovery, add or transfer.

HB 2569 - WITH SENATE AMENDMENTS

Representative Brady called up with senate amendments for consideration at this time,

HB 2569, A bill to be entitled An Act relating to the investigation of child abuse and the protection of the interests of a child who is the subject of a child abuse investigation or a suit affecting the parent-child relationship or who is under the jurisdiction of the Department of Protective and Regulatory Services.

Representative Brady 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 the bill.

The motion prevailed without objection.

HB 2569 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2569**: Brady, chair, Goodman, Harris, H. Cuellar, and Van de Putte.

HB 1305 - WITH SENATE AMENDMENTS

Representative Gray called up with senate amendments for consideration at this time,

HB 1305, A bill to be entitled An Act relating to the continuation and functions of the Texas Racing Commission and to the transfer of certain commission functions to the Texas Department of Commerce; creating a criminal offense; providing a criminal penalty.

Representative Gray 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 the bill.

The motion prevailed without objection.

HB 1305 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1305**: Gray, chair, Black, Wilson, Solis, and Hightower.

HB 1718 - WITH SENATE AMENDMENTS

Representative S. Turner called up with senate amendments for consideration at this time,

HB 1718, A bill to be entitled An Act relating to the revision of the open records law.

Representative S. Turner 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 the bill.

The motion prevailed without objection.

HB 1718 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1718**: S. Turner, chair, Combs, Seidlits, Danburg, and Hochberg.

MESSAGE FROM THE SENATE

Austin, Texas, May 26, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HCR 223 by Jackson and Talton, honoring Chelsi Smith, Miss Universe 1995.

HCR 230 by Carter, et al. (Sponsor-Moncrief), commending the members of the Texas Task Force for Tiltrotor Technology.

HB 1358 by Alexander, et al. (Sponsor-Montford), relating to the appraisal for ad valorem tax purposes of open-space land used for wild life management.

HB 2085 by Turner, Bob (Sponsor-Wentworth), relating to the liability of certain private and governmental owners of agricultural land used for recreation.

HB 3199 by Swinford (Sponsor-Armbrister), relating to the duties of the secretary of state.

HJR 72 by Alexander, et al. (Sponsor-Montford), proposing a constitutional amendment relating to the ad valorem taxation of open-space land used for wildlife management.

Senate Conferees on **SB 449** were discharged and the Senate concurred in House amendments by viva voce vote.

I am directed by the Senate to inform the House that the Senate has granted the request of the House for the appointment of a Conference Committee to adjust the differences between the two Houses on the following:

HB 418 Conferees: Harris, chair, Sibley, Madla, Nixon, and Brown.

HB 814 Conferees: Ellis, chair, Montford, Galloway, Gallegos, and Whitmire.

HB 1013 Conferees: Barrientos, chair, Lucio, Turner, Truan, and Wentworth.

HB 1541 Conferees: Gallegos, chair, Henderson, Truan, Barrientos, and Wentworth.

HB 1810 Conferees: Whitmire, chair, Ellis, Gallegos, Turner, and Brown.

HB 2027 Conferees: Gallegos, chair, Nixon, Patterson, Truan, and Madla.

HB 2726 Conferees: Montford, chair, Ellis, Brown, Lucio, and Barrientos

HB 2861 Conferees: Harris, chair, West, Sibley, Haywood, and Sims.

HB 2890 Conferees: Armbrister, chair, Truan, Luna, Madla, and Wentworth.

HB 3189 Conferees: Armbrister, chair, Truan, Luna, Madla, and Wentworth.

HB 788 Conferees: Ratliff, chair, Haywood, Shapiro, West, and Cain.

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to the following and requests the appointment of a Conference Committee to adjust the differences between the two Houses:

SB 964 Conferees: Harris, chair, Armbrister, Sibley, Madla, and Montford.

SB 1546 Conferees: Bivins, chair, Brown, Armbrister, Sims, and Lucio.

SB 421 Conferees: Wentworth, chair, Barrientos, Patterson, Turner, and Cain.

SB 1128 Conferees: Ellis, chair, Ratliff, West, Bivins, and Rosson.

I am directed by the Senate to inform the House that the Senate has concurred in House Amendments to the following: **SB 44, SB 111, SB 369, SB 390, SB 452, SB 496, SB 527, SB 553, SB 595, SB 607, SB 726, SB 752, SB 886, SB 896, SB 1058, SB 1135, SB 1360, SB 1407, SB 1439, SCR 89, SCR 101, SCR 136** by Viva Voce Vote; **SB 74, SB 480, SB 783, SB 1685, SJR 46** by 31 Yeas, 0 Nays.

I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on the following: **SB 870** by Viva Voce Vote; **SB 1231** by Viva Voce Vote; **HB 1863** by 30 Yeas, 1 Nay.

Respectfully,
Betty King
Secretary of the Senate

HB 3111 - WITH SENATE AMENDMENTS

Representative Berlanga called up with senate amendments for consideration at this time,

HB 3111, A bill to be entitled An Act relating to the delivery of health care by certain nonprofit health corporations.

On motion of Representative Berlanga, the house concurred in the senate amendments to **HB 3111**.

HB 3111 - TEXT OF SENATE AMENDMENTS

CSHB 3111, A bill to be entitled An Act relating to the delivery of health care by certain nonprofit health corporations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.52F to read as follows:

Art. 21.52F. CERTIFICATION OF CERTAIN NONPROFIT HEALTH CORPORATIONS

Sec. 1. DEFINITIONS. In this article:

(1) "Applicant" means an approved nonprofit health corporation that has filed an application with the commissioner for certification under this article.

(2) "Approved nonprofit health corporation" means a nonprofit health corporation certified under Section 5.01(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

(3) "Certificate holder" means an approved nonprofit health corporation that holds a certificate of authority issued under this article.

(4) "Health care plan" has the meaning assigned by Section 2, Texas Health Maintenance Organization Act (Section 20A.02, Vernon's Texas Insurance Code).

(5) "Health maintenance organization" means a health maintenance organization licensed under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

Sec. 2. CERTIFICATE OF AUTHORITY REQUIRED; EXCEPTIONS.

(a) An approved nonprofit health corporation may arrange for or provide a health care plan to enrollees on a prepaid basis only if the corporation obtains and maintains a certificate of authority issued by the department under this article.

(b) This article does not apply to:

(1) an approved nonprofit health corporation that contracts to arrange for or provide health care services on a fee-for-service basis;

(2) contracts entered into by a certificate holder to arrange for or provide health care services on a fee-for-service basis; or

(3) an activity exempt from regulation under Section 26(f), Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

(c) An approved nonprofit health corporation may arrange for or provide health care services on a risk-sharing or capitated risk arrangement on behalf of a health maintenance organization. An approved nonprofit health corporation acting under this subsection is not required to obtain a certificate of authority under this article or under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

Sec. 3. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY. The commissioner may issue a certificate of authority only to an approved nonprofit health corporation that:

(1) meets each requirement for the issuance of a certificate of authority as a health maintenance organization imposed by the Texas Health Maintenance

Organization Act (Chapter 20A, Vernon's Texas Insurance Code) as if the approved nonprofit health corporation were a health maintenance organization; and

(2) is accredited under Section 4 of this article.

Sec. 4. ACCREDITATION REQUIRED. (a) An applicant must establish and a certificate holder must maintain accreditation by:

(1) the National Committee on Quality Assurance;

(2) the Joint Commission on Accreditation of Healthcare Organization's accreditation for health care networks; or

(3) an accrediting organization recognized by rule of the commissioner.

(b) The commissioner shall grant a provisional certificate of authority to an applicant if:

(1) the applicant has applied for accreditation;

(2) the applicant is diligently pursuing accreditation;

(3) the accrediting organization has not denied the accreditation; and

(4) all other requirements of this article are satisfied.

Sec. 5. UNFAIR COMPETITION. (a) A certificate holder may not engage in unfair and disruptive provider hiring or contracting practices, the purpose of which is to limit competition from traditional community providers.

(b) The Texas State Board of Medical Examiners shall adopt rules to implement this section.

Sec. 6. POWERS AND DUTIES OF CERTIFICATE HOLDER. A certificate holder has all the powers granted to and duties imposed on a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) and the insurance laws of this state, and is subject to regulation and regulatory enforcement under those laws in the same manner as a health maintenance organization.

Sec. 7. RULES. Except as provided by Section 5(b) of this article, the commissioner shall adopt rules to implement this article.

SECTION 2. (a) Not later than September 16, 1995, the commissioner of insurance shall establish an advisory committee composed of:

(1) five members representing nonprofit health corporations certified under Section 5.01(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(2) four members representing the public, two of whom are employers.

(b) Not later than October 16, 1995, the advisory committee shall recommend to the commissioner of insurance rules necessary to implement Article 21.52F, Insurance Code, as added by this Act.

(c) Not later than January 1, 1996, the commissioner of insurance shall publish proposed rules necessary to implement Article 21.52F, Insurance Code, as added by this Act. In developing the rules, the commissioner of insurance shall consider the recommendations of the advisory committee.

SECTION 3. The Texas Department of Insurance may not issue a certificate of authority to an approved nonprofit health corporation under Article 21.52F, Insurance Code, as added by this Act, before April 1, 1996.

SECTION 4. This Act takes effect September 1, 1995.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 3111** by striking Section 2(b)(3) and adding a new Section 2(d) as follows:

(d) This article shall not be construed to alter the exceptions set out in Section 26(f), Texas Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

(Speaker in the chair)

HB 40 - WITH SENATE AMENDMENTS

Representative McCall called up with senate amendments for consideration at this time,

HB 40, A bill to be entitled An Act relating to the requirement of DNA analysis of certain inmates and to the creation of a DNA database; providing penalties.

On motion of Representative McCall, the house concurred in the senate amendments to **HB 40**.

HB 40 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 40** as follows:

Amend Section 1, creating 411.148, Government Code, by deleting subdivisions (1), (2) and (3) of Subsection (a) of 411.148, Government Code, (at Page 10, lines 8-22, House Engrossment), and substituting the following:

(1) an offense under one or more of the following Penal Code provisions:

(A) Section 21.11 (indecenty with a child);

(B) Section 22.011 (sexual assault);

(C) Section 22.021 (aggravated sexual assault);

(D) Section 20.04(a)(4) (aggravated kidnapping), if the defendant committed the offense with intent to violate or abuse the victim sexually; or

(E) Section 30.02 (burglary), if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A), (B), (C), or (D) of this subdivision; or

(2) any offense if the inmate has previously been convicted of:

(A) an offense described in Subsection (a)(1); or

(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subsection (a)(1).

Amend Section 1, creating Section 411.148, Government Code, by deleting Subsection (e) (at page 11, lines 17-24, House Engrossment).

Amend Section 1, creating Section 411.148, Government Code, by deleting "(f)" (at page 11, line 25, House Engrossment) inserting "(e)".

Amend Section 1, creating Section 411.150, Government Code, by deleting

subdivisions (1), (2) and (3) of Subsection (a) (at page 12, lines 14-27, and page 13, line 1, House Engrossment), and inserting the following:

(1) one or more of the following Penal Code provisions:

(A) Section 21.11 (indecenty with a child);

(B) Section 22.011 (sexual assault);

(C) Section 22.021 (aggravated sexual assault);

(D) Section 20.04(a)(4) (aggravated kidnapping), if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(E) Section 30.02 (burglary), if the offense is punishable under Subsection (d) and the defendant committed the offense with the intent to commit a felony listed in paragraph (A), (B), (C), or (D) of this subdivision; or

(2) a penal law if the juvenile has previously been adjudicated as having engaged in:

(A) a violation of a penal law described in Subsection (a)(1);

or

(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described by Subsection (a)(1).

Amend Section 1, creating Section 411.150, Government Code, by deleting Subsection (c) of Section 411.150 (at page 13, lines 6-13, House Engrossment).

Senate Amendment No. 2

Amend **HB 40** as follows:

(1) On page 3, between lines 12 and 13, insert a new Subsection (h) to read as follows:

(h) The department shall establish standards for DNA analysis by the DNA laboratory that meet or exceed the current standards for quality assurance and proficiency testing for forensic DNA analysis issued by the FBI. The DNA database may contain only DNA records of DNA analyses performed according to the standards adopted by the department.

(2) On page 3, strike lines 21-27 and substitute the following:

(c) Other purposes of the database include:

(1) assisting in the recovery or identification of human remains from a disaster or for humanitarian purposes;

(2) assisting in the identification of living or deceased missing persons;

and

(3) if personal identifying information is removed:

(A) establishing a population statistics database;

(B) assisting in identification research and protocol development; and

(C) assisting in database or DNA laboratory quality control.

(3) On page 8, strike lines 6-27, and on page 9, strike line 1, and substitute the following:

(c) The department may release a DNA sample, analysis, or record only:

(1) to a criminal justice agency for law enforcement identification purposes;

(2) for a judicial proceeding, if otherwise admissible under law;

(3) for criminal defense purposes to a defendant, if related to the case in which the defendant is charged; or

(4) if personally identifiable information is removed, for:

(A) a population statistics database;

(B) identification research and protocol development; or

(C) quality control.

(4) On page 9, line 2, strike "(f)" and substitute "(d)".

(5) On page 9, strike lines 5-6.

(6) On page 9, line 7, strike "(h)" and substitute "(e)".

(7) On page 9, line 10, strike "(i)" and substitute "(f)".

(8) On page 9, strike lines 12-23.

Senate Amendment No. 3

Amend **HB 40** as follows:

Delete Section 2, creating Article 38.351, Code of Criminal Procedure, (at page 15, lines 8-27, and page 16, lines 1-14, House Engrossment) and renumber the remaining sections accordingly.

HR 1173 - ADOPTED

Representative Black moved to suspend all necessary rules to take up and consider at this time **HR 1173**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Black,

HR 1173, Congratulating Shari and Marc Shivers on the birth of their daughter, Savannah Lynn Shivers.

The resolution was read and was adopted without objection.

On motion of Representative Hochberg, the names of all the members of the house were added to **HR 1173** as signers thereof.

HB 1023 - WITH SENATE AMENDMENT

Representative Coleman called up with a senate amendment for consideration at this time,

HB 1023, A bill to be entitled An Act relating to regulation of end stage renal disease facilities; providing penalties.

On motion of Representative Coleman, the house concurred in the senate amendment to **HB 1023**.

HB 1023 - TEXT OF SENATE AMENDMENT

CSHB 1023, A bill to be entitled An Act relating to regulation of end stage renal disease facilities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 251 to read as follows:

CHAPTER 251. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Department" means the Texas Department of Health.

(4) "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

(5) "Dialysis technician" means an individual who is not a registered nurse or physician and who provides dialysis care under the supervision of a registered nurse or physician.

(6) "End stage renal disease" means that stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.

(7) "End stage renal disease facility" means a facility that provides dialysis treatment or dialysis training to individuals with end stage renal disease.

- (8) "Medical review board" means a medical review board that:

(A) is appointed by a renal disease network organization which includes this state; and

(B) has a contract with the Health Care Financing Administration of the United States Department of Health and Human Services under Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section 1395rr).

(9) "Physician" means an individual who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

Sec. 251.002. FEES. (a) The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

(b) In setting fees under this section, the board shall consider setting a range of license and renewal fees based on the number of dialysis stations at each end stage renal disease facility and the patient census.

(c) An end stage renal disease facility owned or operated by a state agency is not required to pay fees imposed under this chapter.

Sec. 251.003. ADOPTION OF RULES. The board shall adopt rules to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility.

[Sections 251.004-251.010 reserved for expansion]

SUBCHAPTER B. LICENSING OF END STAGE

RENAL DISEASE FACILITIES

Sec. 251.011. LICENSE REQUIRED. Except as provided by Section 251.012, a person may not operate an end stage renal disease facility without a license issued under this chapter.

Sec. 251.012. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities are not required to be licensed under this chapter:

- (1) a home and community support services agency licensed under Chapter 142 with a home dialysis designation;

(2) a hospital licensed under Chapter 241 that provides dialysis only to individuals receiving inpatient services from the hospital; or

(3) the office of a physician unless the office is used primarily as an end stage renal disease facility.

Sec. 251.013. ISSUANCE AND RENEWAL OF LICENSE. (a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the board.

(b) Each application must be accompanied by a nonrefundable license fee.

(c) Each application must contain evidence that there is at least one qualified physician on the staff of the facility and that each dialysis technician on staff has completed the training program required by this chapter.

(d) The department may grant a temporary initial license to an applicant. The temporary initial license expires on the earlier of:

(1) the date the department issues or denies the license; or

(2) the date six months after the date the temporary initial license was issued.

(e) The department shall issue a license if, after inspection and investigation, it finds the applicant meets the requirements of this chapter and the standards adopted under this chapter.

(f) The license is renewable annually after submission of:

(1) the renewal application and fee; and

(2) an annual report on a form prescribed by the board.

(g) The annual report required under Subsection (f) must include information related to the quality of care at the end stage renal disease facility. The report must be in the form and documented by evidence as required by board rule.

Sec. 251.014. MINIMUM STANDARDS. (a) The rules adopted under Section 251.003 must contain minimum standards to protect the health and safety of a patient of an end stage renal disease facility, including standards for:

(1) the qualifications and supervision of the professional staff, including physicians, and other personnel;

(2) the equipment used by the facility is compatible with the health and safety of the patients;

(3) the sanitary and hygienic conditions in the facility;

(4) quality assurance for patient care;

(5) the provision and coordination of treatment and services by the facility;

(6) clinical records maintained by the facility;

(7) design and space requirements for the facility for safe access by patients and personnel and for ensuring patient privacy;

(8) indicators of the quality of care provided by the facility; and

(9) water treatment and reuse by the facility.

(b) The standards described in Subsection (a)(7) of this section shall apply only:

(1) to a facility which initiates the provision of end stage renal disease services on or after September 1, 1996; or

(2) to the area of a facility affected by design and space modifications or renovations completed after September 1, 1996.

Sec. 251.015. MEDICAL REVIEW BOARD. (a) A medical review board shall advise the board on minimum standards and rules to be adopted under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the department with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

[Sections 251.016-251.030 reserved for expansion]

SUBCHAPTER C. DIALYSIS TECHNICIANS

Sec. 251.031. TRAINING REQUIRED. An individual may not act as a dialysis technician employed by or working in an end stage renal disease facility unless that individual is trained and competent under this subchapter.

Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The rules adopted by the board under Section 251.003 shall establish:

(1) minimum standards for the curricula and instructors used to train individuals to act as dialysis technicians;

(2) minimum standards for the determination of the competency of individuals who have been trained as dialysis technicians;

(3) minimum requirements for documentation that an individual has been trained and determined to be competent as a dialysis technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and

(4) the acts and practices that are allowed or prohibited for dialysis technicians.

[Sections 251.033-251.050 reserved for expansion]

SUBCHAPTER D. INSPECTIONS

Sec. 251.051. INSPECTIONS. (a) The department may conduct an inspection of an end stage renal disease facility to verify compliance with this chapter, rules adopted under this chapter, or a corrective action plan under Section 251.061.

(b) An inspection conducted under this section may be unannounced.

Sec. 251.052. DISCLOSURE OF UNANNOUNCED INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the

date or time of or any other fact about an unannounced inspection of an end stage renal disease facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general; or

(3) any other person authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment.

[Sections 251.053-251.060 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 251.061. CORRECTIVE ACTION PLAN. (a) The department may use a corrective action plan as an alternative to enforcement action under this subchapter.

(b) Before taking enforcement action under this subchapter, the department shall consider whether the use of a corrective action plan under this section is appropriate. In determining whether to use a corrective action plan, the department shall consider whether:

(1) the end stage renal disease facility has violated this chapter or a rule adopted under this chapter and the violation has resulted in an adverse patient result;

(2) the facility has a previous history of lack of compliance with this chapter, rules adopted under this chapter, or a corrective action plan; or

(3) the facility fails to agree to a corrective action plan.

(c) The department may use a level one, level two, or level three corrective action plan, as determined by the department in accordance with this section, after inspection of the end stage renal disease facility.

(d) A level one corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter, but the circumstances are not serious or life-threatening. Under a level one corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor may supervise the implementation of the plan.

(e) A level two corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are potentially serious or life-threatening or if the department finds that the facility failed to implement or comply with a level one corrective action plan. Under a level two corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor shall supervise the implementation of the plan. Supervision of the implementation of the plan may include on-site supervision, observation, and direction.

(f) A level three corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are serious

or life-threatening or if the department finds that the facility failed to comply with a level two corrective action plan or to cooperate with the department in connection with that plan. Under a level three corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. In connection with requiring a level three corrective action plan, the department may seek the appointment of a temporary manager under Subchapter F.

(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under Chapter 552, Government Code, in accordance with that chapter or other applicable law.

(h) The department shall select the monitor for a corrective action plan. The monitor shall be an individual or team of individuals and may include a professional with end stage renal disease experience or a member of the medical review board. The monitor may not be or include individuals who are current or former employees of the facility that is the subject of the corrective action plan or of an affiliated facility. The purpose of the monitor is to observe, supervise, consult, and educate the facility and the employees of the facility under a corrective action plan. The facility shall pay the cost of the monitor.

Sec. 251.062. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license issued under this chapter for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Sec. 251.063. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of patients of an end stage renal disease facility.

(b) A district court, on petition of the department and on a finding that a person is violating this chapter or a rule adopted under this chapter, may by injunction:

(1) prohibit a person from continuing the violation;

(2) restrain or prevent the operation of an end stage renal disease facility without a license issued under this chapter; or

(3) grant other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the end stage renal disease facility is located or in Travis County.

Sec. 251.064. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 251.011 or 251.031.

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

(c) Each day of a continuing violation constitutes a separate offense.

Sec. 251.065. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not more than \$1,000 for each violation

if the department finds that the violation threatens the health and safety of a patient of an end stage renal disease facility.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Sec. 251.066. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Sec. 251.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) If after investigation of a possible violation and the facts surrounding that possible violation the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty, based on the factors listed in Section 251.066(c); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the recommended penalty.

Sec. 251.068. HEARING; ORDER. (a) If the person notified fails to respond in a timely manner to the notice under Section 251.067(b) or if the person requests a hearing, the commissioner or the commissioner's designee shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred.

Sec. 251.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The commissioner or the commissioner's designee shall give notice of the commissioner's order under Section 251.068(c) to the person notified. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the commissioner's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty in full;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:
(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:
(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Sec. 251.070. PENALTY DEPOSITED TO STATE TREASURY. A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 251.071. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date of a board order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 251.063 or 251.065 or to enforce an administrative penalty assessed under Section 251.066, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

[Sections 251.072-251.090 reserved for expansion]

SUBCHAPTER F. TEMPORARY MANAGER

Sec. 251.091. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in an end stage renal disease facility may, at any time, request the department to assume the management of the facility through the appointment of a temporary manager under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the temporary manager's appointment and authority; and

(2) preserve all rights of the individuals served by the facility granted by law.

(d) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement.

Sec. 251.092. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a temporary manager to manage an end stage renal disease facility if:

(1) the facility is operating without a license;

(2) the department has denied, suspended, or revoked the facility's license but the facility continues to operate;

(3) license denial, suspension, or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility;

(5) the facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure; or

(6) the department determines a level three corrective action plan under Section 251.061 that includes appointment of a temporary manager is necessary to address serious or life-threatening conditions at the facility.

(b) After a hearing, a court shall appoint a temporary manager to manage a facility if the court finds that the appointment of the manager is necessary.

(c) The court order shall address the duties and authority of the temporary manager, which may include management of the facility and the provision of dialysis services to facility patients until specified circumstances occur, such as new ownership of the facility, compliance with this chapter and rules adopted under this chapter, or closure of the facility.

(d) If possible, the court shall appoint as temporary manager an individual whose background includes administration of end stage renal disease facilities or similar facilities.

(e) Venue for an action under this section is in Travis County.

Sec. 251.093. FEE; RELEASE OF FUNDS. (a) A temporary manager appointed under Section 251.092 is entitled to a reasonable fee as determined by the court. The fee shall be paid by the facility.

(b) The temporary manager may petition the court to order the release to the manager of any payment owed the manager for care and services provided to patients of the facility if the payment has been withheld.

(c) Withheld payments that may be released under Subsection (b) may include payments withheld by a governmental agency or other entity before or during the appointment of the temporary manager, including:

(1) Medicaid, Medicare, or insurance payments; or

(2) payments from another third party.

SECTION 2. (a) Except as provided by Subsection (b) of this section and Section 3, this Act takes effect September 1, 1995.

(b) Sections 251.011 and 251.031 and Subchapter E, Chapter 251, Health and Safety Code, as added by this Act, take effect September 1, 1996.

SECTION 3. A person is not required to obtain a license under Subchapter B, Chapter 251, Health and Safety Code, as added by this Act, and an individual is not required to be trained and competent under Subchapter C, Chapter 251, Health and Safety Code, as added by this Act, until September 1, 1996.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 1826 - WITH SENATE AMENDMENTS

Representative Jackson called up with senate amendments for consideration at this time,

HB 1826, A bill to be entitled An Act relating to the approval of disposal system plans by the Texas Natural Resource Conservation Commission.

Representative Jackson 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 the bill.

The motion prevailed without objection.

HB 1826 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1826**: Jackson, chair, Corte, King, Culberson, and Johnson.

HB 2550 - WITH SENATE AMENDMENT

Representative Madden called up with a senate amendment for consideration at this time,

HB 2550, A bill to be entitled An Act relating to the regulation of food wholesalers and manufacturers and distributors of devices under the Texas Food, Drug, and Cosmetic Act.

On motion of Representative Madden, the house concurred in the senate amendment to **HB 2550**. (The vote was reconsidered later today, the house refused to concur in the senate amendment, and a conference committee was appointed.)

HB 2550 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 2550** following Section 8, by inserting a new Section 9 as follows and renumber accordingly:

Section 9. Subchapter L, Chapter 431, Health and Safety, is repealed.

HB 2603 - WITH SENATE AMENDMENTS

Representative Kubiak called up with senate amendments for consideration at this time,

HB 2603, A bill to be entitled An Act relating to the liability of certain volunteer fire departments.

On motion of Representative Kubiak, the house concurred in the senate amendments to **HB 2603**.

HB 2603 - TEXT OF SENATE AMENDMENTS

CSHB 2603, A bill to entitled An Act relating to the liability of and a motor vehicle liability self-insurance program for volunteer fire departments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.61 to read as follows:

Art. 21.61. VOLUNTEER FIRE DEPARTMENT MOTOR VEHICLE SELF-INSURANCE PROGRAM

Sec. 1. DEFINITIONS. In this article:

(1) "Fund" means the volunteer fire department self-insurance fund established under Section 5 of this article.

(2) "Program" means the volunteer fire department motor vehicle self-insurance program established under this article.

(3) "Service" means the Texas Forest Service of The Texas A&M University System.

(4) "Volunteer fire department" means a fire department operated by its members that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed as an exempt organization in Section 501(c)(3) of that code (26 U.S.C. Section 501(c)(3)).

Sec. 2. ADMINISTRATION OF PROGRAM. (a) The Texas Forest Service shall administer the volunteer fire department motor vehicle self-insurance program established under this article.

(b) The service may employ staff to administer the program.

Sec. 3. SELF-INSURANCE PROGRAM. (a) The service shall establish the program to:

(1) identify and evaluate risks arising from the use of motor vehicles by volunteer fire departments;

(2) maintain a loss-prevention and loss-control program to reduce risks arising from the use of motor vehicles by volunteer fire departments;

(3) consolidate and administer volunteer fire department risk management and self-insurance programs; and

(4) provide motor vehicle self-insurance coverage in accordance with Section 4 of this article.

(b) The director of the service may adopt rules to implement and administer the program.

Sec. 4. SELF-INSURANCE COVERAGE. (a) The program shall establish a self-insurance pool to provide coverage for motor vehicles used for fire fighting by a volunteer fire department.

(b) The coverage may indemnify an official, employee, member, or volunteer of a volunteer fire department for liability arising from the use of a covered motor vehicle in the performance of the fire fighting duties of the official, employee, member, or volunteer. The coverage must be subject to a maximum limit of \$100,000 for damages for bodily injury, death, or property damage arising out of a single occurrence.

(c) The director of the service may establish:

(1) eligibility requirements for participation in coverage under this section; and

(2) equipment and safety standards for the motor vehicle to be covered under this section.

(d) To participate in coverage provided under this section, a volunteer fire department must submit a written request to the program. The director of the program shall approve the request if each motor vehicle to be covered meets the eligibility requirements and equipment and safety standards established under Subsection (c) of this section.

Sec. 5. FUND. (a) The volunteer fire department self-insurance fund is an account in the general revenue fund.

(b) The fund is composed of:

(1) money collected under Section 6 of this article; and

(2) interest accruing on money in the fund.

(c) Money in the fund may be expended in accordance with legislative appropriation only for:

(1) administration of this article, including the salaries and expenses of staff for the program and the fund; or

(2) funding self-insurance under the program.

(d) Self-insurance coverage provided under Section 4 of this article may be funded only from money available from the fund.

(e) Coverage limits of self-insurance provided under Section 4 of this article must be based on the liquidity of the fund after deduction of the cost of administration of this article.

(f) The state's liability for a loss covered by self-insurance provided under this article is limited to the assets of the fund, and the state is not otherwise liable for that loss.

Sec. 6. SELF-INSURANCE FEE. (a) The service may levy and collect a reasonable fee from participating volunteer fire departments to provide self-insurance coverage under this article. In establishing the amount of the fee, the service shall consider the amount that could be charged to the volunteer fire department for similar insurance coverage provided to the department in accordance with this code.

(b) Fees collected under this section shall be deposited to the credit of the fund.

Sec. 7. REPRESENTATION OF INSURED. (a) The service may employ an attorney to represent a volunteer fire department or an official, employee, member, or volunteer of a volunteer fire department in a liability action for which insurance coverage is provided under this article.

(b) The attorney general may not provide the services described by Subsection (a) of this section.

SECTION 2. Section 101.001, Civil Practice and Remedies Code, is amended by amending Subdivision (2) and adding Subdivision (6) to read as follows:

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority; [~~and~~]

(C) a volunteer fire department; and

(D) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

(6) "Volunteer fire department" means a fire department that is:

(A) operated by its members; and

(B) exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed as an exempt organization in Section 501(c)(3) of that code (26 U.S.C. Section 501(c)(3)).

SECTION 3. Section 101.023, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) Except as provided by Section 78.001, liability of a volunteer fire department under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

SECTION 4. This Act takes effect September 1, 1995.

SECTION 5. (a) The volunteer fire department motor vehicle self-insurance program established under Section 3, Article 21.61, Insurance Code, as added by this Act, may not provide insurance coverage under Section 4 of that article before January 1, 1996.

(b) Notwithstanding Section 5, Article 21.61, Insurance Code, as added by this Act, the volunteer fire department self-insurance fund established under that section may include amounts appropriated to the fund until August 31, 1997. The initial self-insurance fee set under Section 6, Article 21.61, as added by this Act, must be established in an amount sufficient to refund to the general revenue fund any appropriation made to the volunteer fire department self-insurance fund. The refund contemplated by this subsection shall be made not later than August 31, 1997.

SECTION 6. The change in law made by this Act to Chapter 101, Civil Practice and Remedies Code, applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the

effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 2603** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 101.001, Civil Practice and Remedies Code, is amended by amending Subdivision (2) and adding Subdivision (6) to read as follows:

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority; ~~and~~

(C) a volunteer fire department; and

(D) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

(6) "Volunteer fire department" means a fire department that is:

(A) operated by its members; and

(B) exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed as an exempt organization in Section 501(c)(3) of that code (26 U.S.C. Section 501(c)(3)).

SECTION 2. Section 101.023, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) Except as provided by Section 78.001, liability of a volunteer fire department under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

SECTION 3. This Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several

days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 2550 - VOTE RECONSIDERED

Representative Madden moved to reconsider the vote by which the house concurred in the senate amendment to **HB 2550**.

The motion to reconsider prevailed.

Representative Berlanga offered a substitute motion that the house not concur and that a conference committee be requested to adjust the differences between the two houses on the bill.

(Speaker pro tempore in the chair)

The motion prevailed.

HB 3021 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3021**: Kuempel, chair, Kubiak, Moreno, Heflin, and Carter.

HB 2644 - WITH SENATE AMENDMENT

Representative Hilderbran called up with a senate amendment for consideration at this time,

HB 2644, A bill to be entitled An Act relating to licensing and Medicaid certification requirements for certain nursing facilities and related penalties and dispute resolution.

Representative Hilderbran moved that the house concur in the senate amendment to **HB 2644**.

The motion was withdrawn.

HB 2850 - WITH SENATE AMENDMENT

Representative Naishtat called up with a senate amendment for consideration at this time,

HB 2850, A bill to be entitled An Act relating to the regulation of the indoor air quality of certain school district buildings.

On motion of Representative Naishtat, the house concurred in the senate amendment to **HB 2850**.

HB 2850 - TEXT OF SENATE AMENDMENT

CSHB 2850, A bill to be entitled An Act relating to the regulation of the indoor air quality of certain school district buildings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 385 to read as follows:

CHAPTER 385. INDOOR AIR QUALITY
IN SCHOOL DISTRICT BUILDINGS

Sec. 385.001. DEFINITIONS. In this chapter:

(1) "Air contaminant" means a gaseous, liquid, or solid substance or combination of substances that is in a form that is transported by or in air and has the potential to be detrimental to human health.

(2) "Board" means the Texas Board of Health.

(3) "Indoor air pollution" means the presence, in an indoor environment, of one or more air contaminants in sufficient concentration and of sufficient duration to be capable of causing adverse effects to human health.

(4) "Public school" means a building owned by a public school district or leased by a public school district for three months or more that is used by the district for a purpose that involves regular occupancy of the building by students.

Sec. 385.002. POWERS AND DUTIES OF BOARD. (a) The board by rule shall establish voluntary guidelines for indoor air quality in public schools, including guidelines for ventilation and indoor air pollution control systems. The board may adopt other rules necessary to implement this chapter.

(b) In establishing the guidelines, the board shall consider:

(1) the potential chronic effects of air contaminants on human health;

(2) the potential effects of insufficient ventilation of the indoor environment on human health;

(3) the potential costs of health care for the short-term and long-term effects on human health that may result from exposure to indoor air contaminants; and

(4) the potential costs of compliance with a proposed guideline.

(c) A guideline adopted under this chapter may include a contaminant concentration, a control method, a sampling method, a ventilation rate, design, or procedure, or a similar recommendation.

(d) The board's guidelines may differ for different pollution sources or different areas of the state.

Sec. 385.003. LIABILITY AND IMMUNITY. This chapter does not create liability for a school board for an injury caused by the failure to comply with the voluntary guidelines established under Section 385.002.

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 2891 - WITH SENATE AMENDMENT

Representative Hilderbran called up with a senate amendment for consideration at this time,

HB 2891, A bill to be entitled An Act relating to reports to the legislature by state health and human services agencies and to the long-term care state plan for the elderly.

On motion of Representative Hilderbran, the house concurred in the senate amendment to **HB 2891**.

HB 2891 - TEXT OF SENATE AMENDMENT

CSHB 2891, A bill to be entitled An Act relating to reports to the legislature by state health and human services agencies and to the long-term care state plan for the elderly.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.011, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) The report required by Subsection (b) must include fees for professional services or consultative services provided for the general administration of the department but may not include:

(1) professional fees paid for routine or special examinations for the purpose of determining eligibility of individuals for a program administered by the department;

(2) professional fees for treatment, services, or care for individual recipients; or

(3) fees for providing special needs or appliances for individual recipients.

SECTION 2. Section 33.002(d), Human Resources Code, is amended to read as follows:

(d) The department shall continually monitor the expedited issuance of food stamp benefits to ensure that each region in the state complies with federal regulations and that those households eligible for expedited issuance are identified, processed, and certified within the timeframes prescribed within the federal regulations. As soon as practicable after the end of each fiscal [Once each] year, the department shall [also present a] report to the Governor's Office of Budget and Planning [governor], the Legislative Budget Board, the state auditor [legislature], and the department's board members regarding its monitoring of expedited issuance and the degree of compliance with federal regulations on a region-by-region basis. The department shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

SECTION 3. Section 33.024(j), Human Resources Code, is amended to read as follows:

(j) Not later than November 1 of each even-numbered year, the [The] department and the agency shall provide to the Governor's Office of Budget and Planning, the Legislative Budget Board, and the state auditor a report that includes [74th Legislature and 75th Legislature biennial reports which shall include] a listing of school districts identified as described in Subsection (c) that [which] have become sponsors of a summer program. The report must [reports shall] also include a listing of identified school districts that failed to satisfy the requirements of this section. The report must [reports shall] also include the costs, above federal funds, incurred by the school districts and the state in order to comply with this section. The department shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

SECTION 4. The heading to Chapter 50, Human Resources Code, is amended to read as follows:

CHAPTER 50. LICENSING [~~CERTIFICATION~~]

SECTION 5. Section 50.007, Human Resources Code, is amended to read as follows:

Sec. 50.007. ANNUAL REPORT. The [As part of the annual report required by Section 21.011 of this code, the] commissioner of public health shall file with the governor and the presiding officer of each house of the legislature [include] a written report regarding the department's work in licensing [certifying] social workers during the preceding fiscal year. The report must be filed not later than November 1 of each year.

SECTION 6. Section 51.006, Human Resources Code, is amended to read as follows:

Sec. 51.006. REPORT. Not later than November 1 of each even-numbered year [Prior to each regular session of the legislature], the department shall publish a report that summarizes reports from family violence shelter centers under contract with the department and that analyzes the effectiveness of the contracts authorized by this chapter. The reports must include information on the expenditure of funds authorized under this chapter, the services provided, the number of persons for whom a service was provided, and any other information relating to the provision of family violence services. The report may be combined with the report required by Section 21.011. Copies of the report shall be submitted to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the standing committees of the senate and house of representatives having primary jurisdiction over the department [the Senate Committee on Human Resources, and the House Committee on Human Services or their successor committees].

SECTION 7. Section 91.012(c), Human Resources Code, is amended to read as follows:

(c) The executive director shall:

~~[(1)] adopt personnel policies;~~

~~[(2)] prepare and submit to the commission an annual report of commission activities and expenditures; and~~

~~[(3)] before each regular session of the legislature, estimate the amount of funds necessary to administer commission programs and the amount available from all sources for those purposes].~~

SECTION 8. Section 91.053(b), Human Resources Code, is amended to read as follows:

(b) The commission shall negotiate agreements or plans with the federal government and shall adopt efficient methods of administration and comply with other conditions required to secure the full benefits of the federal laws. If the commission determines that a provision of state law precludes conformity with a federal requirement and limits federal financial support, the commission:

(1) may waive or modify the state law to the extent necessary to obtain the full benefits of the federal law; and

(2) shall include in the report required by Section 91.019 a description of the manner in which state law conflicts with federal law.

SECTION 9. Section 101.0061(f), Human Resources Code, is amended to read as follows:

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, ~~disability~~ [handicap], sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the agency work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underuse in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance. [~~The policy statement shall be filed with the governor's office before November 1, 1985, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature.~~]

SECTION 10. Section 101.008(c), Human Resources Code, is amended to read as follows:

(c) The board 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 funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act. The report must include information concerning the amount of matching funds required for federal grants to local retired senior volunteer programs.

SECTION 11. Subchapter B, Chapter 101, Human Resources Code, is amended by adding Section 101.0252 to read as follows:

Sec. 101.0252. REPORT ON UNIT COSTS. The department shall file with the Legislative Budget Board and the Governor's Office of Budget and Planning a report that clearly identifies the unit cost of each service, other than services related to community service volunteering and subsidized employment services, provided by an area agency on aging. The report must be filed twice each year on or before the date specified by the Legislative Budget Board. The report must be in the form required by the Legislative Budget Board.

SECTION 12. Section 101.049, Human Resources Code, is amended to read as follows:

Sec. 101.049. ANNUAL REPORT [~~DEPARTMENT REPORTS~~]. (a) The department shall annually report [~~submit periodic reports~~] on the program to the governor and the presiding officer of each house of the legislature.

(b) The report must include information concerning the manner in which the department has provided services under the program to elderly persons entitled to priority under Section 101.043(a).

(c) The report must be submitted not later than November 1 of each even-numbered year. The report may be combined with the report required by Section 101.008.

SECTION 13. Section 101.062, Human Resources Code, is amended to read as follows:

Sec. 101.062. ANNUAL REPORT. (a) The office shall prepare an annual report that contains:

(1) information and findings relating to the problems and complaints of elderly residents; and

(2) policy, regulatory, and legislative recommendations to solve the problems, resolve the complaints, and improve the quality of the elderly residents' care and lives.

(b) The report must be submitted to the governor and the presiding officer of each house of the legislature not later than November 1 of each even-numbered year. The report may be combined with the report required by Section 101.008.

SECTION 14. Section 122.018(a), Human Resources Code, is amended to read as follows:

(a) On or before November ~~January~~ 1 of each year, the committee shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the committee during the preceding year.

SECTION 15. Section 131.002, Human Resources Code, is amended to conform to Section 14, Chapter 747, Acts of the 73rd Legislature, Regular Session, 1993, and is amended to read as follows:

Sec. 131.002. POWERS AND DUTIES. (a) The office shall:

(1) collect data on health and human services client transportation needs, services, and expenditures;

(2) create a statewide coordination plan regarding a system of transportation for clients of health and human services agencies, including the designation of local transportation coordinators;

(3) establish standards of reporting and accounting methods for all agencies providing health and human services client transportation;

(4) maximize federal funds for client transportation through the use of available state funds for matching purposes and the possible use of oil overcharge money and planning funds available through the federal department of transportation;

(5) evaluate the effectiveness of pooling client transportation resources for capital acquisition and the joint purchase of liability insurance;

(6) assist state agencies in coordinating transportation resources;

(7) ensure coordination between the office and the Texas Department of Transportation with regard to the use of funds received by the department under 49 U.S.C. Section 1612(b)(1);

(8) examine the feasibility of consolidating all funding for health and human services client transportation and creating a transportation system through which clients of a state or local agency or program could be matched with the most cost-effective and appropriate transportation services for their needs; ~~and~~

(9) evaluate the use of existing computer software for use at the local level in client transportation services; and

(10) review the feasibility of taking medical care to those in need, including the use of mobile clinics, and review the possibility of using federal highway funds for those transportation needs.

(b) The Health and Human Services Transportation and Planning Office shall coordinate with the Health and Human Services Commission and health and human services agencies in implementing the goals listed in Section 10(b), Article 4413(502), Revised Statutes. The office shall report its findings and proposals to the governor, the Legislative Budget Board, the secretary of state, and the commissioner of health and human services not later than September 1 of each even-numbered year.

SECTION 16. Section 141.0475(a), Human Resources Code, is amended to read as follows:

(a) The commission and the [Texas] Department of Protective and Regulatory [Human] Services shall maintain a joint memorandum of understanding to coordinate local-level interagency service delivery to runaways. The memorandum must:

(1) require local county-level agreements to be signed by the department and local juvenile probation offices receiving state aid and to be updated annually that:

(A) designate the entity responsible for initial assessment for the service needs for runaways;

(B) require joint investigations on request of either entity when abuse or neglect is suspected and jurisdiction is unclear;

(C) require the local offices of the two entities to contact each other before a runaway case file is closed;

(D) provide for a plan to develop additional voluntary and purchased community resources for runaways;

(E) provide a plan to coordinate services for runaways with law enforcement and local school districts; and

(F) provide for each local entity to jointly present a plan to the commissioners of a county with a high number of runaways for developing or contracting for emergency services for runaways that includes a specific request for funding for needed services for runaways and their families and encourages and allows intercounty efforts to provide services for runaway children;

(2) provide for the development of a model cooperative agreement to be distributed to local agencies;

(3) designate the number of runaways for each county that shall be considered as a high number;

(4) provide for a procedure in which foster homes may be dually licensed or approved by both the department and the local juvenile probation department to serve runaways; and

(5) require both agencies to report, as part of the reports required by Article 4413(503), Revised Statutes, and Section 141.024, Human Resources Code [annually to the governor, lieutenant governor, and speaker of the house of representatives] regarding:

(A) the types of services offered to runaways and their families;

(B) the number of runaways and families receiving each type of service; and

(C) the number of runaways and families who were eligible to receive each service but who were not served because of staff or resource shortfalls.

SECTION 17. Subchapter F, Chapter 552, Government Code, is amended by adding Section 552.270 to read as follows:

Sec. 552.270. REPORT BY STATE AGENCY ON COST OF COPIES.

(a) Not later than December 1 of each even-numbered year, each state agency shall file a report with the Legislative Budget Board, comptroller, and General Services Commission describing the agency's procedures for charging and collecting fees for copies of public records.

(b) In this section, "state agency" has the meaning assigned by Sections 1.02(2)(A) and (C), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 18. Section 2052.001, Government Code, is amended by adding Subsection (c) to read as follows:

(c) On receipt of a report under Subsection (a), the secretary of state shall send a copy to each of the standing committees of the senate and house of representatives having primary jurisdiction over the state agency that submitted the report.

SECTION 19. Section 2052.003, Government Code, is amended to read as follows:

Sec. 2052.003. REPORT ON EQUAL EMPLOYMENT OPPORTUNITIES [OF HANDICAPPED]. (a) A state agency that sends to the governor an annual report on equal employment opportunities with the agency shall include in the statistical information of the report information relating to the number of:

(1) [~~handicapped~~] individuals with disabilities whom [~~that~~] the agency employs; and

(2) individuals for whom state or federal guidelines encourage a more equitable balance whom the agency employs.

(b) In this section, "individual with a disability" [~~"handicapped individual"~~] means an individual who has:

(1) a mental disability or impairment, including mental retardation; or

(2) a physical disability [~~handicap~~] or impairment, including:

(A) an impairment [~~mental retardation, hardness~~] of hearing, [~~deafness, a~~] speech, or vision;

(B) [~~impairment,~~] blindness;

(C) deafness; [;] or

(D) a crippling condition that requires special ambulatory devices or services.

(c) The term "individual with a disability" does not include an individual whose sole disability [~~handicap~~] or impairment is addiction to the use of alcohol or to a drug or other controlled substance.

SECTION 20. Article 4413(503), Revised Statutes, is amended by adding Section 16 to read as follows:

Sec. 16. REPORTS. A report required by law concerning the department's expenditures must include fees for professional services or consultative services provided for the general administration of the department but may not include:

(1) professional fees paid for routine or special examinations for the purpose of determining eligibility of individuals for a program administered by the department;

(2) professional fees for treatment, services, or care for individual recipients; or

(3) fees for providing special needs or appliances for individual recipients.

SECTION 21. Section 20, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. ANNUAL REPORT. As part of the report required by Section 11.017, Health and Safety Code, the Texas Board of Health shall include [Not later than the 90th day after the last day of each state fiscal year, the board shall submit to the governor, lieutenant governor, and speaker of the house] a report about the activities of the Texas State Board of Examiners of Professional Counselors [board] during the preceding fiscal year.

SECTION 22. Not later than November 1, 1996, the Texas Department of Human Services shall report to the standing committees of the senate and the house of representatives having primary jurisdiction over the department on the status of the pilot program required by Chapter 830, Acts of the 73rd Legislature, Regular Session, 1993. The department shall notify each member of the legislature of the report and shall provide a copy of the report to each member who requests one.

SECTION 23. The following provisions are repealed:

- (1) Sections 21.0051(d), 31.013, 81.008(e), 81.011, 91.017(b), 101.022(f), 101.031, Human Resources Code;
- (2) Section 8(f), Article 4413(502), Revised Statutes;
- (3) Section 10(f), Article 4413(503), Revised Statutes; and
- (4) Section 14, Chapter 747, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 24. This Act takes effect September 1, 1995.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 3028 - WITH SENATE AMENDMENTS

Representative Ehrhardt called up with senate amendments for consideration at this time,

HB 3028, A bill to be entitled An Act relating to security deposits and application deposits provided by residential tenants and prospective residential tenants and lease obligations of certain successor landlords; providing a civil penalty.

On motion of Representative Ehrhardt, the house concurred in the senate amendments to **HB 3028**.

HB 3028 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1

Amend SECTION 5 of **HB 3028** as follows:

- by deleting Section 92.333(b)
- by deleting the phrase "on or before the required date" in Section 92.333(c), and
- by deleting Section 92.334(b)

Senate Amendment No. 2

Amend **HB 3028** as follows:

On page 1, lines 31-37, (committee printing) delete subsection (d).

HB 3101 - WITH SENATE AMENDMENTS

Representative Pitts called up with senate amendments for consideration at this time,

HB 3101, A bill to be entitled An Act relating to application of usury laws to certain purchases of accounts receivable.

Representative Pitts 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 the bill.

The motion prevailed without objection.

HB 3101 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3101**: Pitts, chair, Romo, Hudson, Brady, and Staples.

HB 52 - WITH SENATE AMENDMENTS

Representative McCall called up with senate amendments for consideration at this time,

HB 52, A bill to be entitled An Act relating to the authority of state and local governments to make purchases and contracts and to engage in certain projects.

Representative McCall 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 the bill.

The motion prevailed without objection.

HB 52 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 52**: McCall, chair, Park, Madden, Brady, and Hamric.

HB 93 - WITH SENATE AMENDMENT

Representative Kamel called up with a senate amendment for consideration at this time,

HB 93, A bill to be entitled An Act relating to the penalty for the offense of intoxication manslaughter.

On motion of Representative Kamel, the house concurred in the senate amendment to **HB 93**.

HB 93 - TEXT OF SENATE AMENDMENT

CSHB 93, A bill to entitled An Act relating to the imposition of a sentence for the offense of intoxication manslaughter.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3.03, Penal Code, is amended to read as follows:

Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE. (a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided by Subsection (b), the [Such] sentences shall run concurrently.

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense under Section 49.08; or

(2) an offense for which a plea agreement was reached in a case in which the accused was charged with more than one offense under Section 49.08.

SECTION 2. (a) The change in law made by this Act applies to the joinder of prosecutions of offenses arising out of a single criminal episode only if each offense is committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) The joinder of prosecutions for offenses arising out of a single criminal episode if any of the offenses were committed before the effective date of this Act is covered by the law in effect before the changes made by this Act, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 576 - WITH SENATE AMENDMENTS

Representative Pitts called up with senate amendments for consideration at this time,

HB 576, A bill to be entitled An Act relating to theft by check, issuance of bad checks, and collection of processing fees for dishonored checks; providing penalties.

On motion of Representative Pitts, the house concurred in the senate amendments to **HB 576**.

HB 576 - TEXT OF SENATE AMENDMENTS

CSHB 576, A bill to be entitled An Act relating to theft by check, issuance of bad checks, and collection of processing fees for dishonored checks; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.06(a), Penal Code, is amended to read as follows:

(a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money,

when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, it is prima facie evidence of his intent to deprive the owner of property under Section 31.03 (Theft) including a drawee or third-party holder in due course who negotiated the check or to avoid payment for service under Section 31.04 (Theft of Service) [is presumed] (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

SECTION 2. Section 32.41(c), Penal Code, is amended to read as follows:

(c) Notice for purposes of Subsection (b)(2) may be notice in writing, sent by registered or certified mail with return receipt requested, ~~[or]~~ by telegram with report of delivery requested, or by first class mail if the letter was returned unopened with markings indicating that the address is incorrect and that there is no current forwarding order, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee; or

(3) the records of the person to whom the check or order has been issued or passed.

SECTION 3. Subchapter E, Chapter 153, Tax Code, is amended by adding Section 153.409 to read as follows:

Sec. 153.409. ISSUANCE OF BAD CHECK TO PERMITTED DISTRIBUTOR OR PERMITTED SUPPLIER. (a) A person commits an offense if:

(1) the person issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance;

(2) the payee on the check or order is a permitted distributor or permitted supplier; and

(3) the payment is for an obligation or debt that includes a tax under this chapter to be collected by the permitted distributor or permitted supplier.

(b) Sections 32.41(b), (c), (d), (e), and (g), Penal Code, apply to an offense under this section in the same manner as those provisions are applicable to the offense under Section 32.41(a), Penal Code.

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

(d) A person who makes payment on an obligation or debt that includes a tax under this chapter and pays with an insufficient funds check issued to a permitted distributor or permitted supplier may be held liable for a penalty equal to the total amount or tax not paid to the permitted distributor or permitted supplier.

SECTION 4. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of

this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 1995.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 576** as follows:

(1) In SECTION 1 of the bill, on page 1, line 13, after the words "Section 31.06(a)" insert the words "and (b)".

(2) Between lines 31 and 32, insert the following:

"(b) For purposes of Subsection (a)(2), notice may be actual notice or notice in writing that:

(1) is[;] sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested;

(2) is[; and] addressed to the issuer at his address shown on:

(A) [(+)] the check or order;

(B) [(2)] the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

(3) On page 1, line 45, insert the following new SECTION 3, and renumber sections accordingly:

"SECTION 3. Subsection (c), Section 32.41, Penal Code is amended to read as follows:

(c) Notice for purposes of Subsection (b)(2) may be actual notice or notice in writing that:

(1) is[;] sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested[;]

(2) is[; and] addressed to the issuer at his address shown on:

(A) [(+)] the check or order;

(B) [(2)] the records of the bank or other drawee; or

(C) [(3)] the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

Senate Amendment No. 2

Add the following new SECTION to the proposed committee substitute for **HB 576** and renumber the existing sections accordingly:

SECTION _____. Section 31.06, Penal Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) For purposes of Subsection (a)(2) or (f)(3), notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

- (1) the check or order;
- (2) the records of the bank or other drawee; or
- (3) the records of the person to whom the check or order has been issued or passed.

(f) If the actor obtained property by issuing or passing a check or similar sight order for the payment of money, the actor's intent to deprive the owner of the property under Section 31.03 (theft) is presumed, except in the case of a postdated check or order, if:

(1) the actor ordered the bank or other drawee to stop payment on the check or order;

(2) the bank or drawee refused payment to the holder on presentation of presentation of the check or order within 30 days after issue;

(3) the owner gave the actor notice of the refusal of payment and made a demand to the actor for payment or return of the property; and

(4) the actor failed to:

(A) pay the holder within 10 days after receiving the demand for payment; or

(B) return the property to the owner within 10 days after receiving the demand for return of the property.

HB 809 - WITH SENATE AMENDMENT

Representative Williamson called up with a senate amendment for consideration at this time,

HB 809, A bill to be entitled An Act relating to the purposes for which funds received by local crime stoppers programs may be used, including the installation of signs on the right-of-way of public highways.

On motion of Representative Williamson, the house concurred in the senate amendment to **HB 809**.

HB 809 - TEXT OF SENATE AMENDMENT**Senate Amendment No. 1**

Amend **HB 809** as follows:

Strike Section 3 and renumber subsequent sections appropriately.

HB 982 - WITH SENATE AMENDMENTS

Representative McDonald called up with senate amendments for consideration at this time,

HB 982, A bill to be entitled An Act relating to the children's trust fund and the Children's Trust Fund of Texas Council operating fund.

Representative McDonald 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 the bill.

The motion prevailed without objection.

HB 982 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 982**: McDonald, chair, S. Turner, Harris, Coleman, and Junell.

HB 1020 - WITH SENATE AMENDMENT

Representative Marchant called up with a senate amendment for consideration at this time,

HB 1020, A bill to be entitled An Act relating to the regulation of savings banks.

On motion of Representative Marchant, the house concurred in the senate amendment to **HB 1020** by (Record 563): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Romo; Rusling; Sadler; Saunders; Serna; Shields; Siebert; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

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

Absent, Excused — Denny.

Absent — Mowery; Ogden; Rodriguez; Seidlits; Smithee; Staples; Wilson; Zbranek.

STATEMENT OF VOTE

When Record No. 563 was taken, I was in the house but away from my desk. I would have voted yes.

Zbranek

HB 1020 - TEXT OF SENATE AMENDMENT

CSHB 1020, A bill to be entitled An Act relating to the regulation of savings banks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.03(1), Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Administrative procedure act" means Chapter 2001, Government Code [~~the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

SECTION 2. Section 2.05(a), Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An application to incorporate a savings bank must be in a form specified by the commissioner, signed by each incorporator, and submitted to the commissioner with the filing fee. An application consists of:

(1) two copies of the proposed articles of incorporation setting forth the name of the savings bank, the site of the principal office, and the names and addresses of the initial directors;

(2) two copies of the bylaws under which the savings bank proposes to operate;

(3) statements, exhibits, maps, and other data sufficiently detailed and comprehensive to enable the commissioner to make findings under Section 2.11 of this Act;

(4) other information relating to the proposed savings bank and its operation required by the rules of the commissioner and the finance commission; and

(5) financial information about the applicants, incorporators, directors, officers, or stockholders required by the rules of the commissioner and the finance commission.

SECTION 3. Section 2.10, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) When a complete application to incorporate as defined by rules adopted by the commissioner and the finance commission is filed, the commissioner shall issue public notice of the application and shall give any interested party an opportunity to appear, present evidence, and be heard for or against the application. A hearing officer designated by the commissioner shall hold the hearing. A hearing is not required if:

(1) no party provides written notice to the commissioner, before the 11th day after the date of publication of the notice of application, of the party's intention to appear and present evidence at the hearing; and

(2) the commissioner finds that the application complies with all statutory requirements for approval.

(c) Not later than the 30th day after the date of the completion of a hearing, the commissioner shall enter a final order approving or denying the application. An applicant may appeal a final order to a district court of Travis County with the commissioner as defendant. A party to the action in the district court of Travis County may appeal to the appellate court having

jurisdiction of the cause. The appeal is immediately returnable to the appellate court having jurisdiction of the cause, and that action has precedence in that appellate court over all causes of a different character pending in that court. The commissioner is not required to give an appeal bond in a cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

SECTION 4. Chapter 2, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended by adding Section 2.15 to read as follows:

Sec. 2.15. PREFERENCE FOR LOCAL CONTROL. If more than one application to incorporate a new savings bank or establish an additional office of an existing savings bank in the same community is before the commissioner at the same time, the commissioner may give additional weight to the application having the greater degree of control vested in or held by residents of the community.

SECTION 5. Sections 3.07(c) and (g), Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The applicant shall pay a filing fee when the applicant files an application. A proposal to acquire voting securities of a savings bank subject to this section may be made by an individual, two or more individuals acting in concert, any type of partnership, corporation, syndicate, trust, or any other organization, or any combination of those individuals or entities. The information required by the commissioner may be required of each member of the group, as directed by the commissioner. Notice of the application, its date of filing, and the identity of all parties to the application shall be submitted to the Texas Register by the commissioner on receipt of the application for publication in the next issue of the Texas Register following the date the information is received, except that the commissioner may waive the requirement that a notice be published or permit delay of the publication if the commissioner determines that the waiver or delay is in the public interest. Information obtained by the commissioner under this section, other than published information, is confidential and may not be disclosed by the commissioner or any officer or employee of the Savings and Loan Department of Texas, except nothing in this section prohibits the commissioner from disclosing, on request, the identity of the actual or beneficial owner of any savings bank chartered under this Act, and the information that would have been contained in a published notice that the commissioner waived becomes public information under Chapter 552, Government Code, on the 34th day after the date the application is filed. The commissioner, in the commissioner's discretion and if the commissioner deems it necessary or proper in the enforcement of the laws of any state or the United States and in the best interest of the public, may also divulge information to any appropriate banking agency or any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States.

(g) Not later than the 60th day after the date of the filing of the application, the commissioner shall approve the application without a hearing or notify the proposed transferee in writing of the commissioner's intent to deny the application based on the requirements of this section. The notice must state the grounds for denial. The proposed transferee may file a written request for

hearing on the application before the 31st day after the date the notice of intent to deny is mailed to the proposed transferee. The commissioner may immediately enter an order denying the application if a hearing is not timely requested, and the order is final and nonappealable. If the proposed transferee requests a hearing ~~[When the commissioner determines that an application for approval of change of control is complete]~~, the commissioner shall issue public notice of the application and shall give any interested party an opportunity to appear, present evidence, and be heard for or against the application. A hearing officer designated by the commissioner shall hold the hearing. ~~After the [A hearing is not required if no party provides written notice to the commissioner, within 10 days of the date of publication of the notice of application, of intention to appear and present evidence at the hearing and if the commissioner finds that the application complies with all statutory requirements for approval within 30 days after the date of the completion of a]~~ hearing, the commissioner shall enter a final order either approving or denying the application. An applicant may appeal a final order to a district court of Travis County with the commissioner as defendant. Either party to the action may appeal from the district court of Travis County to the appellate court having jurisdiction of the cause. The appeal is at once returnable to the appellate court having jurisdiction of the cause, and that action has precedence in that appellate court over all causes of a different character pending in that court. The commissioner is not required to give any appeal bond in any cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

SECTION 6. Section 4.02, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. ANNUAL INDEPENDENT AUDIT REQUIRED. (a) Each savings bank shall obtain within 90 days after the date of the close of each of its fiscal years an audit by an independent accounting firm that is a member of the American Institute of Certified Public Accountants or its successor. Copies of the audit together with all correspondence reasonably related to the audit shall be provided to the commissioner. The commissioner and the finance commission may adopt rules as necessary to implement this section.

(b) An audit under this section is not required if the savings bank:

- (1) received at its most recent examination a composite rating of 1 or 2 on the CAMEL financial institution rating scale; or
- (2) had at the beginning of its current fiscal year consolidated assets of \$500 million or less.

SECTION 7. Section 4.08, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.08. CONFIDENTIALITY. (a) Except as otherwise provided by this Act or rules adopted under this Act, the [The] commissioner and any examiner, supervisor, conservator, liquidator, inspector, deputy, assistant clerk, or other employee of the Savings and Loan Department of Texas appointed or acting under this Act shall keep confidential any facts or information regarding a financial institution or a shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, other than a public statement or a public portion of a call report or profit and loss statement,

regardless of whether the facts or information is obtained through application, examination, or otherwise. All related files and records of the department are confidential and may not be disclosed [savings bank obtained in the course of an examination or by reason of the individual's official position, unless the public duty of the person requires otherwise]. A person who violates this section or wilfully makes a false official report on the condition of a financial institution [savings bank] shall be removed from office or further employment with the Savings and Loan Department of Texas.

(b) A report of an examination made to the commissioner is confidential and not for public record or inspection, except that the commissioner for good reason may make the report public.

(c) This section does not prevent the proper exchange of information relating to savings banks and the business of savings banks with the representatives of regulatory authorities of other states or to any other department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines the disclosure necessary or proper for the enforcement of the laws of this state, another state, or the United States.

(d) Unless otherwise provided by this Act, this section does not apply to facts, information, or reports of investigations obtained or made by the commissioner or the commissioner's staff in connection with an application for charter or a hearing held by the commissioner under this Act, and those facts, information, or reports may be included in the record of the appropriate hearing.

(e) The commissioner shall report promptly to the finance commission when a supervisory order is issued under Chapter 5 of this Act. The commissioner shall furnish information about a savings bank or person as the finance commission may require in executive session, and all information discussed in the executive session is confidential.

(f) Confidential information that is provided to a financial institution or an affiliate or service provider of a financial institution, whether in the form of a report of examination or otherwise, is the confidential property of the department. Unless approved in writing by the commissioner or authorized by rules adopted under this section, the information may not be made public or disclosed in any manner by the recipient, or by an officer, director, manager, employee, or agent of the recipient, to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, or independent auditor.

(g) Discovery of confidential information under subpoena or other legal process from a person subject to this section must comply with rules adopted under this Act. The rules may restrict release of confidential information to that portion directly relevant to the legal dispute involved and may require that a protective order, in the form and under circumstances specified by the rules, be issued by a court of competent jurisdiction before release of confidential information.

(h) Notwithstanding any other law, the commissioner may refuse to release any information or record in the custody of the department if the commissioner believes release of the information or record might jeopardize an investigation of possibly unlawful activities.

SECTION 8. Section 6.03(a), Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person may not be a member of the board of directors of a savings bank if the person:

- (1) ~~[is not a citizen of the United States;~~
- ~~[(2)]~~ is not at least 18 years of age;
- (2) ~~[(3)]~~ has been adjudicated bankrupt or convicted of a criminal offense involving dishonesty or breach of trust, unless given prior written approval to be a member of the board by the commissioner;
- (3) ~~[(4)]~~ has a final judgment entered against the person for a sum of money that has remained unsatisfied or unsecured for more than six months after the date of the judgment's entry, unless the commissioner gives the person prior written approval to be a member of the board or unless the judgment was satisfied of record more than one year before the date of the election; or
- (4) ~~[(5)]~~ is a director, officer, or employee of another savings bank, unless given the prior written approval to be a member of the board by the commissioner.

SECTION 9. Section 7.01, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.01. GENERAL CORPORATE POWERS. (a) Each savings bank has the powers authorized by this Act and other rights, privileges, and powers as may be incidental to or reasonably necessary for the accomplishment of the objects and purposes of the savings bank. Subject to the prior approval of the commissioner, a savings bank may engage in business as a savings bank in any state or territory of the United States to the extent permitted by the laws of that state or territory, either directly or through ownership of another savings bank incorporated under the laws of another state.

(b) The finance commission by rule may expand savings bank powers to accommodate or take advantage of changing technology and enable state savings banks to respond to the needs of and convenience demanded by consumers and businesses through on-premises and off-premises operations, except that the finance commission may not authorize state savings banks to offer financial services prohibited to state savings banks by laws of this state other than this Act. In adopting any rules under this subsection, the finance commission shall consider the need to:

- (1) promote a stable financial institution environment;
- (2) provide the public with convenient, safe, and competitive financial services; and
- (3) allow for economic development within the state.

SECTION 10. Section 7.05, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.05. INVESTMENT IN BANKING PREMISES. (a) Without prior approval of the commissioner, a [A] savings bank may invest not more than an amount equal to its regulatory capital in real estate, buildings, and related facilities, including parking, and in leasehold improvements for rented facilities for use by the savings bank as its banking premises.

(b) The finance commission by rule adopted under Section 7.01(b) of this Act may approve a new form of savings bank facility or authorize the commissioner to approve a new form of savings bank facility if the commissioner does not have a significant supervisory or regulatory concern regarding the proposed facility.

SECTION 11. Section 7.09, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.09. COMMERCIAL LOANS. Subject to the rules of the commissioner and the finance commission, a savings bank may lend and invest not more than 40 [~~45~~] percent of its total assets in commercial loans. A commercial loan is a non-real-estate loan for business, commercial, corporate, or agricultural purposes.

SECTION 12. Section 7.10(b), Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A savings bank may not make any investment in a subsidiary corporation if its aggregate investments in subsidiaries would exceed 10 percent of its total assets, excluding amounts invested in a subsidiary corporation the activities of which are limited to activities that could be conducted directly by the parent savings bank.

SECTION 13. Section 8.02, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8.02. LIQUIDITY. Unless approved in advance by the commissioner, a savings bank shall maintain a minimum of 10 percent of an amount equal to its average daily deposits for the most recently completed calendar quarter [~~assets~~] in cash, balances in a federal reserve bank or passed through a federal home loan bank or another depository institution to a federal reserve bank under the Federal Reserve Act (12 U.S.C. Section 221 et seq.), or other readily marketable investments, including unencumbered federal government sponsored enterprises securities, as allowed by rules adopted by the commissioner and the finance commission.

SECTION 14. Section 11.07, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) A foreign savings and loan association may merge with a domestic savings bank under this section as if the foreign savings and loan association were a foreign savings bank. If the surviving institution is the foreign savings and loan association, the commissioner shall issue and deliver to the foreign savings and loan association a certificate of authority under Subsection (e) of this section to do business in this state. In this section, "foreign savings and loan association" means a savings and loan association whose principal office is located outside this state and that has been organized under the laws of a state or territory of the United States other than this state or under the laws of the United States.

SECTION 15. Section 12.12(a), Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as provided in Subsection (b) of this section, a reference in statutes of this state, including Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), the Government Code, and the Local Government Code or in a rule adopted under the statutes to a "savings and loan association," "savings and loan," or "association" in the context of a savings and loan association, or to a corporation, association, or other organization incorporated or organized under the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is also a reference to a savings bank, as defined in this Act.

SECTION 16. (a) The changes made by this Act to the procedures applicable to a proceeding before the savings and loan commissioner apply only to a proceeding initiated on or after the effective date of this Act. A proceeding initiated before the effective date of this Act is governed by the law in effect when the proceeding was initiated, and that law is continued in effect for that purpose.

(b) The savings and loan commissioner shall by rule prescribe the manner and period in which a savings bank that on the effective date of this Act does not comply with Section 7.05 or 8.02, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), as amended by this Act, shall come into compliance with that section.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 1362 - WITH SENATE AMENDMENTS

Representative McDonald called up with senate amendments for consideration at this time,

HB 1362, A bill to be entitled An Act relating to certain health care liability claims for which the state provides indemnification.

On motion of Representative McDonald, the house concurred in the senate amendments to **HB 1362** by (Record 564): 99 Yeas, 45 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Bailey; Berlanga; Bosse; Brady; Clemons; Coleman; Conley; Cook; Counts; Cuellar, H.; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hartnett; Hawley; Hernandez; Hightower; Hilderbran; Hirschi; Hochberg; Hudson; Hunter, B.; Hunter, T.; Johnson; Jones, D.; Jones, J.; Junell; King; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Oakley; Ogden; Oliveira; Patterson; Pickett; Pitts; Place; Price; Puente; Rangel; Raymond; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Siebert; Solis; Solomons; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Willis; Wolens; Yarbrough; Yost; Zbranek.

Nays — Averitt; Black; Brimer; Carona; Carter; Chisum; Combs; Corte; Crabb; Craddick; Culberson; Driver; Elkins; Finnell; Grusendorf; Hamric; Harris; Heflin; Hilbert; Hill; Holzheuser; Horn; Howard; Jackson; Janek; Kamel; Krusee; Kubiak; Kuempel; Madden; Marchant; Mowery; Nixon; Park; Rabuck; Ramsay; Reyna; Shields; Staples; Swinford; Walker; West; Williamson; Wohlgemuth; Woolley.

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

Absent, Excused — Denny.

Absent — Moffat; Smithee; Wilson.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 564. I intended to vote no.

Siebert

I was shown voting yes on Record No. 564. I intended to vote no.

Hilderbran

HB 1362 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1

Amend **HB 1362** by striking all below the enacting clause and substituting the following:

SECTION 1. Sections 110.001, 110.002, 110.003, and 110.005, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional or health clinic ~~through~~ under:

~~[(A) Chapter 31, 32, 35, or 61, Health and Safety Code;~~

~~[(B) the Medicaid program under Chapter 32, Human Resources Code;~~

~~[(C) a contract with a migrant, community, or homeless health center that receives funds under 42 U.S.C. Section 254b, 254c, or 256;~~

~~[(D) Subchapter B, Chapter 311, Health and Safety Code, or 42 U.S.C. Section 1395dd, to the extent the professional or the hospital in which the care or services are provided is not compensated;~~

~~[(E)] an approved family practice residency training program established under Subchapter I, Chapter 61 [66], Education Code, to the extent the professional is not compensated for the services[;~~

~~[(F) an indigent health care program of a hospital district created under the authority of Article IX, Sections 4 through 11, of the Texas Constitution; or~~

~~[(G) a county correctional institution to inmates who are in custody of such county correctional institution operated by such county or under contract with such county].~~

(2) "Eligible health care liability claim" means a health care liability claim as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) against a health care professional or health clinic that renders charity care in at least 10 percent of the patient encounters engaged in by said health care professional or health clinic during the policy year in which the claim was made~~[- a claim against a health center, or a claim against a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code].~~

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an advanced nurse practitioner or a certified nurse midwife; or

(C) a person licensed by the Physician Assistant Advisory Council under the Texas State Board of Medical Examiners as a physician assistant~~;~~ ~~or~~

~~(D) a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code].~~

(4) [~~"Health center" means a federally qualified health center, as that term is defined by 42 U.S.C. Section 1396d.~~

~~(5)] "Health clinic" means a clinic or other facility providing health care in conjunction with an approved family residency practice program.~~

(5) [~~(6)] "Insurer" means an insurance company chartered to write or admitted to write and writing health care liability or medical professional liability insurance in this state, the Texas Medical Liability Insurance Underwriting Association (Article 21.49-3, Insurance Code), any self-insurance trust created under Article 21.49-4, Insurance Code, for the purpose of providing health care liability or medical professional liability insurance, or a purchasing group domiciled, registered, and writing health care liability or medical professional liability insurance for health centers in this state. The term "insurer" includes an institution of higher education that provides health care liability or medical professional liability coverage under Chapter 59, Education Code.~~

(6) [~~(7)] "Health Care Liability claim" means a claim or action against a health care professional~~;~~ ~~health center,~~] or health clinic for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of a patient, whether the patient's claim or cause of action sounds in tort or contract.~~

(7) [~~(8)] "Patient encounter" means an occasion on which a health care professional~~;~~ ~~health center,~~] or health clinic renders professional health care services to a patient.~~

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a health care liability cause of action against a health care professional~~;~~ ~~health center,~~] or health clinic based on conduct described in Section 110.003, the state shall indemnify the health care professional~~;~~ ~~health center,~~] or health clinic for actual damages adjudged against the health care professional~~;~~ ~~health center,~~] or health clinic or which the health care professional~~;~~ ~~health center,~~] or health clinic becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible health care liability claim against a health care professional~~;~~ ~~health center,~~] or health clinic in the course and scope of providing professional health care.

(b) The state is liable for indemnification in a case unless the jury or, if a jury is waived, the trial judge in a cause of action against a health care professional~~;~~ ~~health center,~~] or health clinic returns a verdict and judgment against the applicable defendant finding that such person or entity committed

gross negligence or an intentional act found to be a proximate cause of the damages of the plaintiff.

Sec. 110.005. **TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED.** The state is not liable for indemnification for damages under this chapter unless the health care professional[~~,-health center,-~~] or health clinic against whom the cause of action is asserted:

(1) is covered under a valid professional health care liability or medical liability insurance policy that is issued by an insurer and that provides coverage for the health care liability claim that is the subject of the claim or action with a policy limit of not less than \$100,000 per occurrence and \$300,000 aggregate for the policy period; and

(2) delivers or causes to be delivered to the attorney general a true copy of any summons or citation in a health care liability claim served on the health care professional[~~,-health center,-~~] or health clinic, which summons or citation shall be delivered to the attorney general not later than the 60th day after the receipt thereof by the health care professional[~~,-health center,-~~] or health clinic. However, subsequent notification of such summons or citation shall not be a basis for denial of a claim for indemnification unless the attorney general proves by clear and convincing evidence that such delay would unduly prejudice the state's ability to evaluate the reasonableness of the settlement offer or agreement. No such claim may be asserted by the state unless, within 10 days of the receipt of such late notification by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court in Travis County, Texas) a pleading setting forth the reasons why the state's ability to evaluate the reasonableness of the settlement offer or agreement has been prejudiced.

SECTION 2. Sections 110.006(a), (b), (d), and (e), Civil Practice and Remedies Code, are amended to read as follows:

(a) The insurer for a health care professional[~~,-health center,-~~] or health clinic that is the subject of an eligible health care liability claim shall designate an attorney or other representative assigned to the claim who shall keep the attorney general or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional[~~,-health center,-~~] or health clinic, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional[~~,-health center,-~~] or health clinic regarding settlement.

(b) If a settlement agreement is reached between the health care professional[~~,-health center,-~~] or health clinic and a claimant, the insurer for the health care professional[~~,-health center,-~~] or health clinic shall promptly notify the attorney general of same. The settlement shall become final and binding upon the state unless, within 10 days of the receipt of said notice by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why the reasonable

settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated and any other reason why the state should not be liable for indemnification under this chapter based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such hearing, the burden shall be upon the attorney general to prove by clear and convincing evidence that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated or any other reason why the state should not be liable for indemnification under this chapter based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated or that there are other reasons why the state should not be liable for indemnification under this chapter based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the state to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within 15 days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(d) If a suit involving an eligible health care liability claim is imminently scheduled for jury trial or alternative dispute resolution, or if the defendant seeking indemnity is subject to a time limit under the Stowers Doctrine or other applicable law to respond to a settlement proposal, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional[~~health center,~~] or health clinic and any claimant, either of those parties may request the court to require the attorney general or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the attorney general can immediately advise the court of any objection, in which event the hearing described in Subsection (b) shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extent that the attorney general is authorized under this section to object to the reasonableness of a settlement, the attorney general shall not be authorized to intervene in any court proceeding involving an eligible health care liability claim. The insurer for the health care professional[~~health center,~~] or health clinic shall be in charge of the defense of any such claim.

SECTION 3. Sections 1, 2, 3, 4, 5, 6, and 7, Article 5.15-4, Insurance Code, are amended to read as follows:

Sec. 1. DEFINITIONS. In this article, "charity care or services," "eligible health care liability claim," "health care professional," [~~"health center,"~~] "health clinic," "insurer," "health care liability claim," and "patient encounter" have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional[~~;~~
~~health center~~]; or health clinic is entitled to a premium discount for medical professional liability insurance coverage if the professional[~~;~~
~~center~~]; or health clinic meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. (a) The Texas Department of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional[~~;~~
~~health center~~]; or health clinic covered by this section. Each insurer shall file proposed premium discounts and any loss and statistical data required by department rule.

(b) The insurer has the burden of demonstrating to the department, by a preponderance of the evidence, that the proposed premium discount is adequate to reflect the reduction in the insurer's liability exposure based on the state's indemnification of the first \$100,000 or \$25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional[~~;~~
~~health center~~]; or health clinic.

(c) The information required to be filed with the Texas Department of Insurance under this section is public information and shall be made available to the public on written request.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. (a) A health care professional is entitled to a premium discount for medical professional liability insurance coverage if:

(1) the projected patient encounters of the health care professional during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(2) the health care professional completes 15 hours of continuing education during the calendar year in which the policy is in effect on patient safety and risk reduction subjects related to the health care professional's practice that are sponsored, approved, endorsed, or accredited by the Texas Department of Insurance or the health care professional's licensing or certifying agency, an "insurer" as defined in this Act, or state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

(b) ~~[A health center is entitled to a premium discount for professional liability coverage if the health center adopts a quality assurance program.~~

~~[(c)] A health clinic [or health care professional under Section 110.001(3)(D), Civil Practice and Remedies Code,] is entitled to a premium discount for professional liability coverage if the health clinic [or health care professional under Section 110.001(3)(D), Civil Practice and Remedies Code,] provides at least 10 percent or more of charity care or services and adopts a quality assurance program.~~

~~(c) [(d)] The Texas Department of Insurance may adopt rules governing [health center or] health clinic quality assurance programs.~~

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional[~~;~~
~~health center~~]; or health clinic that desires a premium discount for medical professional liability insurance coverage shall submit to the insurer, at the time coverage is applied for, a written verified application for a new policy or a verified statement for a policy to be renewed stating that the health care professional[~~;~~
~~health center~~]; or health clinic desires a premium discount and qualifies for a premium discount under this article. The application or

statement also shall provide for each policy for which a discount is requested necessary information to determine the eligibility of the health care professional[~~,-health center,;~~] or health clinic and the amount of the discount.

Sec. 6. AUDIT; PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional[~~,-health center,;~~] or health clinic to which the insurer has provided a discount under this article to determine if the health care professional[~~,-health center,;~~] or health clinic provided the charity care and services necessary under Section 4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional[~~,-health center,;~~] or health clinic was eligible for the premium discount. If a health care professional[~~,-health center,;~~] or health clinic denies access to the property or to the books and records, the insurer may obtain an appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional[~~,-health center,;~~] or health clinic did not provide charity care or services as required under Section 4 of this article, the insurer may charge the health care professional[~~,-health center,;~~] or health clinic an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional[~~,-health center,;~~] or health clinic had not received the premium discount plus 20 percent of the amount of the premium that would have been due without the premium discount.

(d) If a health care professional[~~,-health center,;~~] or health clinic that has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional[~~,-health center,;~~] or health clinic had not received the premium discount plus interest at the legal rate for the unpaid premium prior to 30 days before the expiration of the policy year, the health care professional[~~,-health center,;~~] or health clinic will not be subject to the penalty provided in Subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew professional liability insurance coverage solely on the basis that the covered health care professional[~~,-health center,;~~] or health clinic is eligible for a premium discount under this article except for the following reasons:

- (1) fraud or misrepresentation in obtaining coverage;
- (2) failure to pay premiums when due; or
- (3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional[~~,-health center,;~~] or health clinic who files the appropriate verified application or statement under this article will be entitled to a premium discount as approved by the department under Section 3 of this article. When consent to rate is used, a health care professional[~~,-health center,;~~] or health clinic will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

SECTION 4. The change in law made by this Act to Chapter 110, Civil Practice and Remedies Code, applies only to claims under that chapter filed with the attorney general on or after the effective date of this Act. A claim under that chapter filed with the attorney general in accordance with that chapter before the effective date of this Act is covered by Chapter 110 as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 5. The change in law made by this Act to Article 5.15-4, Insurance Code, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act. A policy that is delivered, issued for delivery, or renewed 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.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Senate Amendment No. 2

Amend Floor Amendment No. 1 to **HB 1362**, page 13, line 19 by striking all of the sentence beginning on such line and substitute the following to read as follows: "A claim or cause of action under that chapter accruing under policies issued prior to the effective date of this act, filed with the Attorney General pursuant to such act, shall remain eligible for indemnification under such chapter and the former law is continued in effect for that purpose."

HB 1612 - WITH SENATE AMENDMENT

Representative Kubiak called up with a senate amendment for consideration at this time,

HB 1612, A bill to be entitled An Act relating to the application to religious facilities of the law relating to architectural barriers.

On motion of Representative Kubiak, the house concurred in the senate amendment to **HB 1612** by (Record 565): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.;

Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbrank.

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

Absent, Excused — Denny.

Absent — Moffat; Mowery.

HB 1612 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend the House Engrossment of **HB 1612** as follows:

On page 1, line 8, after the word "within" and before the word "a" insert the word "either".

HB 1988 - WITH SENATE AMENDMENTS

Representative Duncan called up with senate amendments for consideration at this time,

HB 1988, A bill to be entitled An Act relating to the insurance rates and policy forms for certain lines of insurance and to certain administrative hearings conducted regarding those rates.

On motion of Representative Duncan, the house concurred in the senate amendments to **HB 1988**.

HB 1988 - TEXT OF SENATE AMENDMENTS

CSHB 1988, A bill to be entitled An Act relating to the insurance rates and policy forms for certain lines of insurance and to certain administrative hearings conducted regarding those rates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 5.101, Insurance Code, is amended to read as follows:

Art. 5.101. FLEXIBLE RATING PROGRAM FOR CERTAIN INSURANCE LINES.

Sec. 1. PURPOSE[~~[- EXPIRATION DATE]~~. [(a)] The [pilot] program on flexible rating is designed [~~created~~] to help stabilize the rates charged for insurance in [a] lines of property and casualty insurance covered by Subchapters A and C [~~through E~~] of this chapter. This article does not apply to: [~~except~~]

- (1) ocean marine insurance; [;]
- (2) inland marine insurance; [;]
- (3) fidelity, surety and guaranty bond insurance; [;]
- (4) errors and omissions insurance; [;]
- (5) directors' and officers' liability insurance; [;]

- (6) general liability insurance; [;]
- (7) commercial property insurance; [;]
- (8) workers' compensation insurance; [;]
- (9) professional liability insurance for physicians and health care providers as defined in Article 5.15-1 of this code; ~~or [; and]~~
- (10) attorney's professional liability insurance.

~~[(b) This article expires December 31, 1995.]~~

Sec. 2. DEFINITIONS. In this article:

(1) "Benchmark rate" means the rate set annually by the commissioner ~~[board]~~ by line, relative to which the flexibility bands and statutory rate limitations apply.

(2) "Classification" means a generic application to similar risks within the same line.

(3) "Flexibility band" means the [a] range of rates from 30 percent below to 30 percent above, inclusive, [relative to] the benchmark rates set by the commissioner [board] by line, within which an insurer, during a set period relative to a particular line, may increase or decrease rate levels by classification without prior approval by the commissioner [board]. ~~[The board shall set the flexibility band as a percentage above and below the benchmark rate, which percentage need not be equal above and below that benchmark rate.]~~

(4) "Line" means each type of insurance made subject to this subchapter, other than fidelity, surety, or guaranty bonds.

(5) "Rate" or "rating plan" means the charge for a particular line for each unit of exposure.

~~[(6) "Statutory rate limitation" means a minimum and maximum boundary on insurance rates that is based on a benchmark rate set by line by the board.]~~

Sec. 3. OPERATION OF FLEXIBLE RATING PROGRAM ~~[PLAN]~~. (a) Under the flexible rating program [plan] prescribed by this article, rates used by insurers in writing property or casualty insurance for lines subject to this article are determined through the application of flexibility bands to a benchmark rate and are implemented on a file and use basis.

(b) The commissioner [board] shall promulgate a benchmark rate ~~[and a flexibility band]~~ for each line subject to this article after notice and hearing under Chapter 2001, Government Code ([pursuant to] the Administrative Procedure [and Texas Register] Act [(Article 6252-13a, Vernon's Texas Civil Statutes)]. ~~The commissioner shall [board must] set the benchmark rate to produce [and the flexibility band in] a range that:~~

- (1) promotes stability in that line; and
- (2) produces [that will produce] rates that are just, reasonable, adequate and not excessive for the risks to which they apply, and not confiscatory.

~~(c)~~ In promulgating the benchmark rate ~~[and the flexibility band]~~, the commissioner [board] may give due consideration to:

- (1) past and prospective loss experience within the state and outside the state if the state data are not credible;
- (2) the peculiar hazards and experience of individual risks, past and prospective, within and outside the state;
- (3) a reasonable margin for profit;

(4) expenses of operation, which may not include disallowed expenses under Subsection (o) [(h)] of this section;

(5) the extent and nature of competition in that market;

(6) the availability or lack of availability in that market;

(7) the level and range of rates and rate changes among insurers;

(8) investment and underwriting experience of insurers;

(9) reinsurance availability;

(10) consumer complaints;

(11) extent of denials and restrictions of coverage;

(12) the volume of cancellations and nonrenewals; and

(13) any other factor considered appropriate by the commissioner [board].

(d) [(e)] Each [initial] flexibility band is based on a benchmark rate promulgated by the commissioner [board]. ~~The commissioner [On or before January 1, 1992, and annually thereafter, the board]~~ shall conduct hearings to determine the benchmark rates [~~and flexibility bands~~] by line on or before September 1 of each year. The determination of the rate shall not include disallowed expenses under Subsection (o) [(h)] of this section. An insurer, the public insurance counsel, and any other interested person may present testimony at the hearing and may file information for consideration by the commissioner [board]. An advisory organization which collects ratemaking data shall not be a party to the hearing. A trade association that does not collect historical data and that does not provide statistical plans, prospective loss costs, or supplementary rating information to its members may, on behalf of its members that are small or medium-sized insurers, as defined by the commissioner, present rate making data and make recommendations to the commissioner [board] at the hearing. There is no immunity from antitrust liability for a trade association that presents rate making data or makes recommendations to the commissioner [board] at the hearing. The definition of "small and medium-sized insurers" shall be a limitation upon the scope of the presentation to be made by a trade association, but may not limit the participation of a trade association because its membership includes other sized insurers. An insurer shall use that benchmark rate and the flexibility band to develop rates used for the line for the year following the setting of the benchmark rate [~~and the flexibility band~~].

(e) [(f)] An insurer may use any rate by classification within the [applicable] flexibility band without prior [board] approval by the commissioner. The rate may not include expenses disallowed under Subsection (o) [(h)] of this section. Within 30 days of the effective date of the benchmark rate for a particular line, each insurer which proposes to write that line of insurance in this [the] state during the effective period of the benchmark rate shall file with the commissioner [board] its proposed rate by line, and by classification and territory under the [~~board-promulgated~~] rating manual promulgated by the commissioner, unless the insurer has obtained approval from the commissioner [board] under Subsection (l) [(g)(2)] of this section to use its own rating manual. The insurer shall include in the filing any statistics to support the rates to be used by the insurer as required by [board] rule of the commissioner, including information necessary to evidence that the calculation of the rate does

not include disallowed expenses. Rates proposed in filings made under this subsection must be just, reasonable, adequate and not excessive for the risks to which they apply. The rate takes effect on the date specified by the insurer, but not later than the 60th day after the date of filing of the rate with the commissioner [board]. For the purpose of this section, the date the rate is received by the commissioner [board] is the date of filing. From and after the effective date of the benchmark rate and prior to the insurer's specified effective date [filing] of a new rate, the insurer's previously filed rate shall remain in effect.

(f) Filed rates within the flexibility band are effective as provided in Subsection (e) of this section and are presumed to be valid and in compliance with the requirements of that subsection. However, if, after a hearing, the commissioner finds that the filing of an insurer under Subsection (e) of this section does not meet the requirements of this article, the commissioner shall issue an order that specifies how the filing fails to meet the requirements of this article and states the date on which, within a reasonable period after the order date, the insurer's filing is no longer in effect.

(g) ~~[(e)(1)]~~ An insurer may not use a rate outside the upper and lower limits of the flexibility band without the prior approval of the commissioner [board]. A filing made by an insurer subject to the [board] approval of the commissioner is considered approved by the commissioner [board] unless the commissioner [board] disapproves the filing not later than the 60th day after the date of the filing. Any such filing must produce rates which are just, reasonable, adequate and not excessive for the risks to which they apply, or the commissioner [board] shall disapprove the filing. If the commissioner [board] requests additional information regarding the filing, the commissioner [it] shall act within 60 days after the response to that request. ~~[The rate may not include expenses disallowed under this section. The rate takes effect on the expiration of that time period or on the date the board affirmatively approves the rate.]~~

(h) ~~[(2)]~~ An insurer, the public insurance counsel, and any other interested person may request, within 30 days of the filing, that the commissioner [board] hold a hearing on an insurer's prior approval filing. Upon such request, the commissioner [board] shall conduct a hearing under Chapter 2001, Government Code ([pursuant to] the Administrative Procedure [and Texas Register] Act [(Article 6252-13a, Vernon's Texas Civil Statutes)], after which hearing, the commissioner [board] shall have 60 days to disapprove the filing, or it is deemed approved.

(i) ~~[(f)]~~ For the purposes of this article, the statutory rate limitations are plus or minus 30 percent of the benchmark rate. Rates used under this subchapter, including rates used under flexibility bands, may not exceed or be lower than the statutory rate limitations unless those rates are approved by the board, after notice and hearing pursuant to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), before implementation.] The rate filed under Subsection (g) of this section may not include expenses disallowed under Subsection (o) [(h)] of this section. In approving an insurer's filing for a rate [rates] outside the flexibility [statutory] band, the burden of proof is on the insurer making the filing to show, by clear and convincing evidence, that, if the rate proposed by the insurer is [failure to approve the filing with]:

(1) more than 30 percent above the benchmark rate, the rates available within the flexibility band to the relevant market are inadequate for the risks insured and that failure to approve the filing will cause a lack of availability in the relevant market [~~the marketplace to be inadequately served~~]; or

(2) more than 30 percent below the benchmark rate, approval of the filing will not adversely affect the financial condition of [~~cause a lack of availability in the line or lines that are the subject of the filing; and~~

[~~(3) be confiscatory to~~] the insurer [~~making the filing~~].

(j) An approved rate outside the flexibility band takes effect, after approval, on the date specified by the insurer, but not later than the 60th day after the date of the approval.

(k) [~~(g)(1)~~] The commissioner [~~board~~], by rule, shall adopt a rating manual of classifications and territories for each line subject to this subchapter and shall spread the benchmark rate among those classifications and territories. The [~~board-promulgated~~] rating manual promulgated by the commissioner shall be used by all insurers unless they receive approval to use their own manual under Subsection (1) [~~Subdivision (2)~~] of this section [~~subsection~~].

(l) [~~(2)~~] Following written application and [~~board~~] approval of the commissioner, an insurer may use a rating manual relative to classifications and territories of risks, different from that promulgated by the commissioner [~~board~~], to calculate the rate used by that insurer for an individual risk. The calculation of the rate may not include disallowed expenses under Subsection (o) [~~(11)~~] of this section. The commissioner [~~board~~] shall approve the use of only such additions or refinements in its classification plan as will produce subclassifications, which, when combined, will enable consideration of the insurer's experience under both the commissioner's [~~board~~] rating manual and its own rating manual. Such application shall be approved by the commissioner [~~board~~], after notice and hearing under Chapter 2001, Government Code [~~pursuant to~~] the Administrative Procedure [~~and Texas Register~~] Act [~~(Article 6252-13a, Vernon's Texas Civil Statutes)~~], in whole or in part, provided the commissioner [~~board~~] finds that the resulting premiums will be just, adequate, reasonable, not excessive, and not unfairly discriminatory, taking into consideration the following:

(1) [~~(A)~~] the financial condition of the insurer;

(2) [~~(B)~~] the method of operation and expenses of such insurer;

(3) [~~(C)~~] the actual paid and incurred loss experience of the insurer;

(4) [~~(D)~~] investment income of the insurer; and

(5) [~~(E)~~] that the application meets the reasonable conditions, limitations, and restrictions deemed necessary by the commissioner [~~board~~].

(m) [~~(3)~~] In considering all matters set forth in such application, the commissioner [~~board~~] shall give consideration to the composite effect of Subsections (1)(2)-(4) of this section [~~Subdivisions (2)(B), (C), and (D) of this subsection~~] and the commissioner [~~board~~] shall deny the application if the commissioner [~~it~~] finds that the resulting premiums would be inadequate, excessive, or unfairly discriminatory.

(n) [~~(4)~~] The effect on the rate charged an individual risk through surcharges and discounts under any such approved rating manual shall not be greater than plus or minus 15 [~~10~~] percent, as a deviation from the insurer's

filed rate within the flexibility band or approved rate outside the flexibility band.

(o) ~~[(h)]~~ For the purposes of ~~[Subsections (b), (c), (d), (e), (f), and (g)]~~ of this section, "disallowed expenses" include:

(1) administrative expenses, not including acquisition expenses, not including acquisition, loss control and safety engineering expenses, that exceed 110 percent of the industry median for those expenses;

(2) lobbying expenses;

(3) advertising expenses, other than advertising that is directly related to the services or products provided by the insurer, advertising designed and directed at loss prevention, or advertising the promotion of organizations exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code;

(4) amounts paid by an insurer as damages in a suit against the insurer for bad faith or as fines or penalties for violation of law;

(5) contributions to organizations engaged in legislative advocacy;

(6) fees and penalties imposed on the insurer for civil or criminal violations of law;

(7) contributions to social, religious, political, or fraternal organizations;

(8) fees and assessments paid to advisory organizations; and

(9) any unreasonably incurred expenses, as determined by the commissioner [board].

(p) ~~[(h)]~~ An insurer may change a rate adopted under Subsection ~~(e)~~ ~~[(d)]~~ of this section on a file and use basis not more than twice during a 12-month period. Additional changes require the prior approval of the commissioner [board].

(q) ~~[(j)]~~ An insurer who writes insurance in any line subject to this article ~~[subchapter]~~ is required to make rate filings under Subsection ~~[(d); (e), [(f); or] (g), (h), (i), (k), (l), (m), or (n)]~~ of this section, using its own historical premium and loss data, as well as its own data for expenses and for profit and contingency factors. The commissioner [board] may require an audit of the insurer's historical premium and loss data. The insurer may separately supplement its own historical premium and loss data with historical premium and loss data as necessary. The commissioner [board] may, by rule, establish requirements for reporting historical premium and loss data under this subsection.

Sec. 4. EFFECT OF ENDORSEMENTS. An insurer that provides additional coverage through an endorsement to a policy subject to this article may assess an additional charge for coverage under the endorsement only with the prior approval of the commissioner [board].

Sec. 5. ~~[BOARD POWERS AND DUTIES. If the board determines at any time that the implementation of this subchapter or any part thereof is contrary to the public interest, and has resulted or may result in imminent peril to the insurance consumers of this state, the board may issue an order stating the harm to the public and shall thereafter rely upon Subchapters A through L of this chapter, or parts thereof, in regulation of property and casualty insurance.~~

~~[Sec. 6.] ADMINISTRATIVE PROCEDURE [AND TEXAS REGISTER] ACT APPLICABLE; BENCHMARK RATE HEARINGS. (a) Chapter 2001,~~

Government Code ([The provisions of] the Administrative Procedure [and Texas Register] Act [(Article 6252-13a, Vernon's Texas Civil Statutes)], applies [apply] to all rate hearings conducted under this article, subject to Article 1.33B of this code and Subsections (b)-(d) of this section.

(b) In a hearing on benchmark rates conducted under this article, discovery directed to any party to the proceeding concerning that party's premium, loss, expense, profit, or rate of return experience or its operations is prohibited, except to the extent that the party presents evidence, relies on, or provides to another party its own individual insurer data in the benchmark rate hearing. This subsection does not deny or restrict any party's right to produce or rely on relevant information concerning an individual insurer as evidence in a benchmark rate hearing.

(c) As part of a benchmark rate hearing, any party may present evidence regarding, and the administrative law judge shall make proposed findings concerning, any adjustments or amendments that should be made to the statistical reporting rules and statistical plans to aid in presenting a case at future benchmark rate hearings.

(d) If the record indicates evidence under Subsection (c) of this section, the commissioner may initiate a proceeding under Article 5.96 of this code to determine and make adjustments and amendments to the rules and statistical plans as necessary to further aid in determining whether rates and rating systems in use under this article comply with the regulatory standards imposed under this article. The commissioner shall consider the evidence taken at the benchmark rate hearings under Subsection (c) of this section, and shall address that evidence in any order or action taken as a result of the proceeding.

SECTION 2. Article 5.01(f), Insurance Code, is amended to read as follows:

(f) Notwithstanding Subsections (a) through (d) of this article, on and after March 1, 1992, rates for motor vehicle insurance in this state are determined as provided by the flexible rating program adopted under Subchapter M of this chapter. [~~This subsection expires December 31, 1995.~~]

SECTION 3. Article 5.01-2(b), Insurance Code, is amended to read as follows:

(b) On and after March 1, 1992, rates for motor vehicle insurance written by a Lloyd's plan insurer or a reciprocal or interinsurance exchange are determined as provided by the flexible rating program adopted under Subchapter M of this chapter. [~~This subsection expires December 31, 1995.~~]

SECTION 4. Article 5.03(g), Insurance Code, is amended to read as follows:

(g) Notwithstanding Sections (a) through (e) of this article, on and after March 1, 1992, rates for motor vehicles are determined as provided by Subchapter M of this chapter. [~~This subsection expires December 31, 1995.~~]

SECTION 5. Article 5.04(c), Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after March 1, 1992, rates for motor vehicles are determined as provided by Subchapter M of this chapter. [~~This subsection expires December 31, 1995.~~]

SECTION 6. Article 5.09, Insurance Code, is amended to read as follows:

Art. 5.09. DISCRIMINATIONS OR DISTINCTIONS. (a) Except as provided by Subsection (b) of this article, no insurer coming within the terms of this subchapter shall, in its business in this State, make or permit any distinction or discrimination in favor of the insured having a like hazard, in the matter of the charge of premiums for insurance, or in dividends or other benefits payable under any policy, nor shall any such insurer or agent make any contract of insurance, or agreement as to such insurance, other than expressed in the policy, nor shall any such insurer or its agents or representatives pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insured, any rebate payable upon the policy or any special favor or advantage in dividends or other benefits to accrue, or anything of value whatsoever, not specified in the policy; provided that nothing in this subchapter shall be construed to prohibit the modification of rates by rating plans designed to encourage the prevention of accidents, and to take account of the peculiar hazards and experience of individual risks, past and prospective, within and outside the State, and of all other relevant factors, within and outside the State, provided such plan shall have been approved by the Board.

(b) This article does not prohibit an insurer, on approval by the Board, from distributing to policyholders who are on active duty in the United States Armed Forces any estimated profits resulting from service by those policyholders in any foreign country in a combat theater of operations at any time after January 1, 1990. An insurer that elects to make such distributions shall file a written description of its distribution program with the Board for approval by the Board and shall notify the Board in writing of each distribution made under the program. The insurer may distribute the estimated profits among those policyholders based on the length of time served by a policyholder in a combat theater of operations, the location of the military service, the duration of the applicable insurance policy, or any other reasonable basis. The Board shall act on the insurer's distribution program within five business days of receipt of the insurer's distribution program, otherwise the distribution program shall be deemed approved.

(c) ~~[(b)]~~ Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for motor vehicles are determined as provided by Subchapter M of this chapter. ~~[This subsection expires December 31, 1995.]~~

SECTION 7. Article 5.11(c), Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after March 1, 1992, rates for motor vehicles are determined as provided by Subchapter M of this chapter. ~~[This subsection expires December 31, 1995.]~~

SECTION 8. Section 1, Article 5.13-2, Insurance Code, is amended to read as follows:

Sec. 1. PURPOSE. ~~[(a)]~~ This article governs the regulation of general liability, commercial property, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, fidelity, surety, or guaranty bonds. The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

- (2) promote availability of insurance;
- (3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;
- (4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;
- (5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and
- (6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

~~[(b) This article expires December 31, 1995.]~~

SECTION 9. Section 3(2), Article 5.13-2, Insurance Code, is amended to read as follows:

(2) "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Catastrophe Property Insurance Association. However, the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance.

SECTION 10. Section 10, Article 5.13-2, Insurance Code, is amended to read as follows:

Sec. 10. ADMINISTRATIVE PROCEDURE ~~[AND TEXAS REGISTER]~~ ACT APPLICABLE. Chapter 2001, Government Code ~~([The provisions of] the Administrative Procedure [and Texas Register] Act [(Article 6252-13a, Vernon's Texas Civil Statutes)],~~ applies ~~[apply]~~ to all rate hearings conducted under this article.

SECTION 11. Article 5.14(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after October 1, 1991, rates and forms for general liability and commercial property insurance coverage subject to this subchapter are determined as provided by Article 5.13-2 of this code. ~~[This subsection expires December 31, 1995.]~~

SECTION 12. Article 5.15(h), Insurance Code, is amended to read as follows:

(h) Notwithstanding Subsections (a)-(g) of this article, rates for general liability, commercial property, and all commercial casualty insurance coverage under this article are determined, and hearings related to those rates are conducted, as provided by Article 5.13-2 of this code. ~~[This subsection expires December 31, 1995.]~~

SECTION 13. Article 5.25(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. This subsection does not affect the requirement for the commissioner ~~[Board]~~ to conduct inspections of commercial property and prescribe a manual of rules and rating schedules for commercial property under this subchapter. ~~[This subsection expires December 31, 1995.]~~

SECTION 14. Article 5.25A(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 15. Article 5.26(i), Insurance Code, is amended to read as follows:

(i) Notwithstanding Subsections (a)-(h) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 16. Article 5.28(d), Insurance Code, is amended to read as follows:

(d) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 17. Article 5.29(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 18. Article 5.30(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 19. Article 5.31(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 20. Article 5.32(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 21. Article 5.34(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 22. Article 5.39(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined, and hearings related to those rates are conducted, as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 23. Article 5.40(d), Insurance Code, is amended to read as follows:

(d) Notwithstanding Subsections (a)-(c) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined, and hearings related to those rates are conducted, as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 24. Article 5.41(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after March 1, 1992, rates for homeowners and farm and ranch owner's residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 25. Article 5.96(a-1), Insurance Code, is amended to read as follows:

(a-1) Except as provided by Section 5(d), Article 5.101, of this code, this [~~This~~] article does not apply to the setting of [~~flexibility bands and~~] benchmark rates for motor vehicle insurance and fire and allied lines insurance under Subchapter M of this chapter. [~~This subsection expires December 31, 1995.~~]

SECTION 26. Article 5.96A(d), Insurance Code, is amended to read as follows:

(d) Notwithstanding Subsections (a) through (c) of this article, on or after September 1, 1992, policy or endorsement forms for commercial motor vehicle insurance are adopted as provided by Article 5.06 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 27. Article 5.97(n), Insurance Code, is amended to read as follows:

(n) Notwithstanding Subsections (a) through (l) of this article, this article does not apply to a line of insurance subject to Article 5.13-2 of this code. [~~This subsection expires December 31, 1995.~~]

SECTION 28. Chapter 5, Insurance Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. RATE ROLLBACK

Art. 5.131. TEMPORARY RATE ROLLBACK FOR CERTAIN LINES OF INSURANCE

Sec. 1. FINDINGS. The legislature finds that:

(1) the cost of litigation against insureds and their insurers, the possibility of large and unjust judgments, and the uncertainty created by a litigious environment within this state have been significant factors in the high cost of certain lines of insurance;

(2) legislation enacted by regular sessions of the 73rd and 74th legislatures, which may be aided by legislation under consideration by the 104th Congress of the United States, is intended to meaningfully reform the civil justice system of this state and will result in reductions in the cost of litigation and in the size of judgments;

(3) while the monetary effect of the legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience;

(4) the delay described by Subdivision (3) of this section will result in a windfall for the insurers benefited by the legislation described by Subdivision (2) of this section, and this benefit should be passed on to their insureds; and

(5) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured public of this state.

Sec. 2. SCOPE OF ARTICLE. (a) This article applies to any insurer that is authorized to do business in this state and that is authorized to write any of the types of coverages or lines and sublines listed in Subsection (b) of this section, including:

(1) a capital stock company;

(2) a mutual company;

(3) a Lloyd's plan company; and

(4) a reciprocal or interinsurance exchange.

(b) It is the intent of the legislature that all insurers, including county mutual insurers, joint underwriting associations, and others whose rates are not regulated, pass through the savings that accrue from the legislation described

by Section 1 of this article to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls, informational hearings, and any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential to the same extent as the information is privileged and confidential under this code or other laws for other insurers licensed and writing the same line of insurance in this state. The information remains privileged and confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.

(c) This article applies only to policies or coverages in the following lines or sublines that are issued, issued for delivery, or renewed on and after January 1, 1996:

(1) professional liability insurance for a physician, other health care provider, or hospital;

(2) commercial liability insurance for damages arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or for completed operations coverage;

(3) private passenger automobile liability insurance for bodily injury;

(4) commercial automobile liability insurance for bodily injury;

(5) private umbrella and excess liability insurance;

(6) the liability portion of commercial multi-peril insurance;

(7) the liability portion of homeowner's, farm and ranch owner's, and renter's insurance;

(8) the employer's liability portion of workers' compensation insurance;

and

(9) other commercial liability insurance, including the following lines and sublines:

(A) premises medical;

(B) fire legal liability;

(C) personal advertising injury;

(D) contractual liability;

(E) liability for all premises;

(F) pollution liability;

(G) owners and contractors protective liability;

(H) railroad protective liability;

(I) liquor liability;

(J) farm liability;

(K) commercial umbrella and excess liability;

(L) professional liability other than insurance described by

Subdivision (1) of this subsection; and

(M) garage liability.

Sec. 3. RATE ROLLBACK. (a) Notwithstanding Article 1.33B of this code, on or before September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable across-the-board reductions in insurance rates required of insurers writing the lines and sublines of liability coverage described by Section 2(c) of this article.

(b) Not later than October 1, 1995, the commissioner shall issue rules mandating the appropriate rate reductions to rates for the lines and sublines of liability coverage described by Section 2(c) of this article and developed without consideration of the effect of the legislation described by Section 1 of this article.

(c) The commissioner may set the percentage of the rate reduction by line and subline within any of the coverages described by Section 2(c) of this article and may set a percentage either above or below the percentages listed in Subsection (e) of this section. The commissioner's order establishing the rate reductions must be based on the evidence adduced at the rulemaking hearing. It is the intent of the legislature that the rates resulting from the rate reductions imposed by this article be reasonable, adequate, not unfairly discriminatory, nonconfiscatory, and not excessive.

(d) The rate reductions adopted under this section are applicable to each policy or coverage issued, issued for delivery, or renewed on and after January 1, 1996, and to each policy or coverage issued, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under Subsection (a) of this section.

(e) Notwithstanding Subsection (d) of this section, if, on January 1, 1996, the commissioner has not issued an order establishing rate reductions for a line or subline under this section, or the order has not become final because of judicial intervention in action brought by an insurer described in Section 2(a) of this article or an organization representing any of these insurers, the following reductions, as measured from the base rates in effect on April 1, 1995, apply to each insurer for each affected policy or coverage issued, issued for delivery, or renewed on and after January 1, 1996:

<u>LINE or SUBLINE</u>	<u>PERCENTAGE REDUCTION</u>
<u>(1) professional liability insurance for physician, other health care provider, or hospital:</u>	<u>30%</u>
<u>(2) commercial liability insurance for damages arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or for completed operations coverage:</u>	<u>25%</u>
<u>(3) private passenger automobile liability insurance for bodily injury:</u>	<u>15%</u>
<u>(4) commercial automobile liability insurance for bodily injury:</u>	<u>20%</u>
<u>(5) private umbrella and excess liability insurance:</u>	<u>20%</u>
<u>(6) the liability portion of commercial multi-peril insurance:</u>	<u>10%</u>
<u>(7) the liability portion of homeowner's, farm and ranch owner's, and renter's insurance:</u>	<u>5%</u>
<u>(8) the employer's liability portion of workers' compensation insurance:</u>	<u>10%</u>
<u>(9) all lines and sublines of other commercial liability insurance:</u>	<u>15%</u>

(f) A rate reduction imposed by a rule adopted under this section is effective under the terms of the rule without regard to any legal challenge as to the validity or implementation of the rule.

(g) The commissioner shall consider the effect of the legislation described by Section 1 of this article in determining rates under Section 5 of Article 21.81 of this code.

Sec. 4. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed as to a line or subline of insurance

coverage affected by this article on and after January 1, 1996, and a rate filed on and after the 90th day following the effective date of a subsequent rule adopted under Section 3(a) of this article, shall reflect the rate reduction imposed by Section 3 of this article. The commissioner shall disapprove a rate, subject to the procedures established by Section 7, Article 5.13-2, of this code if the commissioner finds that the filed rate does not reflect that reduction.

(b) The commissioner is not required to disapprove a filed rate that reflects less than the full amount of the rate reduction imposed by Section 3 of this article if the commissioner determines, based on credible data, that for the particular insurer in writing the particular line of insurance affected:

(1) the rate reduction required by Section 3 of this article is not justified by the anticipated cost savings described by Section 1 of this article;

(2) the filed rate adequately reflects the anticipated cost savings described by Section 1 of this article for that insurer; and

(3) the rate reduction required by Section 3 of this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code.

Sec. 5. DECLARATION OF INAPPLICABILITY TO CERTAIN LINES. The commissioner shall, by order, declare this article inapplicable to a line or subline of insurance otherwise subject to this article at the time the commissioner finds, based on actuarially credible data, that rates in that line or subline reflect the actual experience under the legislation described by Section 1 of this article.

Sec. 6. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 4 or 5 of this article, each rate resulting from the reduction required under Section 3 of this article remains in effect until the latest of:

(1) the first anniversary of the date the insureds' policy or coverage is issued or renewed after January 1, 1996;

(2) the effective date of rates filed by the affected insurer or insurers that are based on actuarially credible data reflecting actual experience under the legislation described by Section 1 of this article and that are not excessive, inadequate, unfairly discriminatory, or unreasonable; or

(3) January 1, 2001.

Sec. 7. MODIFICATION. The commissioner may, by bulletin or directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any of the legislation described by Section 1 of this article on which the commissioner based the rate reduction.

Sec. 8. HEARINGS AND ORDERS. Notwithstanding Article 1.33B of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. Article 1.09-5 of this code does not apply to hearings under this article. The rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 9. PENDING RATE MATTERS. A rate filed pursuant to a commissioner's order issued before May 1, 1995, is not subject to the rate reductions required by this article before January 1, 1996.

Sec. 10. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.

SECTION 29. Article 21.69, Insurance Code, is amended to read as follows:

Art. 21.69. [~~Parallel~~] STATISTICAL DATA COLLECTION. (a) ~~The~~ commissioner may, for a line or subline of insurance, designate or [shall] contract with a qualified organization to serve as the statistical agent for the commissioner to gather data relevant for regulatory purposes or as otherwise provided in this code.

(b) To qualify as a statistical agent, an organization must demonstrate at least five years of experience in data collection, data maintenance, data quality control, accounting, and related areas.

(c) The commissioner's designation or contracting with a statistical agent under this article authorizes the statistical agent to collect from the reporting insurers any fees necessary for the statistical agent to recover the necessary and reasonable costs of data collection from the reporting insurers for data collection services provided by the statistical agent. A reporting insurer shall pay the fee to the statistical agent for the data collection services provided by the statistical agent.

(d) A statistical agent designated or contracted with by the commissioner under this article shall collect data from reporting insurers under a statistical plan promulgated by the commissioner.

(e) An insurer shall provide all premium and loss cost data to the commissioner or the commissioner's agent designated or contracted with under this article as the commissioner or the agent requires.

(f) Notwithstanding Section 4C, Article 5.73, of this code, the statistical agent may provide aggregate premium and loss cost data to their subscribers.

(g) The commissioner may adopt rules necessary to accomplish the purposes of this article. [one statistical entity for each line of insurance to compile and maintain historical premium and loss data pursuant to statistical plans adopted by the commissioner. A statistical entity designated by the commissioner must provide sufficient evidence of five years of experience in data collection, data maintenance, data quality control, accounting and related areas:

~~[(b) An insurer may continue to provide historical premium and loss data to a statistical agent designated by the board prior to April 1, 1993, as required by a statistical plan in use on that date. The board shall receive that information, and the statistical agent may return that information to its subscribers. The board may utilize this information in all rate hearings.~~

~~[(c) The select committee on rate and form regulation created under Article 1.50 of this code shall appoint an independent consulting firm to evaluate the costs and benefits of each of the systems and include in its report to the legislature a recommendation for future data collection consistent with its recommendations on rates:]~~

SECTION 30. Article 17.22(b), Insurance Code, is amended to read as follows:

(b) The flexible rating program created under Subchapter M, Chapter 5, of this code does not apply to county mutual insurance companies. [~~This subsection expires December 31, 1995.~~]

SECTION 31. The commissioner of insurance shall conduct hearings on the benchmark rate under Section 3(d), Article 5.101, Insurance Code, as amended by this Act, to be used by insurers in calendar year 1996, not later than October 1, 1995.

SECTION 32. This Act takes effect September 1, 1995.

SECTION 33. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 1988** as follows:

Amend SECTION 28 of the bill, proposed Section (2)(b), Article 5.131, Subchapter O, Chapter 5, Insurance Code, by inserting a new sentence after the word "jurisdiction" to read as follows: Sections 3 and 4 of this Subchapter do not apply to the nonrate regulated insurers covered by this Subsection. (Senate Committee Report, page 10, line 39).

Senate Amendment No. 2

Amend **CSHB 1988** as follows:

Amend SECTION 28, proposed Article 5.131, Subchapter O, Chapter 5, Insurance Code, by striking the existing Section 6 and inserting the following:

Sec. 6. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 4 or 5 of this article, each rate resulting from the reduction required under Section 3 of this article remains in effect until January 1, 2001. (Senate Committee Report, page 12, lines 36 through 47).

Senate Amendment No. 3

Amend **CSHB 1988** as follows:

Amend SECTION 29, proposed Article 21.69, Insurance Code, by striking the existing Subsection (f) and inserting the following:

(f) The statistical agent may provide aggregate historical premium and loss data to its subscribers. (Senate Committee Report, page 13, lines 28 through 30).

Senate Amendment No. 4

Amend **CSHB 1988** as follows:

Amend SECTION 28, proposed Section 3, Article 5.131, Subchapter O, Chapter 5, Insurance Code, as follows:

(1) In Subdivision (e), strike the language between "under this section," and "the following reductions," (Senate Committee Report, page 11, lines 37 through 40).

(2) Strike the existing Subdivision (f) and insert the following:

(f) Any rule or order of the commissioner which determines, approves, or sets a rate reduction under this section and is appealed or challenged shall

be and remain in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use the rate reduction provided in the order being appealed or challenged. Such rate reduction shall be lawful and valid during such appeal or challenge. (Senate Committee Report, page 11, lines 67 through 70).

Senate Amendment No. 5

Amend **CSHB 1988** by substituting the following for Sec. 4(b) on page 12:

(b) The commissioner is not required to disapprove a filed rate that reflects less than the full amount of the rate reduction imposed by Section 3 of this article if:

(1) the commissioner determines that based on clear and convincing evidence that an insurer will be financially unable in a particular line of insurance to continue writing that line, or

(2) the rate reduction required by Section 3 of this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code.

HB 2523 - WITH SENATE AMENDMENT

Representative McDonald called up with a senate amendment for consideration at this time,

HB 2523, A bill to be entitled An Act relating to the prevention of Medicaid fraud; imposing civil penalties.

On motion of Representative McDonald, the house concurred in the senate amendment to **HB 2523**.

HB 2523 - TEXT OF SENATE AMENDMENT

CSHB 2523, A bill to entitled An Act relating to the prevention of Medicaid fraud; imposing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Human Resources Code, is amended by adding Chapter 36 to read as follows:

CHAPTER 36. MEDICAID FRAUD PREVENTION

Sec. 36.001. DEFINITIONS. In this chapter:

(1) "Claim" means a written or electronically submitted request or demand that:

(A) is signed by a provider or a fiscal agent and that identifies a product or service provided or purported to have been provided to a Medicaid recipient as reimbursable under the Medicaid program, without regard to whether the money that is requested or demanded is paid; or

(B) states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under the Medicaid program.

(2) "Documentary material" means a record, document, or other tangible item of any form, including:

(A) a medical document or X ray prepared by a person in relation to the provision or purported provision of a product or service to a Medicaid recipient;

(B) a medical, professional, or business record relating to:
 (i) the provision of a product or service to a Medicaid recipient; or

(ii) a rate or amount paid or claimed for a product or service, including a record relating to a product or service provided to a person other than a Medicaid recipient as needed to verify the rate or amount;

(C) a record required to be kept by an agency that regulates health care providers; or

(D) a record necessary to disclose the extent of services a provider furnishes to Medicaid recipients.

(3) "Fiscal agent" means:

(A) a person who, through a contractual relationship with the Texas Department of Human Services, the Texas Department of Health, or another state agency, receives, processes, and pays a claim under the Medicaid program; or

(B) the designated agent of a person described by Paragraph (A).

(4) "Health care practitioner" means a dentist, podiatrist, psychologist, physical therapist, chiropractor, registered nurse, or other provider licensed to provide health care services in this state.

(5) "Medicaid program" means the state Medicaid program.

(6) "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.

(7) "Physician" means a physician licensed to practice medicine in this state.

(8) "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent; and

(C) an employee of a provider.

(9) "Service" includes care or treatment of a Medicaid recipient.

(10) "Signed" means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.

(11) "Unlawful act" means an act declared to be unlawful under Section 36.002.

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly or intentionally makes or causes to be made a false statement or misrepresentation of a material fact;

(A) on an application for a contract, benefit, or payment under the Medicaid program; or

(B) that is intended to be used to determine a person's eligibility for a benefit or payment under the Medicaid program;

(2) knowingly or intentionally conceals or fails to disclose an event:

(A) that the person knows affects the initial or continued right to a benefit or payment under the Medicaid program of:

(i) the person; or

(ii) another person on whose behalf the person has applied for a benefit or payment or is receiving a benefit or payment; and

(B) to permit a person to receive a benefit or payment that is not authorized or that is greater than the payment or benefit that is authorized;

(3) knowingly or intentionally applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly or intentionally makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) a personal care facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly or intentionally charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or continued service to a Medicaid recipient if the cost of the service provided to the Medicaid recipient is paid for, in whole or in part, under the Medicaid program;

(6) knowingly or intentionally presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly or intentionally makes a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly or intentionally fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service; or

(9) knowingly or intentionally enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent.

Sec. 36.003. INJUNCTIVE RELIEF. (a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit an unlawful act, the attorney general may institute an action for an appropriate order to restrain the person from committing or continuing to commit the act.

(b) An action under this section shall be brought in a district court of Travis County or of a county in which any part of the unlawful act occurred, is occurring, or is about to occur.

Sec. 36.004. CIVIL REMEDIES. (a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) restitution of the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act;

(2) interest on the value of the payment or benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that restitution is paid to the state;

(3) a civil penalty of not less than \$1,000 or more than \$10,000 for each unlawful act committed by the person; and

(4) two times the value of the payment or benefit described by Subdivision (1).

(b) In determining the amount of the civil penalty described by Subsection (a)(3), the trier of fact shall consider:

(1) whether the person has previously violated the provisions of this chapter;

(2) the seriousness of the unlawful act committed by the person, including the nature, circumstances, extent, and gravity of the unlawful act;

(3) whether the health and safety of the public or an individual was threatened by the unlawful act;

(4) whether the person acted in bad faith when the person engaged in the conduct that formed the basis of the unlawful act; and

(5) the amount necessary to deter future unlawful acts.

(c) The trier of fact may assess a total of not more than two times the value of a payment or benefit described by Subsection (a)(1) if the trier of fact finds that:

(1) the person furnished the attorney general with all information known to the person about the unlawful act not later than the 30th day after the date on which the person first obtained the information; and

(2) at the time the person furnished all the information to the attorney general, the attorney general had not yet begun an investigation under this chapter.

(d) An action under this section shall be brought in Travis County or in a county in which any part of the unlawful act occurred.

(e) The attorney general may:

(1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.003; or

(2) institute an action for civil remedies independently of an action for injunctive relief.

Sec. 36.005. INVESTIGATION. (a) The attorney general may take action under Subsection (b) if the attorney general has reason to believe that:

(1) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged unlawful act;

(2) a person is committing, has committed, or is about to commit an unlawful act; or

(3) it is in the public interest to conduct an investigation to ascertain whether a person is committing, has committed, or is about to commit an unlawful act.

(b) In investigating an unlawful act, the attorney general may:

(1) require the person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;

(2) examine under oath a person in connection with the alleged unlawful act; and

(3) execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material under Section 36.006.

Sec. 36.006. CIVIL INVESTIGATIVE DEMAND. (a) An investigative demand must:

(1) state the rule or statute under which the alleged unlawful act is being investigated and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(b) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Texas Rules of Civil Procedure.

(c) Service of an investigative demand may be made by:

(1) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of business in this state or, if the person has no place of business in this state, to a person's principal office or place of business.

(d) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(e) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than an authorized employee of the attorney general without the consent of the person who produced the documentary material. The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(f) A person may file a petition, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A petition under this section shall be filed in a district court of Travis County and must be filed before the earlier of:

(1) the return date specified in the demand; or

(2) the 20th day after the date the demand is served.

(g) Except as provided by court order, a person on whom a demand has been served under this section shall comply with the terms of an investigative demand.

(h) A person who has committed an unlawful act in relation to the Medicaid program in this state has submitted to the jurisdiction of this state and personal service of an investigative demand under this section may be made on the person outside of this state.

(i) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Texas Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(j) If a person fails to comply with an investigative demand, or if copying and reproduction of the documentary material demanded cannot be satisfactorily accomplished and the person refuses to surrender the documentary material, the attorney general may file in a district court of Travis County a petition for an order to enforce the investigative demand.

(k) If a petition is filed under Subsection (j), the court may determine the matter presented and may enter an order to implement this section.

(l) Failure to comply with a final order entered under Subsection (k) is punishable by contempt.

(m) A final order issued by a district court under Subsection (k) is subject to appeal to the supreme court.

Sec. 36.007. DOCUMENTARY MATERIAL IN POSSESSION OF STATE AGENCY. (a) A state agency, including the Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, or the Department of Protective and Regulatory Services, shall provide the attorney general access to all documentary materials of persons and

Medicaid recipients under the Medicaid program to which that agency has access. Documentary material provided under this subsection is provided to permit investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.

(b) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than:

(1) an authorized employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general; or

(5) a state or federal grand jury.

Sec. 36.008. IMMUNITY. Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material under this chapter to:

(1) an authorized employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general; or

(5) a state or federal grand jury.

Sec. 36.009. SUSPENSION OR REVOCATION OF AGREEMENT; PROFESSIONAL DISCIPLINE. (a) The commissioner of human services, the commissioner of public health, the commissioner of mental health and mental retardation, the executive director of the Department of Protective and Regulatory Services, or the executive director of another state health care regulatory agency may suspend or revoke:

(1) a provider agreement between the department or agency and a person found liable under Section 36.004; or

(2) a permit, license, or certification granted by the department or agency to a person found liable under Section 36.004.

(b) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

Sec. 36.010. APPLICATION OF OTHER LAW. The application of a civil remedy under this chapter does not preclude the application of another common law, statutory, or regulatory remedy, except that a person may not be liable for a civil remedy under this chapter and civil damages or a penalty under Section 32.039 if the civil remedy and civil damages or penalty are assessed for the same act.

Sec. 36.011. RECOVERY OF COSTS, FEES, AND EXPENSES. The attorney general may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, reasonable attorney's fees, witness fees, and deposition fees.

Sec. 36.012. USE OF MONEY RECOVERED. The legislature, in appropriating money recovered under this chapter, shall consider the requirements of the attorney general and other affected state agencies in investigating Medicaid fraud and enforcing this chapter.

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 2758 - WITH SENATE AMENDMENTS

Representative Saunders called up with senate amendments for consideration at this time,

HB 2758, A bill to be entitled An Act relating to the provision of municipal services in an annexed area.

Representative Saunders 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 the bill.

The motion prevailed without objection.

HB 2758 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2758**: Saunders, chair, Yost, Mowery, Krusee, and B. Turner.

HJR 80 - WITH SENATE AMENDMENTS

Representative Black called up with senate amendments for consideration at this time,

HJR 80, A joint resolution proposing a constitutional amendment to abolish the office of constable in Mills, Reagan, and Roberts counties.

Representative Black 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 the resolution.

The motion prevailed without objection.

HJR 80 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HJR 80**: Black, chair, Craddick, R. Lewis, Chisum, and Kamel.

HB 2610 - WITH SENATE AMENDMENT

Representative Craddick called up with a senate amendment for consideration at this time,

HB 2610, A bill to be entitled An Act relating to the collection of delinquent ad valorem taxes and the appraisal of property for ad valorem tax purposes.

On motion of Representative Craddick, the house concurred in the senate amendment to **HB 2610** by (Record 566): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberston; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

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

Absent, Excused — Denny.

Absent — Goodman; Marchant.

HB 2610 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 2610** by adding an appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

SECTION _____. (a) Section 26.08, Tax Code, as amended by Chapters 347 and 728, Acts of the 73rd Legislature, 1993, is amended to read as follows:

Sec. 26.08. ELECTION TO LIMIT SCHOOL TAXES. (a) If the governing body of a school district adopts a rate that exceeds the sum of the district's effective maintenance rate, the rate of \$0.08, and the district's current debt rate [~~school district rollback tax rate~~], the registered [~~qualified~~] voters of the district at an election held for that purpose must determine whether [~~or not~~] to limit the tax rate the governing body may adopt for the current year to the school district rollback tax rate. When increased expenditure of money [~~funds~~] by a school district is necessary to respond to a disaster, including [~~such as~~] a tornado, hurricane, flood, or other calamity, but [~~(not including a drought, that) which~~] has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, an election is not required under this section to limit the [~~repeat a~~] tax rate the governing body may adopt for [~~increase adopted~~] the year following the year in which [~~next time the district adopts a tax rate after the date~~] the disaster occurs.

(b) The governing body shall order that an [the] election be held in the school district on a date not less than 30 or more than 90 days after the day on which it adopted the tax rate. Section 41.001, Election Code, [A state law requiring local elections to be held on a specified date] does not apply to the election unless a [specified] date specified by that section falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Limiting [Reducing] the ad valorem tax rate in (name of school district) for the current year from (the rate adopted) to (the school district rollback tax rate)."

(c) If a majority of the votes cast [qualified voters voting on the question] in the election favor the proposition, the governing body may not adopt a tax rate for the school district for the current year that exceeds [is] the school district rollback tax rate calculated for that year using the following formula:
$$\text{ROLLBACK TAX RATE} = (\text{ENROLLMENT ADJUSTMENT}) (\text{EFFECTIVE MAINTENANCE AND OPERATIONS RATE FOR TAX YEAR}) + \$0.08 + \text{CURRENT DEBT RATE}$$
 where:

(1) "tax year" denotes amounts used in calculating the rollback tax rate in the year immediately preceding the year in which the tax increase that initiated the referendum occurred rather than the year in which the calculation occurs; and

(2) "enrollment adjustment" is computed by dividing the current year's projected fall enrollment, as defined by the Texas Education Agency, by last year's enrollment but may not be less than 1.0[; otherwise the tax rate for the current year is the one adopted by the governing body].

(d) For purposes of this section, local tax funds dedicated to a junior college district under Section 45.105(e), Education Code, shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district. However, the funds dedicated to the junior college district are subject to Section 26.085.

(e) If a school district is certified by the commissioner of education under Section 42.251(c), Education Code, to have been subject to a reduction in total revenue for the school year ending on August 31 of the tax year:

(1) the district's effective maintenance and operations rate for the tax year is calculated as provided by Section 26.012, except that last year's levy is reduced by the amount of taxes imposed in the preceding year, if any, to offset the amount of the reduction certified by the commissioner; and

(2) the district's rollback tax rate for the tax year calculated as provided by Section 26.04 or by Subsection (c), as applicable, is increased by the tax rate that, if applied to the current total value for the school district, would impose taxes in an amount equal to the amount of the reduction certified by the commissioner.

(f) In a school district that received distributions from an equalization tax imposed under former Chapter 18, Education Code, the effective rate of that tax as of the date of the county unit system's abolition is added to the district's effective maintenance and operations rate under Subsections (a) and (c) of this section in the calculation of the district's rollback tax rate.

~~(g)(d) For purposes of this section, except as provided by Subsection (e), the school district rollback tax rate of a school district is the sum of:~~

~~[(1) the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to the state funds to be distributed to the district under Chapters 15 and 16, Education Code, for the school year beginning in the current tax year, would provide the same amount of state funds and local maintenance and operations taxes per student in weighted average daily attendance for that school year that was available to the district in the preceding year;~~

~~[(2) the rate of \$0.06; and~~

~~[(3) the district's current debt rate.~~

~~[(e) In the first year in which a school district that is the product of the consolidation of two or more whole school districts adopts a tax, the school district rollback tax rate for the consolidated district is the sum of:~~

~~[(1) the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds to be distributed to the district under Chapters 15 and 16, Education Code, for the school year beginning in the current tax year, would provide the same amount of state funds and local maintenance and operations taxes per student in weighted average daily attendance for that school year that was available to the component district in the preceding year for which that amount was greater than for any other component district;~~

~~[(2) the rate of \$0.06; and~~

~~[(3) the consolidated district's current debt rate.~~

~~[(f) For purposes of Subsections (d) and (e), the amount of state funds and local maintenance and operations taxes that was available to a school district in the preceding year is the amount of state funds distributed to the school district under Chapters 15 and 16, Education Code, for the preceding school year and the total amount of local maintenance and operations taxes imposed by the district in the preceding tax year.~~

~~[(g) In this section, "weighted students in average daily attendance" has the meaning assigned by Section 16.302, Education Code.~~

~~[(h) For purposes of this section, local tax funds dedicated to a junior college district under Section 20.48(e), Education Code, shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district. However, the funds dedicated to the junior college district are subject to Section 26.085 of this code.]"~~

(b) This section prevails over the amendment of Section 26.08, Tax Code, provided by **SB 1**, Acts of the 74th Legislature, Regular Session, 1995, regardless of the relative dates of enactment.

HB 1193 - WITH SENATE AMENDMENTS

Representative Berlanga called up with senate amendments for consideration at this time,

HB 1193, A bill to be entitled An Act relating to the regulation of orthotists and prosthetists; providing a civil penalty.

Representative Berlanga 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 the bill.

The motion prevailed without objection.

HB 1193 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1193**: Berlanga, chair, Harris, Maxey, Rodriguez, and Glaze.

HB 2860 - WITH SENATE AMENDMENT

Representative Grusendorf called up with a senate amendment for consideration at this time,

HB 2860, A bill to be entitled An Act relating to the power of certain school districts to grant tax abatements.

On motion of Representative Grusendorf, the house concurred in the senate amendment to **HB 2860** by (Record 567): 145 Yeas, 0 Nays, 3 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbraneck.

Present, not voting — Mr. Speaker; Hartnett; Uher(C).

Absent, Excused — Denny.

Absent — Greenberg.

HB 2860 - TEXT OF SENATE AMENDMENT

CSHB 2860, A bill to be entitled An Act relating to tax abatements by municipalities, counties, and junior college districts relating to property in certain school districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 312, Tax Code, is amended by adding Section 312.210 to read as follows:

Sec. 312.210. AGREEMENT BY TAXING UNITS RELATING TO PROPERTY IN CERTAIN SCHOOL DISTRICTS. (a) This section applies only to a tax abatement agreement applicable to property located in a

reinvestment zone with respect to which a municipality, county, and junior college district have entered into a joint agreement to offer tax abatements exempting from taxation a specified portion of the value of the property in the reinvestment zone.

(b) A tax abatement agreement with the owner of real property that is located in the reinvestment zone described by Subsection (a) and in a school district that has a wealth per student that does not exceed the equalized wealth level must exempt from taxation:

(1) the portion of the value of the property in the amount specified in the joint agreement among the municipality, county, and junior college district; and

(2) an amount equal to 10 percent of the maximum portion of the value of the property that may under Section 312.204(a) be otherwise exempted from taxation.

(c) In this section, "wealth per student" and "equalized wealth level" have the meanings assigned those terms by Section 36.001, Education Code.

SECTION 2. This Act applies only to a tax abatement agreement entered into on or after the effective date of this Act. A tax abatement agreement entered into before the effective date of this Act is covered by the law as it existed on the date on which the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 2969 - WITH SENATE AMENDMENTS

Representative McCoulskey called up with senate amendments for consideration at this time,

HB 2969, A bill to be entitled An Act relating to the acquisition and disposition of land and facilities by a municipality and to the issuance of municipal bonds.

On motion of Representative McCoulskey, the house concurred in the senate amendments to **HB 2969** by (Record 568): 147 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria;

Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

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

Absent, Excused — Denny.

HB 2969 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1 (Senate Committee Amendment No. 2)

Amend **HB 2969** as follows:

(1) Add to the existing SECTION 1, and the following:

SECTION 1. Section 2A, Article 835s, Revised Statutes, is added to read as follows:

Sec. 2A. A municipality with a population greater than 8,000 but less than 10,000 that is located in two counties with populations of 225,000 or more but less than 2,818,199 may acquire, by any lawful means other than eminent domain, land, and may construct or otherwise acquire a building or other facility for the purpose of selling, pursuant to an installment sale agreement or otherwise, or leasing the land, building or other facility to an "institution of higher education" under Section 61.003, Education Code, which will provide a significant number of vocational and vocational-technical education courses in the facility for public use. A sale or lease under this section to an "institution of higher education" may proceed without the need for public notice or bidding, and otherwise on such terms as the governing body of the municipality may find acceptable.

Senate Amendment No. 2

Amend **HB 2969** as follows:

(1) Strike the following language in Section 1, subsection 2 of **HB 2969**: "selling, pursuant, to an installment sale agreement or otherwise, or . . . with or without an option to purchase, without the need for public notice or bidding, and otherwise on such terms as the governing body of the municipality may find acceptable."

"including, but not limited to, an "institution of higher education" under Section 61.003, Education Code, which will provide a significant number of vocational and vocational-technical education courses in the facility."

HB 2550 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2550**: Madden, chair, Berlanga, Harris, Talton, and Delisi.

HB 713 - WITH SENATE AMENDMENTS

Representative Oakley called up with senate amendments for consideration at this time,

HB 713, A bill to be entitled An Act relating to the regulation of private investigators and private security agencies; creating a criminal penalty.

On motion of Representative Oakley, the house concurred in the senate amendments to **HB 713**.

HB 713 - TEXT OF SENATE AMENDMENTS

CSHB 713, A bill to be entitled An Act relating to the regulation of private investigators and private security agencies; creating a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended by amending Subsections (3), (4), (5) and (31) and adding Subsections (33), (34), (35), (36) and (37) to read as follows:

(3) "Investigations company" means:

(A) any person who engages in the business or accepts employment to obtain or furnish information with reference to:

(i) ~~[(a)]~~ a crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

(ii) ~~[(b)]~~ the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(iii) ~~[(c)]~~ the location, disposition, or recovery of lost or stolen property;

(iv) ~~[(d)]~~ the cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to property; ~~[(e)]~~

(v) ~~[(f)]~~ the securing of evidence to be used before any court, board, officer, or investigating committee; or

(vi) the electronic tracking of the location of any individual or motor vehicle other than for criminal justice purposes by or on behalf of a governmental entity; or

(B) any person who engages in the business of or accepts employment to protect one or more individuals from bodily harm through the use of a personal protection officer.

(4) "Guard company" means any person engaging in the business of or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person and performing any one or more of the following or similar functions:

(a) prevention of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

(b) prevention, observation, or detection of any unauthorized activity on private property;

(c) control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; ~~[(d)]~~

(d) protection of individuals from bodily harm; or

(e) protection of one or more individuals from bodily harm through the use of a personal protection officer.

(5) "Alarm systems company" means any person that sells, installs, services, monitors or responds to burglar alarm signal devices, detection devices, burglar alarms, robbery alarms, television cameras, still cameras, or any other electrical, mechanical, or electronic device used:

(a) to prevent or detect burglary, theft, robbery, shoplifting, pilferage, shrinkage, or other losses of that type;

(b) to prevent or detect intrusion; or

(c) primarily to detect or summon aid for other emergencies.

(31) "Alarm system monitor" means an individual who monitors burglar alarm signal devices, detection devices, burglar alarms, robbery alarms, television cameras, still cameras, or any other electrical, mechanical, or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage, shrinkage, or similar losses, used to prevent or detect intrusion, or used primarily to summon aid for other emergencies. The term does not include a person employed exclusively and regularly by an employer other than a licensee in connection with the affairs of that employer, and with whom the person has an employer-employee relationship.

(33) "Detection device" means an electronic device used as a part of a burglar or hold-up alarm including any control, communications, motion detector, door or window switch, sound detector, vibration detector, light beam, pressure mat, wiring or similar device; or any electronic device used to limit access by persons into building structures or gate compounds, including any control, communications, motion detector, door or window switch, card or proximity readers, push-button key pad entry, gate entry device, door exit buttons, or similar device.

(34) "Personal protection authorization" means an authorization granted by the board to an individual who:

(A) meets the requirements of Section 14(d) of this Act; and

(B) has been issued a security officer commission to carry a concealed firearm.

(35) "Personal protection officer" means an individual who provides personal protection from bodily harm to one or more individuals under a security officer commission and a personal protection officer authorization issued by the board.

(36) "Peace officer" has the meaning assigned by Article 2.12 Code of Criminal Procedure.

SECTION 2. Section 3(a), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act does not apply to:

(1) a person employed exclusively and regularly by one employer in connection with the affairs of an employer only and where there exists an employer-employee relationship; provided, however, any person who shall carry a firearm in the course of his employment shall be required to obtain a private security officer commission under the provisions of this Act;

(2) except as provided by Subsection (d) of this Section, an officer or employee of the United States of America, or of this State or political

subdivision of either, while the employee or officer is engaged in the performance of official duties;

(3) a person who has full-time employment as a peace officer [~~as defined by Article 2.12, Code of Criminal Procedure~~], who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if the officer [~~such person is~~]:

(A) is employed in an employee-employer relationship[:] or [~~(B)~~] employed on an individual contractual basis;

(B) is [~~(C)~~] not in the employ of another peace officer; [~~and~~]

(C) is [~~(D)~~] not a reserve peace officer; and

(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at the rate of the minimum wage or higher, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(4) a person engaged exclusively in the business of obtaining and furnishing information for purposes of credit worthiness or collecting debts or ascertaining the financial responsibility of applicants for property insurance and for indemnity or surety bonds, with respect to persons, firms, and corporations;

(5) an attorney-at-law in performing his duties;

(6) admitted insurers, insurance adjusters, agents, and insurance brokers licensed by the State, performing duties in connection with insurance transacted by them;

(7) a person who engages exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(8) a locksmith who does not install or service detection devices, does not conduct investigations, and is not a security service contractor;

(9) a person who owns and installs burglar detection or alarm devices on his own property or, if he does not charge for the device or its installation, installs it for the protection of his personal property located on another's property, and does not install the devices as a normal business practice on the property of another;

(10) an employee of a cattle association who is engaged in inspection of brands of livestock under the authority granted to that cattle association by the Packers and Stockyards Division of the United States Department of Agriculture;

(11) the provisions of this Act shall not apply to common carriers by rail engaged in interstate commerce and regulated by state and federal authorities and transporting commodities essential to the national defense and to the general welfare and safety of the community;

(12) a registered professional engineer practicing in accordance with the provisions of the Texas Engineering Practice Act that does not install or service detection devices, does not conduct non-engineering investigations, is performing forensic engineering studies, and is not a security services contractor;

(13) a person whose sale of burglar alarm signal devices, burglary alarms, television cameras, still cameras, or other electrical, mechanical, or electronic devices used for preventing or detecting burglary, theft, shoplifting, pilferage, or other losses is exclusively over-the-counter or by mail order;

(14) a person who holds a license or other form of permission issued by an incorporated city or town to practice as an electrician and who installs fire or smoke detectors in no building other than a single family or multifamily residence;

(15) a person or organization in the business of building construction that installs electrical wiring and devices that may include in part the installation of a burglar alarm or detection device if:

(A) the person or organization is a party to a contract that provides that the installation will be performed under the direct supervision of and inspected and certified by a person or organization licensed to install and certify such an alarm or detection device and that the licensee assumes full responsibility for the installation of the alarm or detection device; and

(B) the person or organization does not service or maintain burglar alarms or detection devices;

(16) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;

(17) response to a burglar alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity;

(18) a person who, by education, experience, or background has specialized expertise or knowledge such as that which would qualify or tend to qualify such person as an expert witness, authorized to render opinions in proceedings conducted in a court, administrative agency, or governing body of this state or of the United States, in accordance with applicable rules and regulations and who does not perform any other service for which a license is required by provisions of this Act;

(19) an officer, employee, or agent of a common carrier, as defined by Section 153(h), Communications Act of 1934 (47 U.S.C.A. Sec. 151 et seq.), while protecting the carrier or a user of the carrier's long-distance services from a fraudulent, unlawful, or abusive use of those long-distance services;

(20) a person who sells or installs automobile burglar alarm devices and that does not perform any other act that requires a license under this Act;

(21) a manufacturer, or a manufacturer's authorized distributor, who sells to the holder of a license under this Act equipment used in the operations for which the holder is required to be licensed;

(22) a person employed as a noncommissioned security officer by a political subdivision of this state;

(23) a person whose activities are regulated under Article 5.43-2, Insurance Code, except to the extent that those activities are specifically regulated under this Act;

(24) a landman performing activities in the course and scope of the landman's business;

(25) a hospital or a wholly owned subsidiary or affiliate of a hospital that provides medical alert services for persons who are sick or disabled, if the hospital, subsidiary, or affiliate is licensed under Chapter 241, Health and Safety Code, and the hospital does not perform any other service that requires a license under this Act;

(26) a charitable, nonprofit organization that provides medical alert services for persons who are sick or disabled, if the organization:

(A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986;

(B) has its monitoring services provided by a licensed person or hospital or a wholly owned subsidiary or affiliate of a hospital licensed under Chapter 241, Health and Safety Code; and

(C) does not perform any other service that requires a license under this Act;

(27) a person engaged in the business of electronic monitoring of a person as a condition of that person's probation, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this Act;

(28) a nonprofit business or civic organization that:

(A) employs one or more peace officers meeting the qualifications of Subdivision (3) of this subsection as patrolmen, guards, or watchmen;

(B) provides the services of these peace officers only to:

(i) its members; or

(ii) if the organization does not have members, the members of the communities served by the organization as described in its articles of incorporation or other organizational documents;

(C) devotes the net receipts from all charges for the services exclusively to the cost of providing the services or to the costs of other services for the enhancement of the security or safety of:

(i) its members; or

(ii) if the organization does not have members, the members of the communities served by the organization as described in its articles of incorporation or other organizational documents; and

(D) does not perform any other service that requires a license under this Act;

(29) a charitable, nonprofit organization that maintains a system of records to aid in the location of missing children if the organization:

(A) is exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments;

(B) exclusively provides services related to locating missing children; and

(C) does not perform any other service that requires a license under this Act; or

(30) a person engaged in the business of psychological testing or other testing and interviewing services (to include but not limited to attitudes, honesty, intelligence, personality, and skills) for preemployment purposes, if the person does not perform any other service that requires a license under this Act.

SECTION 3. Section 3A (a) and (c), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), are amended to read as follows:

Section 3A. (a) Except as provided by Subsection (c) of this section, the provisions of this Act do not apply to a person who sells [~~burglar alarms~~]

detection devices or other devices for preventing or detecting burglary in a person's residence if:

(1) the person does not install, service, or maintain [~~the burglar alarms or other~~] detection devices;

(2) the person holds a valid seller's certificate issued by the board;

(3) the person has, as a precedent for obtaining a seller's certificate, submitted to the board an application for a seller's certificate which shall include the person's full name, residence telephone number, date and place of birth, and Social Security number[~~; together with two color photographs taken within the past six months that show a facial likeness of the person~~] and two sets of classifiable fingerprints;

(4) the person has paid to the board a seller's certificate fee as established by the board, but not to exceed \$25, which certificate shall be valid for a period of two years;

(5) there is filed with the board, either by the manufacturer, distributor, or sellers of such devices, a certificate evidencing insurance for liability for bodily injury or property damage arising from faulty or defective products in an amount not less than \$1 million combined single limit, provided that such policy of insurance need not relate exclusively to burglary devices;

(6) there has been filed with the board, either by the manufacturer, distributor, or sellers of such devices, a surety bond executed by a surety company authorized to do business in this state in the sum of \$10,000 in favor of the State of Texas, and any customer purchasing such devices in his home who does not receive delivery of the devices in accordance with the contract or agreement may bring an action against the bond to recover the down payment or purchase price actually paid; and

(7) the person is not employed by a security services contractor.

(c) It shall be unlawful and punishable as provided in Section 44 of this Act for any person who holds a current seller's certificate to install, service, monitor, or respond to [~~burglar alarms or other~~] detection devices used to prevent or detect burglary or other losses of that type.

SECTION 4. Section 11B, Subsection (a) Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended to read as follows:

Section 11B. (a) The board shall revoke or suspend any registration, license, or security officer commission, reprimand any registrant, licensee, or commissioned security officer, or deny an application for a registration, license, or security officer commission, or renewal thereof, or may place on probation a person whose registration, license, or security officer commission has been suspended, on proof:

(1) that the applicant, licensee, commissioned security officer, or registrant has violated any provisions of this Act or of the rules and regulations promulgated under this Act;

(2) that the applicant, licensee, commissioned security officer, or registrant has committed any act resulting in conviction of a felony;

(3) that the applicant, licensee, commissioned security officer, or registrant has committed an act after the date of application for a registration, license, or security officer commission that results in a conviction of a misdemeanor involving moral turpitude;

(4) that the applicant, licensee, commissioned security officer, or registrant has practiced fraud, deceit, or misrepresentation; ~~or~~

(5) that the applicant, licensee, commissioned security officer, or registrant has made a material misstatement in the application for or renewal of the license, registration, or security officer commission~~[-]; or~~

(6) that the licensee of the commissioned security officer or registrant has submitted to the board sufficient evidence that a commissioned security officer or registrant, while in the employ of the licensee, practiced fraud or deceit, or committed theft while performing work as a commissioned security officer or registrant.

SECTION 5. Section 11(d), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The board shall ~~[may]~~ recognize, prepare, or administer continuing education programs for ~~[persons]~~ private investigators regulated by the board under this Act. The board shall set the minimum number of hours that must be completed and the types of programs that may be offered for private investigators regulated by the board. A private investigator regulated by the board shall submit evidence of compliance with the board's continuing education requirements in a manner prescribed by the board. [Participation in the programs is voluntary:]

SECTION 6. Section 14, Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended by adding Subsections (d)-(g) to read as follows:

(d) An applicant for a personal protection authorization:

(1) shall submit a written application for a personal protection authorization on a form prescribed by the board;

(2) shall submit a current certificate of completion of the basic security officer training course;

(3) shall provide proof that the applicant is currently employed by an investigations company or guard company licensed by the board;

(4) may not have been convicted of an offense involving assault during the seven years preceding the date of the application;

(5) shall provide proof of completion and the results of the Minnesota Multiphasic Personality Inventory psychological testing as required by board rule;

(6) shall provide proof of training in nonlethal self-defense or defense of a third person; and

(7) must be at least 21 years of age.

(e) A personal protection authorization runs concurrently with the dates of issuance and expiration of the security officer commission under which the holder's authorization was issued.

(f) The board shall establish a 15-hour course for a personal protection officer consisting of training in nonlethal self-defense or the defense of a third person. This training is in addition to the required basic security officer training course.

(g) The board by rule shall require an applicant for a personal protection officer authorization to complete the Minnesota Multiphasic Personality

Inventory test. The board may use the results of the test to evaluate the psychological fitness of the applicant.

SECTION 7. Section 15. (A), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended to read as follows:

Section 15. (A) An application for a license under this Act shall be in the form prescribed by the board. The application shall include:

- (1) the full name and business address of the applicant;
- (2) the name under which the applicant intends to do business;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) a statement as to the classification under which the applicant desires to be qualified;
- (5) the full name and residence address of each of its partners, officers, and directors, and its manager, if the applicant is an entity other than an individual;

~~[(6) two recent photographs of a type prescribed by the board of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a 25 percent or greater interest in the applicant, if the applicant is an entity;]~~

~~[(7)](6) one classifiable set of fingerprints of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns 25 percent or greater interest in the applicant, if the applicant is an entity;~~

~~[(8)](7) a verified statement of his experience qualifications in the particular field of classification in which he is applying;~~

~~[(9)](8) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application; and a letter from the Texas Department of Public Safety setting forth the record of any convictions of any applicant for a felony or a crime involving moral turpitude; and~~

~~[(10)](9) any other information, evidence, statements or documents as may be required by the board.~~

SECTION 8. Section 17(a), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended to read as follows:

Section 17. (a) If the General Appropriations Act does not specify the amount of the fee, the board by rule shall establish reasonable and necessary fees that produce funds sufficient for the administration of this Act but that do not produce unnecessary fund balances and do not exceed the following amounts:

Class A license	\$225
(original and renewal)	
Class B license	225
(original and renewal)	
Class C license	340
(original and renewal)	
Reinstate suspended license	150

Assignment of license	150
Change name of license	75
Delinquency fee	
Branch office certificate and renewal	150
Registration fee for private investigators, managers, branch office managers, and alarm systems installers (original and renewal)	20
Registration fee for noncommissioned security officer	35
Registration fee for security sales person	20
Registration fee for alarm systems monitor	20
Registration fee for dog trainer	20
Registration fee for owner, officer, partner, or shareholder of a licensee	20
Registration fee for security consultants	55
Security officer commission fee (original and renewal)	35
School instructor fee (original and renewal)	100
School approval fee (original and renewal)	250
Letter of Authority fee for private businesses and political subdivisions (original and renewal)	225
FBI fingerprint check	25
Duplicate pocket card	10
Employee information update fee	15
Burglar alarm sellers renewal fee	25
<u>Personal protection authorization</u>	<u>50</u>

SECTION 9. Section 19(a), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) It is unlawful and punishable as provided in Section 44 of this Act:

(1) for an individual employed as a security officer to knowingly carry a firearm during the course of performing his duties as a security officer if the board has not issued him a security officer commission under this section;

(2) for any person to hire or employ an individual or for any individual to accept employment in the capacity of a security officer to carry a firearm in the course and scope of his duties unless the security officer is issued a security officer commission by the board; ~~or~~

(3) for a commissioned security officer to carry a firearm unless:

(A) he is engaged in the performance of his duties as a security officer or is engaged in traveling directly to or from his place of assignment;

(B) he wears a distinctive uniform indicating that he is a security officer; and

(C) the firearm is in plain view; or

(4) for a personal protection officer to carry a concealed firearm unless the officer:

(A) has been issued a personal protection authorization by the board;

(B) is engaged in the exclusive performance of the officer's duties as a personal protection officer for the employer under whom the officer's personal protection authorization was issued; and

(C) carries the officer's security officer commission and personal protection authorization on the officer's person while performing the officer's duties as a personal protection officer and presents the commission and authorization on request.

SECTION 10. Section 28, Subsections (a) and (e) Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Any licensee or officer, director, partner, or manager of a licensee shall divulge to any law enforcement officer or district attorney, or his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person except as he may be required by state law or court order so to do, any information acquired by him except at the direction of the employer or client for whom information was obtained.

(e) Information that is contained in alarm records held by a governmental body and that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the board or as otherwise by state law or court order.

SECTION 11. Section 29, Private Investigators and Private Security Agencies Act (Article 4413(29bb) V.A.C.S., Vernon's Texas Civil Statutes is amended by amending Section 29 to become Section 29(a) and by adding Subsection (b) to read as follows:

Section 29. (a) Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the board.

(b) Each licensee shall maintain on file for board inspection at the licensee's principal place of business or branch office two (2) recent color photographs of a type prescribed by the board of each applicant, registrant, commissioned security officer and employee of the licensee.

SECTION 12. Section 33.(A), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes, is amended to read as follows:

Section 33.(A) The application for registration must be verified and must include:

(1) the full name, residence address, residence telephone number, date and place of birth, and the Social Security number of the applicant;

(2) a statement listing any and all names used by the applicant, other than the name by which he is currently known, together with an explanation setting forth the place or places where each name was used, the date or dates of each use, and a full explanation of the reasons why each such name was used. If the applicant has never used a name other than that by which he is currently known, this fact must be set forth in the statement;

(3) the name and address of the applicant's employer and applicant's consulting firm, the date the employment commenced, and a letter from the licensee requesting that the applicant be registered;

(4) the title of the position occupied by the applicant and a description of his duties;

~~[(5) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;] and~~

~~[(6)] (5) other information, evidence, statements, or documents, as required by the board.~~

SECTION 13. The Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes) is amended by adding Section 39A to read as follows:

Sec. 39A. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE BASED ON CRIMINAL HISTORY BACKGROUND CHECK. (a) The board may obtain any criminal history record relating to an applicant for a license or a license holder regulated under this Act that is maintained by the Department of Public Safety and the Federal Bureau of Investigation. The board shall deny an application for a person who does not provide two complete sets of fingerprints on forms prescribed by the board or fails to pay any required fee under this section.

(b) The board shall suspend a license, registration, security officer commission, letter of approval, or permit issued to an individual under this Act if the board receives written notification from the Department of Public Safety or any other law enforcement agency that the individual has been arrested for or charged with a felony or a misdemeanor involving moral turpitude.

(c) The board shall deny an application for a license, registration, security officer commission, letter of approval, or permit for an individual if the board receives written notification from the Department of Public Safety or any other law enforcement agency that the individual has been arrested for or charged with a felony or a misdemeanor involving moral turpitude.

(d) A license, security officer commission, registration, letter of approval, or permit is conditional on the board's receipt of criminal history information from the Department of Public Safety and shall be denied, suspended, or revoked if the board receives information from the Federal Bureau of Investigation or any other law enforcement agency that the individual or applicant has a record of having committed a criminal offense.

SECTION 14. Section 44, Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) Any person who violates any provision of this Act for which a specific criminal penalty is not prescribed commits an offense. An offense under this subsection is a Class A misdemeanor[-], except that the offense is a felony of the third degree if the person has previously been convicted of an offense under this Act and the offense consists of the person's failure to hold a registration, certificate, license, or commission that the person is required to hold by this Act.

(f) A person commits an offense if the person knowingly hires, contracts with, or employs a person who is required to hold a registration, certificate, license, or commission under this Act but does not hold the required registration, certificate, license, or commission or who otherwise, at the time of hire, contract, or employment, is in violation of this Act. An offense under this subsection is a Class A misdemeanor.

SECTION 15. Section 46.02(b), Penal Code, is amended to read as follows:

(b) It is a defense to prosecution under this section that the actor was, at the time of the commission of the offense:

(1) in the actual discharge of his official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event he must comply with Subdivision (5);

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or was directly en route between the premises and the actor's residence, if the weapon is a type commonly used in the activity;

(5) a person who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view; ~~or~~

(6) a peace officer, other than a person commissioned by the Texas State Board of Pharmacy; or

(7) a person who holds a security officer commission and a personal protection authorization issued by the Texas Board of Private Investigators and Private Security Agencies and who is providing personal protection under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes).

SECTION 16. Section 46.03(d), Penal Code, is amended to read as follows:

(d) It is a defense to prosecution under Subsection (a)~~(5)~~ that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a peace officer;

(2) a member of the armed forces or national guard;

(3) a guard employed by a penal institution; ~~or~~

(4) a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view; or

(5) a security officer who holds a personal protection authorization under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes).

SECTION 17. This Act takes effect September 1, 1995, except that Section 10 of this Act takes effect March 1, 1996.

SECTION 18. (a) The change in law made by this Act applies only to the punishment of an offense committed on or after the effective date of this

Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 19. The Texas Board of Private Investigators and Private Security Agencies shall adopt rules and prescribe forms under this Act not later than March 1, 1996.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 713** as follows:

(1) Add the following appropriately numbered Section:

SECTION . The Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended by adding sections 3A and 3B to read as follows:

(3A) The Board has authority to interpret and issue opinions resolving questions raised concerning the eligibility of alarm system installations to comply with Section 5.33A of the Texas Insurance Code. Such interpretations or opinions shall be conclusive as far as general conditions or individual installations are concerned.

(3B) The Board may authorize alarm system companies to issue a certificate of installation showing that an installation complies with Article 5.33A, Texas Insurance Code in lieu of the inspection required in the Insurance Code. The certificate must be furnished to the insurer and the insurer shall determine whether the person's property is in compliance with Article 5.33A of the Insurance Code. It is the responsibility of the insurer to determine compliance taking into consideration the certificate issued by the installer and other investigation as the insurer may determine to be appropriate.

(2) Renumber the remaining Sections of the bill appropriately.

HB 1367 - WITH SENATE AMENDMENTS

Representative Duncan called up with senate amendments for consideration at this time,

HB 1367, A bill to be entitled An Act relating to certain acts of unfair discrimination in the business of insurance and certain methods, programs, and mechanisms for providing property and casualty insurance in underserved areas; providing administrative penalties.

Representative Duncan 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 the bill.

The motion prevailed without objection.

HB 1367 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1367**: Dutton, chair, Duncan, Smithee, Shields, and De La Garza.

HB 1433 - WITH SENATE AMENDMENT

Representative Hamric called up with a senate amendment for consideration at this time,

HB 1433, A bill to be entitled An Act relating to the eligibility for release on mandatory supervision of certain inmates of the institutional division of the Texas Department of Criminal Justice.

Representative Hamric moved that the house concur in the senate amendment to **HB 1433**.

The motion was withdrawn.

Representative Hamric 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 the bill.

The motion prevailed without objection.

HB 1547 - WITH SENATE AMENDMENTS

Representative Swinford called up with senate amendments for consideration at this time,

HB 1547, A bill to be entitled An Act relating to weight, length, and hours of operation restrictions on certain vehicles.

On motion of Representative Swinford, the house concurred in the senate amendments to **HB 1547**.

HB 1547 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1547** by striking SECTION 3 of the bill and renumbering the remaining sections appropriately.

Senate Amendment No. 2

Amend **HB 1547** by adding the following appropriately numbered sections to read as follows and by renumbering the existing sections as appropriate:

SECTION ____ Subdivision (2), Subsection (b), Section 2, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) Not later than the 14th day after the date the department issues [~~a person receives~~] a permit under Section 5B of this Act, the department [~~person~~] shall notify [~~by certified or registered mail, return receipt requested;~~] the county clerk of each county listed in the permit application that [~~in which~~] the person intends to operate or cause to be operated an overweight vehicle in the county [~~the vehicle~~]. The notification must include:

~~(A) the name and address of the person for whom a permit was issued [the registered owner or operator of the vehicle]; and~~

~~(B) the vehicle identification number and license plate number of the vehicle[;~~

~~[(C) a statement that the person intends to operate or cause to be operated the vehicle on, over, or across the county roads, bridges, and culverts with a gross weight, axle weight, or wheel load that exceeds the limitations established under Section 5 or Section 5 1/2 of this Act; and~~

~~[(D) a statement that the notification is given pursuant to this subsection].~~

SECTION ____ . Section 5B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by amending Subsections (e) and (i) and adding Subsections (j) and (k) to read as follows:

(e)(1) The permit is valid for one year and must be carried in the vehicle. The fee for the permit is a base fee of \$75 plus the fees provided by Subdivision (2) of this subsection. The state treasurer shall remit \$50 of each base permit fee to the counties of the state, with such amount to be distributed among the various counties based on the ratio of the total number of miles of county roads maintained by a county to the total number of miles of county roads maintained by all of the counties of this state. The remaining \$25 of the base fee shall be deposited to the credit of the state highway fund and may be appropriated only to the department to administer this section.

(2)(A) At the time of application, an applicant must designate the counties in which the vehicle will operate. In addition to the base fee required by Subdivision (1) of this subsection, an applicant for a permit shall pay annually a fee for the number of counties designated by the applicant. A permit issued under this section is not valid for use in a county that is not listed on the permit application. The fee schedule under this subdivision is:

<u>Number of counties listed on permit application</u>	<u>Fee</u>
<u>1-20</u>	<u>\$125</u>
<u>21-40</u>	<u>\$345</u>
<u>41-60</u>	<u>\$565</u>
<u>61-80</u>	<u>\$785</u>
<u>81-100</u>	<u>\$1,005</u>
<u>101-254</u>	<u>\$2,000</u>

(B) At the time of application, a person shall pay, in addition to the fees required by Subdivision (1) of this subsection and Paragraph (A) of this subdivision, an administrative fee set by rule by the department in an amount not to exceed the direct and indirect costs of the department to:

(i) issue a sticker under Subdivision (5) of this subsection;

(ii) make the distribution of funds as required by Subdivision (3) of this subsection; and

(iii) provide notice to a county as required by Section 2(b)(2) of this Act.

(3)(A) The fee required by Subdivision (2)(A) of this subsection shall be distributed among the counties listed on the permit application based on the

ratio of the total number of miles of county roads maintained by a county listed on the application to the total number of miles of county roads maintained by all of the counties listed on the application.

(B) The fee required by Subdivision (2)(B) of this subsection shall be deposited in the state treasury to the credit of the state highway fund and may be appropriated only to the department to administer this section.

(4) The state treasurer shall remit the sums due each county under this subsection to the county treasurer or officer performing the function of that office of the county at least twice in each fiscal year. The county treasurer or officer shall deposit such amounts in the county depository of his county to the credit of the County Road and Bridge Fund. The amounts deposited in the fund under this subdivision may be used only for a purpose authorized by Section 4.003(b), County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes).

(5) Each time the department issues a permit under this section, the department shall issue a sticker to be placed above the state inspection sticker on the front windshield of the vehicle. The sticker must be in a form designed to aid in the enforcement of weight limits for motor vehicles and must indicate the expiration date of the permit. A sticker must be removed from the vehicle at the time it expires, when a lease of the vehicle expires, or when the vehicle is sold.

(i) A permit issued under this section may not be transferred. However, if the vehicle for which the permit is issued is destroyed or otherwise becomes permanently inoperable, a person may apply to the department for a credit for the remaining time the permit was valid. The department shall issue a prorated credit for the remaining time on the permit if the person:

(1) pays a fee set by the department in an amount not to exceed the cost of issuing the credit; and

(2) provides to the department:

(A) the original permit; or

(B) if the original permit no longer exists, written evidence of the destruction or permanent incapacity of the vehicle in a form approved by the department [by the department without charge from one vehicle to another vehicle if the vehicle for which the permit was issued will be out of service for more than 30 days because of a mechanical failure or the vehicle is sold or the lease for the vehicle has terminated. A permit may only be transferred to a vehicle for which an original permit may be issued, and a transfer does not extend the period for which the permit is valid. A person shall apply for a transfer by filing an affidavit with the department stating the reason the person is entitled to the transfer and describing the vehicle, including the vehicle identification number, to which the permit is to be transferred].

(j)(1) A credit issued under Subsection (i) of this section may be used only toward the payment of permit fees under this section.

(2) The fee required by Subsection (i)(1) of this section shall be deposited in the state treasury to the credit of the state highway fund and may be appropriated only to the department to administer this section.

(k) Sections 403.094(h) and 403.095, Government Code, do not apply to funds deposited to the credit of the state highway fund under this section.

SECTION _____. Section 15, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d)(1) A person who holds a permit issued under Section 5B of this Act commits an offense if the person:

(A) operates or directs the operation of the vehicle for which the permit was issued on a public highway or road; and

(B) is criminally negligent with regard to the operation of the vehicle in excess of the weight limits authorized by Section 5B(b) of this Act.

(2) A person who holds a permit issued under Section 5B of this Act commits an offense if the person operates or directs the operation of the vehicle for which the permit was issued:

(A) in a county not listed on the person's permit application under Section 5B(e) of this Act; and

(B) in excess of the normal weight limits established under this Act or the County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes).

(3) Except as provided by Subdivision (4) of this subsection, an offense under Subdivision (1) or (2) of this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$150.

(4) An offense under Subdivision (1) or (2) of this subsection is a misdemeanor punishable by a fine of:

(A) not less than \$300 or more than \$500 if the offense involves a vehicle having a gross weight that is more than 5,000 pounds and not more than 10,000 pounds over the vehicle's allowable gross weight; or

(B) not less than \$500 or more than \$1,000 if the offense involves a vehicle having a gross weight that is 10,000 pounds or more over the vehicle's allowable gross weight.

(5) A fine provided by Subdivision (3) or (4) is doubled if the offense occurs before the first anniversary of a conviction of a previous offense under this subsection.

(6) A governmental entity collecting a fine under Subdivision (4) of this subsection shall forward an amount equal to 50 percent of the fine to the comptroller for deposit in a special account in the general revenue fund that may be appropriated only to the Department of Public Safety for the enforcement of laws relating to overweight and oversized vehicles.

(7) A justice of the peace has jurisdiction of any offense under this subsection. A municipal court has jurisdiction of any offense under this subsection in which the fine does not exceed \$500.

(8) A judge of a court rendering a conviction under this subsection shall report the conviction to the Department of Public Safety. The department shall keep a record of each conviction reported under this subdivision.

(9) A person commits an offense if the person fails to display the sticker in the manner required by Section 5B(e) of this Act. An offense under this subdivision is a Class C misdemeanor.

SECTION _____. Section 5(a), Chapter 71, Acts of the 47th Legislature, Regular Session, 1941, is amended to read as follows:

(a) Except as provided by Subsection (c), any person, corporation, receiver or association who violates any provision of Section 5, Chapter 42, General

Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), (the Section fixing the gross weight of commercial motor vehicles) shall, upon conviction, be punished by a fine of not less than \$100 or more than \$150, except that if the offense involves a vehicle having a gross weight that is more than 5,000 pounds and not more than 10,000 pounds over the vehicle's allowable gross weight, the fine is not less than \$300 or more than \$500, and if the offense involves a vehicle having a gross weight that is more than 10,000 pounds over the vehicle's allowable gross weight, the fine is not less than \$500 or more than \$1,000. The fines provided for an offense subject to this subsection are doubled if the offense occurs before the first anniversary of a conviction of a previous offense subject to this subsection. A governmental entity collecting a fine under this subsection for an offense involving a vehicle having a gross weight that is more than 5,000 pounds over the vehicle's allowable gross weight shall forward an amount equal to 50 percent of the fine to the comptroller for deposit in a special account in the general revenue fund that may be appropriated only to the Department of Public Safety for the enforcement of laws relating to overweight and oversized vehicles. A justice of the peace has jurisdiction of any offense under this subsection. A municipal court has jurisdiction of any offense under this subsection in which the fine does not exceed \$500. [~~One Hundred Dollars (\$100), nor more than One Hundred Fifty Dollars (\$150); for a second conviction within one year thereafter such person, corporation, receiver, or association shall be punished by a fine of not less than One Hundred Fifty Dollars (\$150) nor more than Two Hundred Fifty Dollars (\$250) or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the second conviction such person, corporation, receiver, or association shall be punished by a fine of not less than Two Hundred Dollars (\$200) nor more than Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.~~] It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section and it shall be the duty of the Department of Public Safety to keep a record thereof.

SECTION _____. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6674o-2 to read as follows:

Art. 6674o-2. COUNTY AND MUNICIPAL BRIDGE INSPECTION. (a) If the Texas Department of Transportation determines after an inspection that a bridge under the jurisdiction of a county or municipality qualifies for a lower load rating under 23 C.F.R. Sections 650.301-650.311 than is currently permitted, the department shall notify the commissioners court of the county or the governing body of the municipality.

(b) A commissioners court or governing body that receives notice under Subsection (a) of this article shall post notice on a road or highway approaching the bridge indicating that traffic is restricted consistent with the new lower load rating. The notice must be placed in a location that enables restricted traffic to avoid crossing the bridge.

SECTION _____. (a) A permit issued under Section 5B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article

6701d-11, Vernon's Texas Civil Statutes), before the effective date of this Act remains valid until the permit expires or is revoked.

(b) A person possessing a valid permit as described by Subsection (a) of this section is not required to display a sticker on a vehicle as required by Subdivision (5), Subsection (e), Section 5B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), as added by this Act, until the permit expires.

(c) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

Senate Amendment No. 3

Amend **HB 1547**, in SECTION 1, amend Section 5B(b), Article 6701d-11, Vernon's Texas Civil Statutes (committee printing, page 1, line 29), by striking "or distance between axles".

HB 3082 - WITH SENATE AMENDMENT

Representative Holzheuser called up with a senate amendment for consideration at this time,

HB 3082, A bill to be entitled An Act relating to the creation of, annexation of territory by, and consolidation of drainage districts.

On motion of Representative Holzheuser, the house concurred in the senate amendment to **HB 3082** by (Record 569): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogen; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

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

Absent, Excused — Denny.

Absent — Alexander; Clemons; Hunter, T.

STATEMENTS OF VOTE

When Record No. 569 was taken, I was in the house but away from my desk. I would have voted yes.

Alexander

When Record No. 569 was taken, I was in the house but away from my desk. I would have voted yes.

Clemons

When Record No. 569 was taken, I was in the house but away from my desk. I would have voted yes.

T. Hunter

HB 3082 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 3082** by adding a new Section 3 and renumbering subsections accordingly to read as follows:

SECTION 3. Chapter 56, Subchapter D, Water Code, is amended by adding Section 56.144 to read as follows:

Sec. 56.144. Interlocal Agreements. A district created pursuant to this chapter, special law or other general law may enter into an interlocal agreement with another political subdivision to accomplish the purposes set forth in Art. III, Section 52(b) (1), (2) and (3) of the Texas Constitution. In the event the jurisdictional boundaries of two or more districts or political subdivisions contain all or part of the same watershed of a waterway and one or more of the other districts or political subdivisions determines that the construction of improvements in the watershed would be a public benefit and accomplish the purposes set forth in Art. III, Sec. 52(b) (1), (2) and (3) of the Texas Constitution, the district or political subdivision shall propose an interlocal agreement to the governing bodies of the other districts or political subdivisions sharing jurisdiction with the watershed. If an interlocal agreement is not executed within 120 days from the date it is submitted to all of the districts and political subdivisions sharing jurisdiction within the watershed, the district or political subdivision proposing the improvements may petition the commission for approval of the proposed improvements. The commission shall conduct a hearing on the proposed improvements and upon a finding that the improvements would be a public benefit, shall approve the plan for the improvements and the district or political subdivision proposing the improvements shall be authorized to implement the plan within the boundaries of the other district or political subdivision.

HB 3164 - WITH SENATE AMENDMENTS

Representative Danburg called up with senate amendments for consideration at this time,

HB 3164, A bill to be entitled An Act relating to the continuation, operations, and functions of the Public Utility Commission of Texas and the Office of Public Utility Counsel; providing penalties.

Representative West raised a point of order against further consideration of **HB 3164** on the grounds that **HB 3164** violates Article III, Sections 30 and 35 of the Texas Constitution.

The point of order was withdrawn.

Representative Danburg 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 the bill.

The motion prevailed without objection.

HB 3164 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3164**: Seidlits, chair, Danburg, S. Turner, Hochberg, and Hilbert.

HB 1433 - APPOINTMENT OF CONFERENCE COMMITTEE

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1433**: Hamric, chair, Place, Hightower, Telford, and Ramsay.

HB 433 - WITH SENATE AMENDMENT

Representative Goodman called up with a senate amendment for consideration at this time,

HB 433, A bill to be entitled An Act relating to the parent-child relationship, suits affecting the parent-child relationship, and the protection of children.

On motion of Representative Goodman, the house concurred in the senate amendment to **HB 433**. (Eiland, Greenberg, Hartnett, and Hochberg recorded voting no)

HB 433 - TEXT OF SENATE AMENDMENT

CSHB 433, A bill to be entitled An Act relating to the parent-child relationship, suits affecting the parent-child relationship, and the protection of children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3.521(c), Family Code, is amended to read as follows:

(c) The form authorized in this section and the form authorized by Section 102.010 [~~11.09 of this code~~] may be combined in appropriate situations.

SECTION 2. Subchapter C, Chapter 3, Family Code, is amended by adding Section 3.522 to read as follows:

Sec. 3.522. STATEMENT ON ALTERNATIVE DISPUTE RESOLUTION.

(a) A party to a proceeding under this title shall include in the first pleading filed by the party in the proceeding the following statement:

"I AM AWARE THAT IT IS THE POLICY OF THE STATE OF TEXAS TO PROMOTE THE AMICABLE AND NONJUDICIAL SETTLEMENT OF

DISPUTES INVOLVING CHILDREN AND FAMILIES. I AM AWARE OF ALTERNATIVE DISPUTE RESOLUTION METHODS INCLUDING MEDIATION. WHILE I RECOGNIZE THAT ALTERNATIVE DISPUTE RESOLUTION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR A TRIAL AND THAT THIS CASE MAY BE TRIED IF IT IS NOT SETTLED, I REPRESENT TO THE COURT THAT I WILL ATTEMPT IN GOOD FAITH TO RESOLVE CONTESTED ISSUES IN THIS CASE BY ALTERNATIVE DISPUTE RESOLUTION WITHOUT THE NECESSITY OF COURT INTERVENTION."

(b) The statement required by Subsection (a) must be printed in boldfaced type or capital letters and signed by the party.

(c) The statement in Subsection (a) is not required for:

(1) a pleading in which citation on all respondents entitled to service of citation is requested, issued, and given by publication;

(2) a motion or pleading that seeks a protective order under Section 3.581; or

(3) a special appearance under Rule 120A, Texas Rules of Civil Procedure.

SECTION 3. Sections 3.55(b), (c), and (d), Family Code, are amended to read as follows:

(b) If the parties are parents of a child, as defined by Section 101.003 [~~11.01 of this code~~], and the child is not under the continuing jurisdiction of any other court as provided by Chapter 155 [~~under Section 11.05 of this code~~], the suit for divorce, annulment, or to declare the marriage void, must include a suit affecting the parent-child relationship under Title 5 [~~Subtitle A, Title 2, of this code~~]. If a suit affecting the parent-child relationship is pending at the time the suit for divorce, annulment, or to declare a marriage void is filed, the suit affecting the parent-child relationship shall be transferred as provided by Section 103.002 to the court in which the suit for dissolution of a marriage is filed.

(c) If the parties are parents of a child, as defined by Section 101.003 [~~11.01 of this code~~], and the child is under the continuing jurisdiction of another court under Chapter 155 [~~Section 11.05 of this code~~], either party to the suit for divorce, annulment, or to declare the marriage void may move that court for transfer of the suit affecting the parent-child relationship to the court having jurisdiction of the suit or divorce, annulment, or to declare the marriage void. The court with continuing jurisdiction shall then transfer the proceeding to the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void as provided by Chapter 155. [~~Proceedings for transfer under this section shall be governed by the procedures governing transfer under Section 11.06 of this code.~~] On transfer of the proceedings to the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void, that court shall consolidate the suit affecting the parent-child relationship with the suit for divorce, annulment, or to declare the marriage void.

(d) After transfer of a suit affecting the parent-child relationship as provided in Subsection (b) or (c) [~~of this section~~], or if the parties are parents of a child and no other court has jurisdiction of the child, the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void

has jurisdiction to render an order in the suit [~~make orders, decrees, or judgments~~] affecting the parent-child relationship as provided by Title 5 [~~in the same manner that a court with jurisdiction of a suit affecting the parent-child relationship has under Subtitle A, Title 2, of this code, and is subject to the same rules, requirements, and standards set forth in Subtitle A, Title 2, of this code for such suits. On entering its decree or judgment affecting the parent-child relationship, the court has continuing jurisdiction under Section 11.05 of this code, and the decree or judgment shall be treated for all purposes as though it were entered in a suit affecting the parent-child relationship~~].

SECTION 4. Section 4.02, Family Code, is amended to read as follows:

Sec. 4.02. DUTY TO SUPPORT. Each spouse has the duty to support the other spouse. [~~Each parent has the duty to support his or her child during the period that the child is a minor, and thereafter so long as the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma until the end of the school year in which the child graduates.~~] A spouse [~~or parent~~] who fails to discharge the duty of support is liable to any person who provides necessaries to the spouse [~~those~~] to whom support is owed.

SECTION 5. Section 32.001, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 32.001. CONSENT BY NON-PARENT. (a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

- (1) a grandparent of the child;
- (2) an adult brother or sister of the child;
- (3) an adult aunt or uncle of the child;
- (4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;
- (5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;
- (6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject; [~~or~~]
- (7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or

(8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

(b) [~~The person giving consent, a physician or dentist licensed to practice medicine or dentistry in this state, or a hospital or medical facility is not liable for the examination and treatment of a child under this section except for the person's own acts of negligence.~~]

[~~(c)~~] The Texas Youth Commission may consent to the medical, dental, psychological, and surgical treatment of a child committed to it under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary.

(c) [(d)] This section does not apply to consent for the immunization of a child.

(d) A person who consents to the medical treatment of a minor under Subsection (a)(7) or (8) is immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of the person's own acts of negligence. A physician or dentist licensed to practice in this state, or a hospital or medical facility at which a minor is treated is immune from liability for damages resulting from the examination or treatment of a minor under this section, except to the extent of the person's own acts of negligence.

SECTION 6. Section 32.003(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) A child may consent to medical, dental, psychological, and surgical treatment for the child by a licensed physician or dentist if the child:

(1) is on active duty with the armed services of the United States of America;

(2) is:

(A) 16 years of age or older and resides separate and apart from the child's parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and

(B) managing the child's own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code;

(4) is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy; [or]

(5) consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use; or

(6) is unmarried and has actual custody of the child's biological child and consents to medical, dental, psychological, or surgical treatment for the child.

SECTION 7. Section 42.006(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) Damages may include:

(1) the actual costs and expenses incurred, including attorney's fees, in:

(A) locating a child who is the subject of the order;

(B) recovering possession of the child if the petitioner is entitled to possession; and

(C) [~~(2) the actual costs and expenses, including attorney's fees, incurred in~~] enforcing the order and prosecuting the suit; and

(2) [(3)] mental suffering and anguish incurred by the plaintiff because of a violation of the order.

SECTION 8. Section 102.003, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 102.003. GENERAL STANDING TO FILE SUIT. An original suit may be filed at any time by:

- (1) a parent of the child;
- (2) the child through a representative authorized by the court;
- (3) a custodian or person having the right of visitation with or access to the child appointed by an order of a court of another state or country;
- (4) a guardian of the person or of the estate of the child;
- (5) a governmental entity;
- (6) an authorized agency;
- (7) a licensed child placing agency;
- (8) a man alleging himself to be the biological father of a child filing in accordance with Chapter 160, subject to the limitations of Section 160.101, but not otherwise;
- (9) a person who has had actual care, control, and possession of the child for not less than six months preceding the filing of the petition;
- (10) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter 161 or to whom consent to adoption has been given in writing under Chapter 162; or
- (11) a person with whom the child and the child's guardian, managing conservator, or parent have resided for not less than six months preceding the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition.

SECTION 9. Chapter 102, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 102.0085 to read as follows:

Sec. 102.0085. STATEMENT ON ALTERNATIVE DISPUTE RESOLUTION. (a) A party to a proceeding brought under this chapter and Chapters 151, 153, 154, and 160 shall include in the first pleading filed by the party in the proceeding the following statement:

"I AM AWARE THAT IT IS THE POLICY OF THE STATE OF TEXAS TO PROMOTE THE AMICABLE AND NONJUDICIAL SETTLEMENT OF DISPUTES INVOLVING CHILDREN AND FAMILIES. I AM AWARE OF ALTERNATIVE DISPUTE RESOLUTION METHODS INCLUDING MEDIATION. WHILE I RECOGNIZE THAT ALTERNATIVE DISPUTE RESOLUTION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR A TRIAL AND THAT THIS CASE MAY BE TRIED IF IT IS NOT SETTLED, I REPRESENT TO THE COURT THAT I WILL ATTEMPT IN GOOD FAITH TO RESOLVE CONTESTED ISSUES IN THIS CASE BY ALTERNATIVE DISPUTE RESOLUTION WITHOUT THE NECESSITY OF COURT INTERVENTION."

(b) The statement required by Subsection (a) must be printed in boldfaced type or capital letters and signed by the party.

(c) The statement in Subsection (a) is not required for:

- (1) a pleading in which citation on all respondents entitled to service of citation is requested, issued, and given by publication;

(2) a motion or pleading that seeks relief under Section 105.001(c) or Subchapter H, Chapter 157; or

(3) a special appearance under Rule 120A, Texas Rules of Civil Procedure.

SECTION 10. Section 102.009(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) Except as provided by Subsection (b), the following [~~persons~~] are entitled to service of citation on the filing of a petition in an original suit:

- (1) a managing conservator;
- (2) a possessory conservator;
- (3) a person having possession of or access to the child under an order;
- (4) a person required by law or by order to provide for the support of the child;
- (5) a guardian of the person of the child;
- (6) a guardian of the estate of the child;
- (7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161; ~~and~~
- (8) an alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Chapter 161; ~~and~~

(9) the Department of Protective and Regulatory Services, if the petition requests that the department be appointed as managing conservator of the child.

SECTION 11. Section 104.005, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 104.005. SUBSTITUTION FOR IN-COURT TESTIMONY OF CHILD. (a) If the testimony of a child is taken as provided by this ~~chapter~~ subchapter, the child may not be compelled to testify in court during the proceeding.

(b) The court may allow the testimony of a child of any age to be taken in any manner provided by this chapter if the child, because of a medical condition, is incapable of testifying in open court.

SECTION 12. Section 105.002, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 105.002. JURY. (a) Except as provided by Subsection (b) [~~in a suit in which adoption is requested~~], a party may demand a jury trial.

(b) A party may not demand a jury trial in a suit in which adoption is sought, including a trial on the issue of denial or revocation of consent to the adoption by the managing conservator.

(c) The court may not render an order that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of possession of and access to the child, support of the child, and the rights, privileges, duties, and powers of sole managing conservators, joint managing conservators, or possessory conservators, on which the court may submit or

refuse to submit issues to the jury as the court determines appropriate, and on which issues the jury verdict is advisory only.

SECTION 13. Section 105.006, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subsections (b) and (e) and adding Subsection (g) to read as follows:

(b) Except as provided by Subsection (c), ~~[in an order for child support or possession of or access to a child]~~ the court shall order each party to inform each [the clerk and all] other party [parties] of an intended [a] change in any of the information required by this section as long as any person, as a result of the order, is under an obligation to pay child support or is entitled to possession of or access to a child. The court shall order that notice of the intended change be given at the earlier of [to be included in the order]:

(1) ~~[before the 11th day after the date of the change, as long as any person, as a result of the order, is under an obligation to pay child support or is entitled to possession of or access to a child; and~~

~~[(2) if the change in the information is an intended change, on or before] the 60th day before the date the party intends to make the change; or~~

(2) the fifth day after the date that the party knew of the change, if the party did not know or could not have known of the change in sufficient time to comply with Subdivision (1); as long as any person, as a result of the order, is under an obligation to pay child support or is entitled to possession of or access to a child].

(e) Except as provided by Subsection (c), an order in a suit that orders child support or possession of or access to a child must also contain the following order in bold-faced type or in capital letters:

"EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY [THE CLERK OF THIS COURT] WITHIN 10 DAYS AFTER THE DATE OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF [PLACE OF] EMPLOYMENT, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY [THE CLERK OF THE COURT] CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY [THE CLERK] WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF

COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS [CURRENT MAILING ADDRESS OF A PARTY MAY RESULT IN THE ISSUANCE OF A CAPIAS FOR THE ARREST OF THE PARTY IF THAT PARTY CANNOT BE PERSONALLY SERVED WITH NOTICE OF A HEARING AT AN ADDRESS OF RECORD]."

(g) Notwithstanding another provision of this section, a court in a county with a population of 2.8 million or more shall order each party to inform the clerk of the court of a change in information required by this section in the manner provided by Subsection (b). The order required by Subsection (e) shall reflect the notification requirement of this subsection.

SECTION 14. Section 105.007, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 105.007. COMPLIANCE WITH ORDER REQUIRING NOTICE OF CHANGE OF REQUIRED INFORMATION [~~CONSERVATOR'S RESIDENCE~~]. (a) A party [~~who intends a change of place of residence~~] shall comply with the order by giving written notice to each other party of an [the] intended [date of] change in the party's current residence address, mailing address, home telephone number, name of employer, address of employment, and work[,- new] telephone number[,- and new street address of residence to the court having jurisdiction of the suit in which the order was made and to every other party who has possession of or access to the child].

(b) The party must give written notice by registered or certified mail of an intended change in the required information to each other party [must be given] on or before the 60th day before the change is made [conservator changes the conservator's place of residence]. If the party does [conservator did] not know or could not have known of the change in sufficient time to provide 60-day notice, the party shall provide [of residence or if the required information was not available within the 60-day period, the conservator shall supply] the written notice of the change [of residence or the related information] on or before the fifth day after the date that the party [conservator] knew [or should have known] of the change [or of the related information].

(c) The court may waive the notice required by this section on motion by a party [the moving conservator] if it finds that the giving of notice of a change of the required information [place of residence] would be likely to expose the child or the party [conservator] to harassment, abuse, serious harm, or injury.

(d) The notice may be given to a party by delivery of a copy of the notice to the party either in person or by registered or certified mail, return receipt requested, to the last known address of the party:

(e) The notice may be given to the court by delivery of a copy of the notice either in person to the clerk of the court or by registered or certified mail addressed to the clerk of the court.]

SECTION 15. Chapter 107, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

CHAPTER 107. SPECIAL APPOINTMENTS AND SOCIAL STUDIES
SUBCHAPTER A. GUARDIAN AD LITEM REPRESENTATION

Sec. 107.001. APPOINTMENT OF GUARDIAN AD LITEM. (a) In a suit in which termination of the parent-child relationship is requested, the court or an associate judge shall appoint a guardian ad litem to represent the interests of the child immediately after the filing of the petition but before the full adversary hearing to ensure adequate representation of the child, unless:

(1) the child is a petitioner;

(2) an attorney ad litem has been appointed for the child; or

(3) the court or an associate judge finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party.

(b) In any other suit, the court or an associate judge may appoint a guardian ad litem.

(c) The managing conservator may be appointed guardian ad litem if the managing conservator is not a parent of the child or a person petitioning for adoption of the child and has no personal interest in the suit.

(d) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.

[Sections 107.002-107.010 reserved for expansion]
SUBCHAPTER B. ATTORNEY AD LITEM

Sec. 107.011 [~~107.002~~]. DISCRETIONARY APPOINTMENT OF ATTORNEY AD LITEM. (a) An associate judge shall [~~may~~] recommend the appointment of an attorney ad litem for any party in a case in which the associate judge deems representation necessary to protect the interests of the child who is the subject matter of the suit.

(b) The court shall [~~may~~] appoint an attorney ad litem for any party in a case in which the court deems representation necessary to protect the interests of the child who is the subject matter of the suit.

Sec. 107.012. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR CHILD. [~~(c)~~] In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full adversary hearing, [~~as soon as practicable~~] to ensure adequate representation of the child [~~child's interests~~].

Sec. 107.013. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR INDIGENT PARENT. (a) [~~(c)~~] In a suit in which termination of the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of each indigent parent of the child who responds in opposition to the termination.

(b) If both parents of the child are indigent and oppose termination and the court finds that the interests of the parents are not in conflict, the court may appoint a single attorney ad litem to represent the interests of both parents.

Sec. 107.014. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD. (a) An attorney ad litem appointed under this subchapter to represent a child may:

(1) investigate to the extent the attorney ad litem considers appropriate to determine the facts of the case;

(2) obtain and review copies of all of the child's relevant medical, psychological, and school records; and

(3) call, examine, and cross-examine witnesses.

(b) An attorney ad litem appointed to represent a child shall within a reasonable time after the appointment:

(1) interview the child if the child is four years of age or older; and

(2) interview individuals with significant knowledge of the child's history and condition.

Sec. 107.015 [~~107.003~~]. AD LITEM FEES. (a) An attorney appointed to represent a child or parent as authorized by this subchapter is entitled to a reasonable fee in the amount set by the court to be paid by the parents of the child unless the parents are indigent.

(b) If the court or associate judge determines that the parties or litigants are able to defray the costs of an ad litem's compensation as determined by the reasonable and customary fees for similar services in the county of jurisdiction, the costs may be ordered paid by either or both parties, or the court or associate judge may order either or both parties, prior to final hearing, to pay the sums into the registry of the court or into an account authorized by the court for the use and benefit of the ad litem on order of the court. The sums may be taxed as costs to be assessed against one or more of the parties.

(c) If indigency of the parents is shown, an attorney appointed to represent a child or parent in a suit to terminate the parent-child relationship shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51.

Sec. 107.016. CONTINUED REPRESENTATION. In a suit brought by a governmental entity seeking termination of the parent-child relationship or appointment of the entity as conservator of the child, an order appointing the Department of Protective and Regulatory Services as the child's managing conservator may provide for the continuation of the attorney ad litem appointment for any period set by the court.

[Sections 107.017-107.030 reserved for expansion]

SUBCHAPTER C. OTHER COURT APPOINTMENTS

Sec. 107.031 [~~107.004~~]. VOLUNTEER ADVOCATES. (a) In a suit filed by a governmental entity, the court may appoint a person who has received the court's approved training and who has been certified by the court to appear at court hearings as a volunteer advocate on behalf of the child.

(b) In addition, the court may appoint a group of court-certified volunteers to serve as an administrative review board to advise the court as to the conservatorship appointment and the placement of the child by the Department of Protective and Regulatory Services [~~department~~] or authorized agency in substitute care.

(c) A court-appointed volunteer, a board member or employee of a volunteer advocate charitable organization, or a member of an administrative

review board [person] is not liable for civil damages for a recommendation made or opinion rendered while serving or having served as a court-appointed volunteer, board member or employee of a volunteer advocate charitable organization, or member of an administrative review board under this section unless the act or failure to act is wilfully wrongful, committed with conscious indifference or reckless disregard for the safety of another, committed in bad faith or with malice, or is grossly negligent.

[Sections 107.032-107.050 reserved for expansion]

SUBCHAPTER D. SOCIAL STUDY

Sec. 107.051 ~~[107.005]~~. ORDER FOR SOCIAL STUDY. (a) The court may order the preparation of a social study into the circumstances and condition of the child and of the home of any person requesting managing conservatorship or possession of the child.

(b) The social study may be made by a state agency, including the Department of Protective and Regulatory Services [department], or a person appointed by the court.

(c) In a suit in which adoption is requested or possession of or access to the child is an issue and in which the Department of Protective and Regulatory Services is not a party or has no interest, the court shall appoint a private agency or person to conduct the social study.

Sec. 107.052. STANDARDS FOR CONDUCTING SOCIAL STUDY. (a) The court may appoint an investigator to conduct the social study required by this section who has the qualifications established by the rules of the Department of Protective and Regulatory Services [department] providing minimum qualifications for persons who may conduct social studies. If the Department of Protective and Regulatory Services [department] or another governmental entity is appointed, the person who conducts the investigation and makes the report must also have those qualifications.

(b) ~~[(t)]~~ A study made under this section shall comply with the rules of the Department of Protective and Regulatory Services [department] establishing minimum standards, guidelines, and procedures for social studies or the criteria established by the court.

(c) ~~[(e)]~~ The social study shall contain any history of physical, sexual, or emotional abuse suffered by the child.

~~[(f) In a suit in which adoption is requested or possession of or access to the child is an issue and in which the department is not a party or has no interest, the court shall appoint a private agency or person to conduct the social study.]~~

Sec. 107.053. PROSPECTIVE ADOPTIVE PARENTS TO RECEIVE COPY. ~~[(g)]~~ In all adoptions a copy of the report shall be made available to the prospective adoptive parents prior to a final order of adoption.

Sec. 107.054. REPORT FILED WITH COURT. ~~[(h)]~~ The agency or person making the social study shall file with the court on a date set by the court a report containing its findings and conclusions. The report shall be made a part of the record of the suit.

Sec. 107.055. INTRODUCTION OF REPORT AT TRIAL. (a) ~~[(i)]~~ Disclosure to the jury of the contents of a report to the court of a social study is subject to the rules of evidence.

(b) [(†)] In a contested case, the agency or person making the social study shall furnish copies of the report to the attorneys for the parties before the earlier of:

- (1) the seventh day after the date the social study is completed; or
- (2) the fifth day before the date of commencement of the trial.

(c) [(†)] The court may compel the attendance of witnesses necessary for the proper disposition of the suit, including a representative of the agency making the social study, who may be compelled to testify.

Sec. 107.056. PREPARATION FEE. [(†)] If the court orders [~~the department to prepare~~] a social study to be conducted and a report to be prepared, the court shall award the agency or other person [~~department~~] a reasonable fee for the preparation of the study that shall be taxed as costs and paid directly to the agency or other person [~~department~~]. The person or agency [~~department~~] may enforce the order for the fee [~~in the department's own name~~].

SECTION 16. Section 108.001, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.001. TRANSMITTAL OF RECORDS OF SUIT BY CLERK. (a) Except as provided by this chapter, the clerk of the court shall transmit to the bureau of vital statistics [~~department~~] a certified record [~~copy~~] of the order rendered in a suit, together with the name and all prior names, birth date, and place of birth of the child prepared by the petitioner on a form provided by the bureau.

(b) The bureau of vital statistics [~~department~~] shall maintain these records in a central file according to the name, birth date, and place of birth of the child, the court that rendered the order, and the docket number of the suit.

(c) All the records required under this section to be maintained by the bureau of vital statistics and the records of a child-placing agency that has ceased operations [~~department~~] are confidential and no person is entitled to access to or information from these records except for good cause [~~as provided by this subtitle or~~] on an order of the court that rendered the order [~~for good cause~~].

SECTION 17. Section 108.003, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.003. TRANSMITTAL OF INFORMATION REGARDING [~~FILES OF~~] ADOPTION. (a) The [~~On rendition of an order of adoption, the~~] clerk of a [~~the~~] court that renders a decree of adoption shall, not later than the 10th day of the first month after the month in which the adoption is rendered, transmit to the central registry of the bureau of vital statistics [~~department~~]:

[(1)] a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court, if the petitioner has requested that the complete file be sent, or a certified copy of the petition and order of adoption, excluding pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void; and

[(2)] a certified report of adoption that includes:

(1) [(A)] the name of the adopted child after adoption as shown in the adoption order;

(2) ~~[(B)]~~ the birth date of the adopted child;
 (3) ~~[(C)]~~ the docket number of the adoption suit;
 (4) ~~[(D)]~~ the identity of the court rendering the adoption;
 (5) ~~[(E)]~~ the date of the adoption order;
 (6) ~~[(F)]~~ the name and address of each parent, guardian, managing conservator, or other person whose consent to adoption was required or waived under Chapter 159 ~~[23]~~, or whose parental rights were terminated in the adoption suit;

(7) ~~[(G)]~~ the identity of the licensed child placing agency, if any, through which the adopted child was placed for adoption; and

(8) ~~[(H)]~~ the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee.

(b) Except for good cause shown or on an order of the court that granted the adoption or terminated the proceedings under Section 155.001, the records concerning a child maintained by the district clerk after rendition of a decree of adoption, the records of a child-placing agency that has ceased operations, and the records required under this section to be maintained by the bureau of vital statistics are confidential, and no person is entitled to access to or information from these records.

SECTION 18. Section 108.004, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.004. TRANSMITTAL OF FILES ON LOSS OF JURISDICTION. On the loss of jurisdiction of a court under Chapter 155, the clerk of the court shall transmit to the central registry of the bureau of vital statistics a certified record, on a form provided by the bureau, stating that jurisdiction has been lost, the reason for the loss of jurisdiction, and the name and all previous names, date of birth, and place of birth of the child ~~[department:~~

~~[(1) a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court, if the petitioner has requested that a complete file be sent; or~~

~~[(2) a certified copy of the petition, excluding pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void].~~

SECTION 19. Section 108.005, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.005. ADOPTION RECORDS RECEIVED BY BUREAU OF VITAL STATISTICS ~~[DEPARTMENT]~~. (a) When the bureau of vital statistics ~~[department]~~ receives records from the district clerk, the bureau ~~[the complete file or petition and order of adoption, it]~~ shall close the records concerning that child. Except for statistical purposes, the bureau ~~[department]~~ may not disclose any information concerning the prior proceedings affecting the child. Except as provided in Chapter 162, any subsequent inquiry concerning the child who has been adopted shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. The bureau shall provide to the Department of Protective and Regulatory Services registry information as necessary for the department to comply with federal law

or regulations regarding the compilation or reporting of adoption information to federal officials and other information as necessary for the department to administer the central registry as provided in Subchapter E, Chapter 162.

(b) On the receipt of additional records concerning a child who has been the subject of a suit affecting the parent-child relationship in which the records have been closed, a new file shall be made and maintained.

SECTION 20. Section 108.006, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.006. FEES. (a) The bureau of vital statistics [~~department~~] may charge a reasonable fee to cover the cost of determining and sending information concerning the identity of the court with continuing, exclusive jurisdiction.

(b) On the filing of a suit requesting the adoption of a child, the clerk of the court shall collect an additional fee of \$15.

(c) The clerk shall send the fees collected under Subsection (b) to the bureau of vital statistics for deposit in a special fund in the state treasury from which the legislature may appropriate money only to operate and maintain the central file and central registry of the bureau [~~department~~].

(d) The receipts from the fees charged under Subsection (a) shall be deposited in a financial institution as determined by the [~~executive~~] director of the bureau of vital statistics [~~department~~] and withdrawn as necessary for the sole purpose of operating and maintaining the central record file.

~~[(e) The funds received under Subsection (b) shall be deposited in a special account in the general revenue fund. Funds in the account may only be used for the operation of the central record file. Sections 403.094 and 403.095, Government Code, do not apply to the special account.]~~

SECTION 21. Section 108.007, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.007. MICROFILM. (a) The bureau of vital statistics [~~department~~] may use microfilm or other suitable means for maintaining the central record file.

(b) A certified reproduction of a document maintained by the bureau of vital statistics [~~department~~] is admissible in evidence as the original document.

SECTION 22. Section 151.002(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) A presumption under this section may be rebutted as provided by Section 160.110 [~~only by clear and convincing evidence. If two or more presumptions arise that conflict, the presumption that is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court order establishing paternity of the child by another man~~].

SECTION 23. Section 151.003(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) A parent of a child has the following rights and duties:

(1) the right to have physical possession, to direct the moral and religious training, and to establish the residence of the child;

(2) the duty of care, control, protection, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education;

(4) the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including the right [~~a power~~] as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

(5) the right to the services and earnings of the child;

(6) the right to consent to the child's marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment;

(7) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;

(9) the right to inherit from and through the child; [~~and~~]

(10) the right to make decisions concerning the child's education; and

(11) any other right or duty existing between a parent and child by virtue of law.

SECTION 24. Section 152.003, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (e) to read as follows:

(e) A court that has jurisdiction of a suit under Subsection (a)(3) for which a court in another state may exercise jurisdiction under prerequisites substantially in accordance with Subsection (a)(1) or (2) may enter only a temporary order to protect the child. The suit shall be dismissed in this state on the date a court of competent jurisdiction in another state signs an order in the suit or on the 91st day after the date the court in this state exercised its jurisdiction, whichever date occurs first.

SECTION 25. Section 153.001, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.001. PUBLIC POLICY. (a) The public policy of this state is to:

(1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

(2) provide a stable environment for the child; and

(3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

(b) A court may not render an order that conditions the right of a conservator to possession of or access to a child on the payment of child support.

SECTION 26. Section 153.007(c), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(c) Terms of the agreement contained in the order or incorporated by reference regarding conservatorship or support of or access to a child in an

order may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as a contract [~~terms unless provided by the agreement~~].

SECTION 27. Subchapter A, Chapter 153, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 153.0071 to read as follows:

Sec. 153.0071. ALTERNATE DISPUTE RESOLUTION PROCEDURES.

(a) On written agreement of the parties, the court may refer a suit affecting the parent-child relationship to arbitration. The agreement must state whether the arbitration is binding or non-binding.

(b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award unless the court determines at a non-jury hearing that the award is not in the best interest of the child. The burden of proof at a hearing under this subsection is on the party seeking to avoid rendition of an order based on the arbitrator's award.

(c) On the written agreement of the parties or on the court's own motion, the court may refer a suit affecting the parent-child relationship to mediation.

(d) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides in a separate paragraph an underlined statement that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(e) If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(f) The procedures and remedies provided by this section apply to an action brought under Title 1.

SECTION 28. Subchapter A, Chapter 153, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 153.013 to read as follows:

Sec. 153.013. FALSE REPORT OF CHILD ABUSE. (a) If a party to a pending suit affecting the parent-child relationship makes a report alleging child abuse by another party to the suit that the reporting party knows lacks a factual foundation, the court shall deem the report to be a knowingly false report.

(b) Evidence of a false report of child abuse is admissible in a suit between the involved parties regarding the terms of conservatorship of a child.

SECTION 29. Section 153.073(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) Unless limited by court order, a parent appointed as a conservator of a child has at all times the right:

(1) as specified by court order:

(A) to receive information from the other parent concerning the health, education, and welfare of the child; and

(B) [(2)] to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;

(2) [(3)] of access to medical, dental, psychological, and educational records of the child;

(3) [(4)] to consult with a physician, dentist, or psychologist of the child;

(4) [(5)] to consult with school officials concerning the child's welfare and educational status, including school activities;

(5) [(6)] to attend school activities;

(6) [(7)] to be designated on the child's records as a person to be notified in case of an emergency;

(7) [(8)] to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

(8) [(9)] to manage the estate of the child to the extent the estate has been created by the parent or the parent's family.

SECTION 30. Section 153.074, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.074. RIGHTS AND DUTIES DURING PERIOD OF POSSESSION. Unless limited by court order, a parent appointed as a conservator of a child has the following rights and duties during the period that the parent has possession of the child:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure; ~~and~~

(3) the right to consent for the child to medical and dental care not involving an invasive procedure;

(4) the right to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child; and

(5) the right to direct the moral and religious training of the child.

SECTION 31. Subchapter B, Chapter 153, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 153.076 to read as follows:

Sec. 153.076. PARENTS' DUTY TO PROVIDE INFORMATION. If both parents are appointed as conservators of the child, the court shall order that each parent has a duty to inform the other parent in a timely manner of significant information concerning the health, education, and welfare of the child.

SECTION 32. Section 153.131, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.131. PRESUMPTION THAT PARENT TO BE APPOINTED MANAGING CONSERVATOR. (a) Unless the court finds that appointment of the parent or parents would not be in the best interest of the child because

the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child.

(b) It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child.

SECTION 33. Section 153.132, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.132. RIGHTS AND DUTIES OF PARENT APPOINTED SOLE MANAGING CONSERVATOR. Unless limited by court order, a parent appointed as sole managing conservator of a child has the rights and duties provided by Subchapter B and the following exclusive rights:

- (1) the right to establish the primary residence of the child;
- (2) the right to consent to medical, dental, and surgical treatment involving invasive procedures, and to consent to psychiatric and psychological treatment;
- (3) the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;

(4) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(5) the right to consent to marriage and to enlistment in the armed forces of the United States;

(6) the right to make decisions concerning the child's education;

(7) the right to the services and earnings of the child; and

(8) [~~(7)~~] except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government.

SECTION 34. Section 153.371, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.371. RIGHTS AND DUTIES OF NONPARENT APPOINTED AS SOLE MANAGING CONSERVATOR. Unless limited by court order or other provisions of this chapter, a nonparent, licensed child-placing agency, or authorized agency appointed as a managing conservator of the child has the following rights and duties:

(1) the right to have physical possession and [~~;~~] to direct the moral and religious training[~~and to establish the primary residence~~] of the child;

(2) the duty of care, control, protection, and reasonable discipline of the child;

(3) the duty to provide the child with clothing, food, shelter, [~~and~~] education, and medical, psychological, and dental care;

(4) the right to consent for the child to medical, psychiatric, psychological, dental, and surgical treatment;

(5) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;

(6) the right to the services and earnings of the child;

(7) the right to consent to marriage and to enlistment in the armed forces of the United States;

(8) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(9) except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; [~~and~~]

(10) the right to establish the primary residence of the child and to make decisions regarding the child's education; and

(11) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the right to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

SECTION 35. Section 153.256, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.256. FACTORS FOR COURT TO CONSIDER. In ordering the terms of possession of a child under an order other than a standard possession order, the court shall be guided by the guidelines established by the standard possession order and may consider:

(1) the age, developmental status, circumstances, needs, and best interest of the child;

(2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and

(3) any other relevant factor.

SECTION 36. Section 153.313, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.313. PARENTS WHO RESIDE OVER 100 MILES APART. If the possessory conservator resides more than 100 miles from the residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) either regular weekend possession beginning on the first, third, and fifth Friday as provided under the terms applicable to parents who reside 100 miles or less apart or not more than one weekend per month of the possessory conservator's choice beginning at 6 p.m. on the day school recesses for the weekend and ending at 6 p.m. on the day before school resumes after the weekend, provided that the possessory conservator gives the managing conservator 14 [~~seven~~] days' written or telephonic notice preceding a designated weekend, and provided that the possessory conservator elects an option for this alternative period of possession by written notice given to the managing conservator within 90 days after the parties begin to reside more than 100 miles apart, as applicable;

(2) each year beginning on the day the child is dismissed from school for the school's spring vacation and ending at 6 p.m. on the day before school resumes after that vacation;

(3) if the possessory conservator:

(A) gives the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 days beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each; or

(B) does not give the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 consecutive days beginning at 6 p.m. on June 15 and ending at 6 p.m. on July 27;

(4) if the managing conservator gives the possessory conservator written notice by June 1 of each year the managing conservator shall have possession of the child on one weekend beginning Friday at 6 p.m. and ending at 6 p.m. on the following Sunday during one period of possession by the possessory conservator under Subdivision (3), provided that if a period of possession by the possessory conservator exceeds 30 days, the managing conservator may have possession of the child under the terms of this subdivision on two nonconsecutive weekends during that time period, and further provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place; and

(5) if the managing conservator gives the possessory conservator written notice by June 1 [~~May 15~~] of each year [~~or gives the possessory conservator 30 days' written notice on or after May 16 of each year~~], the managing conservator may designate 21 days beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each, during which the possessory conservator may not have possession of the child, provided that the period or periods so designated do not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child.

SECTION 37. Section 153.316, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 153.316. GENERAL TERMS AND CONDITIONS. The court shall order the following general terms and conditions of possession of a child to apply without regard to the distance between the residence of a parent and the child:

(1) the managing conservator shall surrender the child to the possessory conservator at the beginning of each period of the possessory conservator's possession at the residence of the managing conservator;

(2) if the possessory conservator elects to begin a period of possession at the time the child's school is regularly dismissed, the managing conservator shall surrender the child to the possessory conservator at the beginning of each period of possession at the school in which the child is enrolled;

(3) the possessory conservator shall be ordered to do one of the following:

(A) the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the residence of the possessory conservator; or

(B) the possessory conservator shall return the child to the residence of the managing conservator at the end of each period of possession, except that the order shall provide that the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the residence of the possessory conservator if:

(i) the possessory conservator's county of residence remains the same after the rendition of the order establishing terms and conditions of possession and access, and [if] the managing conservator's county of residence changes [~~should change~~], effective on the date of the change of residence by the managing conservator; or

(ii) the possessory conservator and managing conservator lived in the same residence at any time during a six-month period preceding the date on which a suit for dissolution of the marriage was filed and the possessory conservator's county of residence remains the same and the managing conservator's county of residence changes after they no longer live in the same residence, effective on the date the order is rendered [~~the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the residence of the possessory conservator~~];

(4) if the possessory conservator elects to end a period of possession at the time the child's school resumes, the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the school in which the child is enrolled;

(5) each conservator shall return with the child the personal effects that the child brought at the beginning of the period of possession;

(6) either parent may designate a competent adult to pick up and return the child, as applicable; a parent or a designated competent adult shall be present when the child is picked up or returned;

(7) a parent shall give notice to the person in possession of the child on each occasion that the parent will be unable to exercise that parent's right of possession for a specified period;

(8) written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due; and

(9) if a conservator's time of possession of a child ends at the time school resumes and for any reason the child is not or will not be returned to school, the conservator in possession of the child shall immediately notify the school and the other conservator that the child will not be or has not been returned to school.

SECTION 38. Section 153.374(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) A parent may designate a competent person, authorized agency, or licensed child-placing agency to serve as managing conservator of the child in

an unrevoked or irrevocable affidavit of relinquishment of parental rights executed as provided by Chapter 161 [22].

SECTION 39. Section 154.001, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 154.001. SUPPORT OF CHILD. (a) The court may order either or both parents to support a child in the manner specified by the order:

(1) until the child is 18 years of age or until graduation from high school, whichever occurs later;

(2) until the child is emancipated through marriage, through removal of the disabilities of minority by court order, or by other operation of law;

(3) until the death of the child; or

(4) if the child is disabled as defined in this chapter, for an indefinite period.

(b) The court may order either or both parents to make periodic payments for the support of a child in a proceeding in which the Department of Protective and Regulatory Services is named temporary managing conservator. In a proceeding in which the Department of Protective and Regulatory Services is named permanent managing conservator of a child whose parents' rights have not been terminated, the court shall order each parent that is financially able to make periodic payments for the support of the child.

SECTION 40. Subchapter A, Chapter 154, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 154.011 to read as follows:

Sec. 154.011. SUPPORT NOT CONDITIONED ON POSSESSION OR ACCESS. A court may not render an order that conditions the payment of child support on whether a managing conservator allows a possessory conservator to have possession of or access to a child.

SECTION 41. Section 154.062(d), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(d) The court shall deduct the following items from resources to determine the net resources available for child support:

(1) social security taxes;

(2) federal income tax based on the tax rate for a single person claiming one personal exemption and the standard deduction;

(3) state income tax;

(4) union dues; and

(5) [~~(4)~~] expenses for health insurance coverage for the obligor's child.

SECTION 42. Section 154.241, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (e) to read as follows:

(e) Subject to Section 154.004, at the request of an obligee, a local registry shall redirect and forward a child support payment to an address and in care of a person or entity designated by the obligee. A local registry may require that the obligee's request be in writing or be made on a form provided by the local registry for that purpose, but may not charge a fee for receiving the request or redirecting the payments as requested.

SECTION 43. Subchapter F, Chapter 154, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 154.309 to read as follows:

Sec. 154.309. POSSESSION OF OR ACCESS TO ADULT DISABLED CHILD. (a) A court may render an order for the possession of or access to an adult disabled child that is appropriate under the circumstances.

(b) Possession of or access to an adult disabled child is enforceable in the manner provided by Chapter 157. An adult disabled child may refuse possession or access if the adult disabled child is mentally competent.

(c) A court that obtains continuing, exclusive jurisdiction of a suit affecting the parent-child relationship involving a disabled person who is a child retains continuing, exclusive jurisdiction of subsequent proceedings involving the person, including proceedings after the person is an adult.

SECTION 44. Sections 155.101(a), (b), and (d), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) The petitioner or the court shall request from the bureau of vital statistics [~~Department of Protective and Regulatory Services~~] identification of the court that last had continuing, exclusive jurisdiction of the child in a suit unless:

(1) the petition alleges that no court has continuing, exclusive jurisdiction of the child and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit, petition for further remedy, or petition to modify has been filed has acquired and retains continuing, exclusive jurisdiction of the child as the result of a prior proceeding and the issue is not disputed by the pleadings.

(b) The bureau of vital statistics [~~department~~] shall, on the written request of the court, an attorney, or a party:

(1) identify the court that last had continuing, exclusive jurisdiction of the child in a suit and give the docket number of the suit; or

(2) state that the child has not been the subject of a suit.

(d) The bureau of vital statistics [~~department~~] shall transmit the information not later than the 10th day after the date on which the request is received.

SECTION 45. Section 155.103, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 155.103. RELIANCE ON BUREAU OF VITAL STATISTICS [~~DEPARTMENT~~] INFORMATION. (a) A court shall have jurisdiction over a suit if it has been, correctly or incorrectly, informed by the bureau of vital statistics [~~Department of Protective and Regulatory Services~~] that the child has not been the subject of a suit and the petition states that no other court has continuing, exclusive jurisdiction over the child.

(b) If the bureau of vital statistics [~~department~~] notifies the court that the bureau [~~department~~] has furnished incorrect information regarding the existence of another court with continuing, exclusive jurisdiction before the rendition of a final order, the provisions of this chapter apply.

SECTION 46. Section 155.104, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 155.104. VOIDABLE ORDER. (a) If a request for information from the bureau of vital statistics [~~Department of Protective and Regulatory Services~~] relating to the identity of the court having continuing, exclusive jurisdiction of the child has been made under this subchapter, a final order, except an order of dismissal, may not be rendered until the information is filed with the court.

(b) If a final order is rendered in the absence of the filing of the information from the bureau of vital statistics [~~department~~], the order is voidable on a showing that a court other than the court that rendered the order had continuing, exclusive jurisdiction.

SECTION 47. Section 156.101, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 156.101. GROUNDS FOR MODIFICATION OF SOLE MANAGING CONSERVATORSHIP. (a) The court may modify an order that designates a sole managing conservator of a child of any age if:

(1) the circumstances of the child, sole managing conservator, possessory conservator, or other party affected by the order have materially and substantially changed since the date of the rendition of the order; and

(2) [~~the retention of the present sole managing conservator would be injurious to the welfare of the child; and~~

~~(3)~~ the appointment of the new sole managing conservator would be a positive improvement for the child.

(b) The court may modify an order that designates a sole managing conservator of a child 12 years of age or older if:

(1) the child has filed with the court in writing the name of the person who is the child's choice for managing conservator; and

(2) the court finds that the appointment of the named person is in the best interest of the child.

SECTION 48. Section 156.203, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 156.203. MODIFICATION FROM JOINT MANAGING CONSERVATORSHIP TO SOLE MANAGING CONSERVATORSHIP. The court may replace a joint managing conservatorship with a sole managing conservatorship if:

(1)(A) the child's present living environment may endanger the child's physical health or significantly impair the child's emotional development [~~welfare of the child is a matter of immediate and serious concern~~];

(B) there has been a substantial and unexcused violation of the terms and conditions established in the existing conservatorship order; or

(C) the circumstances of the child or of one or both of the joint managing conservators have so materially and substantially changed since the rendition of the order that it has become unworkable or inappropriate under existing circumstances; and

(2) the appointment of a sole managing conservator would be a positive improvement for and in the best interest of the child.

SECTION 49. Section 157.062(c), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(c) Notice [~~Except as provided in this chapter, the notice~~] of hearing on a motion for enforcement of an existing order providing for child support or possession of or access to a child shall be given to the respondent by personal service of a copy of the motion and notice not later than the 10th day before the date of the hearing.

SECTION 50. Section 157.066, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 157.066. FAILURE TO APPEAR. [~~(a)~~] If a respondent who has been personally served with [~~sent~~] notice [~~by first class mail~~] to appear at a hearing does not appear at the designated time, place, and date to respond to a motion for enforcement of an existing court order, regardless of whether the motion is joined with other claims or remedies, the court may not hold the respondent in contempt but may, on proper proof, grant a default judgment for the relief sought and [~~personal service of notice of a hearing shall be attempted.~~

[~~(b)~~ ~~The court shall~~] issue a caus for the arrest of the respondent [~~a party~~ if:

[~~(1)~~ the party is allegedly in arrears in court-ordered child support payments;

[~~(2)~~ the party has been ordered as provided in Chapter 105 to provide the clerk of the court with the party's current mailing address;

[~~(3)~~ the party did not appear at the hearing; and

[~~(4)~~ subsequently an attempt to serve notice of the hearing by personal service on the party has been unsuccessful despite diligent efforts to serve process at the latest address on file with the clerk and at any other address known to the moving party at which the respondent may be served].

SECTION 51. Section 157.115(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) The court may render a default order for the relief requested if the respondent:

(1) has been personally served₁;

[~~(2)~~] has filed an answer₁ or has entered an appearance; and

(2) [~~(3)~~] does not appear at the designated time, place, and date to respond to the motion.

SECTION 52. Subchapter D, Chapter 157, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 157.168 to read as follows:

Sec. 157.168. ADDITIONAL PERIODS OF POSSESSION OR ACCESS.
A court may order additional periods of possession of or access to a child to compensate for the denial of court-ordered possession or access.

SECTION 53. Section 157.265, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 157.265. ACCRUAL OF INTEREST ON [~~DELINQUENT~~] CHILD SUPPORT. (a) Interest accrues on delinquent child support at the rate of 12 percent simple interest per year from the date the support is delinquent until the date the support is paid or the arrearages are confirmed and reduced to money judgment.

(b) Interest accrues on child support arrearages that have been confirmed and reduced to money judgment as provided in this subchapter at the rate of 12 percent simple interest per year from the date the order is rendered until the date the judgment is paid.

(c) Interest accrues on a money judgment for retroactive or lump-sum child support at the annual rate of 12 percent simple interest from the date the order is rendered until the judgment is paid.

SECTION 54. Subchapter F, Chapter 157, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 157.269 to read as follows:

Sec. 157.269. RETENTION OF JURISDICTION. A court that renders an order providing for the payment of child support arrearages retains jurisdiction until the arrearages are paid in full as required by the court order.

SECTION 55. Subchapter A, Chapter 158, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 158.011 to read as follows:

Sec. 158.011. VOLUNTARY WITHHOLDING BY OBLIGOR. (a) An obligor may file with the clerk of the court a notarized request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. A request may be filed under this section regardless of whether a notice of delinquency has been served on any party or of the existence or amount of an arrearage.

(b) On receipt of a request under this section, the clerk shall issue and deliver a writ of withholding in the manner provided by this chapter.

(c) An employer that receives a writ of withholding issued under this section may request a hearing in the same manner and according to the same terms provided by Section 158.205.

(d) An obligor whose employer receives a writ of withholding issued under this section may request a hearing in the manner provided by Section 158.309.

(e) An obligee may contest a writ of withholding issued under this section by requesting, not later than the 180th day after the date on which the obligee discovers that the writ has been issued, a hearing in the manner provided by Section 158.309.

(f) A writ of withholding under this section may not reduce the total amount of child support, including arrearages, owed by the obligor.

SECTION 56. Subchapter B, Chapter 158, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 158.107 to read as follows:

Sec. 158.107. FEES FOR ISSUING AND DELIVERING WRIT. The clerk of the court may charge a fee in a reasonable amount set by the clerk, not to exceed \$15, for each writ issued and delivered under this chapter to an employer by mail.

SECTION 57. Section 158.301(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The notice of withholding may be filed in the court of continuing jurisdiction by:

- (1) the Title IV-D agency;

- (2) the attorney representing the local domestic relations office;
- (3) the attorney appointed a friend of the court as provided in Chapter 202; [or]
- (4) the obligor or obligee; or
- (5) a private attorney representing the obligor or obligee.

SECTION 58. Section 158.303, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 158.303. INTERSTATE REQUEST FOR INCOME WITHHOLDING.

(a) In a Title IV-D case, the registration of a foreign support order as provided in Chapter 159 [+60] is sufficient for the filing of a notice of withholding.

(b) The notice shall be filed with the clerk of the court having venue as provided in Chapter 159 [+60].

(c) Notice of withholding may be delivered to the obligor at the same time that an order is filed for registration under Chapter 159 [+60].

SECTION 59. Section 158.309(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The court shall hold a hearing on the motion to stay not later than the 30th day after the date the motion was filed, except that a hearing on a motion to stay in a proceeding that is not in a Title IV-D case may be held later than the 30th day after filing if both the obligor and obligee agree and waive the right to have the motion heard within 30 days.

SECTION 60. Subchapter D, Chapter 158, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 158.319 to read as follows:

Sec. 158.319. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING TO SUBSEQUENT EMPLOYER. (a) After the issuance of a writ of withholding by the clerk, an attorney authorized to file a notice of withholding under this subchapter may issue the writ of withholding to a subsequent employer of the obligor by delivering to the employer by certified mail a copy of the writ.

(b) The writ must include the name, address, and signature of the attorney and clearly indicate that the writ is being issued to a subsequent employer.

(c) The attorney shall file a copy of the writ with the clerk not later than the third working day following delivery of the writ to the subsequent employer. The attorney shall pay the clerk a fee of \$15 at the time the copy of the writ is filed.

(d) The attorney shall file the postal return receipt from the delivery to the subsequent employer not later than the third working day after the attorney receives the receipt.

SECTION 61. Subchapter E, Chapter 158, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding new Sections 158.402 and 158.403 and redesignating existing Sections 158.402 and 158.403 to read as follows:

Sec. 158.402. EFFECT OF AGREEMENT BY PARTIES. If an obligor and obligee agree on a reduction in or termination of child support, the obligor and obligee may file a notarized request with the clerk of the court under

Section 158.011. The clerk shall issue and deliver a writ of withholding to the obligor's employer that reflects the agreed modification or the termination of withholding.

Sec. 158.403. MODIFICATIONS TO OR TERMINATION OF WITHHOLDING IN VOLUNTARY WITHHOLDING CASES. (a) If an obligor initiates voluntary withholding under Section 158.011, the obligee or an agency providing child support services may file with the clerk of the court a notarized request signed by the obligor and the obligee or agency, as appropriate, for the issuance and delivery to the obligor of a:

(1) modified writ of withholding that reduces the amount of withholding; or

(2) notice of termination of withholding.

(b) On receipt of a request under this section, the clerk shall issue and deliver a modified writ of withholding or notice of termination in the manner provided by Section 158.402.

(c) The clerk may charge a reasonable fee not to exceed \$15 for filing the request.

(d) An obligee may contest a modified writ of withholding or notice of termination issued under this section by requesting a hearing in the manner provided by Section 158.309 not later than the 180th day after the date the obligee discovers that the writ or notice has been issued.

Sec. 158.404 [158.402]. DELIVERY OF ORDER OF REDUCTION OR TERMINATION OF WITHHOLDING. If a court has rendered an order that reduces the amount of child support to be withheld or terminates withholding for child support, any person or governmental entity may deliver to the employer a certified copy of the order without the requirement that the clerk of the court deliver the order.

Sec. 158.405 [158.403]. LIABILITY OF EMPLOYERS. The provisions of this chapter regarding the liability of employers for withholding apply to an order that reduces or terminates withholding.

SECTION 62. Section 160.101, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 160.101. DENIAL OF PATERNITY. (a) The presumption that a [A] man [who] is the biological [a presumed] father of a child under Chapter 151 may be contested by:

(1) [;] the biological mother of the child;

(2) a man presumed to be the father of the child, who may contest his own or another man's presumed paternity;

(3) a man alleging himself to be the biological father of the child; or

(4) [; or] a governmental entity, authorized agency, or a licensed child-placing agency [is entitled in a suit to deny a presumed father's paternity of the child].

(b) A contest [The question] of paternity [under this section] must be raised by an express statement denying paternity of the child in a party's pleadings in the suit, without regard to whether the presumed father or biological mother is a petitioner or respondent.

(c) ~~[(b)]~~ In a suit in which a question of paternity is raised ~~[under this section]~~, the court shall conduct the pretrial proceedings and order scientifically accepted paternity testing as ~~[required in a suit]~~ provided by this chapter.

SECTION 63. Section 160.110, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subsection (a) and adding Subsections (d)-(h) to read as follows:

(a) In a suit in which there is a presumption of parentage under Chapter 151, the party denying a presumed father's paternity of the child has the burden of rebutting the presumption of paternity by clear and convincing evidence.

(d) The court shall dismiss with prejudice a claim regarding a presumed father whose paternity is excluded by scientifically accepted paternity testing.

(e) If two or more presumptions are in conflict, the presumption that is founded on the weightier considerations of policy and logic controls. The court shall find that the weightier presumption of paternity is that of a presumed father who is not excluded as the biological father of the child by scientifically accepted paternity testing that shows that at least 99 percent of the male population is excluded.

(f) The court shall dismiss a suit contesting a presumption of paternity filed by a man who is not a presumed father, but who alleges himself to be the biological father of a child, if:

(1) the suit is filed after the second anniversary of the later of:

(A) the date of birth of the child; or

(B) the time the presumption of paternity came into existence after the child was born; and

(2) the presumed father:

(A) has resided in the same household as the child in a father-child relationship or has established a father-child relationship with the child through his other actions; and

(B) requests an order designating him as the father of the child.

(g) A suit contesting a presumption that a man is the biological father of a child may be filed at any time during the minority of the child by:

(1) the biological mother of the child;

(2) a presumed father; or

(3) a governmental entity, authorized agency, or licensed child-placing agency.

(h) If a presumption of paternity is rebutted, the court shall enter an order finding that the man presumed to be the father of the child is not the biological father.

SECTION 64. Subchapter C, Chapter 160, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

SUBCHAPTER C. VOLUNTARY PATERNITY

Sec. 160.201. VOLUNTARY PATERNITY. (a) If a statement of paternity has been executed by a man claiming to be the biological father of a child who has no presumed father, he, the mother of the child, or the child through a representative authorized by the court or a governmental entity may file a petition for an order adjudicating him as a parent of the child. The statement of paternity must be attached to or filed with the petition.

(b) The court shall render an order adjudicating the child to be the biological child of the child's father and the father to be a parent of the child if the court finds that the statement of paternity was executed as provided by this chapter, and the facts stated are true.

(c) A suit for voluntary paternity may be joined with a suit for termination under Chapter 161.

Sec. 160.202. STATEMENT OF PATERNITY. (a) The statement of paternity authorized to be used by this subchapter must:

- (1) be in writing;
- (2) be signed by the man alleging himself to be the father of the child;
- (3) state whether the man alleging himself to be the father is a minor;

and

(4) clearly state that the man signing the statement acknowledges the child as his biological child.

(b) The statement may include a waiver of citation in a suit to establish the parent-child relationship and ~~but~~ may ~~not~~ include a waiver of the right to notice of the proceedings.

(c) The statement must be executed before a person authorized to administer oaths under the laws of this state.

(d) The statement may be signed before the birth of the child.

(e) The statement must include the social security number of the father.

Sec. 160.203. EFFECT OF STATEMENT OF PATERNITY. (a) A statement of paternity executed as provided by this subchapter is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.

(b) If an alleged father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under this subchapter, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to render an order establishing his paternity of the child.

~~Sec. 160.204. [NOTICE AFTER WAIVER OF SERVICE.— If the respondent does not answer or appear after signing a waiver of service of process as authorized by this subchapter, notice of the proceedings shall be given to the respondent by first class mail sent to the address supplied in the waiver. The waiver shall be valid in a suit filed on or before the first anniversary of the date of signing.~~

~~[Sec. 160.205.]~~ DISPUTED PARENTAGE. If the paternity of the child is uncertain or is disputed by a party in a suit filed under this subchapter, the provisions of Subchapter B apply.

~~Sec. 160.205 [Sec. 160.206].~~ VALIDATION OF PRIOR STATEMENTS. A statement acknowledging paternity or an obligation to support a child that was signed by the father before January 1, 1974, is valid and binding even though the statement is not executed as provided by this subchapter.

SECTION 65. Section 161.001, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence ~~[that]~~:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Chapter 264;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been adjudicated to be criminally responsible for the death or serious injury of a child [~~another of his or her children~~]; [or]

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E); or

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than one year, and;

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not visited or maintained contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment; and

(2) that termination is in the best interest of the child.

SECTION 66. Section 161.002(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The rights of an alleged biological father may be terminated if, after being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Chapter 160 [~~159~~] prior to the final hearing in the suit.

SECTION 67. Section 161.003(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) The court may order termination of the parent-child relationship in a suit filed by the Department of Protective and Regulatory Services if the court finds that:

(1) the parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;

(2) the illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;

(3) the department has been the temporary or sole [~~permanent~~] managing conservator of the child of the parent for the six months preceding the filing of the petition; [~~and~~]

(4) the department has made reasonable efforts to return the child to the parent; and

(5) the termination is in the best interest of the child.

SECTION 68. Section 161.005, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 161.005. TERMINATION WHEN PARENT IS PETITIONER. (a) A parent may file a suit for termination of the petitioner's parent-child relationship. The court may order termination if termination is in the best interest of the child.

(b) If the petition designates the Department of Protective and Regulatory Services as managing conservator, the department shall be given service of citation. The court shall notify the department if the court appoints the department as the managing conservator of the child.

SECTION 69. Section 161.103(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) An affidavit for voluntary relinquishment of parental rights must be:

(1) signed after the birth of the child, but not before 48 hours after the birth of the child, by the parent, whether or not a minor, whose parental rights are to be relinquished;

(2) witnessed by two credible persons; and

(3) verified before a person authorized to take oaths.

SECTION 70. Section 161.104, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 161.104. RIGHTS OF DESIGNATED MANAGING CONSERVATOR PENDING COURT APPOINTMENT. A person, licensed child-placing agency, or authorized agency designated managing conservator of a child in an irrevocable or unrevoked affidavit of relinquishment has a right to possession of the child superior to the right of the person executing the affidavit, the right to consent to medical, ~~and~~ surgical, dental, and psychological treatment of the child, and the rights and duties given by Chapter 153 to a possessory conservator until such time as these rights and duties are modified or terminated by court order.

SECTION 71. Section 161.107(d), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(d) If the department is not able to locate a missing parent or a relative of that parent and sufficient information is available concerning the physical whereabouts of the parent or relative, the department shall request the state agency designated to administer a statewide plan for child support to use the parental locator service established under 42 U.S.C. Section 653 to determine the location of the missing parent or relative.

SECTION 72. Section 161.206(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) If the court finds grounds for termination of the parent-child relationship by clear and convincing evidence, it shall render an order terminating the parent-child relationship.

SECTION 73. Section 162.003, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.003. SOCIAL STUDY. (a) In a suit for adoption, including a suit in which a private agency or individual is responsible for placing the child for adoption, the court shall order a social study as provided in Chapter 107.

(b) The social study required by this section must include a complete investigation of the circumstances and condition of the home of a person petitioning for the adoption of a child under this chapter.

(c) The court shall order that the cost of the social study be paid by the person seeking to adopt the child who is the subject of the social study.

SECTION 74. Section 162.004, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.004. TIME FOR HEARING. (a) The court shall set the date for the hearing on the adoption at a time not before the 40th day or later than the 60th day after the later of the date the social study is ordered or the date criminal history record information is requested under Section 162.0085.

(b) For good cause shown, the court may set the hearing at any date after the report is filed and the court has been notified of the criminal history record information for a person seeking to adopt the child [~~time that provides adequate time for filing the social study~~].

SECTION 75. Subchapter A, Chapter 162, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 162.0085 to read as follows:

Sec. 162.0085. CRIMINAL HISTORY REPORT REQUIRED. (a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order each person seeking to adopt the child to obtain that person's own criminal history record information.

(b) A person required to obtain information under Subsection (a) shall obtain the information in the manner provided by Section 411.128, Government Code.

SECTION 76. Section 162.010(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) Unless the managing conservator is the petitioner, the written consent of a managing conservator to the adoption must be filed. The court may waive the requirement of consent by the managing conservator if the court finds that the consent is being refused or has been revoked without good cause. A hearing on the issue of consent shall be conducted by the court without a jury.

SECTION 77. Section 162.015, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.015. RACE OR ETHNICITY. (a) In determining the best interest of the child, the court may not deny or delay the adoption or otherwise discriminate on the basis of race or ethnicity of the child or the prospective adoptive parents.

(b) This section does not apply to a person, entity, tribe, organization, or child custody proceeding subject to the Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.). In this subsection "child custody proceeding" has the meaning provided by 25 U.S.C. Section 1903.

SECTION 78. Section 162.021(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) Rendition of the order does not relieve the clerk from the duty to send information regarding [~~the files or petitions and decrees of~~] adoption to the bureau of vital statistics [~~department~~] as required by this subchapter and Chapter 108.

SECTION 79. Sections 162.405(b)-(g), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(b) [~~The clerk of the court in which an adoption is granted shall, on or before the 10th day of the first month after the month in which the adoption is granted, transmit to the administrator of the central registry a report of adoption with respect to each adoption granted. The report must include the following information:~~

~~[(1) the name of the adopted child after adoption as shown in the final adoption decree;~~

~~[(2) the birth date of the adopted child;~~

~~[(3) the docket number of the adoption suit;~~

~~[(4) the identity of the court granting the adoption;~~

~~[(5) the date of the final adoption decree;~~

~~[(6) the name and address of each parent, guardian, managing conservator, or other person whose consent to adoption was required or waived under Section 162.010 or whose parental rights were terminated in the adoption suit;~~

~~[(7) the identity of the authorized agency, if any, through which the adopted child was placed for adoption; and~~

~~[(8) the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee.~~

~~[(e)] An authorized agency may file with the administrator of the central registry a report of adoption with respect to any person adopted during the person's minority before January 1, 1984. The report may include:~~

~~(1) the name of the adopted child after adoption as shown in the final adoption decree;~~

~~(2) the birth date of the adopted child;~~

~~(3) the docket number of the adoption suit;~~

~~(4) the identity of the court granting the adoption;~~

~~(5) the date of the final adoption decree;~~

~~(6) the identity of the agency, if any, through which the adopted child was placed; and~~

~~(7) the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee.~~

~~(c) [(d)] On receiving an inquiry by an adoptee who has provided satisfactory proof of age and identity and paid all required inquiry fees, the administrator of the central registry shall review the information on file in the central index. If the index reveals that the adoptee was not placed for adoption through an authorized agency, the administrator of the central registry shall issue the adoptee an official certificate stating that the adoptee is entitled to apply for registration through the central registry. If the index identifies an authorized agency through which the adoptee was placed for adoption, the administrator of the central registry shall determine the identity of the registry through which the adoptee may register. If the administrator of the central registry cannot determine from the index whether the adoptee was placed for adoption through an authorized agency, the administrator of the central registry shall determine the identity of the registry with which the adoptee may register.~~

~~(d) [(e)] Each administrator shall, not later than the 30th day after the date of receiving an inquiry from the administrator of the central registry, respond in writing to the inquiry that the registrant was not placed for adoption by an agency served by that registry or that the registrant was placed for adoption by an agency served by that registry. If the registrant was placed for adoption by an agency served by the registry, the administrator shall file a report with the administrator of the central registry including the information described by Subsections (b) [(e)] (1)-(6).~~

(e) [(f)] After completing the investigation, the administrator of the central registry shall issue an official certificate stating:

(1) the identity of the registry through which the adoptee may apply for registration, if known; or

(2) if the administrator cannot make a conclusive determination, that the adoptee is entitled to apply for registration through the central registry and is entitled to apply for registration through other registries created under this subchapter.

(f) [(g)] On receiving an inquiry by a birth parent who has provided satisfactory proof of identity and age and paid all required inquiry fees, the administrator of the central registry shall review the information on file in the central index and consult with the administrators of other registries in the state in order to determine the identity of the appropriate registry or registries through which the birth parent may register. Each administrator shall, not later than the 30th day after the date of receiving an inquiry from the administrator of the central registry, respond in writing to the inquiry. After completing the investigation, the administrator of the central registry shall provide the birth parent with a written statement either identifying the name, address, and telephone number of each registry through which registration would be appropriate or stating that after diligent inquiry the administrator cannot determine the specific registry or registries through which registration would be appropriate.

SECTION 80. Subchapter B, Chapter 201, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 201.111 to read as follows:

Sec. 201.111. TIME TO ACT ON MASTER'S REPORT. (a) Except as provided by Subsection (b), not later than the 30th day after the date a master's report is filed, the referring court shall:

(1) adopt, approve, or reject the master's report;

(2) hear further evidence; or

(3) recommit the matter for further proceedings.

(b) The time limit in Subsection (a) does not apply if a party has filed a written notice of appeal to the referring court.

SECTION 81. Section 202.002(c), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(c) A friend of the court may file a notice of delinquency and a request for a writ of income withholding under Chapter 158 [49] in order to enforce a child support order.

SECTION 82. Section 231.006, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 231.006. INELIGIBILITY TO RECEIVE STATE GRANTS OR LOANS OR RECEIVE PAYMENTS [BHD] ON STATE CONTRACTS. (a) A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:

(1) ~~receive payments from state funds under [submit a bid or enter into] a contract to provide property, materials, or services [under a contract with the state]; or~~

(2) receive a state-funded grant or loan.

(b) ~~[A sole proprietorship, partnership, corporation, or other entity in which a sole proprietor, partner, majority shareholder, or substantial owner is a delinquent obligor who is ineligible to bid on a state contract as provided by this section may not bid on a state contract.~~

~~[(c)] A child support obligor or business entity ineligible to receive payments under Subsection (a) remains ineligible [to submit a bid on or enter into a state contract or apply for a state-funded grant or loan as provided by this section] until:~~

~~(1) all arrearages have been paid; or~~

~~(2) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.~~

~~(c) A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.~~

~~(d) A contract, bid, or application subject to the requirements of this section must include the following statement:~~

~~"Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."~~

~~(e) If a state agency determines that an individual or business entity holding a state contract is ineligible to receive payment under Subsection (a), the contract may be terminated.~~

~~(f) If the certificate required under Subsection (d) is shown to be false, the vendor is liable to the state for attorney's fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or contract.~~

~~(g) This section does not create a cause of action to contest a bid or award of a state grant, loan, or contract. This section does not impose a duty on the Title IV-D agency to collect information to send to the comptroller to withhold a payment to a business entity. The Title IV-D agency and other affected agencies are encouraged to develop a system by which the Title IV-D agency may identify a business entity that is ineligible to receive a state payment under Subsection (a) and to ensure that a state payment to the entity is not made. This system should be implemented using existing funds and only if the Title IV-D agency, comptroller, and other affected agencies determine that it will be cost-effective.~~

~~(h) This section does not apply to a contract between governmental entities.~~

~~(i) [(d) Each bidder for a state contract or applicant for a state-funded loan or grant as provided by this section shall submit a signed, sworn statement accompanying any bid or application for a grant or loan affirming that the~~

bidder or applicant is not more than 30 days delinquent in providing child support under a court order or a written repayment agreement:

~~[(e)]~~ The Title IV-D agency ~~[and the General Services Commission]~~ may adopt rules or prescribe forms to implement any provision of this section.

SECTION 83. Section 231.007(g), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(g) The amount of weekly workers' compensation benefits that may be withheld or assigned under this section may not exceed the percentage of the person's benefits that would apply if the benefits equalled the person's monthly net resources as provided by Chapter 154 ~~[15]~~, except that in no event may more than 50 percent of the person's weekly compensation benefits be withheld or assigned.

SECTION 84. Section 231.302, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) To assist in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601-617 and 651-669):

(1) each licensing authority shall request and each applicant for a license shall provide the applicant's social security number;

(2) each agency administering a contract that provides for a payment of state funds shall request and each individual or entity bidding on a state contract shall provide the individual's or entity's social security number as required by Section 231.006, Family Code; and

(3) each agency administering a state-funded grant or loan program shall request and each applicant for a grant or loan shall provide the applicant's social security number as required by Section 231.006, Family Code.

(d) This section does not limit the right of an agency or licensing authority to collect and use a social security number under another provision of law.

(e) Except as provided by Subsection (d), a social security number provided under this section is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601-617 and 651-669).

(f) Information collected by the Title IV-D agency under this section may be used only for child support purposes.

SECTION 85. Subtitle D, Title 5, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Chapter 232 to read as follows:

CHAPTER 232. SUSPENSION OF LICENSE FOR FAILURE
TO PAY CHILD SUPPORT

Sec. 232.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by the issuing licensing authority; and

(C) a person must obtain to:

(i) practice or engage in a particular business, occupation, or profession;

(ii) operate a motor vehicle; or

(iii) engage in any other regulated activity, including hunting, fishing, or other recreational activity for which a license or permit is required.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

(3) "Order suspending license" means an order issued by the Title IV-D agency or a court directing a licensing authority to suspend a license.

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following state agencies are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) Texas Commission on Alcohol and Drug Abuse;

(3) Texas Alcoholic Beverage Commission;

(4) Texas Appraiser Licensing and Certification Board;

(5) Texas Board of Architectural Examiners;

(6) State Board of Barber Examiners;

(7) Texas Board of Chiropractic Examiners;

(8) Comptroller of Public Accounts;

(9) Texas Cosmetology Commission;

(10) Court Reporters Certification Board;

(11) State Board of Dental Examiners;

(12) Texas State Board of Examiners of Dietitians;

(13) Texas Funeral Service Commission;

(14) Texas Department of Health;

(15) Texas Board of Professional Land Surveying;

(16) Texas Department of Licensing and Regulation;

(17) Texas State Board of Examiners of Marriage and Family

Therapists:

(18) Texas State Board of Medical Examiners;

(19) Midwifery Board;

(20) Texas Natural Resource Conservation Commission;

(21) Board of Nurse Examiners;

(22) Texas Board of Nursing Facility Administrators;

(23) Texas Board of Occupational Therapy Examiners;

(24) Texas Optometry Board;

(25) Parks and Wildlife Department;

(26) Texas State Board of Examiners of Perfusionists;

(27) Texas State Board of Pharmacy;

(28) Texas Board of Physical Therapy Examiners;

(29) Texas State Board of Plumbing Examiners;

(30) Texas State Board of Podiatry Examiners;

(31) Polygraph Examiners Board;

(32) Texas Board of Private Investigators and Private Security

Agencies:

- (33) Texas State Board of Examiners of Professional Counselors;
- (34) State Board of Registration for Professional Engineers;
- (35) Department of Protective and Regulatory Services;
- (36) Texas State Board of Examiners of Psychologists;
- (37) Texas State Board of Public Accountancy;
- (38) Department of Public Safety of the State of Texas;
- (39) Public Utility Commission of Texas;
- (40) Railroad Commission of Texas;
- (41) Texas Real Estate Commission;
- (42) State Bar of Texas;
- (43) Texas State Board of Social Worker Examiners;
- (44) State Board of Examiners for Speech-Language Pathology and

Audiology;

- (45) Texas Structural Pest Control Board;
 - (46) Board of Tax Professional Examiners;
 - (47) Secretary of State;
 - (48) Supreme Court of Texas;
 - (49) Texas Transportation Commission;
 - (50) State Board of Veterinary Medical Examiners;
 - (51) Board of Vocational Nurse Examiners;
 - (52) Texas Ethics Commission;
 - (53) Advisory Board of Athletic Trainers;
 - (54) State Committee of Examiners in the Fitting and Dispensing of
- Hearing Instruments;

- (55) Texas Board of Licensure for Professional Medical Physicists; and
- (56) Texas Department of Insurance.

Sec. 232.003. SUSPENSION OF LICENSE. A court or the Title IV-D agency may issue an order suspending a license as provided by this chapter if an obligor:

(1) has an arrearage equal to or greater than the total support due for 90 days under a support order;

(2) has been provided an opportunity to make payments toward the child support arrearage under an agreed or court-ordered repayment schedule; and

(3) has failed to comply with the repayment schedule.

Sec. 232.004. PETITION FOR SUSPENSION OF LICENSE. (a) A child support agency or obligee may file a petition to suspend a license.

(b) In a Title IV-D case, the petition shall be filed with the Title IV-D agency.

(c) In a case other than a Title IV-D case, the petition shall be filed in the court of continuing jurisdiction or the court in which a child support order has been registered under Chapter 159.

(d) A proceeding in a case filed with the Title IV-D agency under this chapter is governed by the contested case provisions of Chapter 2001, Government Code, except that Section 2001.054 does not apply to the proceeding. The director of the Title IV-D agency is responsible for rendering a final decision in the contested case proceeding.

Sec. 232.005. CONTENTS OF PETITION. (a) A petition under this chapter must state that license suspension is required under Section 232.003 and allege:

- (1) the name and, if known, social security number of the obligor;
- (2) the type of license the obligor is believed to hold and the name of the licensing authority; and
- (3) the amount owed under the child support order, the amount of support paid, and the amount of arrearages.

(b) A petition under this chapter may include as an attachment a copy of the record of child support payments maintained by the Title IV-D registry or local registry.

Sec. 232.006. NOTICE. (a) On the filing of a petition under Section 232.004, the court or Title IV-D agency shall issue to the obligor:

- (1) notice of the obligor's right to a hearing before the court or agency;
- (2) notice of the deadline for requesting a hearing; and
- (3) a hearing request form if the proceeding is in a Title IV-D case.

(b) Notice under this section may be served as in civil cases generally.

(c) The notice must state that an order suspending license shall be rendered on the 60th day after the date of service of the notice unless by that date:

- (1) the court or Title IV-D agency receives proof that all arrearages and the current month's child support obligation have been paid;
- (2) the child support agency or obligee files a certification that the obligor is in compliance with a reasonable repayment schedule; or
- (3) the obligor appears at a hearing before the court or Title IV-D agency and shows that the request for suspension should be denied or stayed.

Sec. 232.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A request for a hearing and motion to stay suspension must be filed with the court or Title IV-D agency by the obligor not later than the 20th day after the date of service of the notice under Section 232.006.

(b) If a request for a hearing is filed, the court or Title IV-D agency shall:

- (1) promptly schedule a hearing;
- (2) notify each party of the date, time, and location of the hearing; and
- (3) stay suspension pending the hearing.

(c) A record of child support payments made by the Title IV-D agency or a local registry is evidence of whether the payments were made. A copy of the record appearing regular on its face shall be admitted as evidence at a hearing under this chapter, including a hearing on a motion to revoke a stay. Either party may offer controverting evidence.

Sec. 232.008. ORDER SUSPENDING LICENSE. (a) On making the findings required by Section 232.003, the court or Title IV-D agency shall render an order suspending the license unless the obligor proves that all arrearages and the current month's support have been paid.

(b) The court or Title IV-D agency may stay an order suspending a license conditioned on the obligor's compliance with a reasonable repayment schedule that is incorporated in the order. An order suspending a license with a stay of the suspension may not be served on the licensing authority unless the stay is revoked as provided by this chapter.

(c) A final order suspending license rendered by a court or the Title IV-D agency shall be forwarded to the appropriate licensing authority.

(d) If the court or Title IV-D agency renders an order suspending license, the obligor may also be ordered not to engage in the licensed activity.

(e) If the court or Title IV-D agency finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice, and an order suspending license may not be rendered.

Sec. 232.009. DEFAULT ORDER. The court or Title IV-D agency shall consider the allegations of the petition for suspension to be admitted and shall render an order suspending license if the obligor fails to:

- (1) respond to a notice issued under Section 232.006;
- (2) request a hearing; or
- (3) appear at a hearing.

Sec. 232.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An order issued by a Title IV-D agency under this chapter is a final agency decision and is subject to review under the substantial evidence rule as provided by Chapter 2001, Government Code.

Sec. 232.011. ACTION BY LICENSING AUTHORITY. (a) On receipt of a final order suspending license, the licensing authority shall immediately determine if the authority has issued a license to the obligor named on the order and, if a license has been issued:

(1) record the suspension of the license in the licensing authority's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order suspending license without additional review or hearing. The authority may provide notice as appropriate to the license holder or to others concerned with the license.

(c) A licensing authority may not modify, remand, reverse, vacate, or stay an order suspending license issued under this chapter and may not review, vacate, or reconsider the terms of a final order suspending license.

(d) An obligor who is the subject of a final order suspending license is not entitled to a refund for any fee or deposit paid to the licensing authority.

(e) An obligor who continues to engage in the business, occupation, profession, or other licensed activity after the implementation of the order suspending license by the licensing authority is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for any act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending license or dismissing a petition for the suspension of a license does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license.

(h) The denial or suspension of a driver's license under this chapter is governed by this chapter and not by the general licensing provisions of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

Sec. 232.012. MOTION TO REVOKE STAY. (a) The obligee, support enforcement agency, court, or Title IV-D agency may file a motion to revoke the stay of an order suspending license if the obligor does not comply with the terms of a reasonable repayment plan entered into by the obligor.

(b) Notice to the obligor of a motion to revoke stay under this section may be given by personal service or by mail to the address provided by the obligor, if any, in the order suspending license. The notice must include a notice of hearing. The notice must be provided to the obligor not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the obligor failed to comply with the repayment plan.

(d) If the court or Title IV-D agency finds that the obligor is not in compliance with the terms of the repayment plan, the court or agency shall revoke the stay of the order suspending license and render a final order suspending license.

Sec. 232.013. VACATING OR STAYING ORDER SUSPENDING LICENSE. (a) The court or Title IV-D agency may render an order vacating or staying an order suspending license if the obligor has paid all delinquent child support or has established a satisfactory payment record.

(b) The court or Title IV-D agency shall promptly deliver an order vacating or staying an order suspending license to the appropriate licensing authority.

(c) On receipt of an order vacating or staying an order suspending license, the licensing authority shall promptly issue the affected license to the obligor if the obligor is otherwise qualified for the license.

(d) An order rendered under this section does not affect the right of the child support agency or obligee to any other remedy provided by law, including the right to seek relief under this chapter. An order rendered under this section does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license as otherwise provided by law.

Sec. 232.014. FEE BY LICENSING AUTHORITY. A licensing authority may charge a fee to an obligor who is the subject of an order suspending license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

Sec. 232.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND TITLE IV-D AGENCY. (a) The Title IV-D agency may request from each licensing authority the name, address, social security number, license renewal date, and other identifying information for each individual who holds, applies for, or renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in the manner agreed to by the Title IV-D agency and the licensing authority.

(c) The Title IV-D agency may enter into a cooperative agreement with a licensing authority to administer this chapter in a cost-effective manner.

(d) The Title IV-D agency may adopt a reasonable implementation schedule for the requirements of this section.

(e) The Title IV-D agency, the comptroller, and the Texas Alcoholic Beverage Commission shall by rule specify additional prerequisites for the suspension of licenses relating to state taxes collected under Title 2, Tax Code. The joint rules must be adopted not later than March 1, 1996.

Sec. 232.016. RULES, FORMS, AND PROCEDURES. The Title IV-D agency by rule shall prescribe forms and procedures for the implementation of this chapter.

SECTION 86. Sections 261.001(1), (4), and (6), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare ~~[offenses under the Penal Code inflicted on, shown to, or intentionally or recklessly practiced in the presence of a child, including:~~

~~(i) sexual conduct as defined by Section 43.01, Penal Code;~~

~~(ii) sexual assault as provided by Section 22.011, Penal Code; or~~

~~(iii) prohibited sexual conduct as provided by Section 25.02, Penal Code];~~

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child ~~[or sexual assault as defined or provided by Sections 43.01 and 22.011, Penal Code, or prohibited sexual conduct as provided by Section 25.02, Penal Code, from being inflicted on or shown to a child by another person or being intentionally or recklessly practiced in the presence of a child by another person];~~

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code; or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic.

(4) "Neglect" includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent

not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by a person:

(i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child; [or]

(iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(6) "Report" means a report that [of] alleged or suspected abuse or neglect of a child has occurred or may occur.

SECTION 87. Section 261.101, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) If a professional has cause to believe that a child has been or may be abused or neglected, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, and day-care employees.

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, and a mental health professional.

(d) The identity of an individual making a report under this chapter is confidential and may be disclosed only on the order of a court or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

SECTION 88. Section 261.102, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.102. MATTERS TO BE REPORTED. A report should reflect the reporter's belief that a child[:

(1) has been or may be abused or neglected or has died of abuse or neglect[;

~~(2) has violated the compulsory school attendance laws on three or more occasions; or~~

~~(3) has, on three or more occasions, been voluntarily absent from home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return].~~

SECTION 89. Section 261.103, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.103. REPORT MADE TO APPROPRIATE AGENCY. A report shall be made to:

(1) any local or state law enforcement agency;

(2) the department if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child;

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or

(4) the agency designated by the court to be responsible for the protection of children.

SECTION 90. Section 261.104, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.104. CONTENTS OF REPORT. The person making a report shall identify, if known:

(1) the name and address of the child;

(2) the name and address of the person responsible for the care, custody, or welfare of the child; and

(3) any other pertinent information concerning the alleged or suspected abuse or neglect.

SECTION 91. Section 261.106, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.106. IMMUNITIES. (a) A [Except for a person who reports the person's own conduct or who acts in bad faith or with malicious purpose, a] person acting in good faith who reports [reporting] or assists [assisting] in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect [under this chapter] is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting

in good faith and in the scope of the person's responsibilities [participation in a judicial proceeding resulting from the report].

(c) A person who reports the person's own abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability.

SECTION 92. Section 261.107, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.107. FALSE REPORT; PENALTY. ~~[(a)]~~ A person commits an offense if the person knowingly or intentionally makes a report as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this subsection is a Class B misdemeanor.

~~[(b) If, in connection with a pending suit affecting the parent-child relationship, a parent of a child makes a report alleging child abuse by the other parent that the parent making the report knows is false or lacks factual foundation, evidence of the report is admissible in a suit between the parents involving terms of conservatorship.]~~

SECTION 93. Section 261.201, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.201. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except [Except] as otherwise provided in this section, the files, [Subsections (b) and (c), the] reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation [are confidential and may be disclosed only for purposes consistent with the purposes of this code under rules adopted by the investigating agency].

(b) A court may order the disclosure of information that is confidential under this section if:

(1) a motion has been filed with the court requesting the release of the information;

(2) a notice of hearing has been served on the investigating agency and all other interested parties; and

(3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect.

(c) The adoptive parents of a child who was the subject of an investigation and an adult who was the subject of an investigation as a child are entitled to examine and make copies of any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child. The department may edit the documents to protect the identity of the biological parents and any other person whose identity is confidential.

(d) [(e)] Before placing a child who was the subject of an investigation, the department shall notify the prospective adoptive parents of their right to examine any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child.

(e) [(d)] The department shall provide prospective adoptive parents an opportunity to examine information under this section as early as practicable before placing a child.

(f) Notwithstanding Subsection (b), the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

SECTION 94. Sections 261.301(d) and (e), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(d) The department may by rule assign priorities and prescribe investigative procedures for [(t)] investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child.

(e) As necessary to provide for the protection of the child [~~complete a thorough investigation~~], the department or designated agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other children in the home;
- (4) an evaluation of the parents or persons responsible for the care of the child;
- (5) the adequacy of the home environment;
- (6) the relationship of the child to the persons responsible for the care, custody, or welfare of the child; and
- (7) all other pertinent data.

SECTION 95. Section 261.302, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (d) to read as follows:

(d) If, before an investigation is completed, the investigating agency believes that the immediate removal of a child from the child's home is necessary to protect the child from further abuse or neglect, the investigating agency shall file a petition or take other action under Chapter 262 to provide for the temporary care and protection of the child.

SECTION 96. Section 261.303, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.303. INTERFERENCE WITH INVESTIGATION; COURT ORDER ~~[TO ASSIST INVESTIGATION]~~. (a) A person may not interfere with an investigation of a report of child abuse or neglect conducted by the department or designated agency.

(b) If admission to the home, school, or any place where the child may be cannot be obtained, then for good cause shown the court having family law jurisdiction shall order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance for the interview, examination, and investigation.

(c) ~~[(b)]~~ If a parent or person responsible for the child's care does not consent to a medical, psychological, or psychiatric examination of the child that is requested by the department or designated agency, the court having family law jurisdiction shall, for good cause shown, order the examination to be made at the times and places designated by the court.

SECTION 97. Section 261.308, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (c) to read as follows:

(c) On receipt of the report and recommendations, the court may direct the department or designated agency to file a petition requesting appropriate relief as provided in this title.

SECTION 98. Sections 261.401(b) and (c), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(b) ~~[A state agency shall notify the department of each report of abuse or neglect it receives under this subchapter relating to abuse or neglect in a facility operated by the agency according to rules adopted by the department.~~

~~[(c)]~~ A state agency shall adopt rules relating to the investigation and resolution of reports received as provided by ~~[under]~~ this subchapter. The Health and Human Services Commission shall review and approve the rules to ensure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

SECTION 99. Sections 261.402(b), (c), and (e), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(b) A state agency shall immediately notify the appropriate state or local law enforcement agency of any report the agency receives, other than a report from a law enforcement agency, that concerns the suspected abuse or neglect of a child or the death of a child from abuse or neglect. ~~[If the investigation relates to a report of abuse or neglect in a facility operated by a state agency, the agency responsible for the investigation shall submit a copy of the investigative report to the department.~~

~~[(c)]~~ If the state agency finds evidence indicating that a child may have ~~[has]~~ been ~~[or may be]~~ abused or neglected, the agency shall ~~[submit a copy of the]~~ report the evidence ~~[of its investigation]~~ to the appropriate law enforcement agency.

(e) A state agency [~~The department~~] shall compile, maintain, and make available statistics on the incidence of child abuse and neglect in a facility operated by the [a] state agency.

SECTION 100. Chapter 261, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Sections 261.404, 261.405, and 261.406 to read as follows:

Sec. 261.404. INVESTIGATIONS IN FACILITIES UNDER DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION. The department shall investigate a report of abuse or neglect in a facility operated by, regulated by, or providing services under a contract with the Texas Department of Mental Health and Mental Retardation under rules developed jointly between the department and the Texas Department of Mental Health and Mental Retardation.

Sec. 261.405. INVESTIGATIONS IN COUNTY JUVENILE DETENTION FACILITIES. A report of alleged abuse or neglect in a county juvenile detention facility shall be made to a local law enforcement agency for investigation.

Sec. 261.406. INVESTIGATIONS IN SCHOOLS. (a) On receipt of a report of alleged or suspected abuse or neglect of a child in a public or private school under the jurisdiction of the Central Education Agency, the department shall perform an investigation as provided by this chapter.

(b) The department shall send a written report of the department's investigation to the Central Education Agency and the local school board or local governing body for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the report. The report of investigation shall be edited to protect the identity of the persons who prepared the report of abuse or neglect or provided information for the report.

(c) Nothing in this section may prevent a law enforcement agency from conducting an investigation of a report made under this section.

SECTION 101. Section 262.004, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.004. ACCEPTING VOLUNTARY DELIVERY OF POSSESSION OF CHILD. A [~~An authorized representative of the Department of Protective and Regulatory Services, a~~] law enforcement officer[;] or a juvenile probation officer may take possession of a child without a court order on the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

SECTION 102. Section 262.005, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.005. FILING PETITION AFTER ACCEPTING VOLUNTARY DELIVERY OF POSSESSION OF CHILD. When possession of the child has been acquired through voluntary delivery of the child to a law enforcement officer or juvenile probation officer [~~governmental entity~~], the law enforcement officer or juvenile probation officer [~~entity~~] taking the child into possession shall

cause a suit to be filed not later than the 60th day after the date the child is taken into possession.

SECTION 103. Section 262.101, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF CHILD. A petition or affidavit filed by a governmental entity requesting permission to take possession of a child in an emergency shall be sworn to by a person with personal knowledge and shall state facts sufficient to satisfy a person of ordinary prudence and caution that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse and that continuation in the home would be contrary to the child's welfare; and

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing or to make reasonable efforts to prevent or eliminate the need for the removal of the child.

SECTION 104. Section 262.102, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.102. EMERGENCY ORDER AUTHORIZING POSSESSION OF CHILD. (a) Before a court may issue a temporary restraining order or attachment of a child in a suit requesting an emergency order brought by a governmental entity, the court must find [~~be satisfied from a sworn petition or affidavit~~] that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse and that continuation in the home would be contrary to the child's welfare; and

(2) there is no time, consistent with the physical health or safety of the child and the nature of the emergency, to hold [~~for~~] an adversary hearing or to make reasonable efforts to prevent or eliminate the need for removal of the child.

(b) In determining whether there is an immediate danger to the physical health or safety of a child, the court may consider whether the child's household includes a person who has [~~possession of the child has~~]:

(1) abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) sexually abused another child.

SECTION 105. Section 262.107, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.107. STANDARD FOR DECISION AT INITIAL HEARING AFTER TAKING POSSESSION OF CHILD WITHOUT A COURT ORDER IN EMERGENCY. (a) The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:

(1) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child[?]; or

~~[(2)]~~ the evidence shows that the child has been the victim of sexual abuse on one or more occasions and that there is a substantial risk [reasonable likelihood] that the child will be the victim of sexual abuse in the future; and

(2) the nature of the emergency and the continuing danger to the welfare of the child make efforts to allow the child to remain with or return to the person entitled to possession of the child impossible or unreasonable.

(b) In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which [person to whom] the child would be returned includes a person who has:

(1) abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) sexually abused another child.

SECTION 106. Subchapter B, Chapter 262, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 262.111 to read as follows:

Sec. 262.111. FINDING THAT CHILD CANNOT REMAIN IN OR BE RETURNED TO HOME. In the absence of a specific finding to the contrary, the issuance of a temporary restraining order or attachment pending a full adversary hearing or the issuance of an order after a full adversary hearing constitutes a finding by the court that for the child to remain in the home is contrary to the child's welfare or safety and that the emergency made efforts to prevent or eliminate the need for the removal of the child impossible or unreasonable.

SECTION 107. Section 262.201, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE COURT. (a) Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity.

(b) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child; [and]

(2) the urgent need for protection required the immediate removal of the child and makes efforts to eliminate or prevent the child's removal impossible or unreasonable; and

(3) notwithstanding reasonable efforts to eliminate the need for the child's removal and enable the child to return home, there is a substantial risk [reasonable probability] of a continuing danger if the child is returned home.

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall issue an appropriate temporary order under Chapter 105.

(d) In determining whether there is a continuing danger to the physical health or safety of the child, the court may consider whether the household [person] to which [whom] the child would be returned includes a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child.

SECTION 108. Section 263.001(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subdivision (2) and adding Subdivisions (3) and (4) to read as follows:

(2) "Child's home" means the place of residence of at least one of the child's parents.

(3) "Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

(4) "Substitute care" means the placement of a child who is in the conservatorship of the department or an authorized agency in care outside the child's home. The term includes foster care, institutional care, adoption, or placement with a relative of the child.

SECTION 109. Section 263.002, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.002. REVIEW OF PLACEMENTS BY COURT. In a suit affecting the parent-child relationship in which the department or an authorized agency has been appointed by the court or designated in an affidavit of relinquishment of parental rights as the temporary or permanent managing conservator of a child, the court shall hold a hearing to review the conservatorship appointment and substitute [the department's or authorized agency's placement of the child in foster home care, group home care, or institutional] care.

SECTION 110. Section 263.003(c), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(c) The department shall request a review of substitute [the placement of the child in foster home care, group home care, or institutional] care, and its petition shall state that the purpose of the suit is to initiate periodic review of the necessity and propriety of the child's placement under this chapter.

SECTION 111. Section 263.202(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) A status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court. The court shall review the service plan that the department or other agency filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1) a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child; and

(2) the child's parents have reviewed and understand the service plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents.

SECTION 112. Section 263.303(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The status report must:

(1) evaluate all relevant information concerning each of the guidelines under this chapter and the parties' compliance with the service plan; ~~and~~

(2) recommend one of the following actions:

(A) that the child be returned to the child's home and that the suit be dismissed;

(B) that the child be returned to the child's home with the department or other agency retaining conservatorship;

(C) that the child remain in substitute ~~fos~~ter care for a specified period and that the child's parents continue to work toward providing the child with a safe environment;

(D) that the child remain in substitute ~~fos~~ter care for a specified period and that termination of parental rights be sought under this code;

(E) that a child who has resided in substitute ~~fos~~ter care for at least 18 months be placed or remain in permanent or long-term substitute ~~fos~~ter care because of the child's special needs or circumstances; or

(F) that other plans be made or other services provided in accordance with the child's special needs or circumstances; and

(3) with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life.

SECTION 113. Section 263.304, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.304. INITIAL REVIEW HEARING; TIME. Not later than the 180th day after the date of the conclusion of the full adversary hearing under Chapter 262, the court shall hold a ~~review~~ hearing to review the status of, and permanency plan for, a child in substitute care in the court's jurisdiction, including the time for the completion of the plan and the projected date for the achievement of the child's permanency plan.

SECTION 114. Section 263.306, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.306. REVIEW HEARINGS: PROCEDURE. At each review hearing the court shall determine:

(1) the identity of ~~identify~~ all persons or parties present at the hearing or those given notice but failing to appear;

(2) [~~consider all relevant information pertaining to the factors under this chapter to determine~~] whether the child's parents are willing and able to provide the child with a safe environment;

(3) [~~determine~~] the extent to which the child's parents have taken the necessary actions or responsibilities toward achieving the plan goal during the period of the service plan and the extent to which the department or other authorized agency has provided assistance to the parents as provided in the service plan;

(4) whether the child continues to need substitute care and whether the child's current placement is appropriate for meeting the child's needs;

(5) a date for achieving the child's permanency plan;

(6) if the child has been in substitute care for not less than 18 months, the future status of the child and the appropriateness of the date by which the child may return home and whether to render further appropriate orders;

(7) if the child is in substitute care outside the state, whether the out-of-state placement continues to be appropriate and in the best interest of the child;

(8) [~~determine~~] whether the child's parents are willing and able to provide the child with a safe environment without the assistance of a service plan and, if so, return the child to the parents;

(9) [~~(5) determine~~] whether the child's parents are willing and able to provide the child with a safe environment with the assistance of a service plan and, if so, return the child or continue the placement of the child in the child's home under the department's or other agency's supervision;

(10) [~~(6) determine~~] whether the child's parents are presently unwilling or unable to provide the child with a safe environment, even with the assistance of a service plan, and, if so, order the child to remain under the department's or other agency's managing conservatorship for a period of time specified by the court;

(11) [~~(7) determine~~] whether a long-term substitute [foster] care placement is in the child's best interest because of the child's special needs or circumstances and, if so, begin a long-term substitute [foster] care placement and if the child is placed in institutional care, whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(12) [~~(8) determine~~] whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from substitute [foster] care to independent living if the services are available in the community;

(13) [~~(9) determine~~] whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;

(14) [~~(10) determine~~] whether the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department managing conservator and, if so, direct the department or authorized agency to institute further proceedings; and

(15) [~~(11) determine~~] whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.

SECTION 115. Section 263.308, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.308. PARENTS UNABLE OR UNWILLING TO CARE FOR CHILD. ~~[(a)]~~ In a case in which the court determines that an order for the child to remain in the managing conservatorship of the department or other agency is appropriate, the court shall make a finding that the child's parents understand that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code.

~~[(b) In the case of a child residing in foster care for at least 18 months, the court shall determine the appropriateness of the target date by which the child may return home. The court may also enter further orders that are appropriate.]~~

SECTION 116. Section 264.009, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 264.009. LEGAL REPRESENTATION OF DEPARTMENT ~~[IN TRIAL COURT]~~. (a) ~~Except as provided by Subsection (b), in [In] any action [suit brought] under this title [in which the department requests to be named conservator of a child], the department shall be represented in [the trial] court by the:~~

(1) prosecuting attorney who represents the state in criminal cases in the district or county court of the county where the action [suit] is brought [filed or transferred]; or

(2) attorney general.

~~(b) In a county with a population of 2,800,000 or more, in an action under this title, the department shall be represented in court by the:~~

~~(1) attorney who represents the state in civil cases in the district or county court of the county where the action is brought; or~~

~~(2) attorney general.~~

SECTION 117. Subchapter B, Chapter 264, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 264.109 to read as follows:

Sec. 264.109. ASSIGNMENT OF SUPPORT RIGHTS IN SUBSTITUTE CARE CASES. (a) The placement of a child in substitute care by the department constitutes an assignment to the state of any support rights attributable to the child as of the date the child is placed in substitute care.

(b) If a child placed by the department in substitute care is entitled under federal law to Title IV-D child support enforcement services without the requirement of an application for services, the department shall immediately refer the case to the Title IV-D agency. If an application for Title IV-D services is required and the department has been named managing conservator of the child, then an authorized representative of the department shall be the designated individual entitled to apply for services on behalf of the child and shall promptly apply for the services.

(c) The department and the Title IV-D agency shall execute a memorandum of understanding for the implementation of the provisions of this

section and for the allocation between the department and the agency, consistent with federal laws and regulations, of any child support funds recovered by the Title IV-D agency in substitute care cases. All child support funds recovered under this section and retained by the department or the Title IV-D agency and any federal matching or incentive funds resulting from child support collection efforts in substitute care cases shall be in excess of amounts otherwise appropriated to either the department or the Title IV-D agency by the legislature.

SECTION 118. Section 264.602(a), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) The statewide organization with which the attorney general contracts under Section 264.603 shall contract for services with [each] eligible volunteer advocate programs [program] to expand the existing services of the programs [program].

SECTION 119. Section 264.603, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 264.603. ADMINISTRATIVE CONTRACTS. (a) The attorney general shall contract with one statewide organization of individuals or groups of individuals who have expertise in the dynamics of child abuse and neglect and experience in operating volunteer advocate programs to[:

~~[(1)] provide training, technical assistance, and evaluation services for the benefit of local volunteer advocate programs[; and~~

~~[(2) manage the attorney general's contracts under Section 264.602].~~

(b) The contract under this section shall provide that not more than 12 percent of the annual legislative appropriation to implement this subchapter may be spent for administrative purposes by the statewide organization with which the attorney general contracts under this section.

SECTION 120. Section 264.604(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The statewide organization with which the attorney general contracts under Section 264.603 may not contract with a person that is not eligible under this section. However, the statewide organization [attorney general] may waive the requirement in Subsection (a)(3) for an established program in a rural area or under other special circumstances.

SECTION 121. Section 264.606, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 264.606. CRITERIA FOR AWARD OF CONTRACTS. The statewide organization with which the attorney general contracts under Section 264.603 shall consider the following in awarding a contract under Section 264.602:

(1) the volunteer advocate program's eligibility for and use of funds from local, state, or federal governmental sources, philanthropic organizations, and other sources;

(2) community support for the volunteer advocate program as indicated by financial contributions from civic organizations, individuals, and other community resources;

(3) whether the volunteer advocate program provides services that encourage the permanent placement of children through reunification with their families or timely placement with an adoptive family; and

(4) whether the volunteer advocate program has the endorsement and cooperation of the local juvenile court system.

SECTION 122. Section 264.607(b), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The statewide organization with which the attorney general contracts under Section 264.603 may require that a contract under Section 264.602 require the volunteer advocate program to use forms provided by the attorney general.

SECTION 123. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.128 to read as follows:

Sec. 411.128. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: PERSON SEEKING TO ADOPT CHILD. (a) A person seeking to adopt a child under Chapter 162, Family Code, who is ordered by the court to obtain the person's own criminal history record information from the department under Section 162.0085, Family Code, shall request the information as provided by this section.

(b) A person requesting information under this section shall provide the department with the name and address of the court and the date set for the adoption hearing.

(c) The department shall provide the court with criminal history record information not later than the 10th day after the date on which the criminal history record information is requested.

(d) Criminal history record information requested under this section may not be released or disclosed to a person other than the court ordering the investigation except on court order or with the consent of the person who is the subject of the criminal history record information.

SECTION 124. Section 192.003, Health and Safety Code, is amended by amending Subsection (d), as added by Section 1, Chapter 519, Acts of the 73rd Legislature, Regular Session, 1993, and Subsections (e) and (f) to read as follows:

(e) If the mother of the child is not married to the father of the child, a person listed by Subsection (a) or (b) who is responsible for filing the birth certificate shall ~~[(d) On the birth of a child, the hospital, physician, midwife, or person acting as a midwife in attendance or their designee at a birth may]:~~

(1) provide an opportunity for the child's mother and biological father to sign the birth certificate or a form prescribed by the department in which the biological father consents to be named as the child's father on the child's birth certificate; and

(2) provide written information about establishing paternity, including an explanation of the rights and responsibilities of acknowledging paternity and information about the availability of, ~~including an application for~~ child support

services, [~~furnished by the attorney general,~~] to the child's mother and the father, if present [~~regarding the benefits of having her child's paternity established and of the availability of paternity establishment services~~].

(f) [(e)] The local registrar shall transmit signed consent forms to the state registrar.

(g) [(f)] The state registrar shall transmit signed consent forms to the attorney general who may use such forms for any purpose directly connected with the provision of child support services pursuant to Chapter 231, Family Code [~~76, Human Resources Code~~].

SECTION 125. Section 8, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. This article does not apply to interest that accrues on [~~delinquent~~] child support under Section 157.265 [~~14.34~~], Family Code.

SECTION 126. Section 107B(f), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) Use or nonuse of a child passenger safety seat system is not admissible evidence in a civil trial, other than a proceeding under Subtitle A or B, Title 5, Family Code.

SECTION 127. Section 107C(j), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) Use or nonuse of a safety belt is not admissible evidence in a civil trial, other than a proceeding under Subtitle A or B, Title 5, Family Code.

SECTION 128. Sections 105.006(f), 162.023, 162.024, and 264.612(c), Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, are repealed.

SECTION 129. This Act takes effect September 1, 1995, and applies to a pending suit affecting the parent-child relationship without regard to whether the suit was commenced before, on, or after the effective date of this Act.

SECTION 130. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 2644 - WITH SENATE AMENDMENT

Representative Hilderbran called up with a senate amendment for consideration at this time,

HB 2644, A bill to be entitled An Act relating to licensing and Medicaid certification requirements for certain nursing facilities and related penalties and dispute resolution.

On motion of Representative Hilderbran, the house concurred in the senate amendment to **HB 2644**.

HB 2644 - TEXT OF SENATE AMENDMENT

CSHB 2644, A bill to be entitled An Act relating to licensing and Medicaid certification requirements for certain nursing facilities and related penalties and dispute resolution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.021, Human Resources Code, is amended by amending Subsection (d) and adding Subsections (h), (i), (j), and (k) to read as follows:

(d) The department may include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for contract violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act (OBRA), P.L. 100-203, Nursing Home Reform Amendments of 1987, provided that the department:

(1) establish a penalties and sanctions advisory committee of consumer advocates and long-term care providers to help develop and monitor an appropriate system for assessing penalties; and

(2) develop rules in accordance with Subsection (i)~~[-including an administrative appeals process]~~ to adjudicate claims in contested cases~~[-in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]~~.

(h) Except to the extent necessary to implement rights granted to an elderly individual under Chapter 102, the rules adopted by the department for certification of nursing facilities as being in compliance with the requirements for participation in the state Medicaid program may not be different from the standards imposed by federal law. This subsection does not prevent the department from using any civil, administrative, or criminal remedy authorized by state or federal law with respect to a facility that is in violation of a certification or licensing requirement.

(i) The rules adopted under Subsection (d)(2) must provide for:

(1) an informal dispute resolution process that provides for adjudication by an appropriate disinterested person in a regional office of the department and an informal appeal to the department's central office;

(2) an administrative appeals process under Chapter 2001, Government Code; and

(3) the arbitration process described by Subsection (k).

(j) A finding by the department that an institution has violated a standard for participation in the state Medicaid program, or the assessment or payment of a monetary penalty under this section, is not admissible as evidence in a civil action to prove that the institution has committed a violation. This subsection does not apply in an enforcement action or related proceeding in which the state or an agency or political subdivision of the state is a party.

(k) An assessment of monetary penalties under this section is subject to arbitration under Subchapter H, Chapter 242, Health and Safety Code.

SECTION 2. Section 242.037, Health and Safety Code, is amended to read as follows:

Sec. 242.037. MINIMUM STANDARDS. (a) The board may adopt, publish, and enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the dietary needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare; and

(8) the use and administration of medication in conformity with applicable law and rules.

(b) Notwithstanding Section 222.0255(b), an institution that is certified as being in compliance with each standard of participation in the state Medicaid program that relates to the same subject matter as a minimum standard established under Subsection (a) is not required to satisfy the minimum standard established under that subsection.

SECTION 3. Section 242.069, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) A penalty collected under this section shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096.

SECTION 4. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.070 to read as follows:

Sec. 242.070. APPLICATION OF OTHER LAW. The department may not assess a penalty under both this subchapter and Section 32.021, Human Resources Code, for a violation arising out of the same act or failure to act.

SECTION 5. Chapter 242, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. ARBITRATION OF CERTAIN DISPUTES

Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

(1) renewal of a license under Section 242.033;

(2) suspension or revocation of a license under Section 242.061;

(3) assessment of a civil penalty under Section 242.065;

(4) assessment of a monetary penalty under Section 242.066; or

(5) assessment of a penalty as described by Section 32.021(k), Human Resources Code.

Sec. 242.252. ELECTION OF ARBITRATION. (a) An affected institution may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected institution may elect arbitration under this subchapter by filing the election with the department not later than the 10th day after a notice

of hearing relating to any dispute described by Section 242.251 is received by the institution.

(c) The department may elect arbitration under this subchapter by notifying the institution of the election not later than the date that the institution may elect arbitration under Subsection (b).

(d) An election to engage in arbitration under this subchapter is irrevocable and binding on the institution and the department.

Sec. 242.253. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The department shall pay the cost of the arbitration if the department elects the arbitration. The cost of the arbitration shall be shared equally by the department and the institution if the institution elects the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed \$500.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

Sec. 242.254. ARBITRATOR; QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 242.253(b).

Sec. 242.255. ARBITRATOR; SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 242.253(b).

Sec. 242.256. DUTIES OF ARBITRATOR. The arbitrator shall:

(1) protect the interests of the department and the institution;
(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and institution; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.

Sec. 242.257. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the institution of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or institution. The arbitrator may not unreasonably deny a request for a continuance.

Sec. 242.258. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the institution shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.

Sec. 242.259. ATTENDANCE REQUIRED. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Sec. 242.260. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the institution.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the institution may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Sec. 242.261. EVIDENCE. (a) The department or the institution may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Sec. 242.262. CLOSING STATEMENTS; BRIEFS. The department and the institution may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Sec. 242.263. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the institution may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings, for transmittal to the arbitrator.

Sec. 242.264. ORDER. (a) The arbitrator may enter any order that may be entered by the department, board, commissioner, or court under this chapter in relation to a dispute described by Section 242.251.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and institution's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the institution in writing of the decision.

Sec. 242.265. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 242.267, there is no right to appeal.

Sec. 242.266. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Sec. 242.267. COURT VACATING ORDER. (a) On application of the institution, a court shall vacate an arbitrator's order with respect to an arbitration conducted at the election of the department on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;
 (2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).

(b) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(c) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or
 (2) the date the institution knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(d) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Sec. 242.268. NO ARBITRATION OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062.

SECTION 6. (a) This Act takes effect September 1, 1995.

(b) Subchapter H, Chapter 242, Health and Safety Code, as added by this Act, applies only to a dispute described by Section 242.251, Health and Safety Code, as added by this Act, with respect to which formal proceedings are commenced on or after January 1, 1996.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

(Speaker in the chair)

HB 2032 - WITH SENATE AMENDMENT

Representative Uher called up with a senate amendment for consideration at this time,

HB 2032, A bill to be entitled An Act relating to the administration of medical and dental units of public institutions of higher education.

On motion of Representative Uher, the house concurred in the senate amendment to **HB 2032** by (Record 570): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

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

Absent, Excused — Denny.

Absent — Driver; Staples.

HB 2032 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 2032** by adding the following SECTION 2 and renumbering present SECTIONs accordingly:

SECTION 2. Section 830.201, Government Code, is amended by adding Subsections (d), (e) and (f) to read as follows:

(d) For a person who first became a participant in the optional retirement program beginning after August 31, 1996, the compensation limitation of Section 401(a)(17), Internal Revenue Code of 1986 (26 U.S.C. Section 401), applies.

(e) For a person who first became a participant in the optional retirement program before September 1, 1996, the compensation limitation under Section 401(a)(17), Internal Revenue Code (26 U.S.C. Section 401), does not apply. For these persons, the amount of compensation allowed to be taken into account under the plan shall be the amount allowed to be taken into account as of July 1, 1993.

(f) Subsection (e) of this section does not apply to a person whose compensation in excess of the compensation limitation of Section 401(a)(17), Internal Revenue Code (26 U.S.C. Section 401), or whose state retirement contribution under this subchapter, is paid from general revenue funds or any student tuition or fee assessed under Chapters 54 or 55, Education Code.

HB 325 - WITH SENATE AMENDMENTS

Representative Rabuck called up with senate amendments for consideration at this time,

HB 325, A bill to be entitled An Act relating to requiring public notice of an application for an authorization to store certain radioactive waste.

Representative Saunders raised a point of order against further consideration of **HB 325** on the grounds that **HB 325** violates Rule 11, Section 2 of the House Rules and Article III, Section 30 of the Texas Constitution.

The speaker sustained the point of order, speaking as follows:

Representative Saunders raises a point of order against further consideration of **HB 325** with senate amendments under Rule 11, Section 2, of the House Rules and Article III, Section 30, of the Texas Constitution. The chair has reviewed a brief submitted in advance by Mr. Walker on this issue.

For reasons noted in detail in a ruling to be printed in the journal, the chair finds that the senate amendments, which appear to make major change in the statutory regulatory scheme for the handling of hazardous waste, are not germane to the subject of **HB 325**, which provided for local notice of certain radioactive waste permits. In addition, the senate amendments clearly change the original purpose of the bill.

Accordingly, the point of order is well-taken and sustained.

Representative Saunders raises a point of order against further consideration of **HB 325** under Rule 11, Section 2, of the House Rules, and Article III, Section 30, of the Texas Constitution in that the senate amendments are not germane to the engrossment of the house bill.

In an unusual circumstance and in apparent anticipation of this point of order, Representative Walker presented the chair with an unsolicited brief on this issue. The brief was prepared by Mr. Frank Elliot, a former law school dean and former parliamentarian of the Texas Senate. The brief addresses the propriety of the chair ruling on the germaneness of senate amendments as well as the constitutionality of the senate amendments. The chair and staff have studied the brief in some detail.

Propriety of Chair Determining Germaneness of Senate Amendments

The brief states "the chair is correct in refusing to decide upon the germaneness of the senate amendments." The brief also states that "the decision is properly left to the house to be expressed by concurrence or non-concurrence." The brief therefore suggests that it would be incorrect or improper for the chair to decide the matter. However, the explanatory note from the Texas Legislative Manual cited in the brief does not support such a proposition. Rather, the explanatory note says "the chair should not be expected to pass upon the germaneness of senate amendments." It is not a question of whether the chair acts incorrectly or improperly in deciding the issue; rather, the explanatory note supports the proposition that the chair may, at the discretion of the chair, decline to rule on the point of order and leave the issue to concurrence or nonconcurrence by the house.

The portions of the explanatory note that the author of the brief chose not to highlight state plainly that "recent rulings" and "recent trends" are for the chair to decide the issue in cases where the amendments are clearly not germane. The precedents annotated in the manual go back as far as 1937 showing circumstances in which the chair has in fact sustained such a point of order.

To the extent that "recent practice" includes my tenure as speaker as well as that of my predecessor Speaker Lewis, it is well established that the germaneness rule is strictly enforced by the chair at the end of a legislative session. That strict enforcement applies to house amendments of house and senate bills, as well as senate amendments of house bills. Speaker Lewis began the practice, and in a memorandum to all members of the 71st Legislature stated:

Consistent with my practice in past sessions, it is my intent to enforce the constitutional and parliamentary rules relating to germaneness and to bills being limited to a single subject....

I will be giving the same close review to senate amendments to house bills.... (Memorandum dated May 18, 1989.)

I agreed with this practice at the time Speaker Lewis instituted it, and I have continued it as speaker in order to protect the integrity of the legislative process at the end of a legislative session when members face hundreds of bills and amendments with little time for debate and reasoned consideration on the merits of a measure.

Generally, the chair is not placed in the position of having to rule on such a point of order. In most circumstances, when the author is advised that a senate amendment is not germane, the chair will give the author the opportunity to go to conference on the bill for the purpose of removing the amendment.

If presented with a point of order on the germaneness of senate amendments, I will rule and have done so already this session in regard to at least one bill. Just yesterday, a point of order was sustained against senate amendments to **HB 676**. One may look to the house journals for other precedents of "recent practice." [See, e.g., 69 H.J. 3781 (1985); 69 H.J. 3783 (1985); 70 H.J. 4186 (1987); 70 H.J. 4199 (1987).]

As recent students of the legislative process will attest, the house traditionally takes a stricter view in applying the germaneness rule and, much more frequently than the other house, considers and sustains points of order involving germaneness. The author of the brief, a parliamentarian in the other house more than 20 years ago, may be forgiven for a lack of familiarity with recent house practice and precedent.

Germaneness of the Amendments

HB 325 as introduced by Representative Rabuck added a single section to Chapter 401, Health and Safety Code, which is the law governing radioactive materials. The bill had a single subject—requiring public notice and a public meeting before the issuance or renewal of a license. The bill did not modify in any way the type of licenses that could be issued by the Texas Natural Resource Conservation Commission ("TNRCC"), the type of material subject to regulation by the TNRCC, or the statutory regulatory. The only subject was public notice and public meetings.

The house committee substitute narrowed the subject of the bill by omitting the public meeting requirement. The bill was not amended on the house floor. Thus, as the bill left the house the only subject addressed by the bill was the requirement of public notice for applications for a license to store radioactive waste.

The senate amendments added the following:

(1) a new definition of "mixed waste", applicable to all of Chapter 401, Health and Safety Code (defining it to include "hazardous waste" and "radioactive material", a definition different from the same term used in Chapter 402);

(2) an additional notice requirement under Chapter 401 for applicants for a mixed waste license; and

(3) a change in the definition of "radioactive waste" under Chapter 401 by including "mixed waste".

The author of the brief fails to see the forest for the trees and appears to not fully understand the legal effect of the amendments. The amendments, while appearing to simply add an additional notice requirement and define terms used in the notice requirement, in fact provide for major changes in a complex regulatory scheme governing hazardous and radioactive waste.

The effect of including "mixed waste" as "radioactive waste" in Chapter 401 is to alter and expand the jurisdiction of the Texas Natural Resource Conservation Commission in regard to the matters licensed under that chapter. Under current law, "hazardous waste" is regulated under Chapter 361, Health and Safety Code; "radioactive waste" is regulated under Chapter 401; and "mixed waste," which includes hazardous waste and low-level radioactive waste, is regulated under Chapter 402. The effect of the changes in definition is to authorize the regulation of hazardous waste under Chapter 401 without complying with the current regulatory scheme for the handling of that waste in Chapter 361.

Clearly, the definitions do not, as the author of the brief alleges, merely "specify in greater detail the terms of art which are utilized in the bill." The changes in definition effect a significant substantive change in the regulation of hazardous waste.

The subject of the House engrossment of **HB 325** is providing local notice on the issuance of licenses existing under current law for the storage of radioactive waste. The subject of the amendment—effecting a major change in the manner in which the state regulates hazardous waste—is neither the same subject as the house bill nor included within or incidental to that subject. Similarly, since the purpose of the bill was to provide that local notice, the changes to the statutory regulatory scheme change the original purpose of the bill.

The author of the brief is correct in stating, in bold print, that the "germaneness of the amendments to the original purpose of the bill is not even a close call." The amendments are clearly not germane.

Consistent with the House Rules, Article III, Section 30, of the Texas Constitution, and house precedent, the point of order is well-taken and sustained.

SB 15 - REQUEST OF SENATE GRANTED

On motion of Representative Place, the house granted the request of the senate for the appointment of a conference committee on **SB 15**.

SB 15 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 15**: Place, chair, Hightower, De La Garza, Talton, and Solis.

SB 374 - REQUEST OF SENATE GRANTED

On motion of Representative Junell, the house granted the request of the senate for the appointment of a conference committee on **SB 374**.

SB 374 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 374**: Junell, chair, Gray, Black, Telford, and Eiland.

SB 667 - REQUEST OF SENATE GRANTED

On motion of Representative Janek, the house granted the request of the senate for the appointment of a conference committee on **SB 667**.

SB 667 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 667**: Janek, chair, Berlanga, Maxey, Hirschi, and Eiland.

SB 673 - REQUEST OF SENATE GRANTED

On motion of Representative Berlanga, the house granted the request of the senate for the appointment of a conference committee on **SB 673**.

SB 673 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 673**: Berlanga, chair, Hirschi, Glaze, Janek, and Delisi.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Conference committee on **SB 673**, 10 a.m. Saturday, May 27, E2.016, Capitol Extension.

SB 913 - REQUEST OF SENATE GRANTED

On motion of Representative Naishtat, the house granted the request of the senate for the appointment of a conference committee on **SB 913**.

SB 913 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 913**: Naishtat, chair, Alvarado, Hartnett, Ehrhardt, and McDonald.

SB 964 - REQUEST OF SENATE GRANTED

On motion of Representative Bailey, the house granted the request of the senate for the appointment of a conference committee on **SB 964**.

SB 964 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 964**: Bailey, chair, Brimer, Craddick, Yost, and Haggerty.

SB 1013 - REQUEST OF SENATE GRANTED

On motion of Representative Oakley, the house granted the request of the senate for the appointment of a conference committee on **SB 1013**.

SB 1013 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1013**: Oakley, chair, Bailey, Hill, Allen, and Munoz.

SB 1295 - REQUEST OF SENATE GRANTED

On motion of Representative Hightower, the house granted the request of the senate for the appointment of a conference committee on **SB 1295**.

SB 1295 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1295**: Hightower, chair, Black, Bosse, Ramsay, and Seidlits.

SB 1509 - REQUEST OF SENATE GRANTED

On motion of Representative H. Cuellar, the house granted the request of the senate for the appointment of a conference committee on **SB 1509**.

SB 1509 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1509**: H. Cuellar, chair, Hill, R. Cuellar, Wohlgemuth, and T. Hunter.

SB 1542 - REQUEST OF SENATE GRANTED

On motion of Representative Carter, the house granted the request of the senate for the appointment of a conference committee on **SB 1542**.

SB 1542 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1542**: Allen, chair, Luna, Edwards, McCoulskey, and Carter.

SB 1546 - REQUEST OF SENATE GRANTED

On motion of Representative Counts, the house granted the request of the senate for the appointment of a conference committee on **SB 1546**.

SB 1546 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1546**: Counts, chair, Harris, Hirschi, Yost, and R. Lewis.

SB 1683 - REQUEST OF SENATE GRANTED

On motion of Representative Howard, the house granted the request of the senate for the appointment of a conference committee on **SB 1683**.

SB 1683 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1683**: Howard, chair, Saunders, Chisum, Counts, and Hirschi.

SB 421 - REQUEST OF SENATE GRANTED

On motion of Representative Krusee, the house granted the request of the senate for the appointment of a conference committee on **SB 421**.

SB 421 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 421**: Krusee, chair, Howard, B. Turner, Hartnett, and Hamric.

SB 1128 - REQUEST OF SENATE GRANTED

On motion of Representative H. Cuellar, the house granted the request of the senate for the appointment of a conference committee on **SB 1128**.

SB 1128 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1128**: H. Cuellar, chair, Marchant, Patterson, Romo, and Hernandez.

HCR 235 - ADOPTED

Representative Maxey moved to suspend all necessary rules to take up and consider at this time **HCR 235**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Maxey,

HCR 235

WHEREAS, **HB 1697** has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical errors that need correction; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be hereby instructed to make the following corrections:

(1) In Section 1(a)(2) of the bill, strike "Sec. 1(3), Art. 8451a, Texas Civil Statutes" and substitute "Section 1(3), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes)".

(2) In Section 1(a)(2) of the bill, strike "Sec. 4(b), Art. 8407a, Texas Civil Statutes" and substitute "Section 4(b), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes)".

The resolution was adopted without objection.

HCR 234 - ADOPTED

Representative Delisi moved to suspend all necessary rules to take up and consider at this time **HCR 234**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Delisi,

HCR 234

WHEREAS, **HB 994** has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains a technical error that needs correction; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be hereby instructed to make the following correction:

At the end of Section 51.015(a)(3)(B), Labor Code, strike the period added by Senate Floor Amendment No. 1 and substitute "and".

The resolution was adopted without objection.

HR 1129 - ADOPTED

The speaker laid before the house the following privileged resolution:

By Coleman,

HR 1129

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on Senate Bill No. 1646 to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text in Section 1.002(a), Public Facility Corporation Act (Article 717s, Revised Statutes), to read as follows:

SECTION 1. Section 1.002(a), Public Facility Corporation Act (Article 717s, Revised Statutes), is amended to read as follows:

(a) The purposes of this article are to authorize the creation and utilization of public facility corporations with the broadest possible powers to finance or [~~the acquisition of and to authorize sponsors to issue to or incur in favor of the corporations sponsor obligations issued or incurred in accordance with existing law;~~] to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of public facilities [~~of the sponsors~~] in an orderly, planned manner and at the lowest possible borrowing costs.

Explanation: This change is necessary to clarify the authority of a public facility corporation to finance or otherwise provide for the provision of a public facility.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend text in Section 1.003(10), Public Facility Corporation Act (Article 717s, Revised Statutes), to read as follows:

(10) "Public facility" means any real, personal, or mixed property, or any interest in property [~~owned or to be owned by a sponsor;~~] devoted or to be devoted to public use, and authorized to be financed, refinanced, or provided by sponsor obligations.

Explanation: This change is necessary to clarify that a public facility does not have to be owned by a sponsor.

(3) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend text in Sections 2.011(a) and (b), Public Facility Corporation Act (Article 717s, Revised Statutes), to read as follows:

SECTION 3. Sections 2.011(a) and (b), Public Facility Corporation Act (Article 717s, Revised Statutes), are amended to read as follows:

(a) A sponsor may create one or more nonmember, nonstock, nonprofit public facility corporations for the ~~[sole]~~ purpose of issuing bonds under this article to purchase sponsor obligations of its sponsor, to finance public facilities on behalf of its sponsor, or to loan the proceeds of the obligations to other entities to accomplish the purposes of the sponsor.

(b) A sponsor may use the corporation to:

(1) acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in service public facilities ~~[of the sponsor];~~ or

(2) issue bonds on the sponsor's behalf to finance the costs of the ~~[sponsor's]~~ public facilities.

Explanation: This change is necessary to clarify the permissible reasons a sponsor may create a public facility corporation.

(4) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text in Section 4.041(a), Public Facility Corporation Act (Article 717s, Revised Statutes), to read as follows:

SECTION 5. Section 4.041(a), Public Facility Corporation Act (Article 717s, Revised Statutes), is amended to read as follows:

(a) Subject to Section 4.049 of this article, each corporation established under this article has the rights and powers necessary or convenient to accomplish the corporation's purposes, including the power to:

(1) acquire title to a public facility in order to lease, convey, or dispose of the public facility to the corporation's sponsor or, on direction of the sponsor and in furtherance of the sponsor's purposes, to any other entity;

(2) accept a mortgage or pledge of a public facility financed, refinanced, or provided by sponsor obligations purchased by the corporation and, as security for the payment of any connected bonds or credit agreements that the corporation issues or incurs, assign the mortgage or pledge and the revenues and receipts from the mortgage or pledge and from the sponsor obligations or grant other security;

(3) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of the corporation's property and assets, including sponsor obligations;

(4) make a contract, incur a liability, and borrow money at interest;

(5) lend money for its corporate purpose, invest and reinvest its funds, and take and hold security for the payment of money loaned or invested;

(6) sue, be sued, complain, and defend in its corporate name;

(7) appoint agents of the corporation and determine their duties; and

(8) have a corporate seal and use the seal by having it or a facsimile of it impressed on, affixed to, or reproduced on an instrument required or authorized to be executed by the corporation's proper officers.

Explanation: This change is necessary to clarify the permissible reasons a public facility corporation may acquire title to a public facility.

(5) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend text in Sections 4.043(a) and (e), Public Facility Corporation Act (Article 717s, Revised Statutes), to read as follows:

SECTION 6. Sections 4.043(a) and (e), Public Facility Corporation Act (Article 717s, Revised Statutes), are amended to read as follows:

(a) With the approval of its sponsor, a corporation may issue or incur bonds to finance, refinance, or provide one or more public facilities [~~of its sponsor~~]. However, this article does not authorize the sponsor to issue any sponsor obligation, use a letter of credit, or mortgage any public facilities unless the sponsor otherwise is so empowered.

(e) The proceeds of the bonds of a corporation may be used [~~solely~~] to finance, refinance, or provide one or more public facilities, to fund reserve funds determined by the sponsor and the corporation to be necessary and appropriate, or to pay the [~~of the sponsor of the corporation through the purchase by the corporation of one or more sponsor obligations of the sponsor, the deposit of proceeds of the bonds to a reserve fund for the bonds, or the payment of~~] costs of issuance. The purchase by the corporation of a sponsor obligation does not constitute or give rise to the extinguishment of the debt represented by the sponsor obligation. Pending any of the uses described by this subsection, the proceeds of the bonds may be invested or reinvested in accordance with Section 4.041 of this article.

Explanation: This change is necessary to clarify the permissible reasons for the issuance of bonds by a public facility corporation and the permissible uses of the proceeds of the bonds by a corporation.

(6) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text in Section 4.045(a), Public Facility Corporation Act (Article 717s, Revised Statutes), to read as follows:

SECTION 8. Section 4.045(a), Public Facility Corporation Act (Article 717s, Revised Statutes), is amended to read as follows:

(a) Bonds of the corporation are payable from revenues derived from public facilities or sponsor obligations. Bonds issued under this article are not an obligation or a pledge of the faith and credit of the state, a sponsor, or other political subdivision or agency of the state.

Explanation: This change is necessary to clarify the permissible methods for the payment of bonds issued by a public facility corporation.

(Van de Putte in the chair)

The resolution was adopted without objection.

HR 1170 - ADOPTED

The chair laid before the house the following privileged resolution:

By Brimer,

HR 1170

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 466 to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(3), is suspended to permit the committee to add text in proposed Article 61.03(a), Code of Criminal Procedure, to read as follows:

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

(1) another criminal justice agency;

(2) a court; or

(3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Explanation: This change adds "on request" and is necessary to authorize the release of information compiled under proposed Chapter 61, Code of Criminal Procedure, to a criminal justice agency, a court, or a defendant in a criminal proceeding if the criminal justice agency, court, or defendant requests the information.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text in proposed Article 61.03, Code of Criminal Procedure, to read as follows:

(c) A local criminal justice agency may not send information collected under this chapter to a statewide database.

Explanation: This change is necessary to limit statewide access to information collected under Chapter 61, Code of Criminal Procedure, by prohibiting local criminal justice agencies from sending information collected under Chapter 61, Code of Criminal Procedure, to a statewide database.

(3) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text in proposed Chapter 61, Code of Criminal Procedure, to read as follows:

Art. 61.06. DESTRUCTION OF RECORDS. Information collected under this chapter must be destroyed after two years if the individual has not been charged with criminal activity.

Explanation: This change is necessary to provide for the destruction of records collected under proposed Chapter 61, Code of Criminal Procedure.

The resolution was adopted without objection.

HR 1143 - ADOPTED

The chair laid before the house the following privileged resolution:

By Yarbrough,

HR 1143

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 984 to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text in Section 11.11(b), Alcoholic Beverage Code, to read as follows:

(b) A surety bond required under this section shall contain the following statements on the face of the bond:

(1) that the holder of the permit will not violate a law of the state relating to alcoholic beverages or a rule of the commission; and

(2) that the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code, regardless of whether the actions of an employee of a holder are not attributable to the holder under Section 106.14.

Explanation: This change is necessary to clarify the requirements for a valid conduct surety bond.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text in Section 61.13(b), Alcoholic Beverage Code, to read as follows:

(b) A surety bond required under this section shall contain the following statements on the face of the bond:

(1) that the holder of the license will not violate a law of the state relating to alcoholic beverages or a rule of the commission; and

(2) that the holder of the license agrees that the amount of the bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of this code, regardless of whether the actions of an employee of a holder are not attributable to the holder under Section 106.14.

Explanation: This change is necessary to clarify the requirements for a valid conduct surety bond.

The resolution was adopted without objection.

HR 1153 - ADOPTED

The chair laid before the house the following privileged resolution:

By Kuempel,

HR 1153

BE IT RESOLVED by the House of Representatives of the State of Texas, That Rule 13, Section 9(a), Rules of the House of Representatives, 74th Legislature, Regular Session, 1995, is suspended, as provided by Rule 13, Section 9(f), to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of H.B. No. 2349, relating to solid waste management and disposal, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matter:

House Rule 13, Section 9(a)(1), is suspended to permit the committee to alter Section 361.071, Health and Safety Code, in SECTION 5 of the bill, by striking "solid waste management facility" and substituting "municipal solid waste management facility other than a facility that engages in combustion" and by striking "solid waste" and substituting "municipal solid waste".

The amendment is necessary to clarify that Section 361.071, Health and Safety Code, is intended to apply only to municipal solid waste management facilities except those that engage in combustion.

Amendment No. 1

Representative Kuempel offered the following amendment to the resolution:

Amend **HR 1153** as follows:

(1) On page 1, line 10, strike "matter" and substitute "matters".

(2) On page 1, line 11, immediately before "House" add "(1)".

(3) Add the following at the end of the resolution (page 1, immediately following line 20):

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Sections 361.088(f) and (g), Health and Safety Code, in SECTION 6 of the bill, to read as follows:

(f) Notwithstanding Subsections (a) through (d), the commission may process as a Class I modification changes to terms, provisions, or requirements of a municipal solid waste permit or any documents incorporated into a municipal solid waste permit if the changes do not reduce the capacity of the facility to protect human health or the environment. A modification of a Type V solid waste transfer permit under this subsection may be made only in conjunction with a relocation under Subsection (g).

(g) The commission may approve as a Class I modification a request to relocate a Type V transfer station to a new site that is within one-half mile of another permitted municipal solid waste facility owned or operated by the same entity if the relocation site is not more than five miles from the original site and if the relocation does not reduce the capacity of the transfer station to protect human health and the environment. The commission may not require the issuance of a permit for a new solid waste facility or an amended solid waste permit for a relocation under this subsection.

The additions are necessary to clarify that a change to certain solid waste permits may be made without a new permit hearing process if the change does not involve a human health or environmental concern.

Representative Bosse moved to table Amendment No. 1.

The motion to table prevailed.

The resolution was adopted without objection.

HR 1140 - ADOPTED

The chair laid before the house the following privileged resolution:

By Holzheuser,

HR 1140

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on Senate Bill No. 550 to consider and take action on the following matter:

House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit text not in disagreement in Section 1 of the bill, in proposed Subsection (b), Article 6447i, Revised Statutes, as added by the bill. The omitted text consists of the third comma in the proposed subsection and the phrase that reads as follows:

"having a fair market value greater than \$1,000."

Explanation: This change is necessary to ensure that the bill prohibits gifts or donations from certain persons without regard to the monetary value of the gift or donation.

The resolution was adopted without objection.

(Speaker in the chair)

HR 1176 - ADOPTED

Representative Thompson moved to suspend all necessary rules to take up and consider at this time **HR 1176**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Thompson, Conley, Danburg, Gray, and Davis

HR 1176, Congratulating Debby Tucker on the occasion of her birthday.

The resolution was read and was adopted without objection.

On motion of Representative Danburg, the names of all the members of the house were added to **HR 1176** as signers thereof.

HR 1168 - ADOPTED

Representative B. Hunter moved to suspend all necessary rules to take up and consider at this time **HR 1168**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Carter,

HR 1168, Congratulating Chester Morris "Chick" Terry on his 80th birthday.

The resolution was adopted without objection.

HR 1166 - ADOPTED

Representative Dear moved to suspend all necessary rules to take up and consider at this time **HR 1166**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Dear,

HR 1166, Honoring Angelo Dear.

The resolution was adopted without objection.

RESOLUTIONS REFERRED TO COMMITTEE

The following resolutions were laid before the house and referred to committee:

By Hudson,

HR 1116, Congratulating Samuel W. Hudson IV and Stacey Hudson on the birth of their daughter and designating Lora Danielle Hudson an Honorary Texan.

To Committee on Rules and Resolutions.

By Kamel,

HR 1119, Honoring the life of President John Tyler and his efforts and influence in behalf of Texas statehood.

To Committee on Rules and Resolutions.

By Kamel,

HR 1120, Honoring the life of Governor Richard Bennett Hubbard of Tyler.

To Committee on Rules and Resolutions.

By Moffat,

HR 1121, Commending the Sesquicentennial of Statehood Cattle Drive.

To Committee on Rules and Resolutions.

By Greenberg,

HR 1122, Congratulating Rafik Kaissi on his birthday.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1123, Honoring the Multi-Ethnic Heritage Foundation.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1124, Honoring Adamson High School for their celebration of Cinco de Mayo 1996.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1125, Honoring the National Association of Hispanic Firefighters and Texas Association of Hispanic Firefighters.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1126, Honoring Sunset High School for their celebration of Cinco de Mayo 1996.

To Committee on Rules and Resolutions.

By H. Cuellar,

HR 1130, Honoring Chief Jose E. Garza.

To Committee on Rules and Resolutions.

By Davila,

HR 1134, Honoring Ms. Valerie's School of Dance.

To Committee on Rules and Resolutions.

By Davila,

HR 1135, Honoring Maria Isabel Sanchez on her birthday.

To Committee on Rules and Resolutions.

By Davila,

HR 1136, Honoring Francisco Sanchez, Sr., on the occasion of Father's Day, 1995.

To Committee on Rules and Resolutions.

By Place,

HR 1137, Honoring Judge Byron Leaird McClellan, Sr.

To Committee on Rules and Resolutions.

By Talton,

HR 1144, In memory of Martin Roller.

To Committee on Rules and Resolutions.

By Delisi,

HR 1151, Congratulating the Killeen I.S.D.'s Parent/Community Involvement Program on its recent designation as a 1995 Best of Texas award winner.

To Committee on Rules and Resolutions.

By Delisi,

HR 1152, Congratulating the Child, Adolescent and Family Services for Central Texas for its recent receipt of a 1995 Best of Texas award.

To Committee on Rules and Resolutions.

By Serna, Alonzo, Moreno, Berlanga, and McDonald,

HR 1154, Honoring Judge Edward S. Marquez for his judicial and community service.

To Committee on Rules and Resolutions.

By Kubiak,

HR 1156, Commending Rockdale High School's Business Professionals of America parliamentary procedure team.

To Committee on Rules and Resolutions.

By Kubiak,

HR 1157, Congratulating the Milano High School Band.

To Committee on Rules and Resolutions.

By Alonzo and Van de Putte,

HR 1159, Honoring Tony Franco for his community service.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1160, Commemorating Mexico's National Independence Day.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1161, Honoring Steve Salazar on his election to the Dallas City Council.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1162, Congratulating Kathleen Leos on her election to the Dallas Independent School District School Board.

To Committee on Rules and Resolutions.

By Alonzo,

HR 1163, Commemorating the third annual Alonzo Bowl football championship game.

To Committee on Rules and Resolutions.

By Alonzo, Reyna, and Tillery,

HR 1164, Congratulating Mr. and Mrs. Paul Herrera on the occasion of their 40th wedding anniversary.

To Committee on Rules and Resolutions.

By Black,

HR 1165, In memory of Lester W. "Hap" Gibson.

To Committee on Rules and Resolutions.

By Laney,

HR 1167, Honoring Dr. Alex Ignatiev, director of the University of Houston Space Vacuum Epitaxy Center.

To Committee on Rules and Resolutions.

By Johnson,

HR 1169, Honoring Billie Bailey for her many years of service as an educator.

To Committee on Rules and Resolutions.

By Maxey,

HR 1171, Honoring Del Valle I.S.D. Teachers and Employee of the Year.

To Committee on Rules and Resolutions.

By Giddings,

HR 1174, Congratulating Dan Eddy on being named the 1994 Man of the Year by the Duncanville Chamber of Commerce.

To Committee on Rules and Resolutions.

By Giddings,

HR 1175, Honoring Carla Fahey for her community service.

To Committee on Rules and Resolutions.

By Telford,

HR 1177, Congratulating Valerie Brummal and Lacey Brooks on winning the UIL Class 4A girls' doubles state tennis championship.

To Committee on Rules and Resolutions.

By Gallego, et al.,

HCR 232, In memory of Thomas P. "Tip" O'Neill, Jr.

To Committee on Rules and Resolutions.

By J. Jones, Grusendorf, and Marchant,

HCR 236, Paying tribute to the life of Robert David Gordon, Jr.

To Committee on Rules and Resolutions.

ADJOURNMENT

Representative Stiles moved that the house adjourn until 10 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 8:46 p.m., adjourned until 10 a.m. tomorrow.

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

Rules and Resolutions - **HCR 208, HCR 224, HCR 228, HCR 229, HCR 230, SCR 115, SCR 153, SCR 156, SCR 158, SCR 159, SCR 160, SCR 162, SCR 163, SCR 165, SCR 166, HR 924, HR 925, HR 930, HR 932, HR 933, HR 935, HR 936, HR 937, HR 938, HR 939, HR 940, HR 941, HR 942, HR 943, HR 944, HR 945, HR 949, HR 950, HR 951, HR 959, HR 965, HR 966, HR 967, HR 968, HR 969, HR 970, HR 979, HR 984, HR 988, HR 989, HR 990, HR 992, HR 993, HR 1000, HR 1001, HR 1004, HR 1009, HR 1012, HR 1014, HR 1015, HR 1016, HR 1018, HR 1020, HR 1021, HR 1022, HR 1023, HR 1025, HR 1026, HR 1027, HR 1028, HR 1029, HR 1030, HR 1031, HR 1032, HR 1033, HR 1034, HR 1035, HR 1036, HR 1037, HR 1038, HR 1039, HR 1040, HR 1041, HR 1042, HR 1043, HR 1044, HR 1045, HR 1046, HR 1047, HR 1048, HR 1050, HR 1051, HR 1052, HR 1053, HR 1054, HR 1055, HR 1056, HR 1057, HR 1058, HR 1059, HR 1060, HR 1061, HR 1062, HR 1063, HR 1064, HR 1065, HR 1066, HR 1067, HR 1068, HR 1069, HR 1070, HR 1071, HR 1072, HR 1073, HR 1075, HR 1076, HR 1077, HR 1078, HR 1079, HR 1080, HR 1081, HR 1082, HR 1083, HR 1085, HR 1087, HR 1088, HR 1089, HR 1090, HR 1091, HR 1092, HR 1093, HR 1094, HR 1096, HR 1097, HR 1099, HR 1100**

State Affairs - **SCR 150**

ENROLLED

May 25 - **HB 175, HB 238, HB 398, HB 553, HB 677, HB 735, HB 768, HB 815, HB 1127, HB 1405, HB 1479, HB 1487, HB 1586, HB 1698, HB 2162, HB 2216, HB 2307, HB 3031, HJR 68, HCR 186, HCR 205, HCR 227, HCR 231**

May 26 - **HB 742, HB 1048, HB 1094, HB 1366, HB 1481, HB 1651, HB 2540, HB 2943**

SENT TO THE GOVERNOR

May 26 - **HB 175, HB 238, HB 347, HB 359, HB 398, HB 553, HB 677, HB 742, HB 768, HB 815, HB 828, HB 1048, HB 1094, HB 1127, HB 1180, HB 1200, HB 1323, HB 1366, HB 1405, HB 1441, HB 1472, HB 1479, HB 1481, HB 1487, HB 1495, HB 1586, HB 1651, HB 1698, HB 1785, HB 1900, HB 1957, HB 1991, HB 2035, HB 2042, HB 2069, HB 2162, HB 2168, HB 2216, HB 2307, HB 2313, HB 2373, HB 2401, HB 2432, HB 2540, HB 2579, HB 2686, HB 2698, HB 2781, HB 2875, HB 2943, HB 3031, HB 3072, HB 3120, HCR 128, HCR 186, HCR 205, HCR 227, HCR 231**

SENT TO THE SECRETARY OF STATE

May 26 - **HJR 68**