

# HOUSE JOURNAL

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SEVENTY-FIFTH LEGISLATURE, REGULAR SESSION

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## PROCEEDINGS

SEVENTY-EIGHTH DAY — WEDNESDAY, MAY 21, 1997

The house met at 11:40 a.m. and was called to order by the speaker pro tempore.

The roll of the house was called and a quorum was announced present (Record 463).

Present — Mr. Speaker; Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Absent, Excused — Telford.

### LEAVES OF ABSENCE GRANTED

On motion of Representative Carter and by unanimous consent, all members who were granted leaves of absence on the previous legislative day were granted leaves for this legislative day.

### RULES SUSPENDED

Representative Carter moved to suspend all necessary rules in order to take up and consider at this time, on third reading and final passage, the bills on the local, consent, and resolutions calendar which were considered on the previous legislative day.

The motion prevailed without objection.

### MOTION FOR ONE RECORD VOTE

On motion of Representative Carter and by unanimous consent, the house agreed to use the first record vote taken for all those bills on the local, consent, and resolutions calendar that require a record vote on third reading and final passage, with the understanding that a member may record an individual vote on any bill with the journal clerk.

**LOCAL CALENDAR  
CONSENT CALENDAR  
THIRD READING**

The following bills which were considered on second reading on the previous legislative day on the local, consent, and resolutions calendar were laid before the house, read third time, and passed by a voice vote (members registering votes are shown following bill number):

**SB 15**

**SB 16**

**SB 1936**

**SB 11**

**SB 12**

**SB 48**

**SB 57**

**SB 58**

**SB 60**

**SB 68**

**SB 141**

**SB 224**

**SB 337**

**SB 397**

**SB 467**

**SB 531**

**SB 550**

**SB 612**

**SB 617**

**SB 660**

**SB 745**

**SB 910**

**SB 913**

**SB 938**

**SB 961**

**SB 1001**

**SB 1041** (Christian, Corte, Finnell, Heflin, and Keffer - no)

**SB 1050**

**SB 1262****SB 1284****SB 1297****SB 1316****SB 1354****SB 1478****SB 1546****SB 1579****SB 1594****SB 1676****SB 1728****SB 1805** (Clark, Corte, Finnell, and Heflin - no)**SB 1824****SB 1827****SB 1835** (Christian and Keffer - no)**SB 1888****SB 1938**

The following bills which were considered on second reading on the previous legislative day on the local, consent, and resolutions calendar were laid before the house, read third time, and passed by (Record 464): 145 Yeas, 0 Nays, 2 Present, not voting (members registering votes and the results of the vote are shown following bill number).

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

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

Absent, Excused — Telford.

Absent — Nixon.

**SB 10** (145-0-2)

**SB 18** (145-0-2)

**SB 395** (145-0-2)

**SB 899** (145-0-2)

**SB 1450** (145-0-2)

**SB 1479** (145-0-2)

**SB 1623** (145-0-2)

**SB 1793** (145-0-2)

**SB 1811** (145-0-2)

**SB 1925** (145-0-2)

**SB 1930** (145-0-2)

#### **COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Environmental Regulation, on recess today, Desk 98, to consider pending business.

Natural Resources, on recess today, Desk 9.

Insurance, on recess today, Desk 24.

#### **RECESS**

Representative Kubiak moved that the house recess until 1:30 p.m. today.

The motion prevailed without objection.

The house accordingly, at 11:53 a.m., recessed until 1:30 p.m. today.

#### **AFTERNOON SESSION**

The house met at 1:30 p.m. and was called to order by the speaker.

#### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

#### **HR 1031 - ADOPTED (by Wilson)**

Representative Wilson moved to suspend all necessary rules to take up and consider at this time **HR 1031**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

**HR 1031**, Commending Texans actively preserving natural resources.

**HR 1031** was adopted without objection.

**BILLS AND JOINT RESOLUTIONS ON FIRST READING  
AND REFERRAL TO COMMITTEES  
RESOLUTIONS REFERRED TO COMMITTEES**

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

(Wilson in the chair)

**LEAVE OF ABSENCE GRANTED**

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

Solomons on motion of Brimer.

**HR 1026 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1026**, suspending the limitations on the conferees for **SB 758**.

**SB 932 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Patterson, the house granted the request of the senate for the appointment of a conference committee on **SB 932**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 932**: Oliveira, chair, Marchant, Patterson, Siebert, and Luna.

**SB 29 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Goodman submitted the conference committee report on **SB 29**.

Representative Goodman moved to adopt the conference committee report on **SB 29**.

The motion prevailed.

**HB 767 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Junell called up with senate amendments for consideration at this time,

**HB 767**, A bill to be entitled An Act relating to an exemption from tuition and fees at a public institution of higher education for certain students in foster or other residential care.

On motion of Representative Junell, the house concurred in the senate amendments to **HB 767**.

**Senate Committee Substitute**

**CSHB 767**, A bill to be entitled An Act relating to exempting certain children in foster or residential care from the payment of tuition and fees at state-supported institutions of higher education.

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

SECTION 1. Section 54.211, Education Code, is amended to read as follows:

Sec. 54.211. Exemptions for Students in Foster or Other Residential Care. A student is exempt from the payment of tuition and fees authorized in this chapter if the student:

(1) was in foster care or other residential care under the conservatorship of the Department of Protective and Regulatory Services on or after;

(A) the day preceding the student's 18th birthday;

(B) the day of the student's 14th birthday, if the student was also eligible for adoption on or after that day; or

(C) the day the student graduated from high school or received the equivalent of a high school diploma; and

(2) enrolls in an institution of higher education as an undergraduate student not later;

(A) than the third anniversary of the date the student was discharged from the foster or other residential care, the date the student graduated from high school, or the date the student received the equivalent of a high school diploma, whichever date is earliest; or

(B) the student's 21st birthday.

SECTION 2. This Act applies beginning with tuition and fees for the 1997 fall semester.

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.

**SB 361 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Gray, the house granted the request of the senate for the appointment of a conference committee on **SB 361**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 361**: Gray, chair, Hirschi, Telford, Glaze, and Janek.

**HB 65 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Kamel called up with senate amendments for consideration at this time,

**HB 65**, A bill to be entitled An Act relating to increases in tuition and fees charged by public institutions of higher education.

On motion of Representative Kamel, the house concurred in the senate amendments to **HB 65**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 65**, as engrossed, by adding a new SECTION 2 to read as follows:

SECTION 2. This Act applies beginning with tuition and fees due for the spring semester of 1998.

**HB 344 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Hilbert called up with senate amendments for consideration at this time,

**HB 344**, A bill to be entitled An Act relating to registration and insurance requirements for certain vehicles.

On motion of Representative Hilbert, the house concurred in the senate amendments to **HB 344**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 344** by adding a new section to the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.294 to read as follows:

Sec. 502.294. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE LICENSE PLATES. (a) The department shall issue specially designed Texas Commission on Alcohol and Drug Abuse license plates for passenger cars and light trucks.

(b) The department shall design the license plates in consultation with the Boy Scouts of America.

(c) The department shall issue license plates under this section to a person who:

(1) applies to the county assessor-collector of the county in which the person resides on a form provided by the department; and

(2) pays an annual fee of \$30, in addition to the fee prescribed by Section 502.161, and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(d) Of each fee collected under this section, the department shall deposit \$20 to the credit of the general revenue fund and \$10 to the credit of the state highway fund.

(e) Money deposited to the credit of the general revenue fund under Subsection (d) may be appropriated only to the Texas Commission on Alcohol and Drug Abuse for drug abuse prevention programs provided by nonprofit organizations that primarily serve children. In selecting a program provider under this subsection, it is the intent of the legislature that to the extent permissible, a preference be given to a provider whose membership substantially consists of persons who purchase the specially designed license plates under this section.

(f) If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the owner shall return the special license plates to the department.

**HB 492 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Maxey called up with senate amendments for consideration at this time,

**HB 492**, A bill to be entitled An Act relating to activities covered by the Texas Food, Drug, and Cosmetic Act.

On motion of Representative Maxey, the house concurred in the senate amendments to **HB 492**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 492** as follows:

(1) In SECTION 1 of the bill, in added Section 431.002(23)(B), Health and Safety Code (House Engrossment, page 1, line 13), by striking the word "holding."

(2) In SECTION 3 of the bill, in added Section 431.2211(3), Health and Safety Code (House Engrossment, page 2, line 25), between "21," and "64", add "23".

**HB 580 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

Representative Coleman called up with senate amendments for consideration at this time,

**HB 580**, A bill to be entitled An Act relating to enforcement of laws relating to parking by, or accessibility of facilities to, persons with disabilities.

Representative Coleman moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 580**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 580**: Coleman, chair, Glaze, D. Jones, Maxey, and McClendon.

**HB 762 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Averitt called up with senate amendments for consideration at this time,

**HB 762**, A bill to be entitled An Act relating to offenses involving the preparation, sale, or distribution of certain academic materials for profit.

On motion of Representative Averitt, the house concurred in the senate amendments to **HB 762**.



**Senate Amendment No. 1**

Amend **HB 762**, SECTION 1, Section 32.49(g), line 59, by deleting the letter "B" between the words "Class" and "misdemeanor" and substitute the letter "C" in lieu thereof.

**HB 776 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Tillery called up with senate amendments for consideration at this time,

**HB 776**, A bill to be entitled An Act relating to a municipal drainage utility system.

On motion of Representative Tillery, the house concurred in the senate amendments to **HB 776**.

**Senate Committee Substitute**

**CSHB 776**, A bill to be entitled An Act relating to a municipal drainage utility system.

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

SECTION 1. Section 402.044(1), Local Government Code, is amended to read as follows:

(1)(A) "Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

(B) "Benefitted property," in a municipality with a population of more than 1,000,000 which is operating a drainage utility system under this chapter, means a lot or tract, but does not include land appraised for agricultural use, to which drainage service is made available under this subchapter and which discharges into a creek, river, slough, culvert, or other channel that is part of the municipality's drainage utility system. Sections 402.053(c)(2) and (c)(3) do not apply to a municipality described in this subdivision.

SECTION 2. Subsection (b), Section 402.047, Local Government Code is amended to read as follows:

In setting the schedule of charges for drainage service, the governing body must base its calculations on an inventory of the lots and tracts within the service area. The governing body may use approved tax plats and assessment rolls for that purpose. The governing body may also consider the land use made of the benefitted property. The governing body may consider the size, in area, the number of water meters, and topography of a parcel of benefitted property in assessing the drainage charge to the property.

SECTION 3. This Act takes effect September 1, 1997.

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 818 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Cuellar called up with senate amendments for consideration at this time,

**HB 818**, A bill to be entitled An Act relating to a study of the incidence of dual supervision of certain persons by the pardons and paroles division of the Texas Department of Criminal Justice and community supervision and corrections departments and to the reporting of certain arrests to prevent dual supervision.

On motion of Representative Cuellar, the house concurred in the senate amendments to **HB 818** by (Record 465): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culbertson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McClendon; McReynolds; Merritt; Moreno; Mowery; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

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

Absent, Excused — Solomons; Telford.

Absent — Gray; Horn; Marchant; Moffat; Nixon; Reyna, E.

### STATEMENT OF VOTE

When Record No. 465 was taken, I was in the house but away from my desk. I would have voted yes.

Gray

### Senate Committee Substitute

**CSHB 818**, A bill to be entitled An Act relating to a study of the incidence of dual supervision of certain persons by the pardons and paroles division of the Texas Department of Criminal Justice and community supervision and corrections departments and to the reporting of certain arrests to prevent dual supervision.

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

SECTION 1. Article 42.18, Code of Criminal Procedure, is amended by adding Section 30 to read as follows:

Sec. 30. DUAL SUPERVISION. (a) The department, using data included in the community supervision tracking system and other information available

to the department, shall determine the number of persons who at any time during the period beginning on September 1, 1997, and ending on August 31, 1998, are under the supervision of both the division and a community supervision and corrections department.

(b) The department shall determine:

(1) the number of those persons described by Subsection (a) who are supervised by a community supervision and corrections department following a grant of deferred adjudication for a misdemeanor or a conviction of a misdemeanor; and

(2) the number of those persons described by Subsection (a) who are supervised by a community supervision and corrections department following a grant of deferred adjudication for a felony or a conviction of a felony.

(c) For each person determined by the department to be under dual supervision by the division and a community supervision and corrections department, the department shall determine:

(1) the duration of the period of supervision by the division to which the person is subject;

(2) the duration of the period of supervision by the community supervision and corrections department to which the person is subject; and

(3) the duration of the period of dual supervision to which the person is subject.

(d) In addition to making the determinations described by Subsections (b) and (c), the department shall determine the geographic distribution of incidents of dual supervision, including determining whether a difference in the number of incidents of dual supervision may be attributable to whether the person supervised resides in an urban area or a rural area and determining whether certain counties have a disproportionate percentage of incidents of dual supervision.

(e) The department shall report its findings to the legislature and to the Sunset Advisory Commission not later than December 1, 1998.

(f) If a peace officer arrests a person for an offense for which the law enforcement agency employing the officer is required to report the arrest for inclusion in the criminal justice information system, the agency shall inquire of the system as to whether the person at the time of the arrest is under the supervision of the department. If information in the system indicates that the person arrested is under the supervision of the department, the law enforcement agency shall notify the division of the department supervising the person of the arrest. The law enforcement agency may use the statewide law enforcement telecommunications system to notify the division.

(g) This section expires January 1, 1999.

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.

### **Senate Amendment No. 1**

Amend Section 1 of **CSHB 818** on page 1, line 21 of the committee printing by striking "September" and replacing it with "June", and by striking "August" on page 1, line 22 and replacing it with "May".

## **HB 836 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Gallego called up with senate amendments for consideration at this time,

**HB 836**, A bill to be entitled An Act relating to promotion to the next grade level after completion of an extended year program.

On motion of Representative Gallego, the house concurred in the senate amendments to **HB 836** by (Record 466): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

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

Absent, Excused — Solomons; Telford.

Absent — Haggerty; Horn; Marchant; Mowery; Nixon; Reyna, E.

### **Senate Committee Substitute**

**CSHB 836**, A bill to be entitled An Act relating to promotion to the next grade level after completion of an extended year program.

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

SECTION 1. Section 29.082(e), Education Code, is amended to read as follows:

(e) A student who attends at least 90 percent of the program days of a program under this section and who satisfies the requirements for promotion prescribed by Section 28.021 shall be promoted to the next grade level at the beginning of the next school year unless a parent of the student presents a written request to the school principal that the student not be promoted to the next grade level. As soon as practicable after receiving the request from a parent, the principal shall hold a formal meeting with the student's parent, extended year program teacher, and counselor. During the meeting, the

principal, teacher, or counselor shall explain the longitudinal statistics on the academic performance of students who are not promoted to the next grade level and provide information on the effect of retention on a student's self-esteem and on the likelihood of a student dropping out of school. After the meeting, the parent may withdraw the request that the student not be promoted to the next grade level. If the parent of a student eligible for promotion under this subsection withdraws the request, the student shall be promoted. If a student is promoted under this subsection, the school district shall continue to use innovative practices to ensure that the student is successful in school in succeeding years.

SECTION 2. This Act applies beginning with the 1997-1998 school year.

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.

(Speaker in the chair)

### **HB 993 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Patterson called up with senate amendments for consideration at this time,

**HB 993**, A bill to be entitled An Act relating to the application for and use of the proceeds of loans guaranteed by the Young Farmer Loan Guarantee Program.

On motion of Representative Patterson, the house concurred in the senate amendments to **HB 993**.

#### **Senate Amendment No. 1**

Amend **HB 993** in SECTION 1 of the bill, in Section 253.002, Agriculture Code, by adding subsection (e) (committee printing page 1, line 33) to read as follows:

(e) The board may enter an agreement with a lender and a borrower under which the board provides a payment from money in the young farmer loan guarantee account for the purpose of providing a reduced interest rate on a loan guaranteed to a borrower under this chapter. The board shall adopt rules to implement this subsection. The maximum rate reduction under this subsection shall not exceed three percentage points.

### **HB 1016 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Puente called up with senate amendments for consideration at this time,

**HB 1016**, A bill to be entitled An Act relating to fees imposed for certain plans subject to Texas Natural Resource Conservation Commission approval under the commission's rules for the protection of the Edwards Aquifer.

On motion of Representative Puente, the house concurred in the senate amendments to **HB 1016**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 1016** as follows:

(1) In Section 1 of the bill, strike the recitation (House Engrossed Version, page 1, lines 6 and 7) and substitute: Sections 26.0461(a), (d), and (h), Water Code, are amended to read as follows:

(2) In Section 1 of the bill, immediately before amended Subsection (d), Section 26.0461, Water Code (House Engrossed version, page 1, between lines 7 and 8), insert:

(a) The commission may impose fees for processing plans or amendments to plans that are subject to review and approval under the commission's rules for the protection of the Edwards Aquifer and for inspecting the construction and maintenance of projects covered by those plans.

**HB 1133 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Dukes called up with senate amendments for consideration at this time,

**HB 1133**, A bill to be entitled An Act relating to certain reporting requirements for the Texas Natural Resource Conservation Commission.

On motion of Representative Dukes, the house concurred in the senate amendments to **HB 1133**.

**Senate Committee Substitute**

**CSHB 1133**, A bill to be entitled An Act relating to certain reporting requirements for the Texas Natural Resource Conservation Commission.

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

SECTION 1. Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.123 to read as follows:

Sec. 5.123. REPORT ON ENFORCEMENT ACTIONS. (a) Not later than December 1 of each year, the commission shall:

(1) prepare an electronic report on its enforcement actions for the preceding fiscal year, including a comparison with its enforcement actions for each of the preceding five fiscal years; and

(2) provide the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The report shall separately describe the enforcement actions for each type of regulatory program, including programs under Chapters 26 and 27 of this code and Chapters 361, 382, and 401, Health and Safety Code.

(c) The description of enforcement actions for each type of regulatory program shall include:

(1) the number of inspections;

(2) the number of notices of violations;

(3) the number of enforcement actions;

(4) the type of enforcement actions;

- (5) the amount of penalties assessed, deferred, or collected; and
- (6) any other information the commission determines relevant.

(d) As soon as possible after the end of each fiscal year, the attorney general shall provide the commission information on enforcement actions referred by the commission to the attorney general that were resolved during the preceding fiscal year or are pending at the end of that fiscal year.

SECTION 2. Section 5.178, Water Code, is amended to read as follows:

Sec. 5.178. ANNUAL REPORTS; BIENNIAL APPENDIXES [REPORTS TO GOVERNOR]. (a) On or before December 1 of each even-numbered year, the [The] commission shall file with [make biennial reports in writing to] the governor and the members of the legislature a written report that includes[: Each report shall include] a statement of the activities of the commission during the preceding fiscal biennium [and its recommendations for necessary and desirable legislation].

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Sections 361.0219(c), 361.0232, 361.034, 361.485, 361.510, 371.063, and 382.141, Health and Safety Code; and

(B) the reports required by Section 26.0135(d) of this code and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985.

(c) As part of the biennial reports required by this section that are to be filed by December 1, 2000, and every four years after that date, the commission shall file a municipal solid waste report, to include the plans required by Sections 361.020 and 361.0201, Health and Safety Code, and an assessment of commercial nonhazardous waste disposal capacity as required by Section 361.0233, Health and Safety Code.

(d) [(b)] The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

SECTION 3. Section 26.0135(d), Water Code, is amended to read as follows:

(d) On or before October 1 of each even-numbered year, each river authority shall report in writing to the governor, commission, State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality assessment of the authority's watershed, including an identification of any significant regulatory or enforcement issues, and on any actions taken by the authority and other local governments to improve water quality within the authority's watershed. The assessment report must identify each legal, administrative, economic, or other impediment to further water quality efforts by the authority and local governments. The commission shall then prepare a report that summarizes each river authority's assessment report, describes the



commission's regional water quality assessment efforts, and lists the commission's past and proposed actions for improving water quality within the watersheds subject to such assessments. The commission shall submit its report, along with the commission's comments and recommendations on regional water quality management, by December 1 of each even-numbered year as required by Section 5.178(b) [to the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year].

SECTION 4. Section 361.020, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (g) to read as follows:

(e) A strategic plan shall be updated every four [~~two~~] years. The commission continually shall collect and analyze data for use in its next updated plan and systematically shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(g) The commission shall submit the comprehensive statewide strategic plan, as developed under this section and Section 361.0201 and updated under Subsection (e), by December 1, 2000, and every four years after that date, as required by Section 5.178(c), Water Code.

SECTION 5. Section 361.0219(c), Health and Safety Code, is amended to read as follows:

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange [~~and shall report to the legislature on the plan and on the state's participation in any regional or national waste exchange program~~]. Biennially [~~Annually~~] the office of waste exchange shall report to the commission [~~legislature~~] on progress in implementing this section, including the plan to provide information on waste exchange, the state's participation in any national or regional waste exchange program, and information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state. The commission shall submit the report by December 1 of each even-numbered year as required by Section 5.178(b), Water Code.

SECTION 6. Section 361.0234, Health and Safety Code, is amended to read as follows:

Sec. 361.0234. Rules; Update of Rules and Assessments; REPORT. (a) To expedite the consideration of permits for technologies that an assessment prepared under Section 361.0232 or 361.0233 determines to be most needed, the rules adopted by the commission shall provide for a permitting process that encourages the development of new and innovative disposal technologies, grants preferences considering the hierarchies established by Sections 361.022 and 361.023, emphasizes waste reduction efforts, and encourages applicants for permits for hazardous waste management facilities to include recycling and recovery components where appropriate.

(b) The commission shall update the assessment required by Section 361.0232 [~~assessments~~] and related rules at least every two years. The commission shall update the assessment required by Section 361.0233 and related rules at least every four years. In preparing an update of the assessment,



the commission shall consider source reduction and waste minimization plans and reports submitted under Subchapter N.

(c) The assessment [~~assessments~~] and rules adopted under this section and Section 361.0232 may not be applied retroactively to any application that was declared administratively and technically complete and for which public hearings had commenced before June 7, 1991.

(d) The commission shall submit the assessment prepared under Section 361.0232 and updated under Subsection (b) by December 1 of each even-numbered year as required by Section 5.178(b), Water Code. The commission shall submit the assessment prepared under Section 361.0233 and updated under Subsection (b) by December 1, 2000, and every four years after that date as required by Section 5.178(c), Water Code.

SECTION 7. Section 361.485(a), Health and Safety Code, is amended to read as follows:

(a) ~~The [Not later than February 1 of each odd-numbered year, the]~~ commission shall submit by December 1 of each even-numbered year as required by Section 5.178(b), Water Code, a report [~~to the governor and the legislature~~] on the administration of the program established under this subchapter and its effectiveness in cleaning up existing scrap tire sites and in preventing new scrap tire sites.

SECTION 8. Section 361.510, Health and Safety Code, is amended to read as follows:

Sec. 361.510. Report [~~TO LEGISLATURE~~]. Notwithstanding any other reporting requirement, the commission shall prepare a biennial report to be submitted by December 1 of each even-numbered year as required by Section 5.178(b), Water Code [~~the presiding officers of the legislature and the governor concerning the implementation of this subchapter~~]. The report must include:

- (1) the status of the technical assistance program;
- (2) a description of progress toward reducing the volume of hazardous waste generated and the amount of pollutants and contaminants in the state;
- (3) an analysis of and recommendations for changes to source reduction and waste minimization programs, including consideration of additional enforcement provisions; and
- (4) an identification of any other needed pollution prevention activities.

SECTION 9. Section 371.063, Health and Safety Code, is amended to read as follows:

Sec. 371.063. BIENNIAL [~~ANNUAL~~] Reporting Requirement. The commission shall monitor the balance of the used oil recycling fund and shall provide by December 1 of each even-numbered year as required by Section 5.178(b), Water Code, a detailed report of all income, expenditures, and programs funded [~~to the Texas Legislature on an annual basis~~].

SECTION 10. Section 382.141, Health and Safety Code, is amended to read as follows:

Sec. 382.141. Report Required. The commission shall report biennially its evaluations and determinations on the use of alternative fuels and recommend legislative changes necessary to implement an effective and feasible program for the use of alternative fuels. The report shall be submitted by December 1 of each even-numbered year as required by Section 5.178(b), Water Code

~~[submitted to the governor and the legislature not later than the 30th day before the commencement of each regular legislative session].~~

SECTION 11. Section 2155.448(b), Government Code, is amended to read as follows:

(b) Not later than January 1 of each year, a state agency shall deliver a report of the total expenditures in the areas subject to Subsection (a) and the amount spent in each category for the previous fiscal year to the[

~~(1) governor;~~

~~(2) lieutenant governor;~~

~~(3) speaker of the house of representatives; and~~

~~(4) Legislative Budget Board.~~

SECTION 12. The following laws are repealed:

(1) Section 361.034, Health and Safety Code;

(2) Section 361.038, Health and Safety Code; and

(3) Section 26.349(b), Water Code.

SECTION 13. Notwithstanding Section 5.123, Water Code, as added by this Act, a report under that section by the Texas Natural Resource Conservation Commission on its enforcement actions for the preceding fiscal year that is prepared and delivered on or before December 1, 2000, shall include a comparison with its enforcement actions for each of the preceding fiscal years beginning with the fiscal year ending August 31, 1996.

SECTION 14. The first biennial report required by Section 5.178, Water Code, as amended by this Act, is for the fiscal biennium beginning September 1, 1996, and is due December 1, 1998.

SECTION 15. This Act takes effect September 1, 1997.

SECTION 16. 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 1144 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative B. Turner called up with senate amendments for consideration at this time,

**HB 1144**, A bill to be entitled An Act relating to the consolidation of herbicide and pesticide laws under the jurisdiction of the Department of Agriculture.

On motion of Representative B. Turner, the house concurred in the senate amendments to **HB 1144**.

#### **Senate Amendment No. 1**

Amend **HB 1144** by adding SECTION 4 on page 28, line 35, to read as follows:

SECTION 4. Section 4B(d), Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) An owner of a building that is an apartment building; day-care center; hospital; nursing home; hotel; motel; lodge; warehouse; food-processing establishment; or school or educational institution, may obtain pest control services for that building from a person only by:

(1) contracting with a person or business that has a ~~[structural-pest control-business]~~ license to perform the services; or

(2) requiring an employee of the owner, who is licensed as a certified noncommercial applicator or technician, to perform the services.

Section 11, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. EXCEPTIONS. Except for ~~Sections~~ [Section] 4H(d) ~~and 4J~~ of this Act, the provision of this Act shall not apply to nor shall the following persons be deemed to be engaging in the business of structural pest control:

(1) a person who performs pest control work upon property which he owns, leases, or rents as his dwelling;

(2) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person:

(A) holds a Class 1, Class 2, Class 3, or Class 4 registration certificate from the Department of Agriculture under Section 71.043, Agriculture code; and

(B) holds a certified commercial or noncommercial applicator's license from the Department of Agriculture that covers that pest control work;

(3) a person or his employee who is engaged in the business of agriculture or aerial application or custom application of pesticides to agricultural lands;

(4) a person who uses pest control chemicals that are for household use and are available for purchase in retail food stores, such as aerosol bombs and spray cans, if the insecticide is used in accordance with the label directions on the insecticide or board rules or guidelines, or as provided by Section 4B of this Act and is:

(A) used by the owner or his employee or agent in space occupied by the building owner in a residential building; or

(B) used in a place that is vacant, unused, and unoccupied;  
~~[and]~~

(5) a person acting as a beekeeper, as defined by Section 131.001, Agriculture Code, who:

(A) is registered with the chief apiary inspector as provided by Chapter 131, Agriculture Code, and the board;

(B) does not use pesticides or electrical devices other than conventional bee smokers or other equipment as defined by Section 131.001, Agriculture Code; and

(C) collects, removes, or destroys honey bees not attached to a dwelling or structure occupied by the public; or

(6) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants or rights-of-way if the person:

(A) complies with annual continuing education required by the Department of Agriculture;

(B) holds a certified commercial or noncommercial applicator's license from the Department of Agriculture that covers pest control work or is under the direct supervision of a person who holds a certified commercial or noncommercial applicator's license from the Department of Agriculture that covers pest control work;

(C) is an employee of a political subdivision or a cemetery;  
and

(D) is engaged in pest control work or vegetation management for the political subdivision or cemetery.

Renumber lines and remaining sections accordingly.

**HB 1145 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative B. Turner called up with senate amendments for consideration at this time,

**HB 1145**, A bill to be entitled An Act relating to labeling of bison and buffalo products and to the exemption from ad valorem taxation of bison; providing a criminal penalty.

On motion of Representative B. Turner, the house concurred in the senate amendments to **HB 1145**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 1145** as follows:

(1) Strike Section 151.002(e) and renumber the subsequent sections appropriately.

(2) On page 3, line 15, strike "menu".

(3) On page 3, line 17, strike "menu".

(4) On page 3, line 20, strike "menu provision".

**HB 1170 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Smithee called up with senate amendments for consideration at this time,

**HB 1170**, A bill to be entitled An Act relating to certain nursing homes for purposes of professional liability insurance coverage.

On motion of Representative Smithee, the house concurred in the senate amendments to **HB 1170**.

**Senate Committee Substitute**

**CSHB 1170**, A bill to be entitled An Act relating to certain nursing homes for purposes of professional liability insurance coverage.

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

SECTION 1. Section 8, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 8. Punitive damages under medical professional liability insurance. No policy of medical professional liability insurance issued to or renewed for a health care provider or physician in this state may include coverage for punitive damages that may be assessed against the health care provider or physician; provided, however, that the commissioner [~~board~~] may approve an endorsement form that provides for coverage for punitive damages to be used on a policy of medical professional liability insurance issued to a hospital, as the term "hospital" is defined in this article, or to a not-for-profit nursing home.

SECTION 2. This Act takes effect September 1, 1997, and applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 1998. A policy that is delivered, issued for delivery, or renewed before January 1, 1998, 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 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 1401 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Palmer called up with senate amendments for consideration at this time,

**HB 1401**, A bill to be entitled An Act relating to the regulation of automotive wrecking and salvage yards in certain counties; providing a penalty.

On motion of Representative Palmer, the house concurred in the senate amendments to **HB 1401**.

#### **Senate Committee Substitute**

**CSHB 1401**, A bill to be entitled An Act relating to the regulation of automotive wrecking and salvage yards in certain counties; providing a penalty.

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

SECTION 1. Section 396.024(b), Transportation Code, is amended to read as follows:

(b) An offense under this section is a ~~[Class-C]~~ misdemeanor punishable by a fine of not less than \$100 or more than \$500.

SECTION 2. Section 396.041(c), Transportation Code, is amended to read as follows:

(c) An ordinance may:

(1) impose a fee of \$25 for the issuance or renewal of a license;

(2) impose a fee of not more than \$150 for the issuance or renewal of a license, if the ordinance is adopted by the commissioners court of a county with a population of one million or more that contains two or more municipalities, each of which has a population of 250,000 or more;

(3) condition the license on the operation of the junkyard or automotive wrecking and salvage yard only at a location approved by the commissioners court; or

(4) ~~(3)~~ establish grounds for suspending or revoking a license if the junkyard or automotive wrecking and salvage yard is not screened.

SECTION 3. Section 396.045(b), Transportation Code, is amended to read as follows:

(b) An offense under this section is a ~~[Class-C]~~ misdemeanor punishable by a fine of not less than \$100 and not more than \$500.

SECTION 4. (a) The change in law made by Sections 1 and 3 of 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. 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 2071 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Gutierrez called up with senate amendments for consideration at this time,

**HB 2071**, A bill to be entitled An Act relating to qualifications to serve as a constable and to the powers and duties of constables and deputy constables.

On motion of Representative Gutierrez, the house concurred in the senate amendments to **HB 2071**.

#### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

**HB 2071** is amended to read as follows:

A) Strike SECTION 1 of **HB 2071** and replace with new SECTION 1.

SECTION 1. Section 86.021(a), Local Government Code is amended to read as follows: (a) A constable shall execute and return as provided by law each process, warrant, and precept that is directed to the constable and is delivered by a lawful officer. Notices required by Section 24.005, Property Code, relating to eviction actions are process for purposes of this section that may be executed by a constable.

B) Add new SECTION 2 to read as follows and renumber sections accordingly:

SECTION 2. Subchapter A, Section 154.005 OF THE LOCAL GOVERNMENT CODE IS AMENDED TO READ AS FOLLOWS:

(d) A constable may receive in addition to section 154.005(c) of the Texas Government Code, all fees, commissions, or payments for delivering notices required by Section 24.005, Property Code, relating to eviction actions. A constable delivering said notices must not be wearing upon his or her person a uniform or any insignia which would usually be associated with the position of constable nor may the constable use a county vehicle or county equipment while delivering said notices. For purposes of collecting fees for serving said notices, a constable is considered a private process server.

#### **Senate Amendment No. 2**

Amend **HB 2071** as follows:

On page 1, line 25 between the period and "A constable" insert "Notices may only be delivered when not in conflict with the official duties and responsibilities of the constable.".

## **HB 2215 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Staples called up with senate amendments for consideration at this time,

**HB 2215**, A bill to be entitled An Act relating to court-ordered family counseling for conflicts regarding issues of conservatorship or possession of or access to a child.

On motion of Representative Staples, the house concurred in the senate amendments to **HB 2215**.

### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 2215** as follows:

(1) In Section 1 of the bill, in Section 153.010, Family Code, between "COUNSELING." and "If" (page 1, line 7, House engrossed version), insert "(a)".

(2) In Section 1 of the bill, in Section 153.010, Family Code, between "violence" and "[person]" (page 1, line 16, House engrossed version), insert "if the court determines that the training is relevant to the type of counseling needed".

(3) In Section 1 of the bill, at the end of Section 153.010, Family Code (page 1, between lines 18 and 19, House engrossed version), insert the following:

(b) If a person possessing the requirements of Subsection (a)(1) is not available in the county in which the court presides, the court may appoint a person the court believes is qualified to conduct the counseling ordered under Subsection (a).

## **HB 2335 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Smith called up with senate amendments for consideration at this time,

**HB 2335**, A bill to be entitled An Act relating to the continuation of certain crime control and prevention districts.

On motion of Representative Smith, the house concurred in the senate amendments to **HB 2335** by (Record 467): 144 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna;



Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nay — Burnam.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Solomons; Telford.

Absent — Nixon.

### Senate Committee Substitute

**CSHB 2335**, A bill to be entitled An Act relating to certain crime control and prevention districts.

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

SECTION 1. Section 1.05A, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.05A. CREATION OF DISTRICT BY CERTAIN MUNICIPALITIES. A municipality that is partially or wholly located in a county with a population of more than 5,000 [~~1 million~~] may create a crime control district in its jurisdiction in the same manner as a county under this Act. A crime control district created by a municipality under this section has the same relationship with the municipality as a crime control district created by a [~~the~~] county under this Act has with the county. A municipality creating a district under this section shall pay the entire cost of creating the district but may be reimbursed for its costs under Section 3.10(d) of this Act.

SECTION 2. Section 3.03(b), Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The proposed rate for the district sales and use tax imposed under Subchapter B, Chapter 323, Tax Code, may be only:

- (1) one-eighth of one percent;
- (2) one-fourth of one percent;
- (3) three-eighths of one percent; or
- (4) [(2)] one-half of one percent.

SECTION 3. Section 4.01, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) The governing body of a municipality or county by resolution may appoint the governing body's membership as the board of directors of the district, if the appointment is approved by the voters in a creation election or continuation referendum under this Act. A member of a governing body appointed under this section as a member of the district's board of directors serves a term concurrent with the member's term as a member of the governing body.

(d) In a district for which the governing body of the municipality or county



does not serve as the district's board of directors, the governing body may create a board of directors for which one director is appointed by each member of the governing body to serve at the pleasure of that member for a term that is concurrent with the term of the member of the governing body that appointed the director.

SECTION 4. Section 8.01, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) The board shall order a continuation referendum if a petition that requests continuation of the district is presented in accordance with this article or if a majority of the commissioners court of the county in which the district is located by resolution requests continuation after notice and a public hearing on the matter. However, the board may not hold a continuation referendum under this subsection earlier than five years after the date the district was created or earlier than three years after the date of the last preceding continuation or dissolution referendum.

(c) The board may hold a referendum on the question of whether to continue the district until all liabilities of the district and all liabilities associated with the district have been retired. The board shall order a continuation referendum on the question if a petition that requests continuation of the district for those purposes is presented in accordance with this article or if a majority of the commissioners court of the county in which the district is located by resolution requests continuation of the district for those purposes after notice and a public hearing on the matter. The board may not hold a continuation referendum under this subsection earlier than one year after the date of the creation of the district.

(d) For a continuation referendum under Subsection (b) of this section, the ballot shall be printed to permit voting for or against the proposition: "Whether the \_\_\_\_\_ County Crime Control and Prevention District should be continued and the crime control and prevention district sales and use tax should be continued." For a continuation referendum under Subsection (c) of this section, the ballot shall be printed to permit voting for or against the proposition: "Whether the \_\_\_\_\_ County Crime Control and Prevention District should be continued and the crime control and prevention district sales and use tax should be continued until all liabilities of the district and all liabilities associated with the district have been retired."

SECTION 5. Section 10.01, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A district is dissolved five years after the date the district began to levy taxes for district purposes ~~[was created]~~ if the district has not held a continuation or dissolution referendum.

(c) Subsection (b) of this section does not apply to a district continued by a referendum held under Section 8.01(c) of this Act. A district continued under Section 8.01(c) of this Act is dissolved on the date all liabilities of the district and all liabilities associated with the district are retired.

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. 1**

Amend **CSHB 2335** by striking all below the enacting clause and by substituting the following:

SECTION 1. Section 1.05A, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.05A. CREATION OF DISTRICT BY CERTAIN MUNICIPALITIES. A municipality that is partially or wholly located in a county with a population of more than 5,000 [~~1-million~~] may create a crime control district in its jurisdiction in the same manner as a county under this Act. A crime control district created by a municipality under this section has the same relationship with the municipality as a crime control district created by a a [~~the~~] county under this Act has with the county. A municipality creating a district under this section shall pay the entire cost of creating the district but may be reimbursed for its costs under Section 3.10(d) of this Act.

SECTION 2. Section 3.03(b), Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The proposed rate for the district sales and use tax imposed under Subchapter B, Chapter 323, Tax Code, may be only:

- (1) one-eighth of one percent;
- (2) one-fourth of one percent;
- (3) three-eighths of one percent; or
- (4) [~~(2)~~] one-half of one percent.

SECTION 3. Section 4.01, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) The governing body of a municipality or county by resolution may appoint the governing body's membership as the board of directors of the district, if the appointment is approved by the voters in a creation election or continuation referendum under this Act. A member of a governing body appointed under this section as a member of the district's board of directors serves a term concurrent with the member's term as a member of the governing body.

(d) In a district for which the governing body of the municipality or county does not serve as the district's board of directors, the governing body may create a board of directors for which one director is appointed by each member of the governing body to serve at the pleasure of that member for a term that is concurrent with the term of the member of the governing body that appointed the director.

SECTION 4. Section 8.01, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) In a county with a population of one million or more, the board or commissioners court may specify the number of years for which the district

should be continued. The governing body of a municipality with a population of 75,000 or less that creates a district under Section 1.05A of this Act may specify the number of years for which the district should be continued. The board, commissioners court, or governing body of a municipality may continue a district only for 5, 10, 15, or 20 years. For a continuation referendum under this subsection, the ballot shall be printed to permit voting for or against the proposition: "Whether the \_\_\_\_\_ Crime Control and Prevention District should be continued for \_\_\_\_\_ years and the crime control and prevention district sales and use tax should be continued for \_\_\_\_\_ years."

SECTION 5. Section 10.01, Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A district is dissolved five years after the date the district began to levy taxes for district purposes ~~[was created]~~ if the district has not held a continuation or dissolution referendum.

(c) Subsection (b) of this section does not apply to a district that is continued under Section 8.01(d) of this Act, and that district is dissolved on the expiration of the period for which it was continued.

SECTION 6. Section 323.105, Tax Code, is amended to read as follows:

Sec. 323.105. CRIME CONTROL DISTRICT TAX. (a) Subject to an election held in accordance with the Crime Control and Prevention District Act, a county in which a crime control and prevention district is established shall adopt a sales and use tax in the area of the district for the purpose of financing the operation of the crime control and prevention district. The revenue from the tax may be used only for the purpose of financing the operation of the crime control and prevention district. The proposition for adopting a tax under this section and the proposition for creation of a crime control and prevention district shall be submitted at the same election. For purposes of Subsection (c) of Section 323.101 of this code, a tax under this section is not a county sales and use tax.

(b) A tax adopted for a district under this section for financing the operation of the district may be decreased in increments of one-eighth ~~[one-fourth]~~ of one percent by order of the board of directors of the district.

(c) The board of directors or the governing body of the governmental entity that proposed the creation of the crime control and prevention district may call an election on the question of decreasing the tax rate in increments of one-eighth of one percent in the district if the district was created before January 1, 1996. The board of directors or governing body may dedicate a portion of the tax for the payment of bonds used in conjunction with the renovation or extension of a county-owned or municipally owned convention center facility, as defined in Section 351.001, that was constructed before 1969 if the dedication is approved by a majority of the qualified voters in an election held in the district on the question of decreasing the tax rate. At the election, the ballot shall be printed to provide for voting for or against the following proposition: "The decrease of the \_\_\_\_\_ Crime Control and Prevention District sales and use tax to \_\_\_\_\_ percent and authorizing the use of \_\_\_\_\_ of one percent for the payment of bonds issued for the renovation or extension of certain county-owned or municipally owned convention center facilities as

that term is defined under Section 351.001, Tax Code, and authorizing that the tax expire on payment of the bonds."

(d) The rate of a tax adopted for a district under this section may be increased in increments of one-eighth [~~one-fourth~~] of one percent, not to exceed a total tax rate of one-half percent for financing the operation of the crime control and prevention district, by order of the board of directors of the crime control and prevention district if approved by a majority of the qualified voters voting at an election called by the board and held in the district on the question of increasing the tax rate. At the election, the ballot shall be printed to provide for voting for or against the following proposition: "The increase of the \_\_\_\_\_ [~~County~~] Crime Control and Prevention District sales and use tax rate to \_\_\_\_\_ percent." If there is an increase or decrease under this subsection in the rate of a tax imposed under this section, the new rate takes effect on the first day of the next calendar quarter [~~year~~] after the expiration of one calendar quarter after the comptroller receives notice of the increase or decrease. However, if the comptroller notifies the president of the board of directors of the district in writing within 10 days after receipt of the notification that the comptroller requires more time to implement reporting and collection procedures, the comptroller may delay implementation of the rate change for one whole calendar quarter. In that event, the new rate takes effect on the first day of the next calendar quarter following the elapsed quarter.

(e) [~~(e)~~] The comptroller shall remit to the county amounts collected at the rate imposed under this section as part of the regular allocation of county tax revenue collected by the comptroller. The county shall, if the district is composed of an area less than the entire county, remit that amount to the district. Retailers may not be required to use the allocation and reporting procedures in the collection of taxes under this section different from the procedures that retailers use in the collection of other sales and use taxes under this chapter. An item, transaction, or service that is taxable in a county under a sales or use tax authorized by another section of this chapter is taxable under this section. An item, transaction, or service that is not taxable in a county under a sales or use tax authorized by another section of this chapter is not taxable under this section.

(f) [~~(f)~~] If, in a county where a crime control and prevention district is composed of the whole county, a county sales and use tax or a county sales and use tax rate increase for the purpose of financing a crime control and prevention district is approved, the county is responsible for distributing to the district that portion of the county sales and use tax revenue received from the comptroller that is to be used for the purposes of financing the crime control and prevention district. Not later than the 10th day after the date the county receives funds under this section from the comptroller, the county shall make the distribution in the proportion that the crime control and prevention portion of the tax rate bears to the total sales and use tax rate of the county. The amounts distributed to a crime control and prevention district are not considered to be sales and use tax revenue for the purpose of property tax reduction and computation of the county tax rate under Section 26.041, Tax Code.

(g) [~~(g)~~] For purposes of the tax imposed under this section, a reference in this chapter to the county as the territory in which the tax or an incident of

the tax applies means only the territory located in the crime control and prevention district, if that district is composed of an area less than an entire county.

(h) [(f)] The comptroller may adopt rules and the county commissioners court may adopt orders to administer this section.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

### **HB 2382 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Siebert called up with senate amendments for consideration at this time,

**HB 2382**, A bill to be entitled An Act relating to the regulation of the distribution and sale of towable recreational vehicles.

On motion of Representative Siebert, the house concurred in the senate amendments to **HB 2382**.

#### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 2382** as follows:

On page 2, line 2, between "habitation" and "for", insert "as its primary purpose"

### **HB 2446 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Greenberg called up with senate amendments for consideration at this time,

**HB 2446**, A bill to be entitled An Act relating to performance audits of certain metropolitan transit authorities.

On motion of Representative Greenberg, the house concurred in the senate amendments to **HB 2446** by (Record 468): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett;

Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Solomons; Telford.

Absent — Nixon; Williams.

### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 2446** in Subchapter B, Chapter 403, Government Code by deleting Sec. 403.026(a) of the bill and inserting a new Sec. 403.026(a) to read as follows:

Sec. 403.026. PERFORMANCE AUDIT OF CERTAIN TRANSIT AUTHORITIES. (a) This section applies only to a transit authority that is governed by Chapter 451, Transportation Code and was confirmed before July 1, 1985 and does not contain a municipality of more than 750,000.

### **HB 2525 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Naishtat called up with senate amendments for consideration at this time,

**HB 2525**, A bill to be entitled An Act relating to the rights and responsibilities of persons with disabilities.

On motion of Representative Naishtat, the house concurred in the senate amendments to **HB 2525**.

### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 2525**, page 3, line 23, by striking "a disease that is contagious or not contagious,".

### **HB 2703 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Stiles called up with senate amendments for consideration at this time,

**HB 2703**, A bill to be entitled An Act relating to the regulation of manufactured housing; providing penalties.

On motion of Representative Stiles, the house concurred in the senate amendments to **HB 2703**.

### **Senate Committee Substitute**

**CSHB 2703**, A bill to be entitled An Act relating to the regulation of manufactured housing; providing penalties.

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

SECTION 1. Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. Whenever used in this Act, unless the content otherwise requires, the following words and terms have the following meanings:

(1) "Advertising" or "advertisement" means any commercial message which promotes the sale, exchange, or lease-purchase of manufactured homes and which appears in, or is presented on, radio, television, a public-address system, newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, other printed material, an inside or outside sign or window display, or in point-of-sale literature or price tags. Materials which are educational or that may be required by law do not constitute advertising. Any advertisement relating to manufactured housing shall be considered as an offer to sell, exchange, or lease-purchase to consumers.

(2) "Alteration" means the replacement, addition, and modification or removal of any equipment or its installation in a new manufactured home after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring plug-in to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

(3) "Board" means the governing board of the department.

(4) "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of a manufactured home to which a certificate or document of title has been issued and is outstanding. A broker may or may not be an agent of any party involved in the transaction. A person who maintains a location for the display of manufactured homes is not a broker but is a retailer. The term shall not apply if the manufactured home is affixed to a permanent foundation, the manufacturer's certificate or the document of title is canceled, and the home is offered as real estate; however, the provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) shall apply.

(5) "Code" means the Texas Manufactured Housing Standards Code.

(6) "Consumer" means any person other than one registered under this Act that seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

(7) "Department" means the Texas Department of Housing and Community Affairs.

(8) "Director" means the executive director of the department.

(9) "HUD-code manufactured home" means a structure constructed on or after June 15, 1976, according to the rules of the United State Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling



with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).

(10) "Installation," when used in reference to manufactured housing, means the construction of the foundation systems, whether temporary or permanent, and the placement and erection of a manufactured home or manufactured home components on the foundation system and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable sections or components, and minor adjustments.

(11) "Installer" means any person, including a retailer or manufacturer, that contracts to perform or performs installation functions on manufactured housing.

(12) "Label" means a device or insignia issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development, and is permanently affixed to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(13) "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.

(14) "License holder" means a person that holds a license issued by the department as a manufactured housing manufacturer, retailer, broker, rebuilder, salesperson, or installer.

(15) "Manufactured housing" or "Manufactured home" means a HUD-code manufactured home or a mobile home and collectively means and refers to both.

(16) "Manufacturer" means a person that constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.

(17) "Mobile home" means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems.

(18) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

(19) "Retailer" means a person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. A person is not considered a retailer unless the person is engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(20) "Salesperson" means a person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.

(21) "Seal" means a device or insignia issued by the director to be affixed to used manufactured homes for titling purposes, as required by the director. The seal shall remain the property of the department. [~~"Mobile home"~~



means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems:

[(2) "Retailer" means any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

[(3) "Manufacturer" means any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.

[(4) "Department" means the Texas Department of Housing and Community Affairs.

[(5) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

[(6) "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of a manufactured home to which a certificate or document of title has been issued and is outstanding. A broker may or may not be an agent of any party involved in the transaction. A person who maintains a location for the display of manufactured homes is not a broker but is a retailer. The term shall not apply if the manufactured home is affixed to a permanent foundation, the manufacturer's certificate or the document of title is canceled, and the home is offered as real estate; however, the provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) shall apply.

[(7) "Consumer" means any person other than one registered under this article who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

[(8) "Seal" means a device or insignia issued by the director to be affixed to used manufactured homes for titling purposes, as required by the director. The seal shall remain the property of the department.

[(9) "Label" means a device or insignia issued by the director to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

[(10) "Installation," when used in reference to manufactured housing, means the transporting of manufactured homes or manufactured home components to the place where they will be used by the consumer, the construction of the foundation system, whether temporary or permanent, and the placement and erection of a manufactured home or manufactured home components on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable sections or components, the installation of air conditioning, and minor adjustments.

[(11) "Installer" means any person, including a retailer or manufacturer, who performs installation functions on manufactured housing.]

[(12) "Alteration" means the replacement, addition, and modification, or removal of any equipment or its installation in a new manufactured home after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.]

[(13) "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.]

[(14) "Director" means the executive director of the department.]

[(15) "Code" means the Texas Manufactured Housing Standards Code.]

[(16) "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.]

[(17) "Manufactured housing" or "manufactured home" means a HUD-code manufactured home or a mobile home and collectively means and refers to both.]

[(18) "Registrant" means any person who has registered with the department and has been issued a certificate of registration as a manufactured housing manufacturer, retailer, broker, salesperson, or installer.]

[(19) "HUD-code manufactured home" means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).]

[(20) "Advertising" or "advertisement" means any commercial message which promotes the sale, exchange, or lease-purchase of manufactured homes and which appears in, or is presented on, radio, television, a public-address system, newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, other printed material, an inside or outside sign or window display, or in point-of-sale literature or price tags. Materials which are educational or that may be required by law do not constitute advertising. Any advertisement relating to manufactured housing shall be considered as an offer to sell, exchange, or lease-purchase to consumers.]

~~[(21) "Board" means the governing board of the department.]~~

SECTION 2. Section 3A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3A. DEFINITIONS BINDING. The definitions of "mobile home," "HUD-code manufactured home," and "manufactured housing" set forth in Section 3 of this Act ~~[article]~~ are binding on all persons and agencies in this state as a matter of law including local political subdivisions and home-rule cities. A mobile home is not a HUD-code manufactured home and a HUD-code manufactured home is not a mobile home for any purpose under the laws of this state. These terms shall not be defined in any manner which is not identical to the definitions set forth in Section 3 of this Act.

SECTION 3. Subsections (f), (g), (h), and (i), Section 4, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the director. The department shall establish an inspection program whereby at least 25 percent of the manufactured homes installed are inspected on a sample basis for compliance. The department's program shall place priority on multi-section homes and homes installed in Wind Zone II.

(g) A local governmental unit of this state, without the express approval of the board following a hearing on the matter, may not adopt different standards from those promulgated by the director for the construction or installation of manufactured housing within the local governmental unit. The local governmental unit must demonstrate that the public health and safety require the different standards.

(h) Before the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or the approval of different standards by any local governmental unit, the director shall publish a notice and conduct a public hearing under Section 9 of this Act ~~[in accordance with Chapter 2001, Government Code, not sooner than the 30th day following the publication of notice].~~

(i) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the director shall state the date it shall take effect as provided by Section 9 of this Act.

SECTION 4. Section 6, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsections (e), (f), (g), and (h) and adding Subsection (l) to read as follows:

(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a licensed ~~[registered]~~ retailer.

(f) A person may not make any announcement concerning the sale, exchange, or lease-purchase of, nor offer to sell, exchange, or lease-purchase, a manufactured home to consumers in this state through any form of advertising unless such person is a duly licensed ~~[registered]~~ manufacturer, retailer, or broker. This prohibition against advertising shall not apply to a person to whom a certificate or document of title has been issued showing such person to be the owner of the home, provided that such person does not offer to sell,

exchange, or lease-purchase two or more manufactured homes in any consecutive 12-month period. This prohibition also shall not apply to the advertising of real estate on which a manufactured home has been permanently attached and affixed.

(g) It is unlawful for a retailer to purchase for resale to a consumer, or to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase, any new HUD-code manufactured home which was constructed by a manufacturer which was not licensed ~~[registered]~~ with the department at the time of construction.

(h) It is unlawful for a person to sell, convey, or otherwise transfer to a consumer in this state a salvaged manufactured home as such term is defined in Section 8 of this Act ~~[article]~~. A salvaged manufactured home may only be sold to a licensed ~~[registered]~~ retailer or licensed ~~[registered]~~ rebuilder.

(i) It is unlawful for a salesperson to aid or assist a consumer in preparing or providing false or misleading information on a document related to the purchase or financing of a manufactured home or for a salesperson to submit information known to be false or misleading to a retailer or to a credit underwriter.

SECTION 5. Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) is amended by adding Section 6B to read as follows:

Sec. 6B. WIND ZONE REGULATIONS. (a) Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties are in Wind Zone II. All other counties are in Wind Zone I.

(b) A manufactured home constructed on or after the effective date of this section must meet the Wind Zone II standards adopted by the United States Department of Housing and Urban Development in order to be installed in a Wind Zone II county.

(c) All manufactured homes constructed prior to the effective date of this section may be installed in Wind Zone I or Wind Zone II without restriction.

(d) A consumer purchasing a manufactured home constructed on or after the effective date of this section to Wind Zone I standards must be given a notice by the selling retailer that:

(1) the home was not designed nor constructed to withstand hurricane force winds which may occur in Wind Zone II or III areas; and

(2) the home is not permitted to be installed in Wind Zone II counties in Texas, and there may be restrictions in other states prohibiting installation in Wind Zone II or III areas.

(e) The notice required by this section shall be given the consumer prior to the execution of any mutually binding sales agreement or retail installment sales contract.

SECTION 6. Section 7, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. Registration. (a) A person may not construct or assemble a new HUD-code manufactured home in the state or ship a new HUD-code manufactured home into the state, unless the person is licensed ~~[registered]~~ as a manufactured housing manufacturer with the department and possesses a valid

manufacturer's license [~~certificate of registration~~] at the time the home is constructed or assembled.

(b) Except as otherwise expressly provided in this Act [~~article~~], a person may not sell, exchange, lease-purchase, or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in the state in any consecutive 12-month period, unless the person possesses a valid manufactured housing retailer's license [~~certificate of registration~~].

(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in the state in any 12-month period, unless the person possesses a valid manufactured housing broker's license [~~certificate of registration~~].

(d) A person may not perform any installation functions on manufactured housing in the state, unless the person possesses a valid installer's license [~~certificate of registration~~] and files proof of insurance as required by the director. The director may issue a temporary installer's license [~~certificate of registration~~] to a homeowner for the installation of the owner's home in accordance with applicable requirements, standards, and regulations of the director, on application and payment of the required fee and on submission of proof of insurance by the owner as required by the department.

(e) Each applicant for a license [~~certificate of registration~~] as a manufacturer, retailer, broker, rebuilder, or installer must file with the director an application for a license [~~registration~~] containing the following information:

(1) the legal name, address, and telephone number of the applicant;

(2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and

(3) the dates on which the applicant became the owner and operator of the business.

(f) Each application for a license [~~certificate of registration~~] must be accompanied by proof of the security required by this Act and payment of the required fee for the issuance of the certificate.

(g) All licenses [~~certificates of registration~~] are valid for one year and are renewable as provided by the director.

(h) [(†)] If a change occurs in the information filed with the director under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.

(i) [(‡)] While acting as an agent for a license holder [~~registrant~~], an employee is covered by the business entity's license [~~certificate of registration~~] and is not required to be individually licensed [~~registered~~]. An independent contractor or business entity may not operate under the license [~~certificate of registration~~] of another business entity except as an agent or subcontractor of a licensed [~~registered~~] installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor except as provided in Subsection (l) [(‡)] of this section.

(j) [(‡)] The director, after notice and hearing under Section 9 of this Act, may refuse to issue or may permanently revoke, or suspend for a definite period of time and for a specified geographic area or sales location, any license

~~[certificate of registration]~~ if the director finds that the applicant or license holder ~~[registrant]~~:

(1) knowingly and wilfully violated any provision of this Act ~~[article]~~ or any rule, administrative order, or regulation made pursuant to this Act;

(2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits, or insurance premiums;

(3) failed to deliver proper title documents or certificates of title to consumers;

(4) failed to give or breached any manufactured home warranty required by this Act or by the Federal Trade Commission;

(5) engaged in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code;

(6) failed to furnish or file any reports required by the department for the administration and enforcement of this Act;

(7) furnished false information on any application, report, or other document filed with the department;

(8) has a record of criminal convictions within the five years preceding the date of the application that, in the opinion of the director, renders the applicant unfit for licensing ~~[registration]~~; or

(9) failed to file the bond or post other security for each location as required by Section 13 of this Act.

(k) ~~[(t)]~~ The director shall conduct any hearing involving the denial, renewal, revocation or suspension of a license ~~[certificate of registration]~~ in accordance with Chapter 2001, Government Code.

(l) ~~[(m)]~~ A retailer or an installer may not contract with any person for the installation of any air-conditioning equipment, devices, or components in connection with the installation of a manufactured home unless the person is ~~[registered as an installer with the department or is otherwise]~~ licensed by the state as an air-conditioning contractor. The regulation of air-conditioning contractors is exclusively reserved to the Texas Department of Licensing and Regulation ~~[This subsection shall not apply to a new manufactured home being installed on a permanent foundation within a municipality which regulates air-conditioning contractors unless some other state statute provides otherwise].~~

(m) ~~[(n)]~~ A person may not act as a salesperson of manufactured housing unless the person is licensed ~~[registered]~~ with the department. Each applicant for a salesperson's license ~~[certificate of registration]~~ shall file with the director an application giving such information as the director deems necessary and pay the required fee. The owner of a sole proprietorship, a partner in a partnership, or an officer of a corporation which is duly licensed ~~[registered]~~ as a retailer or broker does not have to apply for licensing ~~[register]~~ as a salesperson so long as such individual is properly listed in the retailer's or broker's application for license ~~[registration]~~. The salesperson is the agent of the retailer or broker. The license ~~[registration]~~ shall be an annual license ~~[registration]~~. A retailer or broker shall not employ, retain, or otherwise use the services of a salesperson who is not licensed ~~[registered]~~. A licensed ~~[registered]~~ salesperson may work or sell for one or more retailers, brokers, or sales locations.



(n) [(t)] A person may not alter, repair, or otherwise rebuild a salvaged manufactured home, as such term is defined in Section 8 of this Act, unless the person is duly licensed ~~[registered]~~ with the department as a manufactured home rebuilder or retailer and unless the person complies with the rules and regulations of the director relating to the rebuilding of salvaged manufactured homes.

(o) [(p)] Any person not licensed or registered with the department or a predecessor agency as of September 1, 1987, must attend and complete twenty (20) hours of instruction in the law and consumer protection regulations as a prerequisite for a license ~~[prior to any registration]~~. The instruction shall be given not less than one time each quarter. No test shall be made a prerequisite of licensing ~~[registration]~~, but actual attendance at the instruction sessions is required. The director shall not issue a license ~~[registration]~~ until the instruction is completed. This subsection does not apply to a registrant making application to license ~~[register]~~ additional business locations, to renew or reinstate a license, or to make application for licensing ~~[register]~~ as a salesperson. In lieu of this instruction requirement, a manufacturer may request that a one-day, in-plant training session be presented by an authorized representative of the department. The manufacturer shall reimburse the department for the actual costs of the training session.

(p) [(q)] Notwithstanding any provision of this Act to the contrary, any state or national bank, state or federal savings and loan association or federal savings bank, or state or federal credit union engaged in the business of selling or offering for sale, exchange, or lease-purchase manufactured homes that the institution has acquired as a result of repossession of its collateral is not required to attend any school or file any bond or post other security in order to be licensed ~~[registered]~~ as a retailer.

(q) [(r)] In lieu of the instruction requirements imposed under Subsection (o) [(p)] of this section, the director may recognize and approve a ~~[one-day]~~ training program for installers that is conducted in the field by a private institution or other person.

(r) A license shall be renewed if the renewal application and payment of the annual fee are received by the department prior to the date on which the license expires. The renewal license expires on the first anniversary of the date the license was renewed. If the department needs additional information for the renewal application or verification of the continuing insurance or bond coverage, the license holder shall have 20 days following the receipt of notice from the department to furnish the requested information or verification.

SECTION 7. Section 7A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7A. ~~[CONTINUING]~~ EDUCATION PROGRAMS. The director may recognize, prepare, or administer certification programs and continuing education programs for persons regulated under this Act. Participation in the programs is voluntary. The director shall issue appropriate certificates to those persons who complete the certification program or who participate in the continuing education program.

SECTION 8. Subsections (d), (f), and (h), Section 8, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) It is unlawful for a person to sell, exchange, or lease-purchase a used manufactured home to any person without the appropriate transfer of good and marketable title to the home except when the sale, exchange, or lease-purchase is (1) to a purchaser for the purchaser's business use, or (2) to a rebuilder for the purpose of rebuilding a salvaged manufactured home. The seller or transferor shall forward to the department properly completed documents for the transfer of title within 30 days after the date the transfer of ownership is effective or after the date the seller or transferor obtains possession of the necessary executed documents.

(f) A holder of a lien recorded on a manufactured home document of title issued by the department who sells, exchanges, or transfers by a lease-purchase a repossessed manufactured home covered by such document of title is not required to comply with the provisions of this Act, provided that the sale, exchange, or transfer by a lease-purchase is (1) to or through a licensed ~~[registered]~~ retailer, or (2) to a purchaser for the purchaser's business use. If the sale, exchange, or lease-purchase is to a purchaser for the purchaser's business use, the holder of the lien shall surrender the title to the department for cancellation. If the sale, exchange, or lease-purchase is to or through a licensed ~~[registered]~~ retailer, the retailer is responsible and liable for compliance with the provisions of this Act and all rules and regulations of the department, and the holder of the lien shall not be joined as a party in any litigation arising in connection with, or relating to, the sale, exchange, or lease-purchase of the repossessed manufactured home.

(h) Notwithstanding any provisions of this section to the contrary, the director, following a written application by the purchaser or transferee, may expressly authorize in writing a licensed ~~[registered]~~ retailer to sell or exchange a used manufactured home which is not or may not be habitable to or with governmental housing agencies or authorities or to nonprofit organizations providing housing for the homeless. As a part of the application the purchaser or transferee must certify to the receipt of a written notice that the home is not or may not be habitable. The form of such written notice shall be prepared by the consumer protection division of the attorney general's office and approved by the director. The purchaser or transferee shall not occupy the home or allow the home to be occupied as a residence or dwelling until such time as any necessary repairs to make the home habitable have been completed.

SECTION 9. Subsections (d), (e), (f), (g), and (m), Section 9, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) In this section "rule" means a standard, requirement, regulation, order, and statement of general applicability that implements, interprets, or prescribes law or policy or that describes the procedures or practices of the department. Internal management operating procedures that prescribe the use of a particular form or that affect the private rights or procedures of a license holder or consumer are also rules. An administrative order that is not of general applicability but that is directed to a specific license holder relating to warranties, the correction of defects, or compliance with the law and regulations is not a rule ~~[At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsections (b)~~



and (c) of this section, ~~the director shall publish in the Texas Register a notice including:~~

~~[(1) a copy of the proposed changes and additions; and~~

~~[(2) the time and place that the director will consider any objections to the proposed changes and additions].~~

(e) All rules shall be promulgated and adopted in accordance with Chapter 2001, Government Code, and with the provisions of this section ~~[After giving the notice required by Subsection (d) of this section, the director shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with the opportunity to present the same orally on any matter].~~

(f) A proposed rule, amendment to a rule, or repeal of a rule shall be published in the Texas Register not less than 30 days prior to the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing shall be published in the Texas Register not less than 30 days prior to the date of the hearing. The director shall also afford interested persons the opportunity to participate in the rulemaking process through the submission of written data and statements of support or opposition [Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the director shall state the date it shall take effect].

(g) A rule, amendment to a rule, or repeal of a rule as finally adopted shall be published in the Texas Register and include a statement of the effective date. The effective date of a rule relating to installation standards shall be not less than 60 days following the date of publication of notice that the rule has been adopted. Any other rule is effective as provided by Chapter 2001, Government Code, or such later date as is published [Immediately after their promulgation, the director shall publish in the Texas Register all rules and regulations or amendments thereto].

(m) In order to protect the public health, safety, and welfare, and to assure the availability of low cost manufactured housing for all consumers, the director shall establish rules and regulations for the protection of the interests of consumers who occupy or desire to purchase or install manufactured housing and for the business conduct of those persons required to be licensed ~~[registered]~~ under this Act.

SECTION 10. Subsections (c) and (d), Section 11, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The board shall set fees for the issuance and renewal of manufacturers', retailers', brokers', salespersons', rebuilders', and installers' licenses ~~[certificates of registration]~~; and fees for the issuance of rebuilder licenses ~~[registrations]~~.

(d) A fee shall be set and charged to each person attending the course of instruction in the law and consumer protection regulations for applicants for licenses ~~[registration]~~.

SECTION 11. Subsections (a), (f), (g), (h), and (i), Section 13, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The department may not issue or renew a license ~~[certificate of registration]~~ unless a surety bond or other security in the form prescribed by the director is filed with the department as provided by this section.

(f) A manufacturer shall be bonded or post other security in the amount of \$100,000. A retailer shall be bonded or post other security in the amount of \$50,000 ~~[\$30,000]~~. A broker shall be bonded or post other security in the amount of \$20,000. An installer shall be bonded or post other security in the amount of \$10,000. A rebuilder shall be bonded or post other security in the amount of \$30,000. In order to assure the availability of prompt and satisfactory warranty service, a manufacturer, which does not have a licensed ~~[registered]~~ manufacturing plant or other facility in this state from which warranty service and repairs can be provided and made, shall be bonded or post other security in an additional amount of \$100,000. A retailer holding a valid license ~~[certificate of registration]~~ shall not be required to be bonded or file any security to secure a license ~~[certificate of registration]~~ as a broker or an installer. A new bond shall not be required for any change of ownership of a corporation licensed ~~[registered]~~ with the department nor for any change of a location; however, a proper endorsement of the original bond may be required by the director.

(g) The bonding company must provide written notification to the director at least 60 days prior to the cancellation of a surety bond required by this section. Any other security on file with the department shall remain on file and be maintained for two years after the person ceases business as a manufacturer, retailer, broker, rebuilder, or installer or at such later time as the director may determine that no claims exist against the security.

(h) If a bond is canceled, the license ~~[certificate of registration]~~ is suspended on the effective date of cancellation. If a surety files for liquidation or reorganization in bankruptcy or is placed in receivership, the license holder ~~[registrant]~~ is entitled to 60 days from the date notice of the filing or receivership was received to obtain other security. If the required face amount of any other security is impaired by the payment of a claim, the license holder ~~[registrant]~~ is entitled to 60 days to restore the security to its required face value.

(i) Subject to the limitations in this section, the bond or other security is liable for, and shall reimburse the recovery fund under Section 13A of this Act, the amount of any claim paid out of the fund by the director to a consumer that resulted from an act or omission of the license holder ~~[registrant]~~ who filed the bond or other security. Payment by the surety or from the other security shall be made not later than the 30th day from the date of receipt of notice from the director that a consumer claim has been paid. If for any reason the surety or other security fails to make timely payment of a claim to the fund, the attorney general shall file suit for recovery of the amount due the fund. Venue for the suit is in Travis County.

SECTION 12. Subsections (e), (f), (g), and (k), Section 13A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(e) Subject to the limitations of Section 13 of this Act and of this section, the fund shall be used to compensate consumers who sustain actual damages resulting from unsatisfied claims against a manufacturer, retailer, broker, or installer licensed ~~[registered]~~ with the department if the claims resulted from a violation of:

- (1) this Act;
- (2) a rule issued by the director;
- (3) the National Manufactured Housing Construction and Safety Standards Act;
- (4) the rules and regulations of the United States Department of Housing and Urban Development; or
- (5) the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code.

(f) The consumer must file a ~~[verified]~~ written complaint in the form required by the director not later than the second anniversary of the date of the alleged act or omission causing the actual damages, or the second anniversary of the date the act or omission is discovered or should reasonably have been discovered. Failure to timely file the claim precludes recovery from the fund. On receipt of a properly verified complaint, the department shall notify the license holders ~~[registrants]~~ as appropriate and investigate the claim to determine its validity and whether or not the complaint can be resolved by remedial action of the license holders ~~[registrants]~~. If there is a dispute between the license holders ~~[registrants]~~ as to responsibility for the complaint, or between any license holder ~~[registrant]~~ and the consumer, the department shall conduct an informal dispute resolution process, including a home inspection if appropriate, for a resolution of the disputes. If it is possible to secure the agreement of the parties, the department shall prepare and file with the director a written report of the agreement.

(g) During the informal dispute resolution process, the department shall make a preliminary determination as to the responsibility and liability of the manufacturer, retailer, and installer for claims determined to be valid. The license holders ~~[registrants]~~ shall be afforded an opportunity to comment on the preliminary determination under consideration by the department before the department makes a final determination. If a license holder ~~[registrant]~~ is out of business, is no longer licensed ~~[registered]~~, or has filed for liquidation or reorganization in bankruptcy, the department shall notify the license holder's ~~[registrant's]~~ surety and give the license holder's ~~[registrant's]~~ surety an opportunity to participate in the informal dispute resolution process. If a license holder ~~[registrant]~~ or the license holder's ~~[registrant's]~~ surety fails or refuses to participate in the informal dispute resolution process after receiving notice of the claim, the license holder ~~[registrant]~~ and the license holder's ~~[registrant's]~~ surety are bound by the department's final determination of responsibility and liability, and the department may suspend or revoke the license holder's license ~~[registrant's certificate of registration]~~.

(k) The provisions of this section do not apply to, and a consumer shall not recover against the fund as a result of, any claim against a license holder ~~[registrant]~~ resulting from a cause of action directly related to the sale, lease-purchase, exchange, brokerage or installation of a manufactured home prior to September 1, 1987.

SECTION 13. Section 14, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsections (f) and (k) and adding Subsection (n) to read as follows:

- (f) If the manufacturer or retailer fails to provide warranty service within

the reasonable time allowed by the rules of the director, the manufacturer or retailer must show good cause in writing why such service was not provided. Failure to show good cause constitutes sufficient basis for suspension or revocation of the license ~~[registration]~~.

(k) If the manufacturer or retailer, or both, fails or refuses to provide the warranty service in accordance with the orders of the department following a home inspection, the director shall set a hearing at which the manufacturer or retailer, or both, shall show cause why the license ~~[registration]~~ should not be suspended or revoked. If, following the hearing, the director finds that the prior warranty service orders were correct, the failure or refusal of the manufacturer or retailer to comply with the orders is sufficient cause for the suspension or revocation of the license ~~[registration]~~. If the director finds that the prior warranty service orders were incorrect in the determination of the respective responsibilities of the manufacturer, retailer, or both, the director shall enter a final order setting forth the correct responsibilities and the right of either the manufacturer or retailer to indemnification from the other. The director may also enter an order directing the manufacturer or retailer whose license ~~[registration]~~ is not revoked, or who is not out of business, to perform the warranty service responsibilities of the retailer or manufacturer whose license ~~[registration]~~ is revoked, or who is out of business, by giving the manufacturer or retailer performing such warranty service the right of indemnity against the other. The manufacturer or retailer entitled to indemnification by virtue of an order of the director pursuant to this subsection is a "consumer" for purposes of Sections 13 and 13A of this Act and may recover its actual damages and attorney's fees from the manufactured homeowners' recovery fund.

(n) When a new HUD-code manufactured home is permanently affixed to real estate, the manufacturer's certificate of origin is canceled, and a certificate of attachment is filed in the deed records of the county, the seller of the real estate may give the initial purchaser a written warranty that combines the manufacturer's warranty and the retailer's warranty required in this section. If a combination warranty is given, the manufacturer and retailer are not required to give separate written warranties; however, the manufacturer and retailer are jointly liable with the seller of the real estate to the purchaser for the performance of their respective warranty responsibilities.

SECTION 14. Subsection (b), Section 17, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In addition to the injunctive relief set forth in Section 18 of this Act, a person who fails to obtain or maintain a license ~~[registration]~~ as required by this Act may be assessed a civil penalty by the director payable to the state in an amount not to exceed \$10,000 for each violation of this Act in addition to the reasonable attorney's fees, court costs, witness fees, investigative costs, and deposition expenses.

SECTION 15. Subsections (d), (f), and (g), Section 18, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) If a retailer, broker, or installer does not possess a valid license ~~[certificate of registration]~~ at the time of entering into any contract with a

consumer, the contract between the consumer and the retailer, broker, or installer is voidable within two years from the date of the purchase of the manufactured home at the option of the consumer. A consumer's contract for the purchase, exchange, or lease-purchase of a new manufactured home is also voidable within two years from the date of the purchase of the manufactured home, if the retailer purchased the home from an unlicensed [~~unregistered~~] manufacturer in violation of Section 6, Subsection (h) of this Act.

(f) Notwithstanding any provisions of any other statute, regulation, or ordinance to the contrary, a licensed [~~registered~~] retailer or licensed [~~registered~~] installer is not required to secure any permit, certificate, or license or pay any fee for the transportation of manufactured housing to the place where it is to be installed except as required by the department or by the Texas Department of Transportation pursuant to Subchapter E, Chapter 623, Transportation Code. The department shall cooperate with the Texas Department of Transportation by providing current lists of licensed [~~registered~~] manufactured housing manufacturers, retailers, and installers.

(g) A local governmental unit or home-rule city may not require any permit, fee, bond, or insurance for the installation of manufactured housing by a licensed [~~registered~~] retailer or installer except as may be approved by the department.

SECTION 16. Subsection (k), Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(k) A lien on the manufactured homes in the inventory is perfected by filing a security agreement with the department in a form that contains the information the director requires. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds of the sale of those homes. Failure to pay or satisfy any inventory lien filed and recorded against a manufactured home pursuant to the terms of the security agreement by the retailer is sufficient cause to revoke or suspend the retailer's license [~~registration~~] with the department.

SECTION 17. Subsection (8), Section 3, Chapter 6A, Title 79, Revised Statutes (Article 5069-6A.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(8) In a transaction not involving real estate, no documentary fee for the preparation of credit documents shall be charged to the consumer and the only items [~~fees~~] which can be charged to the consumer are those fees and taxes actually paid by the creditor as required by law or regulation and those paid [~~or~~] on behalf of the consumer to any governmental entity or agency as a result of or in relation to the credit transaction.

SECTION 18. Subsection (f), Section 6, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) This article does not apply to a person or firm that is licensed [~~registered~~] as a manufacturer, retailer, rebuilder, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages exclusively in air conditioning and refrigeration contracting for manufactured homes provided that the

installation of air conditioning components at the site where the home will be occupied is performed by a person licensed under this Act [in the installation of manufactured homes or in providing retailer or manufacturer warranty services free of charge].

SECTION 19. Section 623.093, Transportation Code, is amended to read as follows:

Sec. 623.093. Contents of Application and Permit. (a) The application for a permit and the permit must be in the form prescribed by the department. The permit must show:

(1) the length, width, and height of the manufactured house and the towing vehicle in combination; and

(2) the route for the transportation of the manufactured house.

(b) The length of the manufactured house and the towing vehicle in combination includes the length of the hitch or towing device. The height is measured from the roadbed to the highest elevation of the manufactured house. The width of the house or section includes any roof or eave extension or overhang on either side.

(c) The route must be the shortest distance from the place where the transportation begins in this state to the place where the transportation ends in this state and include divided and interstate systems, except where construction is in progress or bridge or overpass width or height creates a safety hazard. A county or municipality may designate to the department the route to be used inside the territory of the county or municipality.

(d) If the manufactured home is being moved from or to a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show:

(1) the complete serial or identification number;

(2) the HUD label or state seal number;

(3) the name of the owner of the home; and

(4) the location from which the home is being moved and the location to which the home is being delivered.

(e) If the permit shows the additional information required by subsection (d), the department shall send on a quarterly basis a copy of the permit, or furnish the essential information in the permit, to the chief appraiser of the appraisal district for each county in which the movement begins or ends.

SECTION 20. Section 623.094, Transportation Code, is amended to read as follows:

Sec. 623.094. ~~[MANUFACTURER'S, RETAILER'S, AND TRANSPORTER'S]~~ PERMIT ISSUANCE. (a) Except as authorized by Section 623.095, the department may issue a permit only to ~~[a person]~~:

(1) a person licensed by the Texas Department of Housing and Community Affairs [registered] as a manufacturer, [or] retailer, or installer [with the commissioner of licensing and regulation]; or

(2) motor carriers registered with the department [certificated for the transportation of a manufactured house by the Railroad Commission of Texas or the Interstate Commerce Commission].

(b) The license or registration number [or the certificate number] of the person to whom the permit is issued shall be affixed to the rear of the

manufactured house during transportation and have letters and numbers that are at least eight inches high.

SECTION 21. Section 623.095, Transportation Code, is amended to read as follows:

Sec. 623.095. ~~[SINGLE-TRIP]~~ PERMIT TYPES. (a) The department may issue a single-trip permit for the transportation of a manufactured house to:

(1) the owner of a manufactured house if:

(A) the title to the manufactured house and the title to the towing vehicle show that the owner of the manufactured house and the owner of the towing vehicle are the same person; or

(B) a lease filed under Chapter 641 shows that the owner of the manufactured house and the lessee of the towing vehicle are the same person; or

(2) a person authorized to be issued permits by Section 623.094 [an installer registered with the Texas Department of Licensing and Regulation for the transportation of a manufactured house if that transportation is excluded from regulation under Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes)].

(b) A person or [An] owner [or installer] must have proof of the insurance coverage required by Section 623.103.

(c) In lieu of a single-trip permit, the department may issue an annual permit to any person authorized to be issued permits by Section 623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture. A copy of the permit must be carried in the vehicle transporting a manufactured home from the manufacturer to temporary storage. The department may adopt rules concerning requirements for a permit issued under this subsection.

SECTION 22. Section 623.096, Transportation Code, is amended to read as follows:

Sec. 623.096. PERMIT FEE. (a) The department shall collect a fee of ~~\$20~~ [\$15] for each permit issued under this subchapter. Of each fee, 30 cents shall be deposited to the credit of the state highway fund.

(b) The department shall adopt rules concerning fees for each annual permit issued under Section 623.095(c) at a cost not to exceed \$1,500. Two percent of any fee adopted shall be deposited to the credit of the state highway fund [On application, the department shall issue a permit book or packet containing 20 permits if the \$15 fee for each permit in the book or packet is received with the application].

(c) The [A permit in a book or packet may be used for the movement of a manufactured house regardless of the manufactured house's width, length, or height. The route approval and any required validation number for the permit may be secured from the issuing office by telephone communication.

[(d) In lieu of issuing a permit book or packet, the] department may establish an escrow account for the payment of permit fees.

SECTION 23. (a) This Act takes effect September 1, 1997.

(b) A certificate of registration that is valid immediately before the effective date of this Act remains valid until the expiration date of the registration.



(c) The increase in the bond for a retailer's license required by Section 11 of this Act is effective on September 1, 1997, for an initial license and is effective for a license holder on the date of renewal.

SECTION 24. 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 2703** as follows:

(1) In Section 9(d) of the bill, at lines 49-52, strike the following language:

~~"Internal management operating procedures that prescribe the use of a particular form or that affect the private rights or procedures of a license holder or consumer are also rules."~~ and add the following language in lieu thereof: "Internal management operating procedures that affect the private rights or procedures of license holders or consumers, including requirements for the use of a particular form, are also rules."

(2) In Section 19(e), page 14, line 30, between the words "the" and "chief appraiser", insert the words:

"tax assessor-collector and the"

(3) Add a new Section 23 to read as follows, and renumber the remaining sections appropriately:

"SECTION 23. Subsection 18(b), Article 21.07, Insurance Code, is amended to read as follows:

"(b) Notwithstanding any provisions of either this Article or of the Insurance Code to the contrary, an employee, officer, director, or shareholder of a dealer who holds a valid dealer's general distinguishing number issued by the Texas Department of Transportation pursuant to the authority of Article 6686, Revised Statutes, or of a retailer who holds a valid license issued by the Texas Department of Housing and Community Affairs pursuant to Article 5221f, Revised Statutes, who is licensed as an agent under this Article, and who enters into a contract with an insurer to act as the insurer's agent in soliciting or writing policies or certificates of credit life insurance, credit accident and health insurance, or both, may assign and transfer to the dealer or retailer, or any affiliate of the dealer or retailer, any commissions, fees, or other compensation to be paid to the agent under the agent's contract with the insurer."

### **HB 2798 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED**

Representative Marchant called up with senate amendments for consideration at this time,

**HB 2798**, A bill to be entitled An Act relating to tax-exempt private activity bonds.

Representative Marchant moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2798**.



The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2798**: Marchant, chair, Ehrhardt, Giddings, Smith, and Solomons.

### **HB 2848 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Berlanga called up with senate amendments for consideration at this time,

**HB 2848**, A bill to be entitled An Act relating to the curation of artifacts and other items in the custody of the Texas Historical Commission.

On motion of Representative Berlanga, the house concurred in the senate amendments to **HB 2848** by (Record 469): 145 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddock; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Solomons; Telford.

Absent — Keel.

### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 2848** as follows:

In SECTION 2 of the bill, adding new subsection 191.058(d), Natural Resources Code, on page 1, line 18, after "display," insert the following: "The Corpus Christi Museum of Science and History:

(1) does not own the artifacts for which it serves as a repository; and

(2) shall make available for loan to a qualified institution for display the marine artifacts for which it serves as a repository."

**HB 3025 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Brimer called up with senate amendments for consideration at this time,

**HB 3025**, A bill to be entitled An Act relating to parking fees imposed by a governmental authority.

On motion of Representative Brimer, the house concurred in the senate amendments to **HB 3025**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 3025** as follows:

On page 1, lines 4-16, strike SECTION 1 in its entirety and renumber the remaining Sections of the bill accordingly.

**HB 3170 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Yarbrough called up with senate amendments for consideration at this time,

**HB 3170**, A bill to be entitled An Act relating to a firefighters' relief and retirement fund in certain municipalities.

On motion of Representative Yarbrough, the house concurred in the senate amendments to **HB 3170**.

**Senate Committee Substitute**

**CSHB 3170**, A bill to be entitled An Act relating to a firefighters' relief and retirement fund in certain municipalities.

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

SECTION 1. Title 109, Revised Statutes, is amended by adding Article 6243e.2(1) to read as follows:

Art. 6243e.2(1). FIREFIGHTERS' RELIEF AND RETIREMENT FUND IN MUNICIPALITIES OF AT LEAST 1,600,000 POPULATION

Sec. 1. DEFINITIONS. In this article:

(1) "Average monthly salary" means one thirty-sixth of the member's salary as a firefighter for the member's highest 78 biweekly pay periods during the member's participation in the fund or, if the member has participated in the fund for less than three years, the total salary paid to the member for the periods the member participated in the fund divided by the number of months the member has participated in the fund. If a member is not paid on the basis of biweekly pay periods, "average monthly salary" is determined on the basis of the number of pay periods under the payroll practices of the municipality sponsoring the fund that most closely correspond to 78 biweekly pay periods.

(2) "Board" or "board of trustees" means the board of trustees of a firefighters' relief and retirement fund established under this article.

(3) "Code" means the federal Internal Revenue Code of 1986.

(4) "Deferred retiree" means a member who is eligible for a benefit under Section 8(a) of this article.

(5) "Disabled child" means any individual who is the child of a member by birth or adoption and who is totally disabled as a result of a physical or mental illness or injury, including retardation, at the time the member dies or who becomes so disabled before reaching 18 years of age. The term includes a child the board determines is unable to pursue any gainful employment.

(6) "DROP" means the deferred retirement option plan under Section 5 of this article.

(7) "DROP account" means the notional account established to reflect the credits, contributions, and earnings or losses of a member who has made a DROP election in accordance with Section 5 of this article.

(8) "Eligible child" means a child of a member by birth or adoption who is unmarried and under 18 years of age, a disabled child, or under 23 years of age, unmarried, and a full-time student enrolled in an accredited college or university, but only if the member executes an election permitting the child to be treated as an eligible child in accordance with procedures established by the board or if the member does not have an eligible spouse.

(9) "Eligible parent" means a parent of a member, by birth or by adoption while the member was a minor, who proves to the satisfaction of the board that the parent was a dependent of the member immediately before the member's death.

(10) "Eligible spouse" means:

(A) in the case of a member who dies after June 30, 1998, a spouse to whom the member was married at the time of the member's death; or

(B) in the case of a member who dies before July 1, 1998, a spouse to whom the member was married at the time the member's benefit under this article is scheduled to begin and at the time of the member's death.

(11) "Firefighter" means a full-time, fully paid, active, classified member of a regularly organized fire department of an incorporated municipality with a fund established under this article.

(12) "Fund" means a firefighters' relief and retirement fund established under this article.

(13) "Member" means a firefighter or former firefighter who has satisfied the eligibility requirements under Section 13 of this article and who has not yet received a distribution of the entire benefit to which the person is entitled under this article.

(14) "Off-duty disability" means a physical or mental disability that:

(A) is likely to be permanent; and

(B) results from a cause other than a bodily injury received in, or illness caused by, the performance of a member's duties as a firefighter.

(15) "On-duty disability" means a physical or mental disability that:

(A) is likely to be permanent; and

(B) results from a bodily injury received in, or illness caused by, the performance of the member's duties as a firefighter.

(16) "Salary" means the amounts includable in gross income of a member plus any amount not includable in gross income under Section 125, Section 402(e)(3) or (h), Section 403(b), or Section 414(h) of the code.

(17) "Years of participation" means the number of years that a member has participated in the fund by making the contributions required by this article, as determined under rules established by the board.

Sec. 2. FUND AND BOARD OF TRUSTEES. (a) A firefighters' relief and retirement fund is established in each incorporated municipality that has a population of at least 1,600,000 and a fully paid fire department.

(b) The board of trustees of the fund shall be known as the "Board of Firefighters' Relief and Retirement Fund Trustees of \_\_\_\_\_, Texas." The board consists of 10 trustees, including:

(1) the mayor or an appointed representative of the mayor;

(2) the treasurer of the municipality or, if there is not a treasurer, the secretary, clerk, or other person who by law, charter provision, or ordinance performs the duty of treasurer of the municipality;

(3) five firefighters who are members of the fund;

(4) one person who is a retired firefighter and a member of the fund with at least 20 years of participation; and

(5) two persons, each of whom is a registered voter of the municipality, has been a resident of the municipality for at least three years preceding the date of initial appointment, and is not a municipal officer or employee.

(c) To serve as a trustee under Subsection (b)(3) of this section, a person must be elected by ballot of the firefighters who are members of the fund. That election shall be held during the last quarter of the year preceding the January in which the term of a trustee occupying one of those positions expires. The trustee serves a term of three years. Three of the trustees described under Subsection (b)(3) of this section shall be elected from the suppression division of the fire department. One of the trustees from the suppression division must have the rank of firefighter or engineer/operator, and the position on the board to which that trustee is elected is designated as Position I. One of the trustees from the suppression division must have the rank of captain or senior captain, and the position on the board to which that trustee is elected is designated as Position II. One of the trustees from the suppression division must have the rank of district chief, deputy chief, or assistant chief, and the position on the board to which that trustee is elected is designated as Position III. One of the trustees described under Subsection (b)(3) of this section shall be elected from the fire prevention division, and the position on the board to which that trustee is elected is designated as Position IV. One of the trustees described under Subsection (b)(3) of this section shall be elected from the fire alarm operators division or the fire department repair division, and the position on the board to which that trustee is elected is designated as Position V.

(d) To serve as a trustee under Subsection (b)(4) of this section, a person must be elected by ballot of those retired members with at least 20 years of participation in the fund. The election shall be held during the last quarter of every third year starting in 1997. The trustee serves a three-year term, starting in January after the trustee is elected.

(e) To serve as a trustee under Subsection (b)(5) of this section, a person must be appointed by the elected members of the board. Each of those trustees serves a staggered term of two years. The appointment or reappointment of one of those trustees shall take place in December of each year.

(f) If a vacancy occurs in an elected position on the board, the vacancy shall be filled in the manner provided in this section for the election of the trustee to that position. The election may occur either at the next following regular election of trustees by members of the fire department or in a special election called by the board. If a vacancy occurs in a position appointed by the elected trustees of the board, that position shall be filled by a vote of the elected trustees of the board. A trustee who is elected or selected to fill a vacancy holds office for the unexpired term of the trustee who vacated that position.

(g) Each trustee of the board shall, at the first board meeting following the trustee's most recent election or appointment, take an oath of office that the trustee will diligently and honestly administer the affairs of the fund and that the trustee will not knowingly violate or willingly permit this article to be violated.

(h) The board shall annually elect from among the trustees a chair, a vice chair, and a secretary. The person described under Subsection (b)(2) of this section serves as the treasurer of the fund under penalty of that person's official bond and oath of office.

(i) A trustee of the board may not receive compensation for service on the board.

(j) A majority of the trustees of the board constitutes a quorum to transact business. An order of the board must be made by vote recorded in the minutes of the board's proceedings. Each decision of the board in a matter under the board's jurisdiction is final and binding as to each affected firefighter, member, and beneficiary, subject only to the rights of appeal specified by this article.

(k) The board shall receive, manage, and disburse the fund for the municipality and shall hear and determine applications for retirement and claims for disability and designate the beneficiaries or persons entitled to participate as provided by this article.

(l) The board shall hold regular monthly meetings at a time and place as the board by resolution designates and may hold special meetings on call of the chair as the chair determines is necessary, keep accurate minutes of board meetings and records of board proceedings, keep separate from all other municipal funds all money for the use and benefit of the fund, and keep a record of claims, receipts, and disbursements. A disbursement from the fund may be made in accordance with procedures established by the board.

(m) The municipality shall provide full and timely information to the board on matters relating to the hiring of new firefighters, compensation of members, members' deaths or terminations of service, and such other information concerning firefighters as is reasonably required by the board, from time to time, for the board to administer the fund and provide benefits properly.

(n) The board shall not later than January 31 of each year make and file with the treasurer of the municipality a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of fund administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the treasurer of the municipality.

(o) The secretary of the board shall, not later than the seventh day after

the date of each board meeting, forward true copies of the minutes of the meeting to each fire station and to each division of the fire department.

(p) The board shall manage the fund according to the terms and purposes of this article and all applicable sections of the code and has the powers necessary to accomplish that purpose, including the power to:

(1) adopt for the administration of the fund written rules and guidelines not inconsistent with this article;

(2) interpret and construe this article and any summary plan descriptions or benefits procedures, except that each construction must meet any qualification requirements established under Section 401 of the code;

(3) correct any defect, supply any omission, and reconcile any inconsistency that appears in this article in a manner and to the extent that the board considers expedient to administer this article for the greatest benefit of all members;

(4) select, employ, and compensate employees the board considers necessary or advisable in the proper and efficient administration of the fund;

(5) determine all questions, whether legal or factual, relating to eligibility for participation, service, or benefits or relating to the administration of the fund to promote the uniform administration of the fund for the benefit of all members;

(6) establish and maintain records necessary or appropriate to the proper administration of the fund; and

(7) compel witnesses to attend and testify before the board concerning matters related to the operation of this article in the same manner provided for taking of testimony before notaries public.

(q) The chair may administer oaths to witnesses.

(r) The board shall maintain at the offices of the fund the original of each rule or guideline adopted under this section and shall deliver to the municipality a copy of each adopted rule or guideline.

Sec. 3. OTHER POWERS OF THE BOARD. (a) If the board determines that there is a surplus of funds in an amount exceeding the current demands on the fund, the board may invest the surplus in the manner provided by Chapter 802, Government Code.

(b) The board may employ persons to perform any investment, administrative, legal, medical, accounting, clerical, or other service the board considers appropriate, including:

(1) a certified public accountant or firm of certified public accountants to perform an audit of the fund at times and intervals the board considers necessary;

(2) a professional investment manager or firm of managers as provided by Section 802.204, Government Code;

(3) an actuary or actuarial firm at times and for purposes the board considers necessary or appropriate;

(4) an attorney or firm of attorneys to advise, assist, or represent the board in any legal matter relating to the fund, including litigation involving matters under this article; or

(5) a physician to examine a firefighter before the firefighter becomes a member of the fund or to examine a member or beneficiary applying for or receiving a disability pension or survivor benefit.

(c) A fee incurred in connection with a service or person employed under Subsection (b) of this section may be paid from the fund, except that the costs of audits under Subsection (b)(1) of this section may be paid from the fund only if the municipality does not pay that cost.

(d) The board may have an actuarial valuation performed each year, and for determining the municipality's contribution rate as provided by Section 13(d) of this article, the board may adopt a new actuarial valuation each year, except that an actuarial valuation that will result in an increased municipal contribution rate that is above the statutory minimum may be adopted only once every three years, unless the governing body of the municipality consents to a more frequent increase.

(e) In addition to any other remedy the board has, including any right of set-off from future benefits, the board may recover by civil action from any offending party or from the party's surety money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board for the use and benefit of the fund.

(f) On written request from the chair, the municipal attorney shall represent the board or the fund in any legal matter, including litigation. The municipal attorney is not entitled to compensation from the fund for providing that representation.

(g) The board may, from fund assets, purchase from an insurer licensed to do business in this state insurance to cover liabilities and losses of the fund and to indemnify and hold the trustees of the board and employees of the board, individually and collectively, harmless from the effects and consequences of their acts, omissions, and conduct within the scope of their official capacity as fiduciaries or cofiduciaries or within the scope of what the board trustee or employee believes in good faith, at the time, to be the board trustee's or employee's official capacity. An insurance company through which insurance is purchased under this subsection has a cause of action against a board trustee or employee to the extent that a loss results from the board trustee's or employee's wilful and malicious misconduct or gross negligence. If insurance is unavailable, insufficient, inadequate, or not in effect, the board may indemnify a board trustee or employee for liability imposed as damages and for reasonable costs and expenses incurred by that individual in defense of an alleged act, error, or omission committed in the individual's official capacity or within the scope of what the board trustee or employee believed in good faith, at the time, to be the board trustee's or employee's official capacity. The board may not indemnify a board trustee or employee for the amount of a loss that results from the board trustee's or employee's wilful and malicious misconduct or gross negligence. The board may establish a self-insurance fund to pay claims for the indemnification. The board shall provide that the self-insurance fund must be limited to an amount not to exceed the greater of three percent of the fund assets or \$5 million. The self-insurance fund shall be invested in the same manner as other assets of the fund, and all earnings and losses from investing the self-insurance fund shall be credited to the self-insurance fund unless that credit exceeds the limit on the self-insurance fund set by the board or this subsection. Amounts held in the self-insurance fund



may not be included in the actuarial valuation for purposes of determining the municipal contribution rate or the assets available to satisfy the actuarial liabilities of the fund to pay service, disability, or death benefits provided by this article. A decision to indemnify or make a reimbursement out of the self-insurance fund must be made by a majority vote of board trustees eligible to vote on the matter. If the proposed indemnification or reimbursement is of a trustee, that trustee may not vote on the matter.

Sec. 4. SERVICE PENSION BENEFITS. (a) A member with at least 20 years of participation who terminates active service for any reason other than death is entitled to receive a service pension provided by this section.

(b) A member who terminates active service on or after November 1, 1997, and who has completed at least 20 years of participation in the fund on the effective date of termination of service is entitled to a monthly service pension, beginning on the effective date of termination of active service, in an amount equal to 50 percent of the member's average monthly salary, plus three percent of the member's average monthly salary for each year of participation in excess of 20 years, but not in excess of 30 years of participation, for a maximum total benefit of 80 percent of the member's average monthly salary.

(c) A member who terminated active service before November 1, 1997, and who had completed at least 20 years of participation on the effective date of termination of service is entitled on retirement to receive a monthly service pension in the amount provided under the law in effect on the effective date of that retirement, unless a subsequent benefit increase is expressly made applicable to that member.

(d) A member with a service or disability pension, other than a deferred retiree or an active member who has elected the DROP under Section 5(b) of this article, who began receiving benefits from the fund before November 1, 1997, or a member's beneficiary who began receiving benefits from the fund before November 1, 1997, shall be paid a one-time additional benefit of \$5,000 from the fund, payable in a lump sum as soon as administratively practicable after November 1, 1997.

(e) The total monthly benefit payable to a retired or disabled member, other than a deferred retiree or active member who has elected the DROP under Section 5(b) of this article, or each eligible survivor of a deceased member, shall be increased by \$100, beginning with the monthly payment made for July 1999. That additional benefit may not be increased under Section 11(c) of this article.

(f) The benefit under Subsection (d) of this section shall be paid to the member or to the eligible spouse of a deceased member. If the member is deceased and there is no eligible spouse, the benefit shall be divided equally among and paid to each eligible child of the member, or, if there is no eligible child, the benefit shall be divided among the eligible parents of the member.

Sec. 5. DEFERRED RETIREMENT OPTION PLAN. (a) A member who is eligible to receive a service pension under Section 4 of this article and who remains in active service may elect to participate in the deferred retirement option plan provided by this section. On subsequently terminating active service, a member who elected the DROP may apply for a monthly service pension under Section 4 of this article, except that the effective date of the

member's election to participate in the DROP will be considered the member's retirement date for determining the amount of the member's monthly service pension. The member may also apply for any DROP benefit provided under this section on terminating active service. Except as provided by Subsection (n) of this section, an election to participate in the DROP, once approved by the board, is irrevocable.

(b) A member may elect to participate in the DROP by complying with the election process established by the board. The member's election may be made at any time beginning on the date the member has completed 20 years of participation in the fund and is otherwise eligible for a service pension under Section 4 of this article. The election becomes effective on the first day of the month following the month in which the board approves the member's DROP election. Beginning on the effective date of the member's DROP election, amounts equal to the deductions made from the member's salary under Section 13(c) of this article shall be credited to the member's DROP account. If a DROP participant remains in active service after the fifth anniversary of the effective date of the member's DROP election, subsequent deductions from the member's salary under Section 13(c) of this article may not be credited to the member's DROP account and may not otherwise increase any benefit payable from the fund for the member's service.

(c) Beginning in the month a member's DROP election becomes effective, an amount equal to the monthly service pension the member would have received under Section 4 of this article and Section 11(c) of this article, if applicable, had the member terminated active service on the effective date of the member's DROP election shall be credited to a DROP account maintained for the member. That monthly credit to the member's DROP account shall continue until the earlier of the date the member terminates active service or the fifth anniversary of the effective date of the member's DROP election.

(d) A member's DROP account shall be credited with earnings or losses at an annual rate equal to the average annual return earned by the fund over the five years preceding, but not including, the year during which the credit is given. Those earnings or losses shall be computed and credited at a time and in a manner determined by the board, except that earnings or losses shall be credited not less frequently than once in each 13-month period and shall take into account partial years of participation in the DROP. If the member has not terminated active service, the member's DROP account may not be credited with earnings or losses after the fifth anniversary of the effective date of the member's DROP election.

(e) A member who terminates active service after participating in the DROP is entitled to receive, in addition to the member's service pension under Section 4 of this article, a benefit equal to the balance of the member's DROP account. Unless the member elects to receive installment or partial distributions in accordance with Subsection (f) or (h) of this section, the balance of a member's DROP account shall be paid to the member in a single lump-sum payment as soon as is administratively practicable after the member's termination of active service.

(f) In lieu of a single lump-sum payment, a member may elect to receive the balance of the member's DROP account in three substantially equal

installments. A member electing the installment form of distribution is entitled to receive the first installment within a reasonable period after terminating active service. The second and third installments shall be paid to the member on the first and second anniversaries of the date of the first installment. A member electing to receive the member's DROP account balance in installments may convert that election at any time after receipt of the first installment to an election to receive the remainder of the member's DROP account balance in a lump-sum payment. If a member elects to receive installments, the member's DROP account may not be credited with earnings or losses occurring after the member leaves active service. The DROP account balance of a member who elects to receive the member's DROP account balance in installments may not be credited with interest after the date of payment of the first installment.

(g) The board may adopt by a majority vote the provisions of Subsections (h) and (i) of this section.

(h) In lieu of a single lump-sum payment, a member may elect to receive partial payments from the member's DROP account for each calendar year, in an amount elected by the member. The board may establish procedures concerning partial payments, including limitations on timing and frequency of those payments. A member who elects partial payments may, at any time, elect to receive the member's entire remaining DROP account balance in a single lump-sum payment.

(i) If a member elects partial payments, for periods after a member terminates active service and before the member's DROP account is completely distributed, the member's DROP account shall be credited with earnings or losses of the fund as computed under Subsection (d) of this section and reduced by an administrative fee of one percent of the account balance each year, determined before adjustment for earnings or losses for the year.

(j) An election by a member concerning installment or partial payments as provided by Subsections (f)-(i) of this section must satisfy the requirements of Section 401(a)(9) of the code. All distributions and changes in form of distribution must be made in a manner and at a time that comply with that provision.

(k) A member who elects to participate in the DROP is considered to have terminated active service on the effective date of the member's DROP election for purposes of computing and providing service pension benefits under Section 4 of this article and for purposes of computing and providing death benefits under Section 7 of this article. A salary earned or additional years of participation completed after the member's DROP election becomes effective may not be considered in the computation of retirement, disability, or death benefits unless a DROP revocation is made as prescribed by Subsection (n) of this section.

(l) If a DROP participant dies before complete distribution of the member's DROP account has been made, the member's DROP account balance shall be distributed to the member's eligible beneficiaries, determined as follows:

(1) if the member is survived by a person who was the member's spouse on the member's last day of active service and one or more eligible children, one-half of the member's DROP account balance shall be paid to that eligible spouse, and the remaining one-half shall be divided equally among the member's eligible children;

(2) if the member is survived by a spouse described by Subdivision (1) of this subsection, but not by an eligible child, the member's entire DROP account balance shall be paid to the surviving spouse;

(3) if the member is survived by one or more eligible children, but not by a spouse described by Subdivision (1) of this subsection, the member's DROP account balance shall be divided equally among the eligible children;

(4) if the member is not survived by a spouse described by Subdivision (1) of this subsection or an eligible child, the member's DROP account balance shall be divided equally among the member's eligible parents;

(5) if the member is not survived by a spouse described by Subdivision (1) of this subsection, an eligible child, or an eligible parent, the member's DROP account balance shall be distributed in accordance with the member's beneficiary designation filed with the board or, if the member has failed to file a valid beneficiary designation, to the member's estate; and

(6) if a member's spouse described by Subdivision (1) of this subsection was not married to the member on the date the member's DROP election became effective, the spouse shall receive a reduced benefit equal to the benefit otherwise payable to the surviving spouse under this subsection, multiplied by the percentage of the period between the member's DROP election and the date the member left active service during which the spouse and the member were married, and the amount by which the spouse's benefit is reduced shall be divided among any other eligible survivors as if the member did not have an eligible spouse.

(m) An eligible beneficiary's share of a deceased member's DROP account shall be distributed as soon as administratively practicable after the member's death in the form of a single lump-sum payment. All distributions to beneficiaries under this subsection must be made in a manner and at a time that comply with Section 401(a)(9) of the code.

(n) Except as otherwise provided by this subsection, a member who participates in the DROP is ineligible for disability benefits described by Section 6 of this article, and the member's survivors are ineligible to receive enhanced death benefits described by Section 7(c) of this article. A DROP participant who is determined under Section 6(c) of this article to be incapable of performing any substantial gainful employment because of an on-duty disability may retroactively revoke the member's DROP election if the revocation occurs before the member receives a distribution from the member's DROP account or retirement benefits. If a DROP participant dies in the course of the performance of the member's duty or dies as a result of an on-duty disability described by Section 6(c) of this article, the DROP participant's eligible survivors under Section 7 of this article and the member's eligible DROP beneficiaries under Subsection (l) of this section may, by unanimous agreement, retroactively revoke the member's DROP election if the revocation occurs before receipt of a distribution from the member's DROP account, service pension benefits under Section 4 of this article, or death benefits under Section 7 of this article. For purposes of this subsection, an on-duty disability must have occurred after the effective date of a member's election to participate in the DROP. If a DROP election revocation is made as prescribed by this subsection, the member's DROP account is not distributed, and the member or the member's

beneficiary, as applicable, is entitled to benefits under this article as if a DROP election had not been made.

(o) A retired member who previously participated in the DROP and who returns to active service is subject to the terms of this section in effect at the time of the member's return to active service.

(p) After August 31, 2000, the board may set a date after which additional members will not be allowed to elect to participate in the DROP. A member whose election to participate in the DROP becomes effective before a deadline established by the board is entitled to continue participating in the DROP.

Sec. 6. DISABILITY PENSION BENEFITS. (a) If the board determines that a member has suffered an on-duty disability, the member is entitled to an on-duty disability pension as provided by this section in lieu of any other benefit under this article.

(b) If the board determines that a member is not capable of performing the usual and customary duties of the member's classification or position because of the member's on-duty disability, the member is entitled to receive a monthly disability pension, beginning on the effective date of the member's termination of active service, in an amount equal to the greater of:

(1) 50 percent of the member's average monthly salary; or

(2) the service pension the member would have been entitled to receive under Section 4 of this article based on years of participation as of the effective date of the member's termination of active service.

(c) If the board determines that a member is not capable of performing any substantial gainful activity because of the member's on-duty disability, the member is entitled to receive a monthly disability pension, beginning on the effective date of the member's termination of active service, in an amount equal to the greater of:

(1) 75 percent of the member's average monthly salary; or

(2) the service pension the member would have been entitled to receive under Section 4 of this article based on years of participation on the effective date of the member's termination of active service.

(d) If a full-time active member with at least six years of service becomes disabled or dies from heart or lung disease or cancer, and the member successfully passed a physical examination before the claimed disability or death or on beginning employment as a firefighter, and the examination failed to reveal any evidence of the heart or lung disease or cancer, that condition will be presumed to have caused an on-duty disability for purposes of determining eligibility for disability benefits under this section, and the amount of the disability benefit constitutes the pension amount that shall be used to determine the death benefit payable with respect to that member. Another statutory presumption regarding the cause of illnesses or conditions does not affect any benefit payable under this article.

(e) If the board determines that a member is not capable of performing the usual and customary duties of the member's classification or position because of the member's off-duty disability, the member is entitled to an off-duty disability pension in lieu of any other benefit under this article. If the board makes that determination, the member is entitled to receive a monthly disability pension, beginning on the effective date of the member's termination of active service, in an amount equal to the greater of:

(1) 25 percent of the member's average monthly salary, plus 2-1/2 percent of the member's average monthly salary for each full year of participation in the fund, except that the total monthly disability pension under this subdivision may not exceed 50 percent of the member's average monthly salary; or

(2) the service pension the member would have been entitled to receive under Section 4 of this article based on years of participation on the effective date of the member's termination of active service.

(f) A member is not eligible for an on-duty or off-duty disability pension as provided by this section if the member's on-duty or off-duty disability is a direct and proximate result of a condition that existed on the date the member began membership in the fund. In that event, if the member is not eligible to receive a service pension under Section 4 of this article, the member may elect any deferred pension or refund of contributions for which the member is eligible under Section 8 of this article. A member has a preexisting condition under this subsection if the board determines that the member had:

(1) symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment during the five-year period before the effective date of the member's membership in the fund; or

(2) a condition for which medical advice or treatment was recommended by or received from a physician during the five-year period before the effective date of the member's membership in the fund.

(g) A person may not receive an on-duty or off-duty disability pension from the fund unless the person or the person's legal representative files with the board an application for disability benefits, in the form approved by the board, and certificates of the member's disability signed and sworn to by the member and the member's physician or by a physician selected by the board. The board may require other or additional evidence of disability before authorizing payment of disability pension benefits.

(h) The board shall make all determinations concerning benefits under this section in accordance with uniform principles consistently applied on the basis of medical or other evidence that the board determines is necessary or desirable.

Sec. 7. DEATH BENEFITS. (a) If a member dies who is eligible to receive a service pension under Section 4 of this article, a disability pension under Section 6 of this article, or a deferred pension under Section 8(a) of this article, or who is receiving those benefits, the member's eligible survivors are entitled to death benefits as follows:

(1) if the member is survived by both an eligible spouse and one or more eligible children, the eligible spouse is entitled to receive a monthly death benefit equal to one-half of the amount the member would have been entitled to receive, and the surviving eligible children are entitled to receive a monthly death benefit equal to the remainder of the amount the member would have been entitled to receive, divided equally among the eligible children;

(2) if the member is not survived by an eligible child, or if at any time after the death of the member an eligible child is not entitled to a benefit, the monthly death benefit to be paid the eligible spouse is equal to the full amount the member would have been entitled to receive;

(3) if the member is not survived by an eligible spouse, or if the



member's eligible spouse dies after being entitled to a death benefit under this section, the surviving eligible children are entitled to receive a monthly death benefit equal to the full monthly pension benefit the member would have been entitled to receive, divided equally among the member's eligible children then living; and

(4) if the member is not survived by an eligible spouse or an eligible child, a monthly death benefit equal to the full monthly pension benefit the member would have been entitled to receive shall be divided among the eligible parents of the deceased member.

(b) If a member's eligible spouse was married to the member for less than five years and was not married to the member at the time the member left active service, the eligible spouse shall be paid a reduced benefit equal to the benefit otherwise payable to the eligible spouse under this section, multiplied by the time the eligible spouse was married to the member, and divided by five years. The amount by which the eligible spouse's benefit is reduced shall be divided among any other eligible survivors as if the member did not have an eligible spouse.

(c) Notwithstanding any other provision of this section, if a member dies in the course of the performance of the member's duties as a firefighter or suffers an on-duty disability and dies as a result of the bodily injuries that caused the on-duty disability, death benefits based on the member's service shall be computed on the basis of a benefit equal to 100 percent of the deceased member's average monthly salary.

(d) If a member dies after benefit payments have begun or at a time the member could have terminated active service and elected to receive a service pension or deferred pension immediately, the death benefits payable under this section shall begin or continue effective as of the member's date of death. If a member who is not entitled to receive any monthly pension benefit under this article other than a deferred pension under Section 8(a) of this article dies before age 50, any monthly death benefits payable under this section shall begin on the date the deceased member would have reached age 50.

(e) In addition to the monthly death benefit provided under Subsection (a) of this section, if an active member or a member receiving a service pension under Section 4 of this article or a disability pension under Section 6 of this article dies on or after July 1, 1998, the member's eligible survivors are entitled to a one-time \$5,000 death benefit, payable as a lump sum as follows:

(1) if the member is survived by an eligible spouse, the eligible spouse is entitled to receive \$5,000;

(2) if the member is not survived by an eligible spouse, the member's eligible children are entitled to receive \$5,000, divided equally among those children; or

(3) if the member is not survived by an eligible spouse or an eligible child, the \$5,000 death benefit shall be divided equally among the parents of the deceased member.

(f) A member in active service who dies, for purposes of Subsection (a) of this section, shall be treated as having become disabled because of the member's cause of death on the date of the member's death.

(g) If a member in active service dies and does not leave an eligible



survivor, or the eligible survivors unanimously elect such a benefit in lieu of any other death benefit, a lump-sum benefit shall be paid in an amount equal to the refund, if any, to which the member would have been entitled under Section 8 of this article had the member terminated service on the date of the member's death. That lump-sum benefit shall be paid to the eligible survivors as provided by Subsection (a) of this section or, if there are not any eligible survivors, to the member's designated beneficiary. A member's beneficiary must be designated before the member's death on a form approved by the board. If more than one beneficiary is designated, the benefit shall be divided equally among the beneficiaries unless a different allocation is provided in the designation. If a member fails to properly designate a beneficiary, the benefit provided by this subsection shall be payable to the member's estate on application by the estate. Money payable under this subsection may not escheat to the state.

(h) Death benefits are not payable under this article, including benefits to any survivor, based on a member's service if the board determines that the member's death resulted from suicide or attempted suicide that occurred before the member completed two years of participation or that the member's death resulted from a disability arising out of an attempted suicide that occurred before the member completed two years of participation.

(i) A benefit payable under this section to a member's eligible child ceases when the child ceases to be an eligible child.

(j) An eligible spouse is entitled to receive or continue to receive survivor benefits on remarriage, except that a person who is an eligible spouse of more than one member is entitled to receive survivor benefits as the eligible spouse of only the member whose survivor benefits provide the highest benefit to that eligible spouse.

Sec. 8. DEFERRED PENSION AT AGE 50; REFUND OF CONTRIBUTIONS. (a) A member who terminates active service for any reason other than death with at least 10 years of participation, but less than 20 years of participation, is entitled to a monthly deferred pension benefit, beginning at age 50, in an amount equal to 1.7 percent of the member's average monthly salary multiplied by the amount of the member's years of participation.

(b) In lieu of the deferred pension benefit provided under Subsection (a) of this section, a member who terminates active service for any reason other than death with at least 10 years of participation, but less than 20 years of participation, may elect to receive a lump-sum refund of the member's contributions to the fund with interest computed at five percent, not compounded. A member's election to receive a refund of contributions must be made on a form approved by the board. The member's refund shall be paid as soon as administratively practicable after the member's election is received.

(c) A member who terminates employment for any reason other than death before the member has completed 10 years of participation is entitled only to a refund of the member's contributions without interest and is not entitled to a deferred pension benefit under this section or to any other benefit under this article. The member's refund shall be paid as soon as administratively practicable after the effective date of the member's termination of active service.

Sec. 9. PROOF OF CONTINUED DISABILITY. (a) The board may at

any time require a person receiving a disability pension or receiving death benefits as a disabled child under this article to undergo a medical examination by a physician appointed or selected by the board for that purpose.

(b) A person retired for disability under Section 6(c) of this article or a person receiving death benefits as a disabled child under Section 7 of this article must file an annual report of employment activities and earnings with the board. The board shall establish the form of the report and the time for filing the report.

(c) The result of the examination, the report by the physician, and the report of employment activities and earnings shall be considered by the board in determining whether the relief in the case shall be continued, increased if less than the maximum provided, decreased, or discontinued. The board may reduce or entirely discontinue all benefits to a person receiving benefits under this article who, after notice from the board, fails to appear for a required medical examination or fails to file the report of employment activities and earnings.

Sec. 10. NONSTATUTORY BENEFIT INCREASES. The benefits provided by this article may be increased if:

(1) the increase is first approved by an actuary selected by the board who, if an individual, is a Fellow of the Society of Actuaries, a Fellow of the Conference of Actuaries in Public Practice, or a member of the American Academy of Actuaries;

(2) a majority of the participating members of the fund vote for the increase by a secret ballot;

(3) the increase does not deprive a member, without the member's written consent, of a right to receive benefits that have already become fully vested and matured in a member; and

(4) the State Pension Review Board approves the increase, which approval may not be unreasonably withheld.

Sec. 11. GENERAL PROVISIONS FOR CALCULATION AND PAYMENT OF BENEFITS. (a) A member, eligible survivor, or beneficiary of a member is not entitled to receive payments from a fund under more than one section of this article in a particular capacity. However, a person may be entitled to benefits both as a member and as a survivor or beneficiary of another member.

(b) After a member terminates active service, the amounts of all benefits that the member or the member's beneficiaries may become entitled to receive from the fund shall be computed on the basis of the schedule of benefits in effect for the fund on the effective date of the termination of the member's active service, without adjustment for any subsequent increases of benefits unless those increases are expressly made applicable to previously retired members or their beneficiaries.

(c) The benefits, including survivor benefits, payable based on the service of a member who completed 30 or more years of participation, is or would have been at least 50 years old, or received or is receiving an on-duty disability pension under Section 6(c) of this article shall be increased by three percent in October of each year and, if the benefit had not previously been subject to that adjustment, in the month of the member's 50th birthday.

(d) In computing a member's years of participation, time served in the armed forces of the nation during war or national emergency is considered continuous service. Except for that military service, credit for prior service shall be given only if a member returns to active service as a firefighter before the fifth anniversary of a previous effective date of termination.

(e) A retired firefighter may be recalled to duty by the chief of the fire department in case of great conflagration and shall perform those duties the chief directs but does not have a claim against a municipality or the fund of that municipality for payment for the duty performed.

(f) A member, eligible survivor, or beneficiary who is entitled to receive a benefit payment under this article is entitled to receive the benefit beginning on the date the member ceases to carry out the member's regular duties as a firefighter, notwithstanding the fact that the member may remain on the payroll of the member's fire department or receive sick leave, vacation, or other pay after the effective date of termination of the member's regular duties as a firefighter. If there is a delay in beginning payment of benefits resulting from the requirements of Section 6(g) of this article for disability pensions, the member or beneficiary shall, when the disability pension is approved by the board, be paid the full amount of the disability pension that has accrued since the effective date of termination of the member's regular duties as a firefighter.

(g) A member may designate a trustee to receive the benefit payable to any eligible survivor or beneficiary other than the member's eligible spouse or a spouse eligible to receive a benefit under the DROP. Any such designation must be made on a form approved by the board.

(h) A benefit payable under this article to a minor may be made only to the guardian of the estate of the minor. If a benefit becomes payable to any other person under a legal disability, payment of that benefit may be made only to the conservator or the guardian of that person's estate appointed by a court of competent jurisdiction. A payment made in accordance with this section on behalf of a minor or other person under a legal disability fully discharges the fund's obligation to that person.

(i) Notwithstanding any other provision of this article, a person entitled to receive benefit payments from the fund may:

(1) make a one-time election to receive a smaller pension or survivor benefit than is otherwise provided under this article;

(2) make a one-time election not to receive any future annual increases in the pension or survivor benefits received by the person or the person's beneficiary; or

(3) make a one-time election not to receive a specific benefit enhancement.

(j) An election under Subsection (i) of this section must be made in writing and submitted to the board for approval. On the date the board grants approval of an election under Subsection (i) of this section, the election becomes irrevocable.

(k) A benefit under this article may not be integrated with benefits payable under the federal Social Security Act. In a municipality in which firefighters are eligible to enroll for or receive retirement benefits under the Social Security Act, benefits that may be available to a member under the Social Security Act

may not be taken into account in determining the amount of benefits a member may receive under this article.

(l) If the board determines that the amount in the fund is insufficient to pay in full any pension or disability benefits, all pension and disability benefits made after the date of the determination shall be reduced pro rata for the period the insufficiency exists.

(m) A benefit payable under this article because of the death of a member or eligible beneficiary may not be paid to a person convicted of causing that death but instead shall be paid as if the convicted person predeceased the deceased member or beneficiary. If no beneficiary is entitled to the benefit as a result, the benefit shall be paid to the decedent's estate. Except as otherwise permitted by this subsection with respect to suspension of benefits, the board is not required to withhold payment to a person convicted of causing the death of a member or eligible beneficiary until the board receives actual notice of the conviction of that person. The board may suspend payment of a benefit payable on the death of a member or an eligible beneficiary on the indictment of the person who would otherwise be entitled to the benefit, and the suspension remains in effect until the board determines that a final disposition of the charges relating to the cause of death has occurred. If a benefit payment is suspended under this subsection and the person is not convicted, the benefit again becomes payable with interest computed at the rate earned by the fund during the time the benefit payment was suspended. For purposes of this subsection, a person has been convicted of causing the death of a member or eligible beneficiary if:

(1) the person has pleaded guilty or nolo contendere to, or the person has been found guilty by a court of, an offense at the trial of which it is established that the person's intentional or knowing act or omission caused the death of the member or eligible beneficiary, regardless of whether sentence is imposed or probated; and

(2) an appeal of the conviction is not pending, and the time provided for appeal has expired.

Sec. 12. APPEALS OF BENEFIT DECISIONS. (a) A member who is eligible for retirement for length of service or disability or who has a claim for temporary disability, or any of the member's beneficiaries, who is aggrieved by a decision or order of the board, whether on the basis of rejection of a claim or of the amount allowed, may appeal from the decision or order of the board to a district court in the county in which the board is located by giving written notice of the intention to appeal. The notice must contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons the party feels aggrieved. The notice must be served personally on the chair, secretary, or treasurer of the board not later than the 20th day after the date of the order or decision. After service of the notice, the party appealing shall file with the district court a copy of the notice of intention to appeal, together with the affidavit of the party making service showing how, when, and on whom the notice was served.

(b) Not later than the 30th day after the date of service of the notice of intention to appeal on the board, the secretary or treasurer of the board shall file with the district court a transcript of all papers and proceedings in the case

before the board. When the copy of the notice of intention to appeal and the transcript have been filed with the court, the appeal is considered perfected, and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the board of the date fixed for the hearing.

(c) At any time before issuing a decision on the appeal, the court may require further or additional proof or information, either documentary or under oath. On issuing a decision on the appeal, the court shall give to each party to the appeal a copy of the decision and shall direct the board as to the disposition of the case. The final decision or order of the district court is appealable in the same manner as are civil cases generally.

Sec. 13. MEMBERSHIP AND CONTRIBUTIONS. (a) Each person who becomes a firefighter before age 36 becomes a member of the fund if the person's application for membership is accepted by the board. In accepting employment as a firefighter, and on becoming a member of the fund, a firefighter agrees to make contributions required under this article of members of the fund who are in active service and is entitled to participate in the benefits of membership in the fund as provided by this article.

(b) The board shall establish minimum physical requirements for membership in the fund that may not exceed the physical requirements established by the Fire Fighters' and Police Officers' Civil Service Commission under Section 143.022, Local Government Code, and that must be the same for all applicants. At the time that physical examinations are administered on behalf of the municipality, each applicant must be provided written notice that a copy of the results of the examination will be forwarded to the board to determine eligibility for membership in the fund and the existence of any preexisting condition. Not later than the 10th day after the date of a physical examination performed on an applicant for a beginning position in the fire department as required by Section 143.022, Local Government Code, the municipality shall provide to the board a copy of all documents resulting from the physical examination. The board may require additional physical examinations if necessary to determine whether the applicant meets the minimum physical requirements for membership in the fund. The fund shall pay the cost of any additional physical examination the board requires. Within a reasonable time after receiving the examination reports of an applicant, the board shall, on the basis of one or more physical examinations, determine whether the applicant meets the minimum physical requirements for membership in the fund. The board shall notify the applicant and the chief of the fire department not later than the 10th calendar day after the date of the board's decision on the applicant's satisfaction of the minimum physical requirements. If the board rejects the applicant, the applicant may request further examination by a board of three physicians appointed by the board at the expense of the applicant. If a physician board finds that an applicant meets the minimum physical requirements for membership in the fund, the board shall accept the applicant for membership. If accepted by the board, the applicant's membership in the fund is effective on being appointed to the position of probationary firefighter.

(c) Each member in active service shall make contributions to the fund in

an amount equal to 7.7 percent of the member's salary at the time of the contribution. The governing body of the municipality shall deduct the contributions from the member's salary and shall forward the contributions to the fund as soon as practicable.

(d) The municipality shall make monthly contributions to the fund in an amount equal to the product of the contribution rate certified by the board and the aggregate salaries paid to members of the fund during the month for which the contribution is made. The board shall certify the municipality's contribution rate for each year or portion of a year based on the results of actuarial valuations made at least every three years. The municipality's contribution rate shall be composed of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a period of 40 years beginning on January 1, 1983, computed on the basis of an acceptable actuarial reserve funding method approved by the board. Notwithstanding any other provision of this article, the contributions by the municipality, when added to any contributions with respect to a qualified governmental excess benefit arrangement maintained in accordance with Section 14(c) of this article, may not be less than twice the amount paid into the fund by contributions of the members.

(e) Notwithstanding Subsection (d) of this section, if one or more members of the fund are appointed to positions in the fire department, and those appointments are not made based on the results of a competitive examination, the minimum contribution rate required of the municipality for any year is increased by an amount equal to the difference, if any, between:

(1) the municipality's actuarially determined contribution rate computed in accordance with Subsection (d) of this section, without regard to the minimum contribution rate specified, computed based on the actual monthly salary or compensation for all members; and

(2) the municipality's actuarially determined contribution rate computed in accordance with Subsection (d) of this section, without regard to the minimum contribution rate specified, but for each member so appointed, computed based, for all months of participation after the date of appointment, on the monthly salary or compensation being paid to the person who holds the position the member held immediately before the member was appointed to the new position.

(f) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section become a part of the fund of the municipality in which the contributing member serves at the time of the contribution. In accordance with Section 14(c) of this article, contributions under any qualified governmental excess benefit arrangement do not become part of the trust fund assets of the fund.

(g) On action of its governing body, a municipality may pick up members' contributions prescribed under Subsection (c) of this section for purposes of Section 414(h)(2) of the code. A member's salary is affected by this subsection only as this subsection relates to the computation of pension contributions and gross pay for federal tax purposes. The computation of pension benefits, severance pay, and other benefits is not affected.

(h) If the municipality's actuarially determined contribution rate computed



in accordance with Subsection (d) of this section would exceed the minimum contribution rate specified, the benefits payable under Sections 4(d), 4(e), and 7(e) of this article may not be paid, an eligible spouse whose benefit is reduced under Section 7(b) of this article may not be paid a benefit if there are no other eligible survivors, and the municipality's actuarially determined contribution rate shall be recomputed on the basis of the assumption that those benefits are suspended indefinitely. If the recomputation results in an actuarially determined contribution rate less than the minimum contribution rate specified, a portion of the benefits shall be paid, as determined by the board, to the extent that, with the payments determined, the two contribution rates are equal. This subsection expires July 31, 1999, unless on that date the municipality's actuarially determined contribution rate computed in accordance with Subsection (d) of this section would exceed the minimum contribution rate specified.

Sec. 14. INTERNAL REVENUE CODE LIMITATIONS. (a) Notwithstanding any other provision of this article, a member may not accrue a benefit or allowance under this article in excess of an amount that, when added to all other pension benefits received under plans of the municipality that are qualified under Section 401 of the code, results in an annual benefit in excess of the applicable limits provided by Section 415 of the code. That accrual limitation applies only as long as satisfaction of Section 415 of the code is necessary to maintain the tax-qualified status of the fund under Section 401 of the code. Any benefit accruals limited under this subsection must be certified by a qualified actuary selected by the board.

(b) Notwithstanding any other provision of this article, the fund shall be administered in a manner that complies with the code, United States Treasury Department regulations, and Internal Revenue Service rulings and notices applicable to public retirement systems. The board shall adopt rules and amend or repeal conflicting rules to ensure compliance with this subsection.

(c) The board may establish and maintain a qualified governmental excess benefit arrangement, in accordance with Section 415(m) of the code, solely for the purpose of providing to members the amount of each member's pension benefit otherwise payable under the fund that exceeds the limitations on benefits imposed by Section 415 of the code. The board may maintain a separate trust solely for providing benefits under the arrangement or may maintain the arrangement on an unfunded basis through municipal contributions as benefits become payable. Benefits provided by that arrangement may not be paid from the trust fund assets that are available for payment of any other benefit under this article. Benefits under any qualified governmental excess benefit arrangement shall be paid or funded entirely through municipal contributions in an amount approved by the board. An election may not be provided at any time to a member, directly or indirectly, to defer compensation under the arrangement. The operation and administration of any qualified governmental excess benefit arrangement is the responsibility of the board, which has the same powers concerning the arrangement as are provided to the board under this article concerning the fund.

Sec. 15. EXEMPTION OF BENEFITS FROM JUDICIAL PROCESS. The fund may not, either before or after its order of disbursement by the board to a member, a spouse eligible to receive a benefit under the DROP, an eligible



spouse, the guardian of an eligible child, or an eligible parent, be held, seized, subjected to, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process issued out of, or by, any court for the payment or satisfaction of any debt, damage, claim, demand, or judgment against a member, a spouse eligible to receive a benefit under the DROP, an eligible spouse, the guardian of an eligible child, or an eligible parent. The fund or any claim against the fund may not be directly or indirectly assigned or transferred, and any attempt to assign or transfer the fund or a claim is void. The fund shall be sacredly held, kept, and disbursed only for the purposes provided by this article.

Sec. 16. SERVICE CREDIT FOR MEMBERS PREVIOUSLY MEMBERS OF SIMILAR FUNDS. (a) A person who becomes a firefighter in a municipality to which this article applies may receive service credit for prior employment with the fully paid fire department of another municipality in this state with a similar fund benefiting only firefighters of that municipality to which the firefighter contributed if:

(1) the firefighter is under 36 years of age at the time of applying to the fund;

(2) the firefighter passes a physical examination taken at the firefighter's expense and performed by a physician selected by the board;

(3) the firefighter pays into the fund an amount equal to the total contribution the firefighter would have made had the firefighter been employed by the municipality, at the municipality's pay scale, instead of the municipality by which the firefighter was previously employed, plus six percent interest, compounded annually;

(4) the firefighter applies for that credit not later than the 60th day after the date on which membership begins; and

(5) the firefighter has moved directly into employment at the fire department from the fire department for which the prior service credit is sought, without any intervening employment or extended interruption.

(b) A member may receive credit for prior service in more than one fire department under Subsection (a) of this section only if there have not been interruptions in employment and each preceding service meets the other requirements of Subsection (a) of this section.

(c) The municipality to which the member has transferred shall pay an amount equal to the amount it would have paid had the member been employed by that municipality instead of the municipality by which the firefighter was previously employed, based on the municipality's pay scale, plus six percent interest, compounded annually. Both the municipality's contribution and the member's contribution must be paid promptly on approval of the member's application for service credit.

(d) A firefighter may not participate under this section in the fund of the municipality to which the firefighter has transferred until the firefighter has fully complied with this article and the municipality has complied with Subsection (c) of this section.

(e) A firefighter eligible for prior service credit may participate in the fund, subject to the other requirements of this article, without obtaining that credit, and if the firefighter does not comply with the provisions and time limits of this section, the firefighter is ineligible for the credit.

Sec. 17. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS OR BENEFICIARIES. (a) Information contained in records that are in the custody of a fund established under this article concerning an individual member, retiree, or beneficiary is confidential under Chapter 552, Government Code, and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual;

(B) the individual's attorney, guardian, executor, administrator, or conservator, or other person who the board determines is acting in the interest of the individual or the individual's estate;

(C) a spouse or former spouse of the individual if the board determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the fund; or

(D) a person with written authorization from the individual to receive the information; or

(2) the information is disclosed under an authorization of the board that specifies the reason for the disclosure.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member, or beneficiary of the fund.

(c) A determination and disclosure under Subsection (a)(2) of this section may be made without notice to the individual member, retiree, or beneficiary.

SECTION 2. (a) Article 6243e.2(1), Revised Statutes, as added by this Act, restates and amends Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), as that law existed before repeal by this Act, and continues in effect each firemen's relief and retirement fund established under that law.

(b) Notwithstanding Article 6243e.2(1), Revised Statutes, as added by this Act, a member of the board of trustees of a firefighters' relief and retirement fund in a municipality to which that article applies serving on October 31, 1997, continues to serve until the expiration of the term for which the member was elected or appointed under Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), as that law existed before repeal by this Act, and that law is continued in effect for that purpose.

SECTION 3. Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is repealed.

SECTION 4. This Act takes effect November 1, 1997.

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.

### **HR 1026 - ADOPTED** **(by Serna)**

The speaker laid before the house the following privileged resolution:

### **HR 1026**

BE IT RESOLVED by the House of Representatives of the State of Texas, 75th Legislature, Regular Session, 1997, 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 **SB 758** 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 a new SECTION 1 of the bill to read as follows:

SECTION 1. Chapter 28, Penal Code, is amended by adding Section 28.08 to read as follows:

Sec. 28.08. GRAFFITI. (a) A person commits an offense if with aerosol paint or an indelible marker and without the effective consent of the owner the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsection (d), an offense under this section is:

(1) a Class B misdemeanor if the amount of pecuniary loss is less than \$500;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500;

(3) a state jail felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000;

(4) a felony of the third degree if the amount of pecuniary loss is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

(c) When more than one item of tangible property, belonging to one or more owners, is marked in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the marking of the property may be aggregated in determining the grade of the offense.

(d) An offense under this section is a state jail felony if the marking is made on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is less than \$20,000.

(e) In this section:

(1) "Aerosol paint" means an aerosolized paint product.

(2) "Indelible marker" means a device that makes a mark with a paint or ink product that is specifically formulated to be more difficult to erase, wash out, or remove than ordinary paint or ink products.

Explanation: This change is necessary to more precisely define the conduct that the bill is intended to prohibit.

2. House Rule 13, Section 9(a)(2), is suspended to permit the committee to add a new SECTION 2 to the bill to read as follows:

SECTION 2. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0171 to read as follows:

Art. 102.0171. COURT COSTS: GRAFFITI ERADICATION FUNDS.  
(a) A defendant convicted of an offense under Section 28.08, Penal Code, in a county court, county court at law, or district court shall pay a \$5 graffiti eradication fee as a cost of court.

- (b) In this article, a person is considered convicted if:
- (1) a sentence is imposed on the person;
  - (2) the person receives community supervision, including deferred adjudication; or
  - (3) the court defers final disposition of the person's case.
- (c) The clerks of the respective courts shall collect the costs and pay them to the county treasurer or to any other official who discharges the duties commonly delegated to the county treasurer for deposit in a fund to be known as the county graffiti eradication fund. A fund designated by this subsection may be used only to:
- (1) repair damage caused by the commission of offenses under Section 28.08, Penal Code;
  - (2) provide educational and intervention programs designed to prevent individuals from committing offenses under Section 28.08, Penal Code; and
  - (3) provide to the public rewards for identifying and aiding in the apprehension and prosecution of offenders who commit offenses under Section 28.08, Penal Code.
- (d) The county graffiti eradication fund shall be administered by or under the direction of the commissioners court.

Explanation: This addition is necessary to omit text referring to a cost on conviction of a Class C graffiti misdemeanor, which no longer exists as a possible punishment for a graffiti offense.

**HR 1026** was adopted without objection.

#### **SB 758 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Serna submitted the conference committee report on **SB 758**.

Representative Serna moved to adopt the conference committee report on **SB 758**.

The motion prevailed. (Rhodes recorded voting no)

#### **SB 1310 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Janek, the house granted the request of the senate for the appointment of a conference committee on **SB 1310**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1310**: Janek, chair, Flores, Isett, Moffat, and Pitts.

#### **HR 1024 - ADOPTED (by Dutton)**

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 1024**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

**HR 1024**, Honoring Loreece Pierreauguste on the occasion of her retirement.

**HR 1024** was adopted without objection.

**HR 1025 - ADOPTED**  
**(by Dutton)**

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 1025**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

**HR 1025**, Honoring Glenn Portia McGowan on the occasion of her retirement.

**HR 1025** was adopted without objection.

**HCR 281 - ADOPTED**  
**(by Goolsby)**

Representative Goolsby moved to suspend all necessary rules to take up and consider at this time **HCR 281**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

**HCR 281**, Directing the General Services Commission to request that the Texas Jewelers Association conduct a design contest.

**HCR 281** was adopted without objection.

**SCR 101 - ADOPTED**  
**(Van de Putte - House Sponsor)**

Representative Van de Putte moved to suspend all necessary rules to take up and consider at this time **SCR 101**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

**SCR 101**, Requesting the governor to return **SB 1568** to the Senate for further consideration.

**SCR 101** was adopted without objection.

**HR 1032 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1032**, suspending the limitations on the conferees for **SB 99**.

(Stiles in the chair)

**POSTPONED BUSINESS**

The following bill was laid before the house as postponed business:

**CSSB 1514 ON SECOND READING**  
**(Flores - House Sponsor)**

**CSSB 1514**, A bill to be entitled An Act relating to coordinating colonia initiatives.

**CSSB 1514** was read second time on May 20 and was postponed until 10 a.m. today.

**CSSB 1514** was passed to third reading.

**MAJOR STATE CALENDAR  
SENATE BILLS  
THIRD READING**

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

**SB 353 ON THIRD READING  
(Hightower - House Sponsor)**

**SB 353**, A bill to be entitled An Act relating to the continuation and functions of the adjutant general's department.

**Amendment No. 1**

Representative Greenberg offered the following amendment to **SB 353**:

Amend **SB 353** on third reading by adding the following appropriately numbered sections to the bill and renumbering subsequent sections of the bill appropriately:

SECTION \_\_\_\_\_. Section 431.030, Government Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) If the adjutant general receives notice from the asset management division of the General Land Office as provided by Section 31.156, Natural Resources Code, the adjutant general shall produce a report evaluating the military use of any real property under the management and control of the department or the Texas National Guard Armory Board. The adjutant general shall evaluate the use of the property as required by this subsection according to military criteria for use of real property.

(f) Not later than August 1 of the year in which the commissioner of the General Land Office submits a report as provided by Section 31.157, Natural Resources Code, the adjutant general shall submit a preliminary report of the report required under Subsection (e) to the commissioner of the General Land Office identifying the real property used for military purposes. Not later than September 1 of the year in which the commissioner of the General Land Office submits a report as provided by Section 31.157, Natural Resources Code, the adjutant general shall submit the report as required by Subsection (e) to:

- (1) the governor;
- (2) the presiding officer of each house of the legislature;
- (3) the Legislative Budget Board; and
- (4) the governor's budget office.

SECTION \_\_\_\_\_. Section 31.156, Natural Resources Code, is amended by adding Subsection (d) to read as follows:

(d) In any year that the division will evaluate property under the management and control of the adjutant general's department or the Texas National Guard Armory Board, the division shall notify the adjutant general's department before the division begins the evaluation.

SECTION \_\_\_\_\_. Section 31.157, Natural Resources Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) If under the adjutant general's report submitted as provided by Section 431.030, Government Code, the adjutant general determines that real property under the management and control of the adjutant general's department or the Texas National Guard Armory Board is used for military purposes, the commissioner may not recommend a real estate transaction involving that real property in the final report submitted as provided by Subsection (e).

(e) The final report shall be submitted to the governor, the presiding officers of both houses of the legislature, the Legislative Budget Board, and the governor's budget office not later than September 1 of each year. If the report contains an evaluation of a sale of property, it must also contain an evaluation of the lease potential of the property.

Amendment No. 1 was adopted without objection.

**SB 353**, as amended, was passed. (Burnam recorded voting present, not voting)

### **SB 35 ON THIRD READING** **(Place and Brimer - House Sponsors)**

**SB 35**, A bill to be entitled An Act relating to operating a vehicle while intoxicated or under the influence of alcohol by a minor and other actions of a minor concerning the acquisition, possession, and use of alcohol; providing penalties.

Representative Place moved to postpone consideration of **SB 35** until 3:30 p.m. today.

The motion prevailed without objection.

### **SB 370 ON THIRD READING** **(Bosse, Gray, and Alexander - House Sponsors)**

**SB 370**, A bill to be entitled An Act relating to the continuation and functions of the Texas Department of Transportation, the abolition of the Texas Turnpike Authority, and the creation of regional tollway authorities; authorizing the issuance of bonds and the imposition of taxes; granting the power of eminent domain; and providing civil penalties.

#### **Amendment No. 1**

Representative Gray offered the following amendment to **SB 370**:

Amend **SB 370** on 3rd reading by amending the Gray second reading Floor Amendment No. 50 to **SB 370** as follows:

At the end of the Subsection (b) add the following:

"Notwithstanding any other law, the money deposited in the account may be used only for the purposes of the department. **HB 2948**, 75th Legislature, Regular Session, 1997, and Section 403.095, Government Code, do not apply to money deposited in the account."

Amendment No. 1 was adopted without objection.

#### **Amendment No. 2**

Representative Yarbrough offered the following amendment to **SB 370**:



Amend **SB 370**, on third reading, in Article 1 of the bill, by adding a new section to Article 1, to read as follows, and renumbering subsequent sections of Article 1 accordingly:

SECTION 1.\_\_\_\_. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.610 to read as follows:

Sec. 201.610. NOTICE OF REPORT OR STUDY TO LEGISLATORS. (a) Not later than the 10th day after the date on which the department releases a report or the results of a study, the department shall provide notice of the study or report to each member of the legislature who represents a county that is covered by the study or report or that may be effected by the study or report.

(b) On request of a member of the legislature, the department shall provide the member with a copy of the study or report.

Amendment No. 2 was adopted without objection.

### **Amendment No. 3**

Representative Heflin offered the following amendment to **SB 370**:

Amend **SB 370**, on third reading, in Section 1.\_\_\_\_ of the bill, proposed Section 502.2703, Transportation Code, by striking proposed Subsection (e) and substituting the following:

(e) Funds distributed to a public entity under Subsection (d)(1) shall be deposited to the credit of the venue project fund, if the public entity has created a venue project fund under Section 334.042 or 335.072, Local Government Code. If the public entity has not created a venue project fund, funds distributed to a public entity under Subsection (d)(1) must first be used to retire any public debt incurred by the public entity in the construction or acquisition of the facility in which the professional sports team plays its home games. After that debt is retired, funds distributed to the public entity may be spent only for maintenance or improvement of the facility.

Amendment No. 3 was adopted without objection.

### **Amendment No. 4**

Representatives Cuellar, Raymond, and King offered the following amendment to **SB 370**:

Amend **SB 370** by adding a new Section \_\_\_\_ and renumbering subsequent Sections thereof.

SECTION \_\_\_\_ . REST AREA FACILITIES. The Department shall conduct a feasibility study to determine the need for construction of additional public rest areas with restrooms along that section of Interstate 35 between San Antonio and Laredo and report its findings to the legislature no later than January 1, 1999.

Amendment No. 4 was adopted without objection.

### **Amendment No. 5**

Representative Clark offered the following amendment to **SB 370**:

Amend the Clark amendment to **SB 370** as follows:

Add the following Subsection (l) to Sec. 391.0315:

(1) This section takes effect on the first day of the calendar month following the date the Texas Transportation Commission determines that the implementation of this section will neither result in the loss of highway-related funds from the federal government nor violate the first amendment of the U.S. Constitution. The commission shall endeavor to make a determination under this subsection as soon as practical after this section becomes law. In making a determination under this subsection, the commission may seek the opinion of an officer or employee of the federal government, the attorney general of this state, or any other appropriate person.

Amendment No. 5 was adopted without objection.

#### **Amendment No. 6**

Representative McClendon offered the following amendment to **SB 370**:

Amend **SB 370** on 3rd reading by amending the McClendon second reading Floor Amendment No. 53 to **SB 370** as follows:

(1) In lines 5 to 12, strike subsection (a) and substitute the following new subsection (a):

"(a) Notwithstanding any other law including Government Code, Chapter 552, the Texas Department of Transportation is prohibited from providing motor vehicle certificate of title information or motor vehicle registration personal information that consists of the name, address, or date of birth of an individual unless the person receiving the information agrees in writing with the department that the person will not disseminate or publish the information on the internet or similar computer cyberspace network or bulletin board, or permit another to disseminate or publish the information in that manner.

(2) Add the following new Subsections (b) and (c) and re-letter existing Subsection (b) as Subsection (d):

"(b) A person having access to or in possession of the information provided under this section shall not disseminate or publish this information on the internet or similar computer cyberspace network or bulletin board. A person commits an offense if the person disseminates or distributes information in violation of this section.

(c) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than six months; or
- (3) both the fine and confinement."

Amendment No. 6 was adopted without objection.

#### **Amendment No. 7**

Representatives Dukes and Maxey offered the following amendment to **SB 370**:

Amend **SB 370**, on third reading, by adding a new section to Article 7 of the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill appropriately:

SECTION 7.\_\_\_\_\_. (a) If the Texas Department of Transportation is authorized to construct an intermodal toll road inclusive of a freight rail line that is to be part of the state highway system, and if the toll road is constructed as a result of a trade agreement between the United States and foreign countries to relieve congestion on U.S. Interstate Highway 35, no portion of the toll road may be constructed within one mile of an existing public elementary or secondary school in this state that is within 250 miles of an international border crossing.

(b) Subsection (a) of this section takes effect on the first day of the calendar month following the date on which the Texas Transportation Commission determines that implementation of Subsection (a) will not result in the loss of highway-related funds from the federal government. The commission shall endeavor to make such determinations as soon as practicable.

Amendment No. 7 was adopted without objection.

**SB 370**, as amended, was passed. (Burnam recorded voting no)

**MAJOR STATE CALENDAR  
SENATE BILLS  
SECOND READING**

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

**SB 360 ON SECOND READING  
(Stiles - House Sponsor)**

**SB 360**, A bill to be entitled An Act relating to the review and continuation of certain state agencies and laws subject to the Texas Sunset Act.

Representative Hightower moved to postpone consideration of **SB 360** until 10 a.m. Thursday, May 22.

The motion prevailed without objection.

**CSSB 352 ON SECOND READING  
(Hightower - House Sponsor)**

**CSSB 352**, A bill to be entitled An Act relating to the continuation, functions, and name of the Texas National Guard Armory Board.

**Amendment No. 1**

Representative Hightower offered the following amendment to **CSSB 352**:

Amend **CSSB 352** in SECTION 2 of the bill in amended Section 435.025(f), Government Code, by striking "(f) A [(d) Except as provided by Subsection (e)(1), a]" (page 17, line 12, House committee printing) and substituting "(f) [(d)] Except as provided by Subsection (g)(1) [(e)(1)], a".

Amendment No. 1 was adopted without objection.

**Amendment No. 2**

On behalf of Representative Madden, Representative Hightower offered the following amendment to **CSSB 352**:

Amend **CSSB 352** as follows:

On page 7, lines 7 and 8, put a period after the word "year," and delete the remaining text which reads, "unless the absence is excused by majority vote of the commission."

Amendment No. 2 was adopted without objection.

**CSSB 352**, as amended, was passed to third reading.

(Hightower in the chair)

### **CSSB 359 ON SECOND READING**

**(Gray, Greenberg, Goodman, and Naishtat - House Sponsors)**

**CSSB 359**, A bill to be entitled An Act relating to the continuation and operation of the Department of Protective and Regulatory Services, the provision of services to children and families, and suits affecting the parent-child relationship; providing penalties.

#### **Amendment No. 1**

Representative Wohlgemuth offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by adding the following appropriately numbered SECTIONS to read as follows and renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 40.001, Human Resources Code, is amended by adding Subdivision (5) to read as follows:

(5) "Family preservation" includes the protection of parents and their children from needless family disruption because of unfounded accusations of child abuse or neglect. It does not include the provision of state social services for the rehabilitation of parents convicted of abusing or neglecting their children.

SECTION \_\_\_\_\_. Section 40.029, Human Resources Code, is amended to read as follows:

Sec. 40.029. RULES. (a) The board shall propose and adopt rules to:

- (1) ensure the department's compliance with state and federal law; and
- (2) facilitate the implementation of departmental programs.

(b) The board shall propose and adopt rules that further the policy of family preservation.

SECTION \_\_\_\_\_. Section 40.051, Human Resources Code, is amended to read as follows:

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department shall develop a departmental strategic plan based on the goals and priorities stated in the commission's coordinated strategic plan for health and human services. The department shall also develop its plan based on furthering the policy of family preservation.

Amendment No. 1 was adopted without objection. (Farrar recorded voting no)

#### **Amendment No. 2**

Representative Wohlgemuth offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) In SECTION 14 of the bill, in amended Section 40.061(c), Human Resources Code, strike "investigation or" (page 15, line 22, House Committee Printing) and substitute "investigation".

(2) In SECTION 14 of the bill, in amended Section 40.061(c), Human Resources Code, strike lines 23-26 (page 15, lines 23-26, House Committee Printing) and substitute the following:

"child abuse is an element, or in the preparation of the suit or prosecution:

(1) commits or attempts to commit perjury;

(2) fabricates or attempts to fabricate evidence;

(3) knowingly conceals or fails to disclose information that may lead to a finding that a person alleged to have committed child abuse did not commit child abuse; or

(4) violates state or federal law in the investigation or prosecution of the suit."

Amendment No. 2 was adopted without objection. (Farrar recorded voting no)

### **Amendment No. 3**

Representative Greenberg offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by adding the following appropriately numbered SECTION to read as follows and renumbering existing SECTIONS accordingly:

SECTION \_\_. Section 42.042, Human Resources Code, is amended by adding Subsection (p) to read as follows:

(p) The department by rule shall prescribe minimum training standards for an employee of a regulated child-care facility, including the time required for completing the training. The department may not require an employee to repeat required training if the employee has completed the training within the time prescribed by department rule. The department's local offices shall make available at the local office locations a copy of the rules regarding minimum training standards, information enabling the owner or operator of a regulated facility to apply for training funds from other agencies to lower facility costs, and any other materials the department may develop to assist the owner or operator or other entity in providing the training.

Amendment No. 3 was adopted without objection.

### **Amendment No. 4**

Representative Hilderbran offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) In SECTION 24 of the bill, in proposed Section 42.0461(d), Human Resources Code (House Committee Report page 25, lines 16 and 17), strike Subdivision (1) and renumber Subdivisions (2)-(4) as Subdivisions (1)-(3), respectively.

(2) In SECTION 24 of the bill, in proposed Section 42.0461(e), Human Resources Code (House Committee Report page 26, lines 4 and 5), strike Subdivision (1) and renumber Subdivisions (2)-(4) as Subdivisions (1)-(3), respectively.

Amendment No. 4 was adopted without objection.

**MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

**CSSB 359 - (consideration continued)****Amendment No. 5**

Representatives J. Jones and Hodge offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) On page 31, line 22, delete the word "shall" and insert the word "may".

Amendment No. 5 was adopted without objection.

**Amendment No. 6**

Representatives J. Jones and Hodge offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) On page 38, line 18, by inserting subsection (d) as follows and renumbering the following sections accordingly:

(d) Monetary penalties shall not be assessed for violation of clerical errors or standards which do not clearly apprise the facility or family home of the required standard.

Amendment No. 6 was adopted without objection.

**Amendment No. 7**

Representatives J. Jones and Hodge offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) On page 38, line 3, after the word "chapter" before the "." insert the following: "Non-monetary, administrative penalties or remedies including but not limited to corrective action plans, probation, and evaluation periods shall be imposed when appropriate before monetary penalties."

Amendment No. 7 was adopted without objection.

**Amendment No. 8**

Representative Swinford offered the following amendment to **CSSB 359**:

Amend **CSSB 359**, in SECTION 36 of the bill, by striking proposed Section 42.078(b), Human Resources Code (house committee report, page 38, lines 4-6), and substituting the following:

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation may be in an amount not to exceed the following limits, based on the number of children receiving care at the facility or family home at the time of the violation:

<u>Number of children</u>	<u>Maximum amount of penalty</u>
<u>20 or less</u>	<u>\$20</u>
<u>21-40</u>	<u>\$30</u>
<u>41-60</u>	<u>\$40</u>
<u>61-80</u>	<u>\$50</u>
<u>81-100</u>	<u>\$75</u>
<u>More than 100</u>	<u>\$100</u>

Amendment No. 8 was adopted without objection.

#### **Amendment No. 9**

Representative Wohlgemuth offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by inserting the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 161, Family Code, is amended by adding Section 161.2011 to read as follows:

Sec. 161.2011. STAY OF PROCEEDING; ACCESS TO CHILD. (a) A suit to terminate the parent-child relationship shall be stayed during the time that any criminal charges filed against a parent whose rights are subject to termination in the suit are pending if the criminal charges are directly related to the grounds for which termination of the parent's rights are sought.

(b) The court in which a suit to terminate the parent-child relationship is pending may render an order denying a parent access to a child if the parent is indicted for criminal activity that constitutes a ground for terminating the parent-child relationship under Section 161.001. The denial of access under this section shall continue until the date the criminal charges for which the parent was indicted are resolved and the court renders an order providing for access to the child by the parent.

Amendment No. 9 was adopted without objection. (Danburg, Farrar, Keel, and Maxey recorded voting no)

#### **Amendment No. 10**

Representative Wohlgemuth offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) Add the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. Sections 261.101(a) and (b), Family Code, are amended to read as follows:

(a) A person having cause to believe that a child's physical or mental health or welfare has been ~~[or may be]~~ adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(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.

(2) Add the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. The change in law made by this Act to Section 261.101, Family Code, applies only to a report of child abuse or neglect made on or after the effective date of this Act. A report made before that date is governed by the law in effect on the date the report was made, and the former law is continued in effect for that purpose.

(3) Renumber the sections of the bill accordingly.

Amendment No. 10 was adopted without objection. (Danburg, Farrar, and Maxey recorded voting no)

### **Amendment No. 11**

Representative Wohlgemuth offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by adding the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION \_\_\_\_\_. Sections 261.101(b) and (c), Family Code, are amended to read as follows:

(b) If a professional has cause to believe that a child has been or may be abused or neglected or that a child is a victim of an offense under Section 21.11, Penal Code, 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 or is a victim of an offense under Section 21.11, Penal Code. 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, and an employee of a clinic or health care facility that provides reproductive services.

(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, and an employee of a clinic or health care facility that provides reproductive services.

Representative Goodman moved to table Amendment No. 11.

A record vote was requested.

The motion to table was lost by (Record 470): 6 Yeas, 130 Nays, 4 Present, not voting.

Yeas — Carter; Dutton; Farrar; Goodman; Thompson; Wilson.

Nays — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dunnam; Edwards; Ehrhardt; Eiland; Elkins; Finnell; Galloway; Giddings; Glaze; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Staples; Stiles; Swinford; Talton; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker; Dukes; Hightower(C); Reyna, A.

Absent, Excused — Solomons; Telford.

Absent — Flores; Gallego; Garcia; Keel; Longoria; Moreno; Price.

### STATEMENTS OF VOTE

I was shown voting yes on Record No. 470. I intended to vote no.

Carter

I was shown voting yes on Record No. 470. I intended to vote no.

Wilson

Amendment No. 11 was adopted without objection.

### Amendment No. 12

Representative Goodman offered the following amendment to **CSSB 359**:

Amend **CSSB 359**, as following:

(1) Strike Section 54 of the bill and substitute the following:

The heading of Subchapter B, Chapter 201, Family Code, is amended to read as follows:

#### SUBCHAPTER B. MASTERS FOR CHILD SUPPORT AND MASTERS FOR CHILD PROTECTIVE SERVICES CASES [MASTER]

(2) After Section 54, add the following new Sections 55, 56, 57, 58, and 59 and renumber remaining sections accordingly.

SECTION 55. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.1005 to read as follows:

Sec. 201.1005. DEFINITIONS. In this subchapter:

(1) "Child protection case" means a proceeding brought by the Department of Protective and Regulatory Services under this title.

(2) "Department" means Department of Protective and Regulatory Services.

SECTION 56. Section 201.101, Family Code, is amended by amending Subsection (a) and adding Subsection (3) to read as follows:

(a) The presiding judge of each administrative judicial region, after conferring with the judges of courts in the region having jurisdiction of Title IV-D and child protection cases, shall determine which courts require the appointment of a full-time or part-time master to complete each Title IV-D case within the time specified in this subchapter or to complete child protection cases within a reasonable time.

(e) If the presiding judge determines that a court requires a master to complete child protection cases in a reasonable time and a master has been appointed under Sec. 201.1085, the presiding judge shall, by a general order, refer all child protection cases to the master. At the option of the judge, referral of child protection cases may be made before or after entry of an emergency order under Chapter 262. Referral of child protection cases may not be made for individual cases or case by case, but shall be made by general order. The presiding judge need not appoint a master unless sufficient funds are available from state or federal funds to pay the costs of such master.

SECTION 57. Section 201.104, Family Code, is amended to read as follows:

Sec. 201.104. OTHER POWERS AND DUTIES OF MASTER. (a) On motion of a party, a master may refer a complex case back to the judge for final disposition after the master has recommended temporary support in a Title IV-D case or at any time in a child protection case.

(b) A master shall take testimony and make a record in all Title IV-D and child protection cases as provided by this chapter.

SECTION 58. Section 201.107, Family Code, is amended to read as follows:

Sec. 201.107. STATE AND FEDERAL FUNDS. (a) The office of court administration may contract with the Title IV-D agency or any other departments or agencies for available state and federal funds under Title IV-D or any other law and may employ personnel needed to implement and administer this subchapter. A master and other personnel appointed under this section may also use available state funds and public or private grants.

(b) The presiding judges of the administrative judicial regions, state agencies, and counties may contract with the Title IV-D agency or other departments or agencies for available federal funds under Title IV-D or any other law to reimburse costs and salaries associated with masters and personnel appointed under this section and may also use available state funds and public or private grants.

(c) The presiding judges, ~~and~~ the Title IV-D agency, and the department shall act and are authorized to take any action necessary to maximize the amount of federal funds available under the Title IV-D program or any other law.

SECTION 59. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.085 to read as follows:

Sec. 201.085. APPOINTMENT OF MASTER FOR CHILD PROTECTION CASES. The presiding judge of an administrative judicial region shall appoint a master for a court handling child protection cases if the court needs assistance in order to process the cases in a reasonable time if sufficient state or federal funds are available to pay the costs of such master. The

presiding judge may not appoint a Title IV-D master as a master for child protection cases.

Amendment No. 12 was adopted without objection.

### **Amendment No. 13**

Representative Howard offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by adding the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 40.002(b), Human Resources Code is amended to read as follows:

(b) The department is the state agency with primary responsibility for:

(1) providing protective services for children and elderly and disabled persons, including investigations of alleged abuse, neglect, or exploitation in facilities of the Texas Department of Mental Health and Mental Retardation;

(2) providing family support and family preservation services which respect the fundamental right of parents to control the education and upbringing of their children; and

(3) regulating child-care facilities and child-care administrators.

Representative Gray moved to table Amendment No. 13.

The motion to table was lost.

Amendment No. 13 was adopted without objection. (Danburg and Farrar recorded voting no)

### **Amendment No. 14**

Representative Howard offered the following amendment to **CSSB 359**:

Amend **CSSB 359** on page 19, line 19 through page 20, line 15 by striking SECTION 18 of the bill.

Representative Gray moved to table Amendment No. 14.

A record vote was requested.

The motion to table was lost by (Record 471): 68 Yeas, 74 Nays, 3 Present, not voting.

Yeas — Alexander; Alvarado; Bailey; Berlanga; Bosse; Burnam; Chavez; Coleman; Cuellar; Danburg; Davila; Davis; Dukes; Dunnam; Dutton; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Gray; Greenberg; Gutierrez; Haggerty; Hernandez; Hinojosa; Hirschi; Hochberg; Jones, J.; Junell; King; Lewis, R.; Longoria; Luna; Maxey; McClendon; McReynolds; Moreno; Naishtat; Oliveira; Olivo; Patterson; Pickett; Price; Puente; Rangel; Raymond; Reyna, A.; Rhodes; Roman; Sadler; Serna; Solis; Stiles; Thompson; Torres; Turner, S.; Uher; Van de Putte; Williamson; Wilson; Wise; Wolens; Yarbrough.

Nays — Allen; Averitt; Bonnen; Brimer; Carter; Chisum; Christian; Clark; Cook; Corte; Counts; Crabb; Craddick; Delisi; Denny; Driver; Elkins; Finnell; Galloway; Goolsby; Grusendorf; Hamric; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett;

Jackson; Janek; Jones, D.; Kamel; Keel; Keffer; Krusee; Kubiak; Kuempel; Lewis, G.; Madden; Marchant; McCall; Merritt; Moffat; Mowery; Oakley; Palmer; Pitts; Place; Rabuck; Ramsay; Reyna, E.; Seaman; Shields; Siebert; Smith; Smithee; Staples; Swinford; Talton; Tillery; Turner, B.; Walker; West; Williams; Wohlgemuth; Woolley; Zbranek.

Present, not voting — Mr. Speaker; Edwards; Hightower(C).

Absent, Excused — Solomons; Telford.

Absent — Culberson; Nixon.

### STATEMENT OF VOTE

When Record No. 471 was taken, my vote failed to register. I would have voted yes.

Culberson

A record vote was requested.

The vote of the house was taken on the adoption of Amendment No. 14 and the vote was announced yeas 74, nays 71.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 472): 73 Yeas, 70 Nays, 2 Present, not voting.

Yeas — Allen; Averitt; Bonnen; Brimer; Carter; Chisum; Christian; Clark; Cook; Corte; Counts; Craddick; Delisi; Denny; Driver; Elkins; Finnell; Galloway; Goolsby; Grusendorf; Haggerty; Hartnett; Heflin; Hilbert; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Kamel; Keel; Keffer; Krusee; Kubiak; Kuempel; Lewis, G.; Madden; Marchant; McCall; Merritt; Moffat; Mowery; Nixon; Palmer; Pitts; Rabuck; Ramsay; Reyna, E.; Roman; Seaman; Shields; Siebert; Smith; Smithee; Staples; Swinford; Talton; Turner, B.; Uher; Walker; West; Williams; Williamson; Wohlgemuth; Wolens; Woolley; Zbranek.

Nays — Alexander; Alvarado; Bailey; Berlanga; Bosse; Burnam; Chavez; Coleman; Cuellar; Culberson; Danburg; Davila; Davis; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Gray; Greenberg; Gutierrez; Hamric; Hawley; Hernandez; Hirschi; Hochberg; Hodge; Jones, J.; Junell; King; Lewis, R.; Longoria; Luna; Maxey; McClendon; McReynolds; Moreno; Naishtat; Oakley; Oliveira; Olivo; Patterson; Pickett; Place; Price; Puente; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Serna; Solis; Stiles; Thompson; Tillery; Torres; Turner, S.; Van de Putte; Wilson; Wise; Yarbrough.

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

Absent, Excused — Solomons; Telford.

Absent — Crabb; Hinojosa.

The chair stated that Amendment No. 14 was adopted by the above vote.

### LEAVES OF ABSENCE GRANTED

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

Hinojosa on motion of Flores.

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

Crabb on motion of Heflin.

### COMMITTEE GRANTED PERMISSION TO MEET

Representative Thompson requested permission for the Committee on Judicial Affairs to meet while the house is in session.

Permission to meet was granted without objection.

### COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Judicial Affairs, at this time, speakers committee room.

### CSSB 359 - (consideration continued)

#### Amendment No. 15

Representative Hilderbran offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by adding the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION \_\_. Subchapter A, Chapter 261, Family Code, is amended by adding Sections 261.004 and 261.005 to read as follows:

Sec. 261.004. STATISTICS OF ABUSE AND NEGLECT OF CHILDREN. The department shall prepare and disseminate statistics relating to the department's activities under this subtitle and include in an annual report available to the public the following information:

(1) the number of initial phone calls received by the department alleging abuse and neglect;

(2) the outcome of initial investigations by the department detailing the number of calls for which an initial investigation is made; and

(3) the number of cases pursued by the department in each stage of the judicial process, including civil and criminal proceedings and the results of each proceeding.

Sec. 261.005. ANNUAL COUNTY DATA REPORTS. (a) Each county shall report to the department not later than December 1 of each year the following information:

(1) the number of children reported to the county during the preceding year as having been abused or neglected;

(2) of the children to whom Subdivision (1) applies:

(A) the number for whom the report was substantiated;

(B) the number for whom the report was unsubstantiated; and

(C) the number for whom the report was determined to be

false;

(3) of the children to whom Subdivision (2) applies:

(A) the number who did not receive services during the preceding year under a state or federal program;

(B) the number who received services during the preceding year under a state or federal program; and

(C) the number who were removed from the child's home during the preceding year;

(4) the number of families that received preventative services from the county during the preceding year;

(5) the number of children who died in the county during the preceding year as a result of child abuse or neglect;

(6) of the children to whom Subdivision (5) applies, the number who were in foster care at the time of death;

(7) the number of child protective services workers in the county responsible for report intake and screening during the preceding year;

(8) the response time by the appropriate agency with respect to conducting an initial investigation of a report of child abuse or neglect in the county;

(9) the response time by the appropriate agency with respect to providing services to families and children in the county for whom an allegation of abuse or neglect has been made;

(10) the number of child protective services workers in the county responsible for intake, assessment, and investigation of child abuse and neglect reports during the preceding year compared to the number of reports investigated during the year before the preceding year;

(11) the number of children in the county who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child; and

(12) the number of children in the county for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child.

(b) The department shall summarize all reports received under this section from a county and compile the information in a report to be submitted to the general public not later than February 1 of each year.

Amendment No. 15 was adopted without objection.

#### **Amendment No. 16**

Representative Chisum offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) On page 60, between lines 19 and 20 add new SECTIONS 59 and 60 to the bill to read as follows:

SECTION 59. Section 261.201(a), Family Code, is amended to read as follows:

(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 as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

SECTION 60. Section 261.302, Family Code, is amended by adding Subsection (e) to read as follows:

(e) An interview with a child alleged to be a victim of physical abuse or sexual abuse shall be audiotaped or videotaped unless the investigating agency determines that good cause exists for not audiotaping or videotaping the interview in accordance with rules of the agency. Good cause may include, but is not limited to, such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this subsection shall be construed as prohibiting the investigating agency from audiotaping or videotaping an interview of a child on any case for which such audiotaping or videotaping is not required under this subsection.

(2) Renumber subsequent SECTIONS as appropriate.

Amendment No. 16 was adopted without objection.

#### **Amendment No. 17**

Representative Christian offered the following amendment to **CSSB 359**:

Amend the proposed **CSSB 359** by striking the section of the bill providing for a pilot program for child abuse investigations, by adding the following appropriately numbered section, and by renumbering the sections of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3019 to read as follows:

Sec. 261.3019. PILOT PROGRAM FOR INVESTIGATIONS OF CHILD

ABUSE. (a) On or after September 1, 1997, but not later than March 1, 1998, the department shall enter into an agreement with a sheriff of a county with a population of not less than 500,000, and if necessary for jurisdictional purposes any other law enforcement agency, under which the sheriff or law enforcement agency shall conduct investigations of reports of abuse.

(b) The commissioners court of a county with a population of 25,000 or less may also establish a pilot program under this section independently or in conjunction with the commissioners court of an adjacent county with a population of 25,000 or less.

(c) An agreement under this section shall:

(1) specify the respective roles of law enforcement and department staff in the investigative process;

(2) provide for the department to assist in the removal of children under Chapter 262 as necessary for the protection of children;

(3) provide for the use of any available children's advocacy center or multidisciplinary team under Subchapter E, Chapter 264; and

(4) contain provisions the department and the sheriff and law enforcement determine to be necessary and appropriate.

(d) The commissioners court of a county that is eligible to establish a pilot program and that intends to do so shall inform the department of the county's intent to establish the program. On establishment of the program in a county, authority to conduct an investigation of a report of abuse is transferred from the department to the county's law enforcement agency. After the date of the transfer, the department may only conduct an investigation of a report of abuse in the county at the request of the sheriff or local law enforcement agency. The department may provide advice and technical assistance to the county to ensure that the county complies with state and federal law in implementing and operating the pilot program.

(e) Under the pilot program, the commissioners court:

(1) shall establish a local telephone hotline for the receipt of reports of child abuse and develop a plan for the transfer of calls received by the state child abuse hotline to the local law enforcement agency;

(2) shall develop a plan to be submitted to the department that specifies the manner in which the county's law enforcement agency shall handle investigations, investigator training, and the processing of reports made to the local hotline and other telephone calls;

(3) is entitled to receive from the department funding in an amount consistent with the costs of implementation of the pilot program in the county; and

(4) may contract with other appropriate local law enforcement agencies, if necessary for jurisdictional purposes, to implement the pilot program.

(f) Under the pilot program, the department shall:

(1) from available state or federal funds, provide funding to the county in an amount consistent with the costs of implementing the pilot program in the county, including costs of establishing and operating the local telephone hotline under Subsection (e); and

(2) provide to a participating county law enforcement agency:

(A) information regarding:

(i) the average number of child abuse cases that are typically investigated; and

(ii) staff and investigator training; and

(B) other assistance necessary to adequately implement and fund the pilot program.

(g) Under the pilot program, the commissioners court shall establish an independent local citizens review board composed of seven volunteers who represent the community, including members who have experience in matters relating to child abuse and including one member who is licensed as a psychologist, one member licensed as a medical or health professional, and one member who is a licensed or ordained priest, rabbi, or officer of a religious organization. A member of a review board may not be an employee of or contract with any participating law enforcement agency or the department. The citizens review board shall prepare and make available to the public on an annual basis a report containing a summary of the activities of the board.

(h) The commissioners court may apply for any available federal funds or grants and may research other sources of funding for the county's participation in the pilot program.

(i) An agreement under Subsection (a) is not required to provide for:

(1) the investigation of abuse alleged to have occurred in a facility or home regulated by the department under Chapter 42, Human Resources Code; or

(2) an investigation conducted under Section 48.081, Human Resources Code, or Section 261.404.

(j) The state auditor shall perform an audit and evaluation of the pilot program under this section. In preparing the evaluation, the auditor shall consider any report prepared by a citizens review board established under Subsection (g). The auditor shall report, not later than March 1, 2001, the results of the audit and evaluation to the presiding officers of both houses of the 77th Legislature and to the governor. The report must include an evaluation of the strengths and weaknesses of the pilot program and a recommendation about the feasibility of expanding the pilot program statewide.

(k) The department shall adopt rules necessary to perform the department's duties under this section.

(l) This section expires September 1, 2001.

Amendment No. 17 was adopted without objection.

#### **Amendment No. 18**

Representative Greenberg offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by inserting an appropriately numbered SECTION and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 261, Family Code, is amended by adding Section 261.1055 to read as follows:

Sec. 261.1055. NOTIFICATION OF DISTRICT ATTORNEYS. (a) A district attorney may inform the department or designated agency that the district attorney wishes to receive notification of some or all reports of suspected abuse or neglect of children who were in the county at the time the report was made or who were in the county at the time of the alleged abuse or neglect.

(b) If the district attorney makes the notification under this section, the department or designated agency shall, on receipt of a report of suspected abuse or neglect, immediately notify the district attorney as requested and the department or designated agency shall forward a copy of the reports to the district attorney on request.

Amendment No. 18 was adopted without objection.

#### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

#### **CSSB 359 - (consideration continued)**

#### **Amendment No. 19**

Representative Woolley offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) Insert the following appropriately numbered section:

SECTION \_\_\_\_\_. Subchapter C, Chapter 262, Family Code, is amended by adding Section 262.2015 to read as follows:

Sec. 262.2015. ACCELERATED TRIAL ON THE MERITS. The court may accelerate the trial schedule to result in a final order for a child under the care of the department at an earlier date than provided by Subchapter C, Chapter 263, if the court:

(1) orders at the conclusion of the full adversary hearing that the child may not be placed in the child's home;

(2) finds that the child is a victim of serious bodily injury or sexual abuse; and

(3) finds that there is probable cause to believe that a party to the suit has engaged in conduct against the child that would constitute an offense under the following provisions of the Penal Code:

(A) Section 21.11 (indecenty with a child);

(B) Section 22.011 (sexual assault);

(C) Section 22.02 (aggravated assault);

(D) Section 22.021 (aggravated sexual assault);

(E) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(F) Section 22.041 (abandoning or endangering child);

(G) Section 25.02 (prohibited sexual conduct);

(H) Section 43.25 (sexual performance by a child); or

(I) Section 43.26 (possession or promotion of child pornography).

(2) Renumber subsequent sections appropriately.

Amendment No. 19 was adopted without objection.

#### **Amendment No. 20**

Representative Wohlgemuth offered the following amendment to **CSSB 359**:

Amend **CSSB 359** in SECTION 76 of the bill, in amended Section 264.107, Family Code, between "noncustodial parent" and the period (page 81, line 27, House Committee Printing), by inserting "or a relative of the child".

Amendment No. 20 was adopted without objection.

#### **Amendment No. 21**

Representative Wise offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) In SECTION 14 of the bill, in the recital (House Committee Report, page 15, line 18), between "by" and "adding", insert "amending Subsection (a) and".

(2) In SECTION 14 of the bill (House Committee Report, page 15, between lines 18 and 19), insert the following:

(a) A department employee, a member of a multidisciplinary team established under Section 40.0523, or an authorized department volunteer who

performs a departmental duty or responsibility is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

(3) In SECTION 16 of the bill, in the recital (House Committee Report, page 16, line 19), strike "40.067, and 40.068" and substitute "40.067, 40.068, and 40.069".

(4) In SECTION 16 of the bill (House Committee Report, page 18, between lines 17 and 18), insert the following:

Sec. 40.069. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT. (a) An applicant for temporary or permanent employment with the department whose employment or potential employment with the department involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;
2. Pleaded guilty to (whether or not resulting in a conviction);
3. Pleaded nolo contendere or no contest to;
4. Admitted;
5. Had any judgment or order rendered against me (whether by default or otherwise);
6. Entered into any settlement of an action or claim of;
7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;
8. Been diagnosed as having or have been treated for any mental or emotional condition arising from; or,
9. Resigned under threat of termination of employment or volunteerism for;
10. Had a report of child abuse or neglect made and substantiated against me for;
11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;

12. Endangerment of a child;  
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;  
14. Unfitness as a parent or custodian;  
15. Removing children from a state or concealing children in violation of a court order;  
16. Restrictions or limitations on contact or visitation with children or minors;  
17. Any type of child abduction; or,  
18. Similar or related conduct, matters, or things.  
Except the following (list all incidents, location, description, and date)

(if none, write NONE):

Signed \_\_\_\_\_

Date \_\_\_\_\_.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_.

Signature of notarial officer \_\_\_\_\_.

(seal, if any, of notarial officer)

My commission expires: \_\_\_\_\_

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

(5) In SECTION 19 of the bill, in the recital (House Committee Report, page 20, line 17), strike "Section 42.0425" and substitute "Sections 42.0425, 42.0426, and 42.0427".

(6) In SECTION 19 of the bill (House Committee Report, page 21, between lines 3 and 4), insert the following:

Sec. 42.0426. TRAINING OF PERSONNEL. A licensed facility or registered family home shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

Sec. 42.0427. PARENTAL VISITATION. All areas of a licensed facility must be accessible to a parent of a child who is receiving care at the facility if the parent visits the child during the facility's hours of operation.

(7) Strike SECTION 21 of the bill (House Committee Report, page 21, lines 26-27 through page 22, lines 1-5) and substitute the following:

SECTION 21. Subsections (a), (b), and (c), Section 42.044, Human Resources Code, are amended to read as follows:

(a) An authorized representative of the department ~~[division]~~ may visit a facility or registered family home during operating hours to investigate, inspect, and evaluate.

(b) The department ~~[division]~~ shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The department ~~[division]~~ must investigate a facility when a complaint is received. The department shall investigate a registered family home when the department receives a complaint of abuse or neglect, as defined by Section 261.001, Family Code, of a child at the home. The department ~~[division]~~ representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(8) In SECTION 25 of the bill, strike the recital (House Committee Report, page 27, lines 4 and 5), and substitute "Subsections (c) and (f), Section 42.052, Human Resources Code, are amended to read as follows:"

(9) In SECTION 25 of the bill (House Committee Report, page 27, between lines 14 and 15), insert the following:

(f) A family home may not place a public advertisement that uses the title "registered family home" or any variation of the phrase unless the home is registered with the department ~~[division]~~ under this chapter. Any public advertisement for a registered family home which uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

(10) In SECTION 26 of the bill, in the recital (House Committee Report, page 27, line 16), strike "Sections 42.057 and 42.058" and substitute "Sections 42.057, 42.058, and 42.059".

(11) In SECTION 26 of the bill, strike proposed Section 42.057, Human Resources Code (House Committee Report, page 27, lines 17-27 through page 28, lines 1-26), and substitute the following:

Sec. 42.057. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) In accordance with rules adopted by the department, the director, owner, or operator of a child-care facility or family home shall, when applying to operate a child-care facility or when registering a family home and at least once during each 24 months after receiving a license, registration, or certification of approval, submit to the department for use in conducting background and criminal history checks:

(1) the name of the director, owner, and operator of the facility or home and the name of each person employed at the facility or home; and

(2) the name of each resident of the home and any other person who will regularly or frequently be staying or working at the facility or home while children are being provided care.

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(c) The department by rule shall require a child-care facility or family home to pay to the department a fee in an amount not to exceed the



administrative costs the department incurs in conducting a background and criminal history check under this section.

(12) In SECTION 26 of the bill (House Committee Report, page 29, between lines 14 and 15), insert the following:

Sec. 42.059. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT WITH FACILITY OR REGISTERED FAMILY HOME. (a) An applicant for temporary or permanent employment with a licensed facility or registered family home whose employment or potential employment with the facility or home involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;
2. Pleaded guilty to (whether or not resulting in a conviction);
3. Pleaded nolo contendere or no contest to;
4. Admitted;
5. Had any judgment or order rendered against me (whether by default or otherwise);
6. Entered into any settlement of an action or claim of;
7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;
8. Been diagnosed as having or have been treated for any mental or emotional condition arising from; or,
9. Resigned under threat of termination of employment or volunteerism for;
10. Had a report of child abuse or neglect made and substantiated against me for;
11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;

14. Unfitness as a parent or custodian;

15. Removing children from a state or concealing children in violation of a court order;

16. Restrictions or limitations on contact or visitation with children or minors;

17. Any type of child abduction; or,

18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE)

Signed \_\_\_\_\_

Date \_\_\_\_\_.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of

Signature of notarial officer \_\_\_\_\_.

(seal, if any, of notarial officer)

My commission expires: \_\_\_\_\_

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

(13) In SECTION 30 of the bill, in amended Section 42.072, Human Resources Code (House Committee Report, page 33, lines 23-27), strike Subsection (d) and substitute the following:

(d) The department by rule may provide for denial of an application or renewal for a licensed facility, for certification of approval of a facility, or for registering a family home or may revoke a facility's license or certification or a family home's registration based on findings of criminal history as a result of a background or criminal history check.

(14) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (a), Section 261.105, Family Code, is amended to read as follows:

(a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the department or the designated agency.

SECTION \_\_\_\_\_. Subsection (a), Section 261.301, Family Code, is amended to read as follows:

(a) With assistance from the appropriate state or local law enforcement agency, the ~~[The]~~ department or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.

SECTION \_\_\_\_\_. Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. (a)(1) In this subsection the terms "child," "child-care facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(2) The Department of Protective and Regulatory Services shall ~~is~~

~~entitled to~~] obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, or certification under Chapter 42, Human Resources Code;

(B) an owner or employee of or an applicant for employment by a child-care facility or family home licensed, registered, or certified under that chapter;

(C) a resident of a registered family home, but not a child in the home's care or a parent of the child;

(D) an applicant for a position with the Department of Protective and Regulatory Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) ~~a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;~~

~~[(F)] a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;~~

~~[(G)]~~ an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Protective and Regulatory Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) ~~[(H)]~~ a volunteer or applicant volunteer with the Department of Protective and Regulatory Services;

~~[(G)] [(I)] a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;~~

~~[(H)]~~ a person providing or applying to provide adoptive or foster care for children in the care of the Department of Protective and Regulatory Services and other adults living with that person in the residence in which the child will reside;

(H) ~~[(K)]~~ a Department of Protective and Regulatory Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) ~~[(L)]~~ a person who is the subject of a report the department receives alleging that the person has abused or neglected a child, an elderly person, or a person with a disability, provided that report has proven to have merit;

(J) ~~[(M)]~~ a relative providing or applying to provide in-home care for a child in the care of the Department of Protective and Regulatory Services and other adults living with that relative in the residence in which the child will reside; or

(K) ~~[(N)]~~ a person providing child care for a child who is in the care of the Department of Protective and Regulatory Services and who is or will be receiving adoptive, foster, or in-home care[;]

~~[(O)] a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected; or~~

~~[(P) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America].~~

(3) The Department of Protective and Regulatory Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America; or

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information.

(4) Subject to Section 411.087, the department shall:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2); or

(B) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2).

(5) The Department of Protective and Regulatory Services may not use the authority granted under this section to harass an employee or volunteer. The Board of Protective and Regulatory Services shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) ~~[(4)]~~ Criminal history record information obtained by the Department of Protective and Regulatory Services under this subsection may not be released to any person except:

(A) on court order;

(B) with the consent of the person who is the subject of the criminal history record information;

(C) for purposes of an administrative hearing held by the Department of Protective and Regulatory Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision (7) ~~[(5)]~~.

(7) ~~[(5)]~~ The Department of Protective and Regulatory Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subsection (a)(2)(E) ~~[(a)(2)(G)]~~ who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child and the person who is the subject of the criminal history record information, if the Department of Protective and Regulatory Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child or adult.

(b) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the department, or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

(c) The Department of Protective and Regulatory Services may charge an organization or person that requests criminal history record information under Subsection (a)(3) ~~[(a)(2)]~~ a fee in an amount necessary to cover the costs of obtaining the information on the organization's or person's behalf.

SECTION \_\_\_\_\_. Section 40.052, Human Resources Code, is amended to read as follows:

Sec. 40.052. DUTIES RELATING TO DELIVERY OF SERVICES. The department shall:

(1) propose and implement service delivery standards for departmental programs;

(2) provide training and technical assistance to regional and local service providers;

(3) provide joint training on the investigation of reports of child abuse or neglect to department personnel and law enforcement personnel in appropriate state and local law enforcement agencies;

(4) develop and implement systems for monitoring departmental program performance and service delivery;

~~(5) [(4)]~~ promote innovative service delivery at the local level; and

~~(6) [(5)]~~ cooperate and coordinate as appropriate with other governmental entities in the delivery of services.

SECTION \_\_\_\_\_. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0522 and 40.0523 to read as follows:

Sec. 40.0522. COMMUNITY EDUCATION AND TRAINING RELATING TO CHILD ABUSE OR NEGLECT. (a) The department shall assure the availability of community education programs designed to improve participation of the general public in preventing, identifying, and treating cases of child abuse or neglect, including parent education programs.

(b) The department shall assure that training concerning child abuse or neglect is available to professionals who are required by law to report, investigate, or litigate those cases.

Sec. 40.0523. MULTIDISCIPLINARY TEAMS. (a) To the extent possible, the department shall establish multidisciplinary teams to provide services relating to a report of child abuse or neglect. A multidisciplinary team

shall include professionals in parent education and in each professional discipline necessary to provide comprehensive medical and psychological services to a child who is the subject of a report and to members of the child's household.

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The department may adopt rules governing the exchange of information between team members.

(c) A multidisciplinary team established under this section shall coordinate services provided by the department to a child and to members of the child's household with services available from other sources, including public and private agencies in the community. The goal of the multidisciplinary team is to provide the greatest range of services possible without duplication of effort.

(d) The department shall establish a process by which members of a multidisciplinary team are involved in the department's development and implementation of procedures relating to coordination of the department's child abuse or neglect services with services provided by other public and private agencies.

SECTION \_\_\_\_\_. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0445 to read as follows:

Sec. 42.0445. REQUIRED BACKGROUND SEARCH OF CENTRAL REGISTRY OF REPORTED CASES OF CHILD ABUSE OR NEGLECT.

(a) Before the department issues or renews a license, registration, or certification under this subchapter, the department shall search the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code, to determine whether the applicant or the owner or an employee of the facility or family home is listed in the registry as a person who abused or neglected a child.

(b) The department may adopt rules to implement this section.

Amendment No. 21 was withdrawn.

### **Amendment No. 22**

Representative Naishtat offered the following amendment to **CSSB 359**:

Amend **CSSB 359** (House Committee Report) as follows:

(1) Add the appropriately numbered SECTIONS to the bill to read as follows and renumber existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 531.001, Government Code, is amended to read as follows:

Sec. 531.001. DEFINITIONS. In this chapter:

(1) "Caseload standards" means the minimum and maximum number of cases that an employee can reasonably be expected to perform in a normal work month based on the number of cases handled by or the number of different job functions performed by the employee.

(2) "Commission" means the Health and Human Services Commission.

(3) [(2)] "Commissioner" means the commissioner of health and human services.

(4) [(3)] "Health and human services agencies" includes the:

(A) Interagency Council on Early Childhood Intervention Services;

(B) Texas Department on Aging;

(C) Texas Commission on Alcohol and Drug Abuse;

(D) Texas Commission for the Blind;

(E) Texas Commission for the Deaf and Hard of Hearing Impaired;

(F) Texas Department of Health;

(G) Texas Department of Human Services;

(H) Texas Juvenile Probation Commission;

(I) Texas Department of Mental Health and Mental Retardation;

(J) Texas Rehabilitation Commission; and

(K) Department of Protective and Regulatory Services.

(5) "Professional caseload standards" means caseload standards that are established or are recommended for establishment for employees of health and human services agencies by management studies conducted for health and human services agencies or by an authority or association, including the Child Welfare League of America, the National Eligibility Workers Association, the National Association of Social Workers, and associations of state health and human services agencies.

SECTION \_\_\_\_\_. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.047 to read as follows:

Sec. 531.047. CASELOAD STANDARDS. (a) After considering the recommendations of the caseload standards advisory committees under Section 531.048(e), the commissioner may establish caseload standards and other standards relating to caseloads for each category of caseworker employed by the Texas Department of Human Services or the Department of Protective and Regulatory Services.

(b) In establishing standards under this section, the commissioner shall:

(1) ensure the standards are based on the actual duties of the caseworker;

(2) ensure the caseload standards are reasonable and achievable;

(3) ensure the standards are consistent with existing professional caseload standards;

(4) consider standards developed by other states for caseworkers in similar positions of employment; and

(5) ensure the standards are consistent with existing caseload standards of other state agencies.

(c) Subject to the availability of funds appropriated by the legislature, the commissioner of human services and the executive director of the Department of Protective and Regulatory Services shall use the standards established by the commissioner under this section to determine the number of personnel to assign as caseworkers for their respective agencies.

(d) Subject to the availability of funds appropriated by the legislature, the Texas Department of Human Services and the Department of Protective and Regulatory Services shall use the standards established by the commissioner to assign caseloads to individual caseworkers employed by those agencies.



(e) The commissioner shall include a recommendation made to the commissioner by a caseload standards advisory committee under Section 531.048(e) in the strategic plan of the agency that is the subject of the recommendation.

(f) Nothing in this section may be construed to create a cause of action.

SECTION \_\_\_\_\_. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.048 to read as follows:

Sec. 531.048. CASELOAD STANDARDS ADVISORY COMMITTEES.

(a) A caseload standards advisory committee is established in the Department of Protective and Regulatory Services, and a caseload standards advisory committee is established in the Texas Department of Human Services.

(b) A caseload standards advisory committee is composed of 10 employees appointed by the commissioner who are unit supervisors or caseworkers in the agency in which the committee is established. To the extent practicable, a caseload standards advisory committee must include a unit supervisor or caseworker from each program area of the agency in which the committee is established.

(c) The commissioner shall make appointments to a caseload standards advisory committee from a list submitted by the commissioner or the executive director of the agency in which the committee is established.

(d) Members of a caseload standards advisory committee serve at the pleasure of the commissioner.

(e) Each caseload standards advisory committee shall:

(1) review professional caseload standards and other caseload standards and recommendations the committee considers appropriate and recommend to the commissioner minimum and maximum caseloads for each category of caseworker employed by the agency in which the advisory committee is established; and

(2) advise and make recommendations to the commissioner on granting the agency in which the advisory committee has been established the authority to waive certain reporting standards when the caseload of a caseworker employed by the agency exceeds the maximum number established by the commissioner under Section 531.047(a).

(f) The commissioner shall dissolve a caseload standards advisory committee if the commissioner determines that the caseload standards advisory committee is no longer necessary to develop and implement the standards required under Section 531.047(a).

(g) Except as otherwise provided by this section, a caseload standards advisory committee is subject to Article 6252-33, Revised Statutes.

(h) Nothing in this section may be construed to create a cause of action.

SECTION \_\_\_\_\_. (a) A caseload standards advisory committee shall make its recommendations under Section 531.048(e), Government Code, as added by this Act, not later than March 1, 1998.

(b) The commissioner of health and human services shall adopt rules prescribing the standards required by Section 531.047(a), Government Code, as added by this Act, not later than September 1, 1999.

Amendment No. 22 was adopted without objection.

**Amendment No. 23**

Representative Van de Putte offered the following amendment to **CSSB 359**:

Amend **CSSB 359** by adding the following appropriately numbered sections and renumbering the sections of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (e), Article 49.10, Code of Criminal Procedure, is amended to read as follows:

(e) A justice of the peace shall order an autopsy performed on a body if;

(1) the justice determines that an autopsy is necessary to determine or confirm the nature and cause of death;

(2) the deceased was a child younger than six years of age and the death is determined [was reported] under Section 264.514 [Chapter 264], Family Code, to be unexpected or the result of abuse or neglect; or

(3) directed to do so by the district attorney, criminal district attorney, or, if there is no district or criminal district attorney, the county attorney.

SECTION \_\_\_\_\_. Section 264.514, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A medical examiner or justice of the peace notified of a death of a child under Section 264.513 shall hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death is unexpected or the result of abuse or neglect. An inquest is not required under this subchapter if the child's death is expected and is due to a congenital or neoplastic disease. A death caused by an infectious disease may be considered an expected death if:

(1) the disease was not acquired as a result of trauma or poisoning;

(2) the infectious organism is identified using standard medical procedures; and

(3) the death is not reportable to the Texas Department of Health under Chapter 81, Health and Safety Code.

(c) In this section, the terms "abuse" and "neglect" have the meaning assigned those terms by Section 261.001.

SECTION \_\_\_\_\_. The changes in law made by this Act by the amendment to Article 49.10, Code of Criminal Procedure, and Section 264.514, Family Code, take effect September 1, 1997, and apply only to death of a child younger than six years of age that occurs on or after September 1, 1997. A death of a child that occurs before September 1, 1997, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Amendment No. 23 was adopted without objection.

**MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 5).

**CSSB 359 - (consideration continued)****Amendment No. 24**

Representative Gray offered the following amendment to **CSSB 359**:

Amend **CSSB 359** in SECTION 24 of the bill, added Section 42.0461, Human Resources Code, as follows:

(1) By inserting between ", and "for" (page 24, line 11) "or certificate to operate under Subchapter E".

(2) After "license" (page 24, line 17) insert ", certificate".

(3) After "license" (page 25, line 14) insert "or certificate".

Amendment No. 24 was adopted without objection.

### **Amendment No. 25**

Representative Gray offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) In SECTION 16 of the bill, added Section 40.068, Human Resources Code, by striking "child's" (page 18, line 14) and substituting "client's".

(2) In SECTION 24 of the bill, added Section 42.0461(a), Human Resources Code, by striking "250,000" (page 24, line 14) and substituting "300,000".

(3) In SECTION 24 of the bill, added Section 42.0461(f), Human Resources Code, by striking "that is located in a county with a population of less than 250,000 and" (page 26, lines 17 and 18).

(4) In SECTION 24 of the bill, added Section 42.0461(f), Human Resources Code, by inserting "that is located in a county with a population of less than 300,000" between "home" and "that" (page 26, line 19).

(5) In SECTION 31 of the bill, amended Section 42.073, Human Resources Code, by striking all of subsection (d) (page 34, lines 21 through 24) and substituting the following:

~~"[(d) The suspension of a license and the closure of the facility and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.]"~~

(6) In SECTION 74 of the bill, amended Section 264.009(a), Family Code, by striking "(b) or (c)" (page 78, line 16) and substituting "(b), (c) or (f)".

(7) In SECTION 74 of the bill, amended Section 264.004, Family Code, by inserting the following between lines 18 and 19:

"(f) In a county with a population of 2,800,000 or more, in an action under this code, the department shall be represented in court by the attorney who represents the state in civil cases in the district or county court of the county where the action is brought. If such attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action."

Amendment No. 25 was adopted without objection.

### **Amendment No. 26**

Representative Hilderbran offered the following amendment to **CSSB 359**:

Amend **CSSB 359** on page 58 by striking lines 15-19 and substituting the following:

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 section [subsection] is a Class A [B] misdemeanor unless it

is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

(b) A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the report by restricting further access to the child by the person who made the report.

(c) The appropriate county prosecuting attorney shall be responsible for the prosecution of an offense under this section.

Amendment No. 26 was adopted without objection.

### **Amendment No. 27**

Representative Wise offered the following amendment to **CSSB 359**:

Amend **CSSB 359** as follows:

(1) In SECTION 14 of the bill, in the recital (House Committee Report, page 15, line 18), between "by" and "adding", insert "amending Subsection (a) and".

(2) In SECTION 14 of the bill (House Committee Report, page 15, between lines 18 and 19), insert the following:

(a) A department employee, a member of a multidisciplinary team established under Section 40.0523, or an authorized department volunteer who performs a departmental duty or responsibility is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

(3) In SECTION 16 of the bill, in the recital (House Committee Report, page 16, line 19), strike "40.067, and 40.068" and substitute "40.067, 40.068, and 40.069".

(4) In SECTION 16 of the bill (House Committee Report, page 18, between lines 17 and 18), insert the following:

Sec. 40.069. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT. (a) An applicant for temporary or permanent employment with the department whose employment or potential employment with the department involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;
2. Pleaded guilty to (whether or not resulting in a conviction);
3. Pleaded nolo contendere or no contest to;
4. Admitted;
5. Had any judgment or order rendered against me (whether by default or otherwise);
6. Entered into any settlement of an action or claim of;

7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;

8. Been diagnosed as having or have been treated for any mental or emotional condition arising from; or,

9. Resigned under threat of termination of employment or volunteerism for;

10. Had a report of child abuse or neglect made and substantiated against me for;

11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;

2. Rape or other sexual assault;

3. Physical, sexual, emotional abuse and/or neglect of a minor;

4. Incest;

5. Exploitation, including sexual, of a minor;

6. Sexual misconduct with a minor;

7. Molestation of a child;

8. Lewdness or indecent exposure;

9. Lewd and lascivious behavior;

10. Obscene or pornographic literature, photographs, or videos;

11. Assault, battery, or any violent offense involving a minor;

12. Endangerment of a child;

13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;

14. Unfitness as a parent or custodian;

15. Removing children from a state or concealing children in violation of a court order;

16. Restrictions or limitations on contact or visitation with children or minors;

17. Any type of child abduction; or,

18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE):

Signed \_\_\_\_\_

Date \_\_\_\_\_.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_.

Signature of notarial officer \_\_\_\_\_.

(seal, if any, of notarial officer)

My commission expires: \_\_\_\_\_

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

(5) In SECTION 19 of the bill, in the recital (House Committee Report, page 20, line 17), strike "Section 42.0425" and substitute "Sections 42.0425, 42.0426, and 42.0427".

(6) In SECTION 19 of the bill (House Committee Report, page 21, between lines 3 and 4), insert the following:

Sec. 42.0426. TRAINING OF PERSONNEL. A licensed facility or registered family home shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

Sec. 42.0427. PARENTAL VISITATION. All areas of a licensed facility must be accessible to a parent of a child who is receiving care at the facility if the parent visits the child during the facility's hours of operation.

(7) Strike SECTION 21 of the bill (House Committee Report, page 21, lines 26-27 through page 22, lines 1-5) and substitute the following:

SECTION 21. Subsections (a), (b), and (c), Section 42.044, Human Resources Code, are amended to read as follows:

(a) An authorized representative of the department [~~division~~] may visit a facility or registered family home during operating hours to investigate, inspect, and evaluate.

(b) The department [~~division~~] shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The department [~~division~~] must investigate a facility when a complaint is received. The department shall investigate a registered family home when the department receives a complaint of abuse or neglect, as defined by Section 261.001, Family Code, of a child at the home. The department [~~division~~] representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(8) In SECTION 25 of the bill, strike the recital (House Committee Report, page 27, lines 4 and 5), and substitute "Subsections (c) and (f), Section 42.052, Human Resources Code, are amended to read as follows:"

(9) In SECTION 25 of the bill (House Committee Report, page 27, between lines 14 and 15), insert the following:

(f) A family home may not place a public advertisement that uses the title "registered family home" or any variation of the phrase unless the home is registered with the department [~~division~~] under this chapter. Any public advertisement for a registered family home which uses the title "registered family home" must contain a provision in bold type stating: **"THIS HOME IS REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."**

(10) In SECTION 26 of the bill, in the recital (House Committee Report, page 27, line 16), strike "Sections 42.057 and 42.058" and substitute "Sections 42.057, 42.058, and 42.059".

(11) In SECTION 26 of the bill, strike proposed Section 42.057, Human

Resources Code (House Committee Report, page 27, lines 17-27 through page 28, lines 1-26), and substitute the following:

Sec. 42.057. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) In accordance with rules adopted by the department, the director, owner, or operator of a child-care facility or family home shall, when applying to operate a child-care facility or when registering a family home and at least once during each 24 months after receiving a license, registration, or certification of approval, submit to the department for use in conducting background and criminal history checks:

(1) the name of the director, owner, and operator of the facility or home and the name of each person employed at the facility or home; and

(2) the name of each resident of the home and any other person who will regularly or frequently be staying or working at the facility or home while children are being provided care.

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(c) The department by rule shall require a child-care facility or family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

(12) In SECTION 26 of the bill (House Committee Report, page 29, between lines 14 and 15), insert the following:

Sec. 42.059. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT WITH FACILITY OR REGISTERED FAMILY HOME. (a) An applicant for temporary or permanent employment with a licensed facility or registered family home whose employment or potential employment with the facility or home involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;

2. Pleaded guilty to (whether or not resulting in a conviction);

3. Pleaded nolo contendere or no contest to;

4. Admitted;

5. Had any judgment or order rendered against me (whether by default or otherwise);

6. Entered into any settlement of an action or claim of;

7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;



8. Been diagnosed as having or have been treated for any mental or emotional condition arising from; or,

9. Resigned under threat of termination of employment or volunteerism for;

10. Had a report of child abuse or neglect made and substantiated against me for;

11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;

2. Rape or other sexual assault;

3. Physical, sexual, emotional abuse and/or neglect of a minor;

4. Incest;

5. Exploitation, including sexual, of a minor;

6. Sexual misconduct with a minor;

7. Molestation of a child;

8. Lewdness or indecent exposure;

9. Lewd and lascivious behavior;

10. Obscene or pornographic literature, photographs, or videos;

11. Assault, battery, or any violent offense involving a minor;

12. Endangerment of a child;

13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;

14. Unfitness as a parent or custodian;

15. Removing children from a state or concealing children in violation of a court order;

16. Restrictions or limitations on contact or visitation with children or minors;

17. Any type of child abduction; or,

18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE)

Signed \_\_\_\_\_

Date \_\_\_\_\_.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_.

Signature of notarial officer \_\_\_\_\_.

(seal, if any, of notarial officer)

My commission expires: \_\_\_\_\_

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

(13) In SECTION 30 of the bill, in amended Section 42.072, Human Resources Code (House Committee Report, page 33, lines 23-27), strike Subsection (d) and substitute the following:

(d) The department by rule may provide for denial of an application or renewal for a licensed facility, for certification of approval of a facility, or for registering a family home or may revoke a facility's license or certification or

a family home's registration based on findings of criminal history as a result of a background or criminal history check.

(14) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (a), Section 261.105, Family Code, is amended to read as follows:

(a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the department or the designated agency.

SECTION \_\_\_\_\_. Subsection (a), Section 261.301, Family Code, is amended to read as follows:

(a) With assistance from the appropriate state or local law enforcement agency, the ~~[The]~~ department or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.

SECTION \_\_\_\_\_. Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. (a)(1) In this subsection the terms "child," "child-care facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(2) The Department of Protective and Regulatory Services shall ~~[is entitled to]~~ obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, or certification under Chapter 42, Human Resources Code;

(B) an owner or employee of or an applicant for employment by a child-care facility or family home licensed, registered, or certified under that chapter;

(C) a resident of a registered family home, but not a child in the home's care or a parent of the child;

(D) an applicant for a position with the Department of Protective and Regulatory Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) ~~[a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;~~

~~[(F) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;~~

~~[(G)]~~ an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Protective and Regulatory Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) ~~[(H)]~~ a volunteer or applicant volunteer with the Department of Protective and Regulatory Services;

~~(G) [(H) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;~~

~~[(H)]~~ a person providing or applying to provide adoptive or foster care for children in the care of the Department of Protective and Regulatory Services and other adults living with that person in the residence in which the child will reside;

~~(H) [(K)]~~ a Department of Protective and Regulatory Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

~~(I) [(L)]~~ a person who is the subject of a report the department receives alleging that the person has abused or neglected a child, an elderly person, or a person with a disability, provided that report has proven to have merit;

~~(J) [(M)]~~ a relative providing or applying to provide in-home care for a child in the care of the Department of Protective and Regulatory Services and other adults living with that relative in the residence in which the child will reside; or

~~(K) [(N)]~~ a person providing child care for a child who is in the care of the Department of Protective and Regulatory Services and who is or will be receiving adoptive, foster, or in-home care[;

~~[(O) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected; or~~

~~[(P) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America].~~

(3) The Department of Protective and Regulatory Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America; or

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information.

(4) Subject to Section 411.087, the department shall:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2); or

(B) obtain from any other criminal justice agency in this state

criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2).

(5) The Department of Protective and Regulatory Services may not use the authority granted under this section to harass an employee or volunteer. The Board of Protective and Regulatory Services shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) ~~[(4)]~~ Criminal history record information obtained by the Department of Protective and Regulatory Services under this subsection may not be released to any person except:

(A) on court order;

(B) with the consent of the person who is the subject of the criminal history record information;

(C) for purposes of an administrative hearing held by the Department of Protective and Regulatory Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision ~~(7)~~ ~~[(5)]~~.

(7) ~~[(5)]~~ The Department of Protective and Regulatory Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subsection ~~(a)(2)(E)~~ ~~[(a)(2)(G)]~~ who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child and the person who is the subject of the criminal history record information, if the Department of Protective and Regulatory Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child or adult.

(b) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the department, or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

(c) The Department of Protective and Regulatory Services may charge an organization or person that requests criminal history record information under Subsection ~~(a)(3)~~ ~~[(a)(2)]~~ a fee in an amount necessary to cover the costs of obtaining the information on the organization's or person's behalf.

SECTION \_\_\_\_\_. Section 40.052, Human Resources Code, is amended to read as follows:

Sec. 40.052. DUTIES RELATING TO DELIVERY OF SERVICES. The department shall:

(1) propose and implement service delivery standards for departmental programs;

(2) provide training and technical assistance to regional and local service providers;

(3) provide joint training on the investigation of reports of child abuse or neglect to department personnel and law enforcement personnel in appropriate state and local law enforcement agencies;

(4) develop and implement systems for monitoring departmental program performance and service delivery;

(5) ~~(4)~~ promote innovative service delivery at the local level; and

(6) ~~(5)~~ cooperate and coordinate as appropriate with other governmental entities in the delivery of services.

SECTION \_\_\_\_\_. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0522 and 40.0523 to read as follows:

Sec. 40.0522. COMMUNITY EDUCATION AND TRAINING RELATING TO CHILD ABUSE OR NEGLECT. (a) The department shall assure the availability of community education programs designed to improve participation of the general public in preventing, identifying, and treating cases of child abuse or neglect, including parent education programs.

(b) The department shall assure that training concerning child abuse or neglect is available to professionals who are required by law to report, investigate, or litigate those cases.

Sec. 40.0523. MULTIDISCIPLINARY TEAMS. (a) To the extent possible, the department shall establish multidisciplinary teams to provide services relating to a report of child abuse or neglect. A multidisciplinary team shall include professionals in parent education and in each professional discipline necessary to provide comprehensive medical and psychological services to a child who is the subject of a report and to members of the child's household.

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The department may adopt rules governing the exchange of information between team members.

(c) A multidisciplinary team established under this section shall coordinate services provided by the department to a child and to members of the child's household with services available from other sources, including public and private agencies in the community. The goal of the multidisciplinary team is to provide the greatest range of services possible without duplication of effort.

(d) The department shall establish a process by which members of a multidisciplinary team are involved in the department's development and implementation of procedures relating to coordination of the department's child abuse or neglect services with services provided by other public and private agencies.

SECTION \_\_\_\_\_. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0445 to read as follows:

Sec. 42.0445. REQUIRED BACKGROUND SEARCH OF CENTRAL REGISTRY OF REPORTED CASES OF CHILD ABUSE OR NEGLECT. (a) Before the department issues or renews a license, registration, or

certification under this subchapter, the department shall search the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code, to determine whether the applicant or the owner or an employee of the facility or family home is listed in the registry as a person who abused or neglected a child.

(b) The department may adopt rules to implement this section.

#### **Amendment No. 28**

Representative Grusendorf offered the following amendment to Amendment No. 27:

Amend the Wise amendment to **CSSB 359** on page 4 by striking the and "or" on line 15 and striking "registered family home" on line 16.

Amendment No. 28 was adopted without objection.

Amendment No. 27, as amended, was adopted without objection.

**CSSB 359**, as amended, was passed to third reading. (Heflin recorded voting no)

### **POSTPONED BUSINESS**

The following bill was laid before the house as postponed business:

#### **SB 35 ON THIRD READING (Place and Brimer - House Sponsors)**

**SB 35**, A bill to be entitled An Act relating to operating a vehicle while intoxicated or under the influence of alcohol by a minor and other actions of a minor concerning the acquisition, possession, and use of alcohol; providing penalties.

**SB 35** was read third time earlier today and was postponed until 3:30 p.m. today.

#### **Amendment No. 1**

Representative Place offered the following amendment to **SB 35**:

Amend **SB 35** on 3rd Reading by striking Section 52.02(d), Family Code, as added by SECTION 14 of the bill (house committee report, page 16, line 23 through page 17, line 2), and substituting the following:

(d) Notwithstanding Section 51.09(a), a child taken into custody as provided by Subsection (c) may submit to the taking of a breath specimen or refuse to submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request made of the child to give the specimen and the child's response to that request is videotaped. A videotape made under this subsection must be maintained until the disposition of any proceeding against the child relating to the arrest is final and be made available to an attorney representing the child during that period.

Amendment No. 1 was adopted without objection.

#### **Amendment No. 2**

Representative Place offered the following amendment to **SB 35**:

Amend **SB 35** as follows:

(1) add the following appropriately numbered section and renumbering sections appropriately:

SECTION \_\_\_\_\_. Section 49.02, Penal Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) Except as provided by Subsection (e), an [An] offense under this section is a Class C misdemeanor.

(e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

(2) In Section 54.046, Family Code, as added by SECTION 16 of the bill, immediately following "Alcoholic Beverage Code,", (House committee report, page 18, line 23) insert "or Section 49.02. Penal Code,".

Amendment No. 2 was adopted without objection.

**SB 35**, as amended, was passed. (Uher recorded voting no)

(Speaker in the chair)

## **MAJOR STATE CALENDAR**

**(consideration continued)**

### **CSSB 371 ON SECOND READING**

**(Telford - House Sponsor)**

**CSSB 371**, A bill to be entitled An Act relating to the continuation and functions of the Texas Commission on Fire Protection.

**CSSB 371** was passed to third reading.

### **SB 681 ON SECOND READING**

**(Stiles - House Sponsor)**

**SB 681**, A bill to be entitled An Act relating to the alternative fuels program.

#### **Amendment No. 1**

Representative Stiles offered the following amendment to **SB 681**:

Amend **SB 681** as follows:

On page 1, line 7, between "except" and "a" insert "a motor bus used to transport pre-primary, primary or secondary students to or from school or for approved extracurricular activities or"

Amendment No. 1 was adopted without objection.

#### **Amendment No. 2**

Representative Bosse offered the following amendment to **SB 681**:

Amend **SB 681** on page 1, line 22, by deleting ", except urban buses".

Amend **SB 681** on page 2, lines 5 through 7, by deleting subdivision (10).

Amendment No. 2 was adopted without objection.



**Amendment No. 3**

Representative Tillery offered the following amendment to **SB 681**:

Amend **SB 681** as follows:

On page 2, between lines 4 and 5, add a new subsection to read as follows:  
"(D) a law enforcement or emergency vehicle."

Amendment No. 3 was adopted without objection.

**Amendment No. 4**

Representative Siebert offered the following amendment to **SB 681**:

Amend **SB 681** on page 2, line 10, by deleting "(a)".

Amend **SB 681** on page 2, line 20, by deleting subsection (b).

Amendment No. 4 was adopted without objection.

**SB 681**, as amended, was passed to third reading.

**CSSB 55 ON SECOND READING**

**(Berlanga, J. Jones, Delisi, Dunnam, and Averitt - House Sponsors)**

**CSSB 55**, A bill to be entitled An Act relating to the regulation of the sale, distribution, and use of tobacco products; providing penalties.

**Amendment No. 1**

Representatives Chisum and Palmer offered the following amendment to **CSSB 55**:

Amend **CSSB 55** as follows:

(1) In SECTION 1.01 of the bill (page 6, lines 17-19, House Committee Printing), strike proposed Section 161.086(b) and substitute the following:

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

(1) a facility or business that is not open to persons younger than 18 years of age at any time; or

(2) a permit holder:

(A) that complies with the training and employee policy provisions established by Sections 154.1143 and 155.0593, Tax Code;

(B) that maintains tobacco products in a retail establishment that are within the line of sight of a cashier or other employee of the retailer during regular business hours or are monitored by electronic means that permit a cashier or other employee to view the tobacco products during regular business hours; and

(C) whose employees have not been convicted of violations of this subchapter more than two times in the preceding 24-month period.

(2) In SECTION 1.01 of the bill, at the end of proposed Section 161.086, Health and Safety Code (page 7, between lines 1 and 2, House Committee Printing), insert the following:

(e) The comptroller shall exempt a retailer from the prohibition prescribed by Subsection (a)(1) if the retailer demonstrates to the comptroller that the retailer or an employee of the retailer has not violated a provision of this subchapter in the preceding 12-month period.

Representative Berlanga moved to table Amendment No. 1.

A record vote was requested.

The motion to table prevailed by (Record 473): 93 Yeas, 46 Nays, 1 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Burnam; Carter; Chavez; Christian; Clark; Coleman; Cook; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Farrar; Finnell; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Gray; Greenberg; Gutierrez; Hamric; Hartnett; Hawley; Hernandez; Hilbert; Hirschi; Hochberg; Hodge; Howard; Hunter; Isett; Jones, J.; Kamel; King; Krusee; Kubiak; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McClendon; McReynolds; Merritt; Moreno; Naishtat; Oakley; Oliveira; Olivo; Pickett; Price; Puente; Rabuck; Rangel; Raymond; Reyna, A.; Rhodes; Roman; Sadler; Seaman; Smith; Smithee; Solis; Staples; Thompson; Torres; Van de Putte; West; Williamson; Wilson; Wise; Wolens; Zbranek.

Nays — Allen; Brimer; Chisum; Corte; Counts; Denny; Eiland; Elkins; Galloway; Goolsby; Grusendorf; Haggerty; Heflin; Hightower; Hill; Holzheuser; Horn; Hupp; Jackson; Janek; Junell; Keel; Keffer; Kuempel; Moffat; Mowery; Nixon; Palmer; Patterson; Pitts; Place; Ramsay; Reyna, E.; Serna; Shields; Siebert; Swinford; Talton; Tillery; Turner, B.; Uher; Walker; Williams; Wohlgemuth; Woolley; Yarbrough.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Hinojosa; Solomons; Telford.

Absent — Hilderbran; Jones, D.; Marchant; Stiles; Turner, S.

### STATEMENT OF VOTE

When Record No. 473 was taken, I was temporarily out of the house chamber. I would have voted yes.

Hilderbran

### Amendment No. 2

Representative Berlanga offered the following amendment to **CSSB 55**:

Amend **CSSB 55** in Section 161.087(b), Health and Safety Code, as added by SECTION 1.01 of the bill (page 7, line 16, house committee report printing) by striking "that a recipient" and substituting "that such recipient".

Amendment No. 2 was adopted without objection.

### Amendment No. 3

Representative Berlanga offered the following amendment to **CSSB 55**:

Amend **CSSB 55** as follows:

Article 2. Section 2.01. Subchapter K, Chapter 161, Health and Safety Code, Sec. 161.122, subsections (a) and (e) are amended as follows:

On page 11, line 7 insert the words "or playground" after the word "school" and before the period.

On page 12, line 1 insert the words "or playground" after the word "school" and before the word "but".

On page 12, line 2 insert the words "or playground" after the word "school" and before the period.

Amendment No. 3 was adopted without objection.

#### **Amendment No. 4**

Representative Chisum offered the following amendment to **CSSB 55**:

Amend **CSSB 55** as follows:

(1) In SECTION 2.01 of the bill, strike added Sections 161.123-161.125, Health and Safety Code (page 12, line 3, through page 14, line 16, house committee printing).

(2) In SECTION 3.01 of the bill, in the introductory language to the section (page 14, line 19, house committee printing), strike "Subchapters N and O" and substitute "Subchapter N".

(3) In SECTION 3.01 of the bill, strike added Subchapter O, Health and Safety Code (page 18, lines 1-13, house committee printing).

(4) In SECTION 4.02 of the bill, strike added Section 154.121(d), Tax Code (page 19, lines 22-26, house committee printing).

(5) In SECTION 4.07 of the bill, strike added Section 155.058(d), Tax Code (page 24, lines 6-10, house committee printing).

(6) Strike SECTION 5.03 of the bill (page 28, line 20, through page 29, line 2, house committee printing), and substitute the following:

SECTION 5.03. Notwithstanding any other law, the implementation and execution of the programs established by the change in law made by this Act are contingent on the availability of funds for those programs, as determined by the comptroller, from the permit fee imposed on retailers under Chapters 154 and 155, Tax Code, as amended by this Act.

Representative Berlanga moved to table Amendment No. 4.

A record vote was requested.

The motion to table prevailed by (Record 474): 84 Yeas, 59 Nays, 1 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Burnam; Carter; Christian; Clark; Coleman; Cook; Cuellar; Danburg; Davila; Davis; Delisi; Dunnam; Edwards; Ehrhardt; Eiland; Gallego; Garcia; Giddings; Glaze; Goodman; Gray; Greenberg; Gutierrez; Hawley; Hilderbran; Hirschi; Hochberg; Hodge; Howard; Isett; Janek; Jones, J.; Junell; Kamel; Keffer; King; Kubiak; Lewis, G.; Lewis, R.; Longoria; Maxey; McCall; McClendon; McReynolds; Moffat; Moreno; Naishtat; Oakley; Oliveira; Olivo; Palmer; Pickett; Pitts; Place; Price; Rangel; Raymond; Reyna, A.; Rhodes; Roman; Sadler; Seaman; Serna; Smith; Smithee; Staples; Tillery; Torres; Turner, S.; Van de Putte; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Zbraneck.

Nays — Allen; Brimer; Chavez; Chisum; Corte; Counts; Craddick; Culbertson; Denny; Driver; Dukes; Dutton; Elkins; Farrar; Finnell; Flores;

Galloway; Goolsby; Grusendorf; Haggerty; Hamric; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hill; Holzheuser; Horn; Hunter; Hupp; Jackson; Jones, D.; Keel; Krusee; Kuempel; Luna; Madden; Marchant; Merritt; Mowery; Nixon; Patterson; Puente; Rabuck; Ramsay; Reyna, E.; Shields; Siebert; Solis; Swinford; Talton; Thompson; Turner, B.; Uher; Walker; West; Woolley; Yarbrough.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Hinojosa; Solomons; Telford.

Absent — Stiles.

Representative Chisum raised a point of order against further consideration of **CSSB 55** under Rule 4, Section 11(a) and Rule 4, Section 18(a)(1) of the House Rules on the grounds that the minutes reflect that the May 13 meeting was held in a location other than the location listed on the posted meeting notice.

The speaker sustained the point of order.

The bill was returned to the Committee on State Affairs.

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 6).

(Brimer in the chair)

### **LEAVE OF ABSENCE GRANTED**

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

Smithe on motion of Averitt.

### **CONSTITUTIONAL AMENDMENTS CALENDAR SENATE JOINT RESOLUTIONS SECOND READING**

The following resolution was laid before the house and read second time:

#### **SJR 39 ON SECOND READING (Giddings - House Sponsor)**

**SJR 39**, A joint resolution proposing a constitutional amendment allowing the Texas growth fund to continue to invest in businesses without requiring those businesses to disclose investments in South Africa or Namibia.

A record vote was requested.

**SJR 39** was adopted by (Record 475): 140 Yeas, 1 Nay, 2 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Burnam; Carter; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell;

Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbrank.

Nay — Chavez.

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

Absent, Excused — Crabb; Hinojosa; Smithee; Solomons; Telford.

Absent — Danburg.

### **GENERAL STATE CALENDAR SENATE BILLS THIRD READING**

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

#### **SB 172 ON THIRD READING (Stiles and Berlanga - House Sponsors)**

**SB 172**, A bill to be entitled An Act relating to coverage for childhood immunizations under certain health benefit plans.

**SB 172** was passed.

#### **SB 1460 ON THIRD READING (Telford - House Sponsor)**

**SB 1460**, A bill to be entitled An Act relating to the establishment of excess benefit plans in connection with the optional retirement program for higher education employees.

A record vote was requested.

**SB 1460** was passed by (Record 476): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Burnam; Carter; Chavez; Chisum; Christian; Clark; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.;

Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Solis; Staples; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

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

Absent, Excused — Crabb; Hinojosa; Smithee; Solomons; Telford.

Absent — Coleman; Danburg; Stiles.

**SB 291 ON THIRD READING**  
**(Haggerty - House Sponsor)**

**SB 291**, A bill to be entitled An Act relating to the regulation of orthotists and prosthetists; providing a civil penalty.

**SB 291** was passed.

**SB 299 ON THIRD READING**  
**(Ramsay, Naishtat, and Goodman - House Sponsors)**

**SB 299**, A bill to be entitled An Act relating to the date for a hearing on an application for a protective order.

**SB 299** was passed.

**SB 305 ON THIRD READING**  
**(Berlanga - House Sponsor)**

**SB 305**, A bill to be entitled An Act relating to the Interagency Council on Early Childhood Intervention.

**Amendment No. 1**

Representative Greenberg offered the following amendment to **SB 305**:

Amend **SB 305**, Section 73.0051 on third reading by adding on page 10 between lines 10 and 11 the following:

(i) The Council shall include parents when deciding the appropriate treatment for the needs of their child/children.

(j) The Council shall not limit services to solely natural environments, but shall also make alternatives available when early intervention cannot be achieved satisfactorily in a natural environment.

Amendment No. 1 was adopted without objection.

**SB 305**, as amended, was passed.

**SB 1246 ON THIRD READING**  
**(Berlanga, Glaze, Hightower, Place, and McReynolds - House Sponsors)**

**SB 1246**, A bill to be entitled An Act relating to the establishment of a statewide rural health care system.

**Amendment No. 1**

Representative Berlanga offered the following amendment to **SB 1246**:

Amend **SB 1246**, on third reading, as follows:

(1) In Article 20C.14(a), Insurance Code, as added by SECTION 1 of the bill (page 9, line 17, House Committee Printing), strike "The state" and substitute "To the extent consistent with federal law, the state".

(2) In Article 20C.14(b), Insurance Code, as added by SECTION 1 of the bill (page 9, line 26, House Committee Printing), strike "state fiscal biennium." and substitute "state fiscal biennium, except that the system shall receive a subcontract from the funding entity to provide services to those children if the system elects to receive a subcontract not later than November 1, 1997, the system provides the state share of matching funds for the entire population covered by the subcontract, and the subcontract does not cover an area that is included in the statutory territorial jurisdiction of a hospital district. If the system elects not to receive a subcontract or to provide the state share of matching funds, then any entity that is selected by the state Medicaid contracting entity to provide health care to those children shall use local health care providers and hospital providers in establishing its provider network."

(3) In Article 20C.14, Insurance Code, as added by SECTION 1 of the bill (page 10, between lines 20 and 21, House Committee Printing), insert a new Subsection (f) to read as follows:

"(f) The state retains the right to cancel a contract awarded under this article if the system is sold or dissolved."

Amendment No. 1 was adopted without objection.

**SB 1246**, as amended, was passed.

**SB 381 ON THIRD READING**

**(Goodman, Danburg, and McClendon - House Sponsors)**

**SB 381**, A bill to be entitled An Act relating to the civil and criminal consequences of a grant of deferred adjudication for a sexual offense or a sexually assaultive offense and to the prosecution of certain defendants charged with or convicted of those offenses.

**Amendment No. 1**

On behalf of Representative Goodman, Representative Van de Putte offered the following amendment to **SB 381**:

Amend **SB 381** on 3rd Reading, in the Goodman 2nd Reading amendment, by striking the text of the amendment.

(Speaker in the chair)

Amendment No. 1 was adopted without objection.

**SB 381**, as amended, was passed.

**SB 694 ON THIRD READING**

**(Greenberg - House Sponsor)**

**SB 694**, A bill to be entitled An Act relating to the use of alternative dispute resolution procedures by state agencies.

**SB 694** was passed.



**SB 461 ON THIRD READING****(Maxey - House Sponsor)**

**SB 461**, A bill to be entitled An Act relating to the authority of the comptroller to contract for certain tax collection services.

**SB 461** was passed.

**SB 823 ON THIRD READING****(Naishtat - House Sponsor)**

**SB 823**, A bill to be entitled An Act relating to payroll deductions in certain municipalities.

**SB 823** was passed.

**SB 551 ON THIRD READING****(Thompson - House Sponsor)**

**SB 551**, A bill to be entitled An Act relating to the exemption of certain persons from jury service.

**SB 551** was passed.

**SB 1702 ON THIRD READING****(Hunter - House Sponsor)**

**SB 1702**, A bill to be entitled An Act relating to the records of the executive office of the governor.

A record vote was requested.

**SB 1702** was passed by (Record 477): 139 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Hodge; Holzhauser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Moffat; Moreno; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Solis; Staples; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Hinojosa; Smithee; Solomons; Telford.

Absent — Hamric; Merritt; Mowery; Stiles.

**SB 271 ON THIRD READING**  
**(Wilson - House Sponsor)**

**SB 271**, A bill to be entitled An Act relating to the geographic area where certain holders of a local distributor's permit may sell a brand of ale, beer, or malt liquor.

**SB 271** was passed.

**GENERAL STATE CALENDAR**  
**SENATE BILLS**  
**SECOND READING**

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

**CSSB 343 ON SECOND READING**  
**(Brimer and Hirschi - House Sponsors)**

**CSSB 343**, A bill to be entitled An Act relating to speed limits for vehicles towing certain trailers.

**Amendment No. 1**

Representatives Palmer and Mowery offered the following amendment to **CSSB 343**:

Amend **CSSB 343** as follows:

(1) On page 7, line 10, between "motorcycle," and "or", insert "truck, truck tractor, trailer, semitrailer, or a vehicle towing a trailer, semitrailer, another motor vehicle, or towable recreational vehicle.".

(2) On page 8, line 1, after "highway.", insert "or".

(3) On page 8, line 3, strike "; or", and substitute "[~~;~~or]".

(4) On page 8, strike lines 4 through 10, and substitute the following:  
[~~(C) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is a truck, other than a light truck, or if the vehicle is a truck tractor, trailer, or semitrailer, or a vehicle towing a trailer, semitrailer, another motor vehicle or house trailer of an actual or registered gross weight lighter than 4,500 pounds and a length of 32 feet or shorter, excluding the tow bar.~~]

Amendment No. 1 was adopted.

**CSSB 343**, as amended, was passed to third reading. (Finnell recorded voting no)

**SB 495 ON SECOND READING**  
**(Ramsay - House Sponsor)**

**SB 495**, A bill to be entitled An Act relating to travel expenses incurred by state officers and employees.

**Amendment No. 1 (Committee Amendment No. 1)**

Representative Ramsay offered the following committee amendment to **SB 495**:

Amend **SB 495** as follows:

Strike Section 6 of the bill on page 14, lines 13-25, and page 15, lines 1-16, and substitute the following:

SECTION 6. Section 660.024, Government Code, is amended to read as follows:

Sec. 660.024. ADVANCE APPROVAL FOR CERTAIN INTERNATIONAL TRAVEL. (a) The chief administrator of a state agency must give advance written approval for any travel [Travel] related to official state business for which a reimbursement for travel expenses is claimed or for which an advance for travel expenses to be incurred is sought [must have the advance written approval of the governor]. A copy of the written approval shall be submitted with the travel voucher to the comptroller in accordance with Section 660.027.

(b) Subsection (a) applies to a travel expense only if it is incurred while traveling to, in, or from a destination that is not in [does not apply to travel]:

- (1) the United States [in this state]; [or]
- (2) a possession of the United States;
- (3) [to, in, and from another state,] Mexico;[;] or
- (4) Canada.

(c) The chief administrator of a state agency may designate an employee of the agency to provide the approval required by this section. [The governor may give blanket authority for travel by:

[(1) personnel of the International Trade Development Division of the Texas Department of Commerce; and

[(2) law enforcement personnel of the Department of Public Safety.]]

Amendment No. 1 was adopted without objection.

### **HR 1037 - ADOPTED**

(by A. Reyna)

Representative A. Reyna moved to suspend all necessary rules to take up and consider at this time **HR 1037**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

**HR 1037**, In memory of Raul Alderete.

**HR 1037** was unanimously adopted by a rising vote.

### **SB 495 - (consideration continued)**

#### **Amendment No. 2**

Representative Grusendorf offered the following amendment to **SB 495**:

Amend **SB 495** as follows:

Strike lines 6 through 12 on page 28.

### **COMMITTEE GRANTED PERMISSION TO MEET**

Representative McCall requested permission for the Committee on Calendars to meet while the house is in session.

Permission to meet was granted without objection.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Calendars, 8:30 p.m. today, speakers committee room.

**SB 495 - (consideration continued)**

A record vote was requested.

Amendment No. 2 failed of adoption by (Record 478): 6 Yeas, 126 Nays, 5 Present, not voting.

Yeas — Grusendorf; Hartnett; Heflin; Horn; Nixon; Shields.

Nays — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hamric; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Hodge; Holzheuser; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McClendon; McReynolds; Merritt; Moreno; Naishtat; Oakley; Oliveira; Olivo; Palmer; Pickett; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Siebert; Smith; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Wilson; Wise; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C); Carter; Marchant; Williams; Wohlgemuth.

Absent, Excused — Crabb; Hinojosa; Smithee; Solomons; Telford.

Absent — Galloway; Howard; Madden; Moffat; Mowery; Patterson; Pitts.

**STATEMENTS OF VOTE**

When Record No. 478 was taken, I was in the house but away from my desk. I would have voted no.

Galloway

I was shown voting yes on Record No. 478. I intended to vote no.

Horn

When Record No. 478 was taken, I was in the house but away from my desk. I would have voted no.

Madden

**ADDRESS BY REPRESENTATIVE GRUSENDORF  
ON A MATTER OF PERSONAL PRIVILEGE**

The speaker recognized Representative Grusendorf who addressed the house on a matter of personal privilege.

**SB 495 - (consideration continued)****Amendment No. 3**

Representative Grusendorf offered the following amendment to **SB 495**:

Amend **SB 495** by striking Section 660.075 on page 28 lines 16 through 20.

Amendment No. 3 failed of adoption.

**SB 495**, as amended, was passed to third reading. (Finnell recorded voting no)

**STATEMENT BY REPRESENTATIVE FINNELL**

I voted no on **SB 495** by Armbrister as I feel that trips to attend funerals of state employees should not be taken at state expense.

Finnell

**COMMITTEE GRANTED PERMISSION TO MEET**

Representative Patterson requested permission for the Committee on Agriculture and Livestock to meet while the house is in session.

Permission to meet was granted without objection.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Agriculture and Livestock, 9 p.m. today, speakers committee room.

**SB 274 ON SECOND READING  
(Oliveira - House Sponsor)**

**SB 274**, A bill to be entitled An Act relating to the operation of The University of Texas at Brownsville.

**Amendment No. 1 (Committee Amendment No. 1)**

On behalf of Representative Solis, Representative Oliveira offered the following committee amendment to **SB 274**:

Amend **SB 274**, as follows:

(1) On page 1, line 18, insert "subject to the authority of the Texas Higher Education Coordinating Board (THECB)" between "shall" and "offer".

(2) On page 2, line 16, strike "entering".

(3) On page 2, line 25, add a new Section 4 as follows and renumber subsequent sections appropriately:

SECTION 4. Not later than May 31, 1998, the THECB shall prepare an impact statement examining the initial implementation of this Act and shall deliver a copy of the statement to the board, to the board of trustees of Southmost Union Junior College District, and to the chair of the standing committee of each house of the legislature with primary jurisdiction over higher education.

Amendment No. 1 was adopted without objection.

**SB 274**, as amended, was passed to third reading.

**SB 1591 ON SECOND READING**  
**(Talton - House Sponsor)**

**SB 1591**, A bill to be entitled An Act relating to the authority of the Texas Natural Resource Conservation Commission regarding pollution control or abatement flexibility.

**Amendment No. 1**

Representative Puente offered the following amendment to **SB 1591**:

On page 1, lines 12-13 of **SB 1591**, strike the words "at least as protective of the environment and the public health as" and replace with the words "more protective of the environment and public health than".

Representative Talton moved to table Amendment No. 1.

The motion to table prevailed.

**Amendment No. 2**

Representative Dukes offered the following amendment to **SB 1591**:

On page 1, line 16-19 of **SB 1591**, strike proposed new subsection (b) and insert the following:

(b) The commission shall adopt separate rules for each pollution control program under its jurisdiction that specify the respective procedures for obtaining an exemption under this section and describes the criteria by which the commission will evaluate each request for an exemption. The rules must provide that each application for an exemption must be subject to the same requirements for public notice and the same opportunity for affected persons to request a public hearing that would otherwise be applicable to an application for a permit or for any other commission authorization.

Representative Talton moved to table Amendment No. 2.

The motion to table prevailed.

**Amendment No. 3**

Representative Madden offered the following amendment to **SB 1591**:

Amend **SB 1591** as follows:

On page 2, line 2, substitute a comma for the period after the word "section," and add the following text, "the fee not to exceed the routine charge assessed the applicant to be in compliance with the requirement of a statute or commission rule regarding the control or abatement of pollution."

Amendment No. 3 was withdrawn.

**Amendment No. 4**

Representative Gallego offered the following amendment to **SB 1591**:

Amend **SB 1591** at page 2, line 6 by adding new subsection 5.123 (f) to read as follows:

(f) This section does not apply to any facility that stores, handles, processes or disposes of radioactive materials.

Amendment No. 4 was adopted without objection.

#### **Amendment No. 5**

Representative Dukes offered the following amendment to **SB 1591**:

On page 2 of **SB 1591**, add a new subsection (f) to read as follows:

(f) Any facility that emits air pollutants that was in existence on or before September 1, 1971 and is operating without a construction permit issued by the commission is not eligible for the type of exemption which the commission is authorized to grant under Subsection (a) of this section unless the proposed alternative method of pollution control will result in a decrease in actual air emissions from that facility.

Representative Talton moved to table Amendment No. 5.

The motion to table prevailed.

#### **Amendment No. 6**

Representative Burnam offered the following amendment to **SB 1591**:

Amend **SB 1591** on page 2, by inserting the following Subsection between lines 5 and 6:

(f) This section does not apply to any discharge of wastewater in excess of 500,000 gallons per day.

Representative Stiles moved to table Amendment No. 6.

A record vote was requested.

The motion to table prevailed by (Record 479): 103 Yeas, 38 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Berlanga; Bonnen; Brimer; Carter; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Danburg; Delisi; Denny; Driver; Dunnam; Eiland; Elkins; Finnell; Flores; Galloway; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hightower; Hilbert; Hilderbran; Hill; Hochberg; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Madden; Marchant; McCall; McReynolds; Merritt; Moffat; Mowery; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pitts; Place; Price; Rabuck; Ramsay; Raymond; Reyna, E.; Rhodes; Roman; Seaman; Serna; Shields; Siebert; Smith; Staples; Stiles; Swinford; Talton; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough.

Nays — Alvarado; Bailey; Bosse; Burnam; Chavez; Davila; Davis; Dukes; Dutton; Edwards; Ehrhardt; Farrar; Gallego; Garcia; Giddings; Greenberg; Gutierrez; Hernandez; Hirschi; Hodge; Jones, J.; Longoria; Luna; Maxey; McClendon; Moreno; Naishtat; Pickett; Puente; Rangel; Reyna, A.; Sadler; Solis; Thompson; Tillery; Turner, S.; Wilson; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Hinojosa; Smithee; Solomons; Telford.

Absent — Glaze; Gray.



## STATEMENT OF VOTE

I was shown voting yes on Record No. 479. I intended to vote no.

Danburg

### Amendment No. 7

Representative Burnam offered the following amendment to **SB 1591**:

Amend **SB 1591** on page 2, by inserting the following Subsection between lines 5 and 6:

(f) This section does not apply to any facility that emits more than 100 tons per year of any air contaminant.

## LEAVE OF ABSENCE GRANTED

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

Kubiak on motion of Yarbrough.

### SB 1591 - (consideration continued)

Representative Talton moved to table Amendment No. 7.

A record vote was requested.

The motion to table prevailed by (Record 480): 110 Yeas, 20 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Berlanga; Bonnen; Brimer; Carter; Chisum; Christian; Clark; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Danburg; Delisi; Denny; Driver; Dunnam; Edwards; Eiland; Elkins; Finnell; Flores; Gallego; Galloway; Glaze; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hochberg; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Junell; Kamel; Keel; Keffer; King; Krusee; Kuempel; Lewis, G.; Lewis, R.; Madden; Marchant; McCall; McReynolds; Merritt; Moffat; Moreno; Mowery; Nixon; Oakley; Oliveira; Palmer; Patterson; Pickett; Pitts; Place; Price; Rabuck; Ramsay; Rangel; Raymond; Reyna, E.; Rhodes; Roman; Seaman; Serna; Shields; Siebert; Smith; Solis; Staples; Stiles; Swinford; Talton; Thompson; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wohlgemuth; Wolens; Woolley; Yarbrough.

Nays — Alvarado; Bailey; Burnam; Davis; Dukes; Dutton; Ehrhardt; Farrar; Garcia; Hirschi; Hodge; Jones, J.; Luna; Maxey; McClendon; Naishtat; Reyna, A.; Tillery; Wilson; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Hinojosa; Kubiak; Smithee; Solomons; Telford.

Absent — Bosse; Chavez; Coleman; Davila; Giddings; Gray; Longoria; Olivo; Puente; Sadler; Turner, S.; Wise.

## STATEMENTS OF VOTE

I was shown voting yes on Record No. 480. I intended to vote no.

Danburg

When Record No. 480 was taken, I was in the house but away from my desk. I would have voted yes.

S. Turner

### **Amendment No. 8**

Representative Burnam offered the following amendment to **SB 1591**:

On page 2, lines 1-2 of **SB 1591**, strike the current Subsection (d) and replace with the following new Subsection (d) to read as follows:

(d) The commission by rule may establish a reasonable fee for applying for an exemption under this section and any such fee shall be sufficient to cover the full costs incurred by the commission in the review and evaluation of applications for exemptions. The authority granted by this section to the commission to exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution shall be in effect only in those fiscal years for which the legislature has appropriated to the commission specific funds to cover the processing and evaluation of such applications for exemptions.

Representative Talton moved to table Amendment No. 8.

A record vote was requested.

The motion to table prevailed by (Record 481): 116 Yeas, 22 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Berlanga; Bonnen; Bosse; Brimer; Carter; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Davila; Delisi; Denny; Driver; Dunnam; Dutton; Edwards; Eiland; Elkins; Finnell; Flores; Galloway; Glaze; Goodman; Goolsby; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Junell; Kamel; Keel; Keffer; King; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Madden; Marchant; McCall; McReynolds; Merritt; Moffat; Mowery; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Seaman; Serna; Shields; Siebert; Smith; Solis; Staples; Stiles; Swinford; Talton; Thompson; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough.

Nays — Bailey; Burnam; Chavez; Danburg; Davis; Dukes; Ehrhardt; Farrar; Gallego; Garcia; Giddings; Greenberg; Hodge; Jones, J.; Luna; Maxey; McClendon; Moreno; Naishtat; Sadler; Tillery; Zbrank.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Hinojosa; Kubiak; Smithee; Solomons; Telford.

Absent — Alvarado; Gray; Hochberg; Turner, S.

### **STATEMENT OF VOTE**

When Record No. 481 was taken, I was in the house but away from my desk. I would have voted yes.

S. Turner

**Amendment No. 9**

Representative Berlanga offered the following amendment to **SB 1591**:

Amend **SB 1591** (house committee printing, page 2, between lines 5 and 6) by inserting the following:

(f) A permit may satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts.

Amendment No. 9 was adopted without objection.

**Amendment No. 10**

Representative Chavez offered the following amendment to **SB 1591**:

Amend **SB 1591** to add the following after Page 2, Line 5:

(f) The commission may not exempt an applicant from a requirement under this chapter if the applicant has been fined by the commission for a violation of state law in the previous 2 years.

(Thompson in the chair)

Representative Talton moved to table Amendment No. 10.

The motion to table prevailed.

**SB 1591**, as amended, was passed to third reading. (Burnam and Zbranek recorded voting no)

**SB 798 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Goodman, the house granted the request of the senate for the appointment of a conference committee on **SB 798**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 798**: Goodman, chair, J. Jones, A. Reyna, Smith, and Williams.

(Speaker in the chair)

**SB 1865 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative R. Lewis, the house granted the request of the senate for the appointment of a conference committee on **SB 1865**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1865**: R. Lewis, chair, Counts, Culberson, Puente, and Walker.

**HB 883 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Krusee called up with senate amendments for consideration at this time,

**HB 883**, A bill to be entitled An Act relating to the composition of the board of directors of certain metropolitan transit authorities.

On motion of Representative Krusee, the house concurred in the senate amendments to **HB 883** by (Record 482): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Solis; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Hinojosa; Kubiak; Smithee; Solomons; Telford.

Absent — Dukes.

### **Senate Amendment No. 1**

Amend **HB 883** by striking Sections 3, 4, 5, and 6 of the bill and substituting the following:

SECTION 3. Subchapter K, Chapter 451, Transportation Code, is amended by adding Section 451.5021 to read as follows:

Sec. 451.5021. BOARD COMPOSITION; CERTAIN AUTHORITIES.  
(a) This section applies only to the board of an authority in which each member of the governing body of the principal municipality is elected at large.

(b) The board is composed of seven members who are appointed as follows:

(1) two members representing the general public appointed by the metropolitan planning organization designated by the governor that serves the area of the authority;

(2) two members appointed by the governing body of the principal municipality;

(3) one member appointed by the commissioners court of the principal county;

(4) one member appointed by a panel composed of the mayors of all the municipalities in the authority located in the principal county of the authority excluding the mayor of the principal municipality; and

(5) one member appointed by a panel composed of:

(A) the mayors of all municipalities in the authority located

outside the principal county of the authority, excluding the mayor of the principal municipality;

(B) the county judges of the counties having unincorporated area in the authority, excluding the county judge of the principal county; and

(C) the presiding officer of each municipal utility district any portion of which is located outside the principal county.

(c) Only a member of a metropolitan planning organization who is an elected officer of a political subdivision in which a tax of the authority is collected is entitled to vote on an appointment under Subsection (b)(1).

(d) A person appointed under Subsection (b)(2), (3), (4), or (5):

(1) must be a member of the governing body:

(A) of the political subdivision that is entitled to make the appointment; or

(B) over which a member of the panel entitled to make an appointment presides;

(2) vacates the office of board member if the person ceases to be a member of the governing body described by Subdivision (1);

(3) serves on the board as an additional duty of the office held on the governing body described by Subdivision (1); and

(4) is not entitled to compensation for serving as a member of the board.

(e) A panel appointing a member under this section operates in the manner prescribed by Section 451.503.

(f) In this section, "principal county" has the meaning assigned by Section 451.501(f).

SECTION 4. (a) This section applies only to an authority governed by a board to which Section 451.5021, Transportation Code, as added by this Act, applies.

(b) Effective immediately, the terms of all members serving on the board on the effective date of this Act expire. The authority is managed by a temporary board consisting of five members appointed by the executive committee of the metropolitan planning organization designated by the governor that serves the area of the authority. The temporary board has all the powers of a board under Chapter 451, Transportation Code. Only a member of the executive committee who is elected from a political subdivision in which a tax of the authority is collected is entitled to vote on an appointment under this section. The terms of all members serving on the temporary board expire when a majority of the members of the board appointed under Section 451.5021, Transportation Code, as added by this Act, take office.

(c) The governmental entities entitled to make appointments under Section 451.5021, Transportation Code, as added by this Act, shall make the initial appointments as soon as practical after the effective date of Section 3 of this Act.

SECTION 5. This Act takes effect August 15, 1997, except that this section and Section 4 of this Act take effect immediately.

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 according to its terms, and it is so enacted.

**HR 1032 - ADOPTED**  
**(by Pitts)**

The speaker laid before the house the following privileged resolution:

**HR 1032**

BE IT RESOLVED by the House of Representatives of the State of Texas, 75th Legislature, Regular Session, 1997, 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. 99 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 text on a matter that is not included in Section 661.003, Transportation Code, as amended by either the house or senate version of the bill. The added text reads as follows:

(c) It is an exception to the application of Subsection (a) or (b) [a defense to prosecution under this section] that at the time the offense was committed, the person required to wear protective headgear[:

[(+) was at least 21 [+8] years old[:] and had successfully completed a motorcycle operator training and safety course under Chapter 662 or was covered by a health insurance plan providing the person with at least \$10,000 in medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle [(2) presented a medical exemption complying with Subsection (d) to the peace officer who arrested the person].

(d) The Department of Public Safety shall issue a sticker to a person who:

(1) applies to the department on a form provided by the department;

(2) provides the department with evidence satisfactory to the department showing that the person:

(A) is the owner of a motorcycle that is currently registered in this state; and

(B) has successfully completed the training and safety course described by Subsection (c) or has the insurance coverage described by that subsection; and

(3) pays a fee of \$5 for the sticker [Only a practicing physician licensed by the Texas State Board of Medical Examiners may issue a medical exemption and the physician may issue the medical exemption only to a person who has an acute head or facial injury that would be worsened if the person wore protective headgear. The medical exemption must be on a form prescribed by the department and expires on the 10th day after the date it is issued].

(e) A person may apply to the Department of Public Safety for a sticker for each motorcycle owned by the applicant.

(f) A sticker issued by the Department of Public Safety under Subsection (d) expires on the third anniversary of the date of issuance.

(g) A person operating or riding as a passenger on a motorcycle that displays on the license plate of the motorcycle or the license plate mounting bracket a sticker issued by the Department of Public Safety under Subsection (d) is presumed to have successfully completed the training and safety course described by Subsection (c) or to have the insurance coverage described by that subsection.

**EXPLANATION:** This addition is necessary to:

(1) provide as an alternative to the requirement that a person 21 years of age or older be covered by a health insurance plan that the person have completed a motorcycle operator training and safety course approved by the Department of Public Safety; and

(2) provide for the issuance of a sticker by the Department of Public Safety to a qualified individual for display on the person's motorcycle and for the creation of a presumption that the person operating a motorcycle that displays the sticker has the required insurance or has completed the motorcycle training and safety course.

**HR 1032** was adopted without objection.

**CSSB 1 ON SECOND READING**  
**(R. Lewis - House Sponsor)**

**CSSB 1**, A bill to be entitled An Act relating to the development and management of the water resources of the state; providing penalties.

**COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Corrections, on adjournment today, Desk 45, to consider **SB 1611**.

State Affairs, on adjournment today, Desk 71, to consider **SB 55** and other pending bills.

**ADJOURNMENT**

Representative Farrar moved that the house adjourn until 10 a.m tomorrow in memory of Beatrice Quintero and Inez Lopez.

The motion prevailed without objection.

The house accordingly, at 10:37 p.m., adjourned until 10 a.m tomorrow.

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**ADDENDUM**

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**REFERRED TO COMMITTEES**

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

**List No. 1**

**SB 1958** to Judicial Affairs.

**SCR 44** to Corrections.

**MESSAGES FROM THE SENATE**

**Message No. 2**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Wednesday, May 21, 1997 - 2



The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 63**                      Kamel                      SPONSOR: Duncan  
Relating to student debit card programs operated by public institutions of higher education.  
(AMENDED)

**HB 785**                      Gallego                      SPONSOR: Patterson  
Relating to venue in a suit against a political subdivision.

**HB 932**                      Maxey                      SPONSOR: Barrientos  
Relating to the manner in which salaries are paid to certain employees of the Texas School for the Deaf.

**HB 1755**                      Burnam                      SPONSOR: Moncrief  
Relating to a mortgage guaranty insurance policy.  
(AMENDED)

**HB 1917**                      Goodman                      SPONSOR: West  
Relating to the powers and duties of the Texas Juvenile Probation Commission and of juvenile boards.  
(AMENDED)

**HB 2086**                      Palmer                      SPONSOR: Lucio, Jr.  
Relating to the regulation and operation of bingo.  
(COMMITTEE SUBSTITUTE/AMENDED)

**HB 2861**                      Pickett                      SPONSOR: Shapleigh  
Relating to sanctions against retail sellers of alcoholic beverages for violations relating to minors.

**HB 3137**                      Solomons                      SPONSOR: Armbrister  
Relating to adding new provisions to the Texas Workers' Compensation Act regarding judicial review, court judgments and settlements, and Texas Workers' Compensation Commission's right to notice and opportunity to intervene prior to issuance of a judgment or settlement.  
(AMENDED)

**HB 3337**                      Dukes                      SPONSOR: Barrientos  
Relating to application of the Capitol view corridors to the construction, redevelopment, and improvement of East 11th Street pursuant to the East 11th and 12th Streets Redevelopment Program.

**HB 3391**                      Smithee                      SPONSOR: Sibley  
Relating to the licensing of banks as insurance agents and to certain nonresident agents; providing a penalty.  
(AMENDED)

**HB 3515** Goolsby SPONSOR: Harris  
Relating to the transfer, sale, or exchange of real property between the General Services Commission and the City of Austin.

**HB 3544** Thompson SPONSOR: Whitmire  
Relating to the justice of the peace courts of Harris County.

**HCR 144** Crabb SPONSOR: Lindsay  
Creating a special committee to designate Texas State Artists.

**HCR 204** Hilderbran SPONSOR: Ellis  
Directing the Texas Workforce Commission to implement a subsidized work program for unemployed job applicants.

**HCR 283** Dutton  
In memory of Donna Ringoringo.

**HJR 55** Dutton SPONSOR: Ellis  
Proposing a constitutional amendment relating to a deadline for supreme court action on a motion for rehearing.

**SB 189** Haywood  
Relating to the civil liability of charitable organizations that are chambers of commerce.

**SCR 102** Whitmire  
Paying tribute to the memory of Assistant Fire Chief Dennis W. Holder.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 365** (viva-voce vote)

**SB 1630** (viva-voce vote)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**SB 798**  
Senate Conferees: Harris - Chair/Duncan/Ellis/Madla/Shapiro/

**SB 1865**  
Senate Conferees: Armbrister - Chair/Bivins/Brown/Nixon, Drew/Wentworth/  
THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 39**  
Senate Conferees: Zaffirini - Chair/Moncrief/Shapiro/Shapleigh/Sibley/

**HB 1710**  
Senate Conferees: Harris - Chair/Duncan/Ellis/Luna, Gregory/Wentworth/

**HB 2964**

Senate Conferees: Nixon, Drew - Chair/Cain/Gallegos/Galloway, Michael/  
Nelson/

Respectfully,

Betty King  
Secretary of the Senate

**Message No. 3**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Wednesday, May 21, 1997 - 3

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 119**                      Hirschi                      SPONSOR: Zaffirini  
Relating to disclosure of ingredients in cigarettes and tobacco products.  
(AMENDED)

**HB 218**                      Brimer                      SPONSOR: Harris  
Relating to enforcement of the National Flood Insurance Program by certain counties; providing a civil penalty.  
(AMENDED)

**HB 297**                      Driver                      SPONSOR: Galloway  
Relating to certain signs controlling use of traffic lanes.

**HB 733**                      Raymond                      SPONSOR: Shapleigh  
Relating to the lease of certain state facilities.  
(AMENDED)

**HB 812**                      Janek                      SPONSOR: Sibley  
Relating to certain communications between physicians, dentists, or other providers and patients or health care plan enrollees and to certain related contracts.  
(COMMITTEE SUBSTITUTE/AMENDED)

**HB 1070**                      Van de Putte                      SPONSOR: Madla  
Relating to drug regulation and enforcement under the Texas Controlled Substances Act and to the authority of certain state agencies under that Act and to certain penalties for the use of a controlled substance to commit the offense; imposing criminal penalties.  
(AMENDED)

**HB 1327** Nixon, Joe SPONSOR: Duncan  
Relating to the offense of barratry.

**HB 1356** Counts SPONSOR: Haywood  
Relating to licensing of funeral prearrangement life insurance agents.  
(COMMITTEE SUBSTITUTE)

**HB 1453** Turner, Sylvester SPONSOR: Barrientos  
Relating to the enforcement of certain laws prohibiting employment discrimination by the Commission on Human Rights.

**HB 1477** Bonnen SPONSOR: Brown  
Relating to immunity from liability for the directors of the Texas Catastrophe Property Insurance Association.  
(AMENDED)

**HB 1853** Eiland SPONSOR: Patterson  
Relating to coverage provided under certain policies issued through the Texas Catastrophe Property Insurance Association.

**HB 2063** Van de Putte SPONSOR: Cain  
Relating to coverage under a group health benefit plan for diagnosis and treatment of certain conditions affecting the temporomandibular joint.  
(AMENDED)

**HB 2383** Hochberg SPONSOR: Cain  
Relating to the qualification of a nonprofit charitable or religious organization, school, or youth association for an exemption from ad valorem taxation.  
(AMENDED)

**HB 2394** Delisi SPONSOR: Fraser  
Relating to course fees charged for certain courses at public institutions of higher education.  
(AMENDED)

**HB 2556** Kuempel SPONSOR: Wentworth  
Relating to eligibility for state assistance under the Indigent Health Care and Treatment Act for certain hospitals.

**HB 2906** Wolens SPONSOR: Ratliff  
Relating to the duties of the state auditor, state audits, and investigations.  
(AMENDED)

**HB 3052** Berlanga SPONSOR: Truan  
Relating to the liability of certain marine fire-fighting entities.  
(AMENDED)

**HB 3383** Eiland SPONSOR: Patterson  
Relating to the operation of the Texas catastrophe property insurance pool.  
(COMMITTEE SUBSTITUTE)

**SCR 103** Sibley  
Recalling **SB 1913** from the governor.

Respectfully,

Betty King  
Secretary of the Senate

**Message No. 4****MESSAGE FROM THE SENATE  
SENATE CHAMBER**

Austin, Texas

Wednesday, May 21, 1997 - 4

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

**THE SENATE HAS PASSED THE FOLLOWING MEASURES:**

**HB 1439**            Hilderbran            SPONSOR: Duncan  
Relating to use of financial assistance granted to persons with dependent children.

**HB 1800**            Hochberg            SPONSOR: Barrientos  
Relating to state-administered assessment instruments for students in special education programs.

**HB 2146**            Maxey            SPONSOR: Ellis  
Relating to studying minority participation in public higher education.  
(COMMITTEE SUBSTITUTE)

**HB 2255**            Berlanga            SPONSOR: Zaffirini  
Relating to the licensing of certain dentists and dental hygienists.

**SCR 71**            Madla  
Granting Orian R. Gardner permission to sue the State of Texas and the Texas Department of Transportation.

**SCR 95**            Bivins  
Authorizing the creation of the Texas Education Telecommunications Coordinating Committee.

**SCR 104**            Whitmire  
Expressing deep appreciation to Rita Tyson.

Respectfully,

Betty King  
Secretary of the Senate

**Message No. 5****MESSAGE FROM THE SENATE  
SENATE CHAMBER**

Austin, Texas

Wednesday, May 21, 1997 - 5

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SB 1384** Haywood

Relating to counseling for certain persons in a suit for divorce or a suit affecting the parent-child relationship.

Respectfully,

Betty King  
Secretary of the Senate

**Message No. 6**

MESSAGE FROM THE SENATE  
SENATE CHAMBER

Austin, Texas  
Wednesday, May 21, 1997 - 6

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 697** Dutton SPONSOR: Brown

Relating to contracting by court reporters.

(AMENDED)

**HB 1028** Krusee SPONSOR: Wentworth

Relating to strategic partnership agreements between certain local governments.

(AMENDED)

**HB 1418** Alexander SPONSOR: Sibley

Relating to the regulation of motor carriers of household goods; providing a penalty.

(COMMITTEE SUBSTITUTE)

**HB 1507** Dutton SPONSOR: Ratliff

Relating to limiting the liability of certain persons involved in an issuance of securities by a small business.

**HB 1585** Hirschi SPONSOR: Gallegos, Jr.

Relating to liability insurance for motor vehicles operated by law enforcement officers of a political subdivision.

**HB 1645** Goolsby SPONSOR: Carona  
Relating to cancellation of the voter registrations of persons who are not United States citizens; providing a penalty.

**HB 1779** Place SPONSOR: Carona  
Relating to the Real Estate Research Center.

**HB 2380** Siebert SPONSOR: Carona  
Relating to the abolition of unnecessary governmental entities.  
(AMENDED)

**HB 3086** Hartnett SPONSOR: Wentworth  
Relating to statutory probate court judges.  
(AMENDED)

**HB 3087** Hartnett SPONSOR: Harris  
Relating to the protection of defendants against vexatious litigants.  
(AMENDED)

**HB 3563** Smithee SPONSOR: Cain  
Relating to procedures to issue rental car companies limited licenses as insurance agents.  
(AMENDED)

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 2692** (31 YEAS, 0 NAYS)

Respectfully,

Betty King  
Secretary of the Senate

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## APPENDIX

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### STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

May 20

Appropriations - **SB 1107**

Business & Industry - **SB 27, SB 568, SB 1530, SB 1864**

County Affairs - **SB 1543**

Criminal Jurisprudence - **SB 873, SB 1120**

Economic Development - **HCR 113, SB 643, SB 739**

Environmental Regulation - **SB 1876**

Licensing & Administrative Procedures - **SB 218, SB 1190, SB 1831**

Public Health - **SB 1774**



State Affairs - **SB 64, SB 631, SB 882, SB 1059, SB 1396, SB 1578, SB 1674, SB 1914**

Transportation - **SB 1486**

**ENROLLED**

May 20 - **HB 3, HB 9, HB 212, HB 213, HB 385, HB 571, HB 606, HB 909, HB 984, HB 996, HB 1085, HB 1128, HB 1135, HB 1217, HB 1254, HB 1257, HB 1291, HB 1338, HB 1428, HB 1460, HB 1556, HB 1576, HB 1577, HB 1673, HB 1761, HB 1805, HB 1823, HB 1825, HB 1826, HB 2007, HB 2105, HB 2119, HB 2183, HB 2220, HB 2411, HB 2666, HB 2696, HB 2702, HB 2923, HB 2933, HB 3060, HB 3100, HB 3271, HB 3443, HB 3579, HB 3594, HCR 55, HCR 260, HCR 270, HCR 271, HCR 273**

**SENT TO THE GOVERNOR**

May 20 - **HB 9, HB 385, HB 473, HB 571, HB 574, HB 732, HB 740, HB 808, HB 984, HB 1029, HB 1085, HB 1135, HB 1217, HB 1288, HB 1291, HB 1338, HB 1540, HB 1556, HB 1577, HB 1610, HB 1805, HB 1823, HB 1825, HB 2007, HB 2083, HB 2220, HB 2411, HB 2445, HB 2696, HB 2923, HB 3060, HB 3100, HB 3252, HB 3271, HB 3559, HB 3565, HCR 55, HCR 165, HCR 227, HCR 260, HCR 270, HCR 271**

**SENT TO THE SECRETARY OF STATE**

May 20 - **HJR 83**

**SIGNED BY THE GOVERNOR**

May 20 - **HB 588, HB 708, HB 711, HB 758, HB 833, HB 1149, HB 1386, HB 1929, HCR 109, HCR 207, HCR 233, HCR 247**

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