HOUSE JOURNAL

SEVENTY-SEVENTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-FOURTH DAY — SUNDAY, MAY 27, 2001

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

The roll of the house was called and a quorum was announced present (Record 626).

Present — Mr. Speaker; Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Absent, Excused — Hilbert.

Absent — Hill.

The invocation was offered by Representative Dutton.

LEAVE OF ABSENCE GRANTED

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

Hilbert on motion of Haggerty.

MESSAGE FROM THE SENATE

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

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 72).

HR 1382 - ADOPTED
(by Dutton)

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 1382**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1382, Congratulating Diana Alicia Alonzo on being named Miss Crystal City 2001.

HR 1382 was read and was adopted without objection.

On motion of Representative T. King, the names of all the members of the house were added to **HR 1382** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Dutton, who introduced Diana Alicia Alonzo and her family.

HR 1355 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1355**, suspending the limitations on the conferees for **HB 2585**.

HR 1367 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1367**, suspending the limitations on the conferees for **SB 1156**.

HR 1380 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1380**, suspending the limitations on the conferees for **HB 2061**.

HR 1378 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1378**, suspending the limitations on the conferees for **SB 507**.

MESSAGE FROM THE GOVERNOR
OF THE STATE OF TEXAS

The speaker laid before the house and had read the following message from the governor:

TO ALL TO WHOM THESE PRESENTS SHALL COME:

OFFICIAL MEMORANDUM
STATE OF TEXAS
OFFICE OF THE GOVERNOR

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE SEVENTY-SEVENTH TEXAS LEGISLATURE, REGULAR SESSION:

Article 4, Section 14, of the Texas Constitution directs and regulates when and how the Governor can approve or disapprove any bill passed by both houses of the Legislature.

The Legislature has passed and sent to me **HCR 317** requesting that I return **HB 3038** by Isett to correct a technical error in the drafting of the bill. In this instance, I have taken no formal action on **HB 3038** and I am agreeing to the request of the Legislature.

While under no obligation to comply with this request and pursuant to established case law, I hereby return the enrolled copy of **HB 3038** with this message to the House for further consideration.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 27th day of May, 2001.

Rick Perry
Governor of Texas

(SEAL)

ATTESTED BY:
Henry Cuellar, Ph.D.
Secretary of State

HR 1383 - ADOPTED
(by Heflin)

Representative Heflin moved to suspend all necessary rules to take up and consider at this time **HR 1383**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1383, Congratulating Howard J. Hicks and designating June 30th, 2001, as Howard Hicks day in Alief.

HR 1383 was adopted without objection.

HR 1307 - ADOPTED
(by Ellis)

Representative Ellis moved to suspend all necessary rules to take up and consider at this time **HR 1307**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1307, Honoring Colonel M. B. Etheredge for his distinguished service to this state and nation.

HR 1307 was adopted without objection.

HR 1268 - ADOPTED
(by Wise)

Representative Wise moved to suspend all necessary rules to take up and consider at this time **HR 1268**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1268, Congratulating Edinia E. Espinoza of San Antonio for being selected as a NALEO-Shell Legislative Internship Program intern for the summer 2001.

HR 1268 was adopted without objection.

HR 1352 - ADOPTED
(by Chisum)

Representative Chisum moved to suspend all necessary rules to take up and consider at this time **HR 1352**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1352, Commending Alicia Garrison of Dallas on her honesty and integrity.

HR 1352 was adopted without objection.

HR 1387 - ADOPTED
(by Oliveira and Solis)

Representative Solis moved to suspend all necessary rules to take up and consider at this time **HR 1387**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1387, Congratulating Minerva Mora on her 60th birthday.

HR 1387 was read and was adopted without objection.

HCR 316 - ADOPTED
(by Isett)

The following privileged resolution was laid before the house:

HCR 316

WHEREAS, **HB 3038** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

WHEREAS, The bill contains technical errors that should be corrected; now, therefore, be it

RESOLVED by the 77th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct **HB 3038** as follows:

(1) In Section 3 of the bill, in added Section 2(a), Article 21.52K, Insurance Code, strike "Section 32.044" and substitute "Section 32.0422".

(2) In Section 3 of the bill, in added Section 2(e)(2), Article 21.52K, Insurance Code, between "payment" and "program", insert "reimbursement".

(3) In Section 3 of the bill, in added Section 2(f), Article 21.52K, Insurance Code, between "payment" and "program", insert "reimbursement".

HCR 316 was adopted without objection.

SB 1815 - VOTE RECONSIDERED

Representative Luna moved to suspend all necessary rules and reconsider the vote by which **SB 1815** was passed.

The motion to reconsider prevailed.

SB 1815 ON THIRD READING
(Luna - House Sponsor)

SB 1815, A bill to be entitled An Act relating to establishing a loan program to assist communities that may be affected by federal military base closures.

Amendment No. 1 - Vote Reconsidered

Representative Luna moved to suspend all necessary rules and reconsider the vote by which Amendment No. 1 on third reading was adopted.

The motion to reconsider prevailed.

Amendment No. 1 was withdrawn.

SB 1815 was passed.

HB 1839 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 1839, A bill to be entitled An Act Relating to research and excellence funding at certain institutions of higher education.

Representative Junell moved to discharge the conferees and concur in the senate amendments to **HB 1839**.

The motion prevailed.

Senate Committee Substitute

CSHB 1839, A bill to be entitled An Act relating to research and excellence funding at certain institutions of higher education.

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

SECTION 1. Chapter 62, Education Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TEXAS EXCELLENCE FUND

Sec. 62.051. PURPOSE. The Texas excellence fund is established to provide funding to promote increased research capacity and to develop institutional excellence at eligible general academic teaching institutions in order to ensure that Texas and its workforce remain at the forefront of scientific and technological innovation.

Sec. 62.052. DEFINITIONS. In this subchapter:

(1) "Eligible comprehensive research university" means an eligible general academic teaching institution that in each of the two most recent state fiscal years, as verified by the coordinating board:

(A) offered a full range of baccalaureate programs and a wide variety of graduate programs;

(B) awarded 45 or more doctor of philosophy degrees in the fields of science, agricultural science, engineering, and clinical and experimental psychology; and

(C) expended at least $15 million in restricted research funds and related indirect costs as reported in the institution's annual financial report for the applicable year.

(2) "Eligible general academic teaching institution" means a general academic teaching institution, as defined by Section 61.003, that is eligible to participate in the funding provided by Section 17, Article VII, Texas Constitution.

Sec. 62.053. ADMINISTRATION. (a) The Texas excellence fund is a fund outside the state treasury in the custody of the comptroller.

(b) The comptroller shall administer and invest the fund.

Sec. 62.054. FUNDING. (a) The legislature may appropriate or provide for the transfer of any available money to the credit of the Texas excellence fund.

(b) The comptroller shall deposit all interest, dividends, and other income earned from investment of the Texas excellence fund to the credit of the fund.

(c) The comptroller may accept gifts or grants from any public or private source for the Texas excellence fund.

(d) An institution may use money appropriated from the Texas excellence fund only for the support and maintenance of educational and general activities, including research and student services, that promote increased research capacity and develop institutional excellence at the institution.

Sec. 62.055. APPROPRIATION AND ALLOCATION OF FUND TO ELIGIBLE INSTITUTIONS. (a) In each state fiscal year, the legislature may appropriate all or part of the money in the Texas excellence fund to eligible comprehensive research universities and other eligible general academic teaching institutions as follows:

(1) 80 percent of the amount appropriated from the fund must be appropriated to the eligible comprehensive research universities and be allocated among those institutions in accordance with an equitable allocation formula based on the amount of restricted research funds expended by each institution as reported in each institution's annual financial report; and

(2) the remaining amount appropriated from the fund must be appropriated to the eligible general academic teaching institutions, other than the eligible comprehensive research universities, and be allocated among those institutions in accordance with an equitable allocation formula based on the amount of restricted research funds expended by each institution as reported in each institution's annual financial report.

(b) Subsection (a) does not apply to the allocation of money appropriated from the Texas excellence fund for the state fiscal biennium ending August 31, 2003. For each fiscal year in the state fiscal biennium ending August 31, 2003, the money appropriated from the fund is allocated among the eligible general academic teaching institutions, including eligible comprehensive research universities, as provided by the General Appropriations Act. This subsection expires January 1, 2004.

SECTION 2. Section 62.025, Education Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) Not later than November 1 of each state fiscal year, the comptroller shall deposit the first $50 million that comes to the state at the beginning of each state fiscal year and that is not dedicated by other law as follows:

(1) except as provided by Subsection (d), an amount equal to the income earned from investment of the higher education fund in the preceding state fiscal year as certified by the comptroller must be deposited to the credit of the Texas excellence fund established under Subchapter C; and

(2) the remaining amount must be deposited to the credit of the higher education fund.

(c) The deposit required by this section to the higher education fund expires on September 1 after the date the comptroller certifies that the value of the higher education fund is $2 billion. In each state fiscal year that begins on or after that date, the comptroller shall deposit to the credit of the Texas excellence fund established under Subchapter C from the first money that comes to the state at the beginning of that fiscal year an amount equal to the income earned from investment of the higher education fund in the preceding state fiscal year as certified by the comptroller, not to exceed $50 million.

(d) In any state fiscal year for which the legislature has made an appropriation specifically for the purposes of the Texas excellence fund in an amount equal to or greater than the income earned from investment of the higher education fund in the preceding state fiscal year as certified by the comptroller, the deposit to the Texas excellence fund under Subsection (a)(1) or Subsection (c) may not be made.

SECTION 3. Subsections (b) and (d), Section 62.026, Education Code, are amended to read as follows:

(b) The fund consists of the amount [~~$50 million~~] deposited in the fund each state fiscal year under Section 62.025 [~~of this code~~] and interest, dividends, and other income earned from the investment of the fund.

(d) The comptroller shall administer and invest the fund. In investing the fund, the comptroller has the same investment authority as that provided under Sections 11a and 11b, Article VII, Texas Constitution, or other law to the board of regents of The University of Texas System with respect to the investment of the permanent university fund. The investment authority granted to the comptroller under this subsection is in addition to that provided by Section

404.024, Government Code, or other law. The comptroller, in consultation with the presiding officers of the governing boards of the institutions eligible to benefit from the income from the investment of the fund under Section 17, Article VII, Texas Constitution, shall invest the fund in a manner that maximizes the amount of income earned and gains realized from the investment of the fund.

SECTION 4. Chapter 62, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. EXCELLENCE FUNDING FOR CERTAIN PERMANENT UNIVERSITY FUND INSTITUTIONS

Sec. 62.071. DEFINITIONS. In this subchapter:

(1) "Comprehensive research university" means a general academic teaching institution that in each of the two most recent state fiscal years, as verified by the coordinating board:

(A) offered a full range of baccalaureate programs and a wide variety of graduate programs;

(B) awarded 45 or more doctor of philosophy degrees in the fields of science, agricultural science, engineering, and clinical and experimental psychology; and

(C) expended at least $15 million in restricted research funds and related indirect costs as reported in the institution's annual financial report for the applicable year.

(2) "Eligible institution" means a general academic teaching institution that is a component institution of The University of Texas System or The Texas A&M University System, other than The University of Texas at Austin or Texas A&M University, eligible to participate in the funding provided by Section 18, Article VII, Texas Constitution.

(3) "General academic teaching institution" has the meaning assigned by Section 61.003.

Sec. 62.072. FUNDING. (a) In each state fiscal biennium, $8,550,000 in general revenue shall be distributed to eligible institutions in accordance with this section.

(b) For the state fiscal biennium ending August 31, 2003, the total amount to be distributed under this section shall be apportioned between The University of Texas System and The Texas A&M University System based on the total amount of capital equity funds included in the "capital equity and excellence funding" appropriated to the eligible institutions in each system by Chapter 1589, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act), for the state fiscal biennium ending August 31, 2001. The total amount to be distributed under this section in each subsequent state fiscal biennium shall be apportioned between The University of Texas System and The Texas A&M University System based on the amount apportioned between the systems under this subsection in the preceding state fiscal biennium.

(c) The amount apportioned to each system under Subsection (b) shall be allocated among the eligible institutions in that system in accordance with an equitable allocation formula based on the amount of restricted research funds expended by each institution as reported in each institution's annual financial report. In making the allocations under this subsection, the legislature may

consider that an eligible institution is or has become a comprehensive research university and may increase the allocation to that institution accordingly.

(d) Money received by an institution under this section may be used only for the support and maintenance of educational and general activities, including research and student services, that promote increased research capacity and develop institutional excellence at the institution.

SECTION 5. (a) For the state fiscal biennium ending August 31, 2003, $61,456,155 shall be allocated to general academic teaching institutions, other than The University of Texas at Austin and Texas A&M University, according to the same equitable formula used to allocate funds under Section 62.021, Education Code. Money received by an institution under this subsection may be used only to promote research capacity or develop and maintain centers of excellence at the institution. For subsequent state fiscal biennia, $70,006,155 shall be allocated to general academic institutions under this subsection.

(b) For the state fiscal biennium ending August 31, 2003, $8,550,000 in general revenue shall be apportioned between The University of Texas System and The Texas A&M University System based on the total amount of capital equity funds included in the "capital equity and excellence funding" appropriated to the eligible institutions in each system by Chapter 1589, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act), for the state fiscal biennium ending August 31, 2001. The amount of transitional assistance apportioned to each system under this subsection shall be allocated among the eligible institutions in that system according to the same equitable formula used to allocate funds under Section 62.021, Education Code. This subsection expires August 31, 2003.

SECTION 6. For the state fiscal biennium ending August 31, 2003, funds appropriated under Section 62.072, Education Code, as added by this Act, and under Subsections (a) and (b), Section 5 of this Act, are to be allocated from existing funds included in the "capital equity and excellence funding" appropriated to eligible institutions in Senate Bill No. 1, 77th Legislature, Regular Session, 2001, as introduced.

SECTION 7. This Act takes effect September 1, 2001.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **CSHB 1839** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 62, Education Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TEXAS EXCELLENCE FUND

Sec. 62.051. PURPOSE. The Texas excellence fund is established to provide funding to promote increased research capacity and to develop institutional excellence at eligible general academic teaching institutions in order to ensure that Texas and its workforce remain at the forefront of scientific and technological innovation.

Sec. 62.052. DEFINITIONS. In this subchapter:

(1) "Eligible comprehensive research university" means an eligible general academic teaching institution that in each of the two most recent state fiscal years, as verified by the coordinating board:

(A) offered a full range of baccalaureate programs and a wide variety of graduate programs;

(B) awarded 45 or more doctor of philosophy degrees in the fields of science, agricultural science, engineering, and clinical and experimental psychology; and

(C) expended at least $15 million in restricted research funds as reported in the institution's annual financial report for the applicable year.

(2) "Eligible general academic teaching institution" means a general academic teaching institution, as defined by Section 61.003, that is eligible to participate in the funding provided by Section 17, Article VII, Texas Constitution.

Sec. 62.053. ADMINISTRATION. (a) The Texas excellence fund is a fund outside the state treasury in the custody of the comptroller.

(b) The comptroller shall administer and invest the Texas excellence fund.

Sec. 62.054. FUNDING. (a) The legislature may appropriate or provide for the transfer of any available money to the credit of the Texas excellence fund.

(b) The comptroller shall deposit all interest, dividends, and other income earned from investment of the Texas excellence fund to the credit of the fund.

(c) The comptroller may accept gifts or grants from any public or private source for the Texas excellence fund.

(d) An institution may use money appropriated from the Texas excellence fund only for the support and maintenance of educational and general activities, including research and student services, that promote increased research capacity and develop institutional excellence at the institution.

Sec. 62.055. APPROPRIATION AND ALLOCATION OF FUND TO ELIGIBLE INSTITUTIONS. (a) In each state fiscal year, the comptroller shall distribute the total amount of all assets in the Texas excellence fund to eligible comprehensive research universities and other eligible general academic teaching institutions as follows:

(1) 80 percent of the amount distributed from the fund shall be distributed to the eligible comprehensive research universities and be allocated among those institutions in accordance with an equitable allocation formula based on the amount of restricted research funds expended by each institution as reported in each institution's annual financial report; and

(2) the remaining amount distributed from the fund shall be distributed to the eligible general academic teaching institutions, other than the eligible comprehensive research universities, and be allocated among those institutions in accordance with an equitable allocation formula based on the amount of restricted research funds expended by each institution as reported in each institution's annual financial report.

(b) Subsection (a) does not apply to the distribution of money from the Texas excellence fund for the state fiscal biennium ending August 31, 2003. Notwithstanding any other provision of this subchapter, for each fiscal year of the state fiscal biennium ending August 31, 2003, the comptroller shall distribute the money in the fund among the following general academic teaching institutions as follows:

	FY2002	FY2003
University of Houston	$5,533,185	$6,651,584
Texas Tech University	$4,769,654	$5,733,723

University of North Texas	$1,966,761	$2,364,293
University of Houston-Clear Lake	$633,661	$761,740
Southwest Texas State University	$710,519	$854,133
Texas A&M University—Kingsville	$379,568	$456,288
Texas Southern University	$245,801	$295,484
Stephen F. Austin State University	$189,169	$227,405
Sam Houston State University	$139,113	$167,231
Texas Woman's University	$178,415	$214,477
Texas A&M University—Corpus Christi	$163,492	$196,538
Lamar University	$85,502	$102,784
University of Texas—Pan American	$98,993	$119,002
University of Houston—Downtown	$49,445	$59,439
Sul Ross State University	$36,382	$43,735
Texas A&M University—Commerce	$24,646	$29,627
Texas A&M International University	$28,867	$34,702
Angelo State University	$43,511	$52,306
West Texas A&M University	$23,609	$28,381
University of Texas at Brownsville	$28,654	$34,445
Midwestern State University	$8,054	$9,682

(c) For purposes of Subsection (b), "FY2002" means the state fiscal year ending August 31, 2002, and "FY2003" means the state fiscal year ending August 31, 2003. Subsection (b) and this subsection expire January 1, 2004.

(d) This section expires August 31, 2005.

Sec. 62.056. VERIFICATION OF ALLOCATION FACTORS. (a) For purposes of this subchapter, the coordinating board shall establish standards and accounting methods for determining the amount of restricted research funds expended by an eligible general academic teaching institution in a state fiscal year.

(b) The coordinating board, as soon as practicable in each state fiscal year, shall provide the comptroller with verified information relating to the amounts of restricted research funds expended and degrees awarded by eligible general academic teaching institutions as necessary to determine the allocations under this subchapter for that fiscal year.

(c) The coordinating board may audit the appropriate records of an eligible general academic teaching institution to verify information for purposes of this subchapter.

Sec. 62.057. ANNUAL REPORT. Each institution of higher education that receives money under this subchapter in a state fiscal year shall prepare a report at the end of that fiscal year describing the manner in which the institution used the money. The institution shall include in the report information regarding the use of money spent in that fiscal year that was received under this subchapter in a preceding fiscal year. The institution shall deliver a copy of the report to the coordinating board and the Legislative Budget Board not later than December 1 after the end of the fiscal year. The Legislative Budget Board may establish requirements for the form and content of the report.

SECTION 2. Section 62.025, Education Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) Not later than November 1 of each state fiscal year, the comptroller

shall deposit the first $50 million that comes to the state at the beginning of each state fiscal year and that is not dedicated by other law as follows:

(1) except as provided by Subsections (d) and (e), an amount equal to the portion of the total return on all investment assets of the higher education fund in the preceding state fiscal year computed by multiplying that total return by the percentage of the total return on all investment assets of the permanent fund for tobacco education and enforcement that constitutes available earnings as determined by the comptroller under Section 403.1068, Government Code, in that year must be deposited to the credit of the Texas excellence fund established under Subchapter C; and

(2) the remaining amount must be deposited to the credit of the higher education fund.

(c) The deposit required by this section to the higher education fund expires on September 1 after the date the comptroller certifies that the value of the higher education fund is $2 billion. In each state fiscal year that begins on or after that date, the comptroller shall deposit to the credit of the Texas excellence fund established under Subchapter C from the first money that comes to the state at the beginning of that fiscal year an amount, not to exceed $50 million, equal to the portion of the total return on all investment assets of the higher education fund in the preceding state fiscal year computed by multiplying that total return by the percentage of the total return on all investment assets of the permanent fund for tobacco education and enforcement that constitutes available earnings as determined by the comptroller under Section 403.1068, Government Code.

(d) In any state fiscal year for which the legislature has made an appropriation specifically for the purposes of the Texas excellence fund in an amount equal to or greater than the amount provided by Subsection (a)(1) or (c), as applicable to that state fiscal year, the deposit to the Texas excellence fund under Subsection (a)(1) or Subsection (c) may not be made.

(e) An amount may not be deposited to the Texas excellence fund under this section if Subchapter C expires or is repealed or if the Texas excellence fund is abolished.

(f) Notwithstanding **SB 1**, Acts of the 77th Legislature, Regular Session, 2001 (General Appropriations Act), in each year of the biennium, the comptroller shall reallocate a portion of the appropriation under **SB 1** to be deposited to the credit of the higher education fund in the amount required by Subsection (a)(1) to be deposited to the credit of the Texas excellence fund in each fiscal year. This subsection expires September 1, 2003.

SECTION 3. Sections 62.026(b) and (d), Education Code, are amended to read as follows:

(b) The fund consists of the amount [~~$50 million~~] deposited in the fund each state fiscal year under Section 62.025 [~~of this code~~] and interest, dividends, and other income earned from the investment of the fund.

(d) The comptroller shall administer and invest the fund. In investing the fund, the comptroller has the same investment authority as that provided under Sections 11a and 11b, Article VII, Texas Constitution, or other law to the board of regents of The University of Texas System with respect to the investment of the permanent university fund. The investment authority granted to the comptroller under this subsection is in addition to that provided by Section

404.024, Government Code, or other law. The comptroller, in consultation with the presiding officers of the governing boards of the institutions eligible to benefit from the investment of the fund under Section 17, Article VII, Texas Constitution, shall invest the fund in a manner that maximizes the total return of the fund.

SECTION 4. Chapter 62, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. UNIVERSITY RESEARCH FUND FOR CERTAIN PERMANENT UNIVERSITY FUND INSTITUTIONS

Sec. 62.071. PURPOSE. The university research fund is established to provide funding to promote increased research capacity and to develop institutional excellence at eligible general academic teaching institutions.

Sec. 62.072. DEFINITIONS. In this subchapter:

(1) "Eligible general academic teaching institution" means a general academic teaching institution, as defined by Section 61.003, that:

(A) is a component institution of The University of Texas System or The Texas A&M University System, other than The University of Texas at Austin, Texas A&M University, or Prairie View A&M University; and

(B) is eligible to participate in the funding provided by Section 18, Article VII, Texas Constitution.

(2) "Eligible doctoral and research university" means an eligible general academic teaching institution that:

(A) in each of the two preceding state fiscal years, as verified by the coordinating board:

(i) offered a full range of baccalaureate programs and a wide variety of graduate programs; and

(ii) awarded 50 or more doctor of philosophy degrees; and

(B) in the three preceding state fiscal years, as verified by the coordinating board, expended an average of at least $5 million per year in restricted research funds as reported in the institution's annual financial reports for the applicable years.

(3) "Eligible emerging doctoral and research university" means an eligible general academic teaching institution other than an eligible doctoral and research university that:

(A) in each of the two preceding state fiscal years, as verified by the coordinating board:

(i) offered a full range of baccalaureate programs and a wide variety of graduate programs; and

(ii) awarded one or more doctor of philosophy degrees; and

(B) in the three preceding state fiscal years, as verified by the coordinating board, expended an average of at least $5 million per year in restricted research funds as reported in the institution's annual financial reports for the applicable years.

Sec. 62.073. ADMINISTRATION. (a) The university research fund is a fund outside the state treasury in the custody of the comptroller.

(b) The comptroller shall administer and invest the university research fund.

Sec. 62.074. FUNDING. (a) In each state fiscal year, the legislature shall appropriate or provide for the transfer to the credit of the university research fund of an amount equal to the amount deposited to the credit of the Texas excellence fund under Section 62.025 or 62.054 in that fiscal year. The comptroller may not deposit money to the credit of the Texas excellence fund under Section 62.025 or 62.054 and the legislature may not appropriate money specifically for the purposes of the Texas excellence fund under Section 62.025(d) unless an equal amount is deposited at the same time to the credit of the university research fund.

(b) The comptroller shall deposit all interest, dividends, and other income earned from investment of the university research fund to the credit of the fund.

(c) The comptroller may accept gifts or grants from any public or private source for the university research fund.

(d) In each state fiscal year, the comptroller shall distribute all assets in the university research fund as soon as practicable to eligible institutions in accordance with this subchapter.

(e) All assets received by an institution under this subchapter may be used only for the support and maintenance of educational and general activities, including research and student services, that promote increased research capacity and develop institutional excellence at that institution.

(f) As soon as practicable in each fiscal year of the state fiscal biennium ending August 31, 2003, the comptroller shall transfer one-half of the $33,774,000 appropriated by **SB 1**, Acts of the 77th Legislature, Regular Session, 2001 (General Appropriations Act) in the Contingency Appropriation for HB 1839 to the credit of the university research fund. This subsection expires September 1, 2003.

Sec. 62.075. ALLOCATION TO ELIGIBLE INSTITUTIONS. In each state fiscal year, the comptroller shall distribute the total amount of all assets in the university research fund as follows:

(1) $1 million shall be distributed to the eligible general academic teaching institutions, other than the eligible doctoral and research universities and eligible emerging doctoral and research universities, and allocated among those institutions in equal amounts; and

(2) the total amount to be distributed less the amount required to be distributed under Subdivision (1) shall be distributed to the eligible doctoral and research universities and eligible emerging doctoral and research universities as follows:

(A) 50 percent shall be apportioned among those institutions based on the average amount of restricted research funds expended per year by each institution in the three preceding state fiscal years as reported in each institution's applicable annual financial reports; and

(B) the remaining 50 percent shall be apportioned among those institutions as follows:

(i) 75 percent based on the number of doctor of philosophy degrees awarded by each institution in the preceding state fiscal year; and

(ii) the remaining 25 percent based on the number of master's degrees awarded by each institution in the preceding state fiscal year.

(3) This section expires August 31, 2005.

Sec. 62.0751. ALLOCATION TO ELIGIBLE INSTITUTIONS FOR 2002-2003 FISCAL BIENNIUM. (a) Section 62.075 does not apply to the distribution of the total amount of all assets in the university research fund in the state fiscal biennium ending August 31, 2003. In each state fiscal year of that biennium, the comptroller shall distribute the total amount of all assets in the university research fund as soon as practicable as follows:

(1) $1 million shall be distributed to the eligible general academic teaching institutions, other than the eligible doctoral and research universities and eligible emerging doctoral and research universities, and apportioned among those institutions in equal amounts;

(2) $500,000 shall be distributed to the eligible doctoral and research universities and apportioned among those institutions in equal amounts;

(3) $500,000 shall be distributed to the eligible emerging doctoral and research universities and apportioned among those institutions in equal amounts; and

(4) the total amount to be distributed less the amounts required to be distributed under Subdivisions (1), (2), and (3) shall be distributed to the eligible doctoral and research universities and eligible emerging doctoral and research universities as follows:

(A) 50 percent shall be apportioned among those institutions based on the amount of restricted research funds expended by each institution in the preceding state fiscal year as reported in each institution's financial report for the applicable year; and

(B) the remaining 50 percent shall be apportioned among those institutions as follows:

(i) 75 percent based on the number of doctor of philosophy degrees awarded by each institution in the preceding state fiscal year; and

(ii) the remaining 25 percent based on the number of master's degrees awarded by each institution in the preceding state fiscal year.

(b) This section expires August 31, 2003.

Sec. 62.076. VERIFICATION OF ALLOCATION FACTORS. (a) For purposes of this subchapter, the coordinating board shall establish standards and accounting methods for determining the amount of restricted research funds expended by an eligible general academic teaching institution in a state fiscal year.

(b) The coordinating board, as soon as practicable in each state fiscal year, shall provide the comptroller with verified information relating to the amounts of restricted research funds expended and degrees awarded by eligible general academic teaching institutions as necessary to determine the allocations under this subchapter for that fiscal year.

(c) The coordinating board may audit the appropriate records of an eligible general academic teaching institution to verify information for purposes of this subchapter.

Sec. 62.077. ANNUAL REPORT. Each institution of higher education that receives money under this subchapter in a state fiscal year shall prepare a report at the end of that fiscal year describing the manner in which the institution used

the money. The institution shall include in the report information regarding the use of money spent in that fiscal year that was received under this subchapter in a preceding fiscal year. The institution shall deliver a copy of the report to the coordinating board and the Legislative Budget Board not later than December 1 after the end of the fiscal year. The Legislative Budget Board may establish requirements for the form and content of the report.

SECTION 5. (a) The lieutenant governor and speaker of the house of representatives shall appoint a joint committee composed of:

(1) five members of the senate appointed by the lieutenant governor; and

(2) five members of the house of representatives appointed by the speaker.

(b) The speaker and lieutenant governor shall jointly select a presiding officer or co-presiding officers of the committee from among the committee members. The committee may designate other officers as the committee considers appropriate.

(c) The committee shall conduct a study to (i) examine the feasibility of creating a single research enhancement fund to provide funding for institutions of higher education that have a proven research history, (ii) examine how institutions have historically utilized "excellence funds", and (iii) consider whether a portion of the annual distribution from the permanent university fund to the available university fund appropriated to The University of Texas System under Section 18(f), Article VII, Texas Constitution, should be appropriated or made available for appropriation for the support and maintenance of institutions of higher education in The University of Texas System other than The University of Texas at Austin. The committee shall consider the institutions or types of institutions that should be eligible to receive a portion, if any, of that appropriation to The University of Texas System, the methods by which any amount should be allocated among those institutions, and the purposes for which that amount should be used in the best interests of this state and The University of Texas System. The lieutenant governor and speaker may direct the committee to consider other matters related to the committee's charge under this subsection.

(d) The committee shall conduct any study or inquiry and make any findings or recommendations the committee considers appropriate regarding the matters within the committee's charge.

(e) The Legislative Budget Board shall provide staffing and other assistance to the committee on request. The committee may request information from the comptroller, the Texas Higher Education Coordinating Board, or any public institution of higher education in this state. The comptroller, coordinating board, and each public institution of higher education shall provide the requested information to the extent practicable.

(f) The expenses of the committee may be paid from any appropriate funds of the house of representatives, the senate, or a legislative agency.

(g) The committee shall file a report of the committee's activities, findings, and recommendations with the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1, 2002. The report shall include any recommendations for legislative or administrative action the committee considers appropriate.

(h) The committee is abolished and this section expires January 1, 2003.

SECTION 6. This Act takes effect September 1, 2001.

HR 1384 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1384**, suspending the limitations on the conferees for **SB 510**.

HR 1340 - ADOPTED
(by Thompson)

The following privileged resolution was laid before the house:

HR 1340

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 154**, relating to the personal needs allowance for certain Medicaid recipients who are residents of long-term care facilities, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add a new section to the bill adding Section 32.028(h), Human Resources Code, to read as follows:

SECTION 3. Section 32.028, Human Resources Code, is amended by adding Subsection (h) to read as follows:

(h) The Health and Human Services Commission shall ensure that the rules governing the determination of rates paid for nursing home services provide for the rate component derived from reported liability insurance costs to be paid only to those homes that purchase liability insurance acceptable to the commission.

Explanation: This change is needed to clarify the manner in which certain costs of nursing homes may be reimbursed under Medicaid.

HR 1340 was adopted without objection.

HB 154 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Thompson submitted the following conference committee report on **HB 154**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 154** have had the

same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Gallegos	Thompson
Carona	Farabee
Zaffirini	Chavez
Moncrief	Ellis
Bernsen	Eiland
On the part of the Senate	On the part of the House

HB 154, A bill to be entitled An Act relating to certain Medicaid costs incurred in relation to Medicaid recipients who are residents of long-term care facilities.

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

SECTION 1. Section 32.024(v), Human Resources Code, as added by Chapter 1333, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(v) The department shall set a [~~is authorized to increase the~~] personal needs allowance of not less than $60 [~~above the minimum of $30~~] a month[~~, subject to the availability of funds,~~] for a resident of a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, personal care facility, ICF-MR facility, or other similar long-term care facility who receives medical assistance. The department may send the personal needs allowance directly to a resident who receives Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not apply to a resident who is participating in a medical assistance waiver program administered by the department.

SECTION 2. Section 32.021, Human Resources Code, is amended by adding Subsection (p) to read as follows:

(p) In order to increase the personal needs allowance under Section 32.024(v), as added by Chapter 1333, Acts of the 76th Legislature, Regular Session, 1999, the department shall develop an early warning system to detect fraud in the handling of the personal needs allowance and other funds of residents of long-term care facilities.

SECTION 3. Section 32.028, Human Resources Code, is amended by adding Subsection (h) to read as follows:

(h) The Health and Human Services Commission shall ensure that the rules governing the determination of rates paid for nursing home services provide for the rate component derived from reported liability insurance costs to be paid only to those homes that purchase liability insurance acceptable to the commission.

SECTION 4. This Act takes effect September 1, 2001, and applies only to a personal needs allowance paid on or after that date.

Representative Thompson moved to adopt the conference committee report on **HB 154**.

The motion prevailed.

HR 1346 - ADOPTED
(by Maxey)

The following privileged resolution was laid before the house:

HR 1346

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 393**, relating to certain nonprofit entities that provide health or long-term care or health benefit plans and providing a penalty, to consider and take action on the following matters:

1. House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of Section 4(a)(4) of the Act so that the subdivision reads as follows:

(4) closes a licensed facility operated by the nonprofit provider or dissolves.

Explanation: This change is necessary to clarify that the provision applies only to licensed facilities.

2. House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit the text of Sections 5(c), (e), (f), (g), and (h) of the bill.

Explanation: This change is necessary to remove certain restrictions, and certain exceptions to the restrictions, on the use of charitable health care assets subject to the Act.

3. House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of Section 7(d)(1) of the Act so that the subdivision reads as follows:

(1) each county in which a licensed facility that is operated by the nonprofit provider and that is affected by an agreement or transaction described by Section 4 of this Act is located;

Explanation: This change is necessary to clarify that the provision applies only to licensed facilities.

HR 1346 was adopted without objection.

HB 393 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Maxey submitted the following conference committee report on **HB 393**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 393** have had the

same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis	Maxey
Moncrief	Longoria
Carona	Kitchen
West	Corte
Zaffirini	Gray
On the part of the Senate	On the part of the House

HB 393, A bill to be entitled An Act relating to certain nonprofit entities that provide health or long-term care or health benefit plans; providing a penalty.

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

SECTION 1. PURPOSE AND FINDINGS. Nonprofit health care providers have historically served the needs of their community, including the needs of uninsured individuals in the community. Access to high quality, affordable health care is a continuing need in a state with over four million uninsured individuals and millions more individuals who do not have adequate insurance. Changes in the health care market have caused a substantial number of nonprofit health care providers and nonprofit health benefit plan providers to establish new ventures, affecting hundreds of millions of charitable dollars. As these changes in the health care system occur, it is in the best interest of this state to ensure that these health care assets, which are impressed with a constructive charitable trust for health care purposes, continue to serve the public and the unmet health care needs in this state.

SECTION 2. SHORT TITLE. This Act may be cited as the Charitable Health Care Trust Act.

SECTION 3. DEFINITIONS. In this Act:

(1) "Charitable health care organization" means an organization that is:

(A) exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of the code; and

(B) dedicated to:

(i) serving unmet health care needs in this state, particularly the health care needs of low-income uninsured and underserved populations; and

(ii) promoting access to health care and improving the quality of health care.

(2) "For-profit entity" means a business entity that is not a mutual plan provider or a nonprofit provider.

(3) "Health benefit plan provider" means an insurer, group hospital service corporation, health maintenance organization, or other entity that issues:

(A) an individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness;

(B) an evidence of coverage or group subscriber contract; or

(C) a long-term care insurance policy.

(4) "Health care provider" means an entity licensed to provide health or long-term care. The term includes a facility licensed under Subtitle B, Title 4, Health and Safety Code.

(5) "Mutual plan provider" means a mutual or mutual assessment association subject to Chapter 11, 12, 13, or 14, Insurance Code, that provides health and accident insurance, including any entity exempt under Article 14.17, Insurance Code.

(6) "Nonprofit provider" means a health benefit plan provider or a health care provider that is:

(A) exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code;

(B) incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or a similar law of another state;

(C) exempt from state franchise, property, and sales taxes; or

(D) organized and operated exclusively for the promotion of social welfare and that normally receives more than one-third of its support in a year from private or public gifts, grants, contributions, or membership fees.

SECTION 4. DUTIES OF NONPROFIT PROVIDER. (a) A nonprofit provider shall comply with this Act, in accordance with the periods established by this Act, with respect to an agreement or transaction under which the nonprofit provider directly or indirectly:

(1) sells, transfers, leases, exchanges, provides an option with respect to, or otherwise disposes of assets of the nonprofit provider in favor of another nonprofit provider, a for-profit entity, or a mutual plan provider;

(2) restructures as or converts to another nonprofit provider, a for-profit entity, or a mutual plan provider;

(3) transfers control, responsibility, or governance of the assets, operations, or business of the nonprofit provider in favor of another nonprofit provider, a for-profit entity, or a mutual plan provider; or

(4) closes a licensed facility operated by the nonprofit provider or dissolves.

(b) Subsection (a)(1) or (2) of this section applies only if:

(1) the fair market value of the assets of the nonprofit provider involved in the proposed agreement or transaction is at least 30 percent of the value of the total assets of the nonprofit provider; or

(2) the fair market value of the assets of the nonprofit provider involved in the proposed agreement or transaction, when added to the fair market value of all assets of the nonprofit provider that have been subject to a previous agreement or transaction described by Subsection (a)(1), (2), or (3) of this section that has been made during the two-year period before the date on which the proposed agreement or transaction becomes effective, is at least 35 percent of the value of the total assets of the nonprofit provider.

(c) Subsection (a)(3) of this section applies only if:

(1) the fair market value of the assets of the nonprofit provider with respect to which control, responsibility, or governance would be transferred

under the proposed agreement or transaction, is at least 30 percent of the value of the total assets of the nonprofit provider;

(2) the fair market value of the assets of the nonprofit provider with respect to which control, responsibility, or governance would be transferred under the proposed agreement or transaction, when added to the fair market value of all assets of the nonprofit provider that have been subject to a previous agreement or transaction described by Subsection (a)(1), (2), or (3) of this section that has been made during the two-year period before the date on which the proposed agreement or transaction becomes effective, is at least 35 percent of the value of the total assets of the nonprofit provider;

(3) the gross revenues associated with business or operations of the nonprofit provider with respect to which control, responsibility, or governance would be transferred under the proposed agreement or transaction is at least 30 percent of the value of the gross revenues associated with all of the business or operations of the nonprofit provider; or

(4) the gross revenues associated with business or operations of the nonprofit provider with respect to which control, responsibility, or governance would be transferred under the proposed agreement or transaction, when added to the gross revenues associated with the business or operations with respect to which control, responsibility, or governance has been transferred under a previous agreement or transaction described by Subsection (a)(3) of this section that has been made during the two-year period before the date on which the proposed agreement or transaction becomes effective, is at least 35 percent of the value of the gross revenues associated with all of the business or operations of the nonprofit provider.

(d) For purposes of applying Subsection (b) or (c)(1) or (2) of this section:

(1) the fair market value of assets of a nonprofit provider involved in a previous agreement or transaction is determined as of the time the previous agreement or transaction became effective; and

(2) the fair market value of the total assets of the nonprofit provider is determined as of the time the proposed agreement or transaction would become effective.

(e) For purposes of applying Subsection (c)(3) or (4) of this section:

(1) the gross revenues associated with the business or operations of a nonprofit provider with respect to which control, responsibility, or governance has been transferred under a previous agreement or transaction are determined as of the time the previous agreement or transaction became effective; and

(2) the value of the gross revenues associated with all of the business or operations of the nonprofit provider is determined as of the time the proposed agreement or transaction would become effective.

(f) If a nonprofit provider is a health care system that owns or operates more than one licensed hospital, each separately licensed hospital is a nonprofit provider for purposes of applying this section and, for purposes of applying Subsections (b), (c), (d), and (e) of this section, only the assets and business or operations of the separately licensed hospital shall be considered.

SECTION 5. CHARITABLE HEALTH CARE ASSETS. (a) Except as provided by Subsection (b) of this section, a nonprofit provider that enters into an agreement or transaction described by Section 4 of this Act shall:

(1) establish the fair market value of the assets of the nonprofit provider; and

(2) request an appraisal from the chief appraiser or appraisers of the appraisal district or districts in which the nonprofit provider's property is located.

(b) A nonprofit provider that enters into an agreement or transaction described by Section 4 of this Act with another nonprofit provider is not required to request an appraisal from the chief appraiser or appraisers of the appraisal district or districts in which the nonprofit provider's property is located.

(c) An assessor who is not an employee of the nonprofit provider and who is otherwise independent of the nonprofit provider and of the other nonprofit provider, the for-profit entity, or the mutual plan provider with which the agreement or transaction is being made shall determine the fair market value of the charitable health care assets. In determining the fair market value, the assessor shall consider market value, investment or earnings value, net asset value, and a control premium, if any. The nonprofit provider shall pay for the assessment conducted under this subsection.

SECTION 6. NOTICE OF AGREEMENT OR TRANSACTION. (a) A nonprofit provider that signs a letter of intent or another document evidencing the intent to enter into an agreement or transaction described by Section 4 of this Act shall notify the attorney general and shall publish notice in accordance with Section 7 of this Act.

(b) The notice to the attorney general must:

(1) be made in writing not later than the earlier of:

(A) the fifth day after the date the letter of intent or other document is signed; or

(B) the 90th day before the date on which the agreement or transaction is to become effective; and

(2) disclose the conditions under which the agreement or transaction will be made according to the best information available to the nonprofit provider.

(c) The notice provided to the attorney general under Subsection (b) of this section must state:

(1) the identity of the nonprofit provider and any nonprofit entity that owns or controls the nonprofit provider;

(2) the identity of the other nonprofit provider, the for-profit entity, or the mutual plan provider with which the proposed agreement or transaction is to be made;

(3) the identity of any other party to the proposed agreement or transaction;

(4) the terms of the proposed agreement or transaction;

(5) the value of consideration to be provided in connection with the proposed agreement or transaction and the basis on which this valuation is made;

(6) the value of the local appraisal of the nonprofit provider's property, if requested under Section 5(a) of this Act;

(7) the identity of any individual or entity who is an officer, director,

or affiliate of the nonprofit provider and a statement as to whether each named individual or entity:

(A) has been promised future employment as a result of the proposed agreement or transaction;

(B) has been a party to discussions relating to future employment as a result of the proposed agreement or transaction; or

(C) has any other direct or indirect economic interest in the proposed agreement or transaction; and

(8) the date on which the proposed agreement or transaction is to become effective.

(d) The nonprofit provider shall notify the attorney general of a material change in the agreement or transaction or the information required by Subsection (c) of this section not later than the 30th day before the date the agreement or transaction becomes effective. The attorney general may waive the requirement that the notice be provided within the time required by this subsection if the attorney general finds the waiver is appropriate.

(e) The information submitted to the attorney general under Subsections (c)(1), (2), (3), and (6) of this section is public information. The attorney general shall make the information described by this subsection available as required by Chapter 552, Government Code. On the request of any person, the nonprofit provider shall make the information described by this subsection available at the business office of the nonprofit provider the address of which is required to be published under Section 7 of this Act.

SECTION 7. PUBLICATION OF NOTICE. (a) The published notice required by Section 6(a) of this Act must state:

(1) that the nonprofit provider intends to enter into an agreement or transaction that is subject to this Act;

(2) the address of the business office of the nonprofit provider in the nonprofit provider's publication area; and

(3) that more detailed information concerning the proposed agreement or transaction as described by Section 6 of this Act is available at the business office.

(b) Not later than the 90th day before the date the agreement or transaction is to become effective, the notice must be published in the Texas Register and at least once in a newspaper of general circulation in the nonprofit provider's publication area.

(c) If the nonprofit provider's publication area includes more than one county, the nonprofit provider must send the notice to a newspaper of general circulation in each county included in the publication area. If a newspaper of general circulation does not exist in a county in which publication is required, the nonprofit provider shall send the notice to the commissioners court of that county. The commissioners court may post the notice as it finds appropriate.

(d) For purposes of this section, the nonprofit provider's publication area is:

(1) each county in which a licensed facility that is operated by the nonprofit provider and that is affected by an agreement or transaction described by Section 4 of this Act is located;

(2) if different from the county described in Subdivision (1) of this

subsection, the county in which the principal executive office of the provider is located; and

(3) each county that is contiguous to a county described by Subdivision (1) of this subsection.

SECTION 8. PUBLIC MEETING. (a) Except as provided by Subsection (d) of this section, not later than the 45th day after the date the attorney general receives the notice under Section 6 of this Act, the nonprofit provider shall:

(1) solicit written public comment; and

(2) hold at least one public meeting to obtain public comment in the publication area of the nonprofit provider, as determined under Section 7 of this Act.

(b) Not later than the 21st day before the date of the public meeting, the nonprofit provider shall:

(1) publish notice of the request for written comment and of the time and place of the meeting; and

(2) notify the commissioners court in each county in the publication area of the nonprofit provider, as determined under Section 7 of this Act, of the request for written comment and of the time and place of the meeting.

(c) The notice provided under Subsection (b)(1) of this section must state the address of the business office of the nonprofit provider in the nonprofit provider's publication area, as determined under Section 7 of this Act, and must state that more detailed information concerning the proposed agreement or transaction is available at the business office.

(d) A nonprofit provider that enters into an agreement or transaction described by Section 4 of this Act with another nonprofit provider that is located in the same publication area, as determined under Section 7 of this Act, is not required to hold a public meeting under Subsection (a)(2) of this section.

SECTION 9. ENFORCEMENT BY ATTORNEY GENERAL'S OFFICE. (a) The attorney general may bring an action in a district court of Travis County for:

(1) a temporary restraining order, a temporary injunction, or a permanent injunction to prevent a nonprofit provider from entering into an agreement or transaction described by Section 4 of this Act in violation of this Act;

(2) a civil penalty in an amount not to exceed $10,000 for each day of a continuing violation of this Act; or

(3) any other appropriate relief authorized under a statute or the common law.

(b) In an action brought under this section in which the attorney general prevails, the court may award to the attorney general the costs of the suit and attorney's fees.

SECTION 10. EFFECTIVE DATE. This Act takes effect September 1, 2001.

SECTION 11. TRANSITION. (a) This Act applies only to:

(1) an agreement described by Section 4 of this Act that is entered into on or after September 1, 2001; or

(2) a transaction described by Section 4 of this Act that is made pursuant to an agreement entered into on or after September 1, 2001.

(b) An agreement described by Section 4 of this Act that is entered into before September 1, 2001, and a transaction described by Section 4 of this Act that is made pursuant to an agreement entered into before September 1, 2001, are 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.

Representative Maxey moved to adopt the conference committee report on **HB 393**.

The motion prevailed.

HB 393 - STATEMENT OF LEGISLATIVE INTENT

It is my legislative intent that **HB 393** relating to the conversion of nonprofit health facilities to for-profit entities includes the following:

Any entity that operates other than as a nonprofit provider under an agreement pursuant to subsection (1) immediately above, or a transaction pursuant to subsection (2) immediately above, shall not be eligible to receive private network services at the rates provided for in Chapter 58, Subchapter G, Utilities Code.

Maxey

HB 606 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Smithee submitted the following conference committee report on **HB 606**:

Austin, Texas, May 23, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 606** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nelson	Smithee
Zaffirini	Uresti
Fraser	Averitt
Lucio	
Harris	
On the part of the Senate	On the part of the House

HB 606, A bill to be entitled An Act relating to prohibiting certain health benefit plans from requiring the use of hospitalists by participating physicians.

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

SECTION 1. Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, is amended by adding Section 3B to read as follows:

Sec. 3B. USE OF HOSPITALIST. (a) In this section, "hospitalist" means a physician who:

(1) serves as physician of record at a hospital for a hospitalized patient of another physician; and

(2) returns the care of the patient to that other physician at the end of the patient's hospitalization.

(b) A preferred provider contract between an insurer and a physician may not require the physician to use a hospitalist for a hospitalized patient.

SECTION 2. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 18D to read as follows:

Sec. 18D. USE OF HOSPITALIST. (a) In this section, "hospitalist" means a physician who:

(1) serves as physician of record at a hospital for a hospitalized patient of another physician; and

(2) returns the care of the patient to that other physician at the end of the patient's hospitalization.

(b) A contract between a health maintenance organization and a physician may not require the physician to use a hospitalist for a hospitalized patient.

SECTION 3. This Act takes effect September 1, 2001, and applies only to a contract between an insurer or health maintenance organization and a physician that is entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

HB 606 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE G. LEWIS: Chairman Smithee, I thank you for allowing me to establish this legislative intent, in this bill it refers to a contract between an insurer and a physician, is that correct?

REPRESENTATIVE SMITHEE: That’s right.

G. LEWIS: And, by insurer, it is your intent for that to refer to an HMO or a PPO?

SMITHEE: Well, Section 1 of the bill, Glenn, as you know, refers to, to previous end of the PPO act, so it refers to PPOs,...

G. LEWIS: Oh, okay.

SMITHEE: ...as defined in the act. Section 2 is an amendment to the HMO act, Chapter 20A of the insurance code, and so the insurer there refers to HMOs, as defined in the act.

G. LEWIS: And so, in as far as your intent, this is, this legislation does not pertain to contracts between anybody other than HMOs or PPOs and physicians.

SMITHEE: Well, just as defined in the statute and really not any broader than what the bill says.

G. LEWIS: Thank you, Mr. Smithee.

REMARKS ORDERED PRINTED

Representative G. Lewis moved to print remarks by Representative G. Lewis and Representative Smithee.

The motion prevailed without objection.

Representative Smithee moved to adopt the conference committee report on **HB 606**.

The motion prevailed.

HB 695 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative A. Reyna submitted the following conference committee report on **HB 695**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 695** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth	A. Reyna
Fraser	Haggerty
Shapleigh	Yarbrough
Staples	J. Moreno
	Goolsby
On the part of the Senate	On the part of the House

HB 695, A bill to be entitled An Act relating to the regulation of certain occupations by the Texas Real Estate Commission; providing penalties.

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

SECTION 1. Section 6(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person desiring to act as a real estate broker in this state shall file an application for a license with the commission on a form prescribed by the commission. [~~A broker desiring to engage a person to participate in real estate brokerage activity shall join the person in filing an application for a salesperson license on a form prescribed by the commission.~~] A person previously licensed as a broker may apply for inactive status. A person desiring to act as a real estate salesperson in this state must [~~previously licensed as a salesperson may~~] apply for a salesperson license on a form prescribed by the commission. If the person satisfies all requirements for a salesperson license, the commission may issue an inactive salesperson license to the person. The person may not act as a salesperson unless the person is sponsored by a licensed broker who has notified the commission and paid the fee for issuance of an active license

to the salesperson as required by Section 13(b) of this Act [~~inactive status without the participation of a broker. The person must apply for inactive status on a form prescribed by the commission not later than the first anniversary of the date of the expiration of the broker or salesperson license~~].

SECTION 2. Sections 7(b), (d), and (e), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The commission by rule may:

(1) prescribe the content of the core real estate courses listed in Subsection (a) of this section; and

(2) establish the title and content of additional core real estate courses.

(d) Each applicant for a broker license shall furnish the commission satisfactory evidence that the applicant has had not less than two years active experience in this state as a licensed real estate salesperson or broker during the 36-month period immediately preceding the filing of the application; and, in addition, shall furnish the commission satisfactory evidence of having completed successfully 60 semester hours, or equivalent classroom hours, of postsecondary education, of which a minimum of 18 semester hours or equivalent classroom hours must be completed in core real estate courses. The remaining 42 hours must be completed in core real estate courses or related [~~postsecondary education~~] courses accepted by the commission. These qualifications for a broker license may not be required of an applicant who, at the time of making the application, is duly licensed as a real estate broker by any other state in the United States if that state's requirements for licensure are comparable to those of Texas. As a prerequisite for applying for a broker license, those persons licensed as salespersons subject to the annual education requirements provided by Subsection (e) of this section shall, as part of the hours required by this subsection, furnish the commission satisfactory evidence of having completed all the requirements of Subsection (e) of this section.

(e) Each applicant for a salesperson license shall furnish the commission satisfactory evidence of having completed 12 semester hours, or equivalent classroom hours, of postsecondary education, eight [~~six~~] hours of which must be completed in core real estate courses, of which a minimum of four [~~two~~] hours must be completed in Principles of Real Estate as described in Subsection (a)(1) of this section, a minimum of two hours must be completed in Law of Agency as described in Subsection (a)(10) of this section, and a minimum of two hours must be completed in Law of Contracts as described in Subsection (a)(11) of this section. The remaining four [~~six~~] hours must [~~shall~~] be completed in core real estate courses or related courses. As a condition for the first renewal of a salesperson license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 14 semester hours, or equivalent classroom hours, 10 [~~eight~~] hours of which must be completed in core real estate courses. As a condition for the second renewal of a salesperson license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 16 semester hours, or equivalent classroom hours, 12 [~~10~~] hours of which must be completed in core real estate courses. As a condition for the third renewal of a salesperson license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 18 semester hours, or equivalent classroom hours, 14 [~~12~~] hours of which must be completed in core real estate courses.

SECTION 3. Section 7A(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) To renew an active real estate broker license or an active real estate salesperson license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may prescribe the title, content, and duration of continuing education courses that a licensee must attend to renew a license and may provide for the substitution of relevant educational experience or correspondence courses approved by the commission instead of classroom attendance. In addition, supervised video instruction may be approved by the commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, landlord-tenant law and other Property Code issues, agency laws, antitrust laws, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers, landlords, tenants, and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Department of Veterans Affairs regulations, tax laws, property tax consulting laws and legal issues, or other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. Property tax consulting laws and legal issues include but are not limited to the Tax Code, preparation of property tax reports, the unauthorized practice of law, agency laws, tax laws, laws concerning property taxes or assessments, deceptive trade practices, contract forms and addendum, and other legal topics approved by the commission. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit and core real estate courses under Section 7(a) of this Act shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses or courses offered by alternative delivery systems such as computers. Daily classroom course segments must be at least one hour long but not more than 10 hours long.

SECTION 4. Sections 8(c) and (f), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) On determination by the commission at any time that [~~If on December 31 of any year~~] the balance remaining in the real estate recovery fund is less than $1 million, each real estate broker and each real estate salesperson, on the next renewal of the license, shall pay, in addition to the license renewal fee, a fee of $10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount necessary to bring the fund to $1.7 million, whichever is less. If on December 31 of any year the balance remaining in the real estate recovery fund is more than $3.5 million or more than the total amount of claims paid from the fund during the previous four fiscal years, whichever is greater, the amount of money in excess of the greater amount shall be transferred to the general revenue fund. To ensure the availability of a

sufficient amount to pay anticipated claims on the fund, the commission by rule may provide for the collection of assessments at different times and under conditions other than those specified by this Act.

(f) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show that:

(1) the judgment is based on facts allowing recovery under Subsection (a) of this section;

(2) the person is not a spouse of the debtor, or the personal representative of the spouse; and the person is not a registrant under Section 9A of this Act or a real estate broker or salesperson, as defined by this Act, who is seeking to recover a real estate commission or any compensation in the transaction or transactions for which the application for payment is made;

(3) [~~the person has obtained a judgment under Subsection (e) of this section that is not subject to a stay or discharge in bankruptcy, stating the amount of the judgment and the amount owing on the judgment at the date of the application;~~

[~~(4)~~] based on the best available information, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment; and

(4) [~~(5)~~] the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

SECTION 5. Section 11, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. The commission shall charge and collect the following fees:

(1) a fee not to exceed $100 for the filing of an original application for a real estate broker license;

(2) a fee not to exceed $100 for annual renewal of a real estate broker license;

(3) a fee not to exceed $50 for the filing of an original application for a real estate salesperson license;

(4) a fee not to exceed $50 for annual renewal of a real estate salesperson license;

(5) a fee not to exceed $100 [~~$50~~] for an application for a license examination;

(6) a fee not to exceed $20 for filing a request for a license for each additional office or place of business;

(7) a fee not to exceed $20 for filing a request for a license or certificate of registration for a change of place of business, change of name, return to active status, or change of sponsoring broker;

(8) a fee not to exceed $20 for filing a request to replace a license or certificate of registration lost or destroyed;

(9) a fee not to exceed $400 for filing an application for approval of an education program under Section 7(f) of this Act;

(10) a fee not to exceed $200 a year for operation of an education program under Section 7(f) of this Act;

(11) a fee of $20 [~~$15~~] for transcript evaluation;

(12) a fee not to exceed $10 for preparing a license or registration history;

(13) a fee not to exceed $50 for the filing of an application for a moral character determination;

(14) an annual fee of $20 from each real estate broker and each registrant under Section 9A of this Act to be transmitted to Texas A&M University for the Texas Real Estate Research Center as provided by Section 5(m) of this Act;

(15) an annual fee of $17.50 from each real estate salesperson to be transmitted to Texas A&M University for the Texas Real Estate Research Center as provided by Section 5(m) of this Act;

(16) an annual fee of $80 from each registrant under Section 9A of this Act; and

(17) any fee authorized under Section 8 of this Act for the real estate recovery fund.

SECTION 6. Section 15(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission may, on its own motion, and shall, on the signed complaint in writing of any person [~~a consumer or service recipient~~], provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesperson. A service contract that a licensee under this Act enters into for services governed by this Act is not a good or service governed by Chapter 39, Business & Commerce Code. The commission may suspend or revoke a license issued under the provisions of this Act or take other disciplinary action authorized by this Act at any time when it has been determined that:

(1) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence;

(2) the licensee has procured, or attempted to procure, a real estate license, for the licensee or a salesperson, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license;

(3) the licensee, when selling, buying, trading, or renting real property in the licensee's own name, engaged in misrepresentation or dishonest or fraudulent action;

(4) the licensee has failed within a reasonable time to make good a check issued to the commission after the commission has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the commission's records;

(5) the licensee has disregarded or violated a provision of this Act;

(6) the licensee, while performing an act constituting an act of a broker or salesperson, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known

to the broker or salesperson. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase;

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise;

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salespersons, advertising, or otherwise;

(D) failing to make clear, to all parties to a transaction, which party the licensee is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties;

(E) failing within a reasonable time properly to account for or remit money coming into the licensee's possession which belongs to others, or commingling money belonging to others with the licensee's own funds;

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesperson in this state or in any other state for compensation for services as a real estate agent;

(G) failing to specify a definite termination date that is not subject to prior notice in a contract, other than a contract to perform property management services, in which the licensee agrees to perform services for which a license is required under this Act;

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice;

(J) acting in the dual capacity of broker and undisclosed principal in a transaction;

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property;

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or the owner's authorized agent;

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract;

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner, lessor, buyer, or tenant, knowing that the owner, lessor, buyer, or tenant had a written outstanding contract, granting exclusive agency in connection with the transaction to another real estate broker;

(O) offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on terms other than those authorized by the owner or the owner's authorized agent;

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, the Internet, or display which is misleading, or which is likely to deceive the

public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent;

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular;

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action;

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act;

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance;

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness;

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license;

(X) disregarding or violating a provision of this Act;

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry, including directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee;

(7) the licensee has failed or refused on demand to produce a document, book, or record in the licensee's possession concerning a real estate transaction conducted by the licensee for inspection by the commission or its authorized personnel or representative;

(8) the licensee has failed within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(9) the licensee has failed without just cause to surrender to the rightful owner, on demand, a document or instrument coming into the licensee's possession.

SECTION 7. Section 15B(e), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The commission may authorize a commission employee to file a signed written complaint against a licensee and to conduct an investigation if:

(1) a judgment against the licensee has been paid from a recovery fund established under this Act;

(2) the licensee is convicted of a criminal offense that may constitute grounds for the suspension or revocation of the licensee's license; [~~or~~]

(3) the licensee fails to make good a check issued to the commission;

(4) the licensee fails to complete required continuing education within the period prescribed by commission rules adopted under Section 7A(g) of this Act; or

(5) the licensee fails to provide, within a reasonable time, information requested by the commission in connection with an application to renew a license.

SECTION 8. Section 19(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person acting as a real estate broker or real estate salesperson without first obtaining a license or a person required to register under Section 9A of this Act who sells, purchases, leases, or transfers a right-of-way or easement without first obtaining a certificate of registration under Section 9A of this Act commits an offense. An offense under this subsection is a Class A misdemeanor [~~is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than $100 nor more than $500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a person other than an individual, shall be punishable by a fine of not less than $1,000 nor more than $2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less than $500 nor more than $1,000, or by imprisonment for a term not to exceed two years, or both; and if a person other than an individual, shall be punishable by a fine of not less than $2,000 nor more than $5,000~~].

SECTION 9. Sections 19A(a), (b), (d), (h), (m), and (o), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) If a person [~~licensed under this Act~~] violates this Act or a rule or order adopted by the commission under this Act, the commission may assess an administrative penalty against the person as provided by this section.

(b) The penalty for each violation shall be set in an amount not to exceed $1,000. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment if the commission finds that the person charged:

(1) engaged in an activity for which a real estate broker or real estate salesperson license is required without holding a license; and

(2) was not licensed by the commission as a real estate broker or real estate salesperson at any time in the four years preceding the date of the violation.

(d) If, after investigation of a possible violation and the facts surrounding that possible violation, the administrator determines that a violation has occurred, the administrator may issue a violation report stating the facts on

which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The administrator shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by the consideration of the factors set forth in Subsection (c) of this section. The commission may authorize the administrator to delegate to another commission employee the administrator's authority to act under this section.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the administrator shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the administrator. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commission by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. The commission may authorize the hearing examiner to conduct the hearing and enter a final decision [~~the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

(m) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Chapter 2001, Government Code [~~Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

(o) A penalty collected under this section for a violation by a person licensed as a real estate broker or salesperson shall be deposited in the real estate recovery fund. A penalty collected under this section for a violation by a person licensed or registered as a real estate inspector shall be deposited in the real estate inspection recovery fund. A penalty collected under this section for a violation by a person who is not licensed under this Act shall be deposited in the real estate recovery fund or the real estate inspection recovery fund, as determined by the commission.

SECTION 10. Sections 23(f)(3)-(6), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(3) [~~If a person's license has been expired for 90 days or less, the person may renew the license by paying to the commission the required renewal fee and a fee that is one-half of the examination fee, if any, for the registration or license.~~

[~~(4) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the commission all unpaid renewal fees and a fee that is equal to the examination fee, if any, for the license.~~

[~~(5)~~] If a person's license expires [~~has been expired for one year or longer~~], the person may not renew the license. The person may obtain a new license by submitting to reexamination, if required, and complying with the requirements and procedures for obtaining an original license. [~~However, the~~

~~commission may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the one year preceding application. The person must pay to the commission a fee that is equal to the examination fee for the license.~~]

(4) [~~(6)~~] At least 30 days before the expiration of a person's license, the commission shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the commission.

SECTION 11. Section 23(h)(1), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) The commission shall charge and collect reasonable and necessary fees to recover the cost of administering this section as follows:

(A) a fee not to exceed $75 for the filing of an original application for a license as an apprentice inspector;

(B) a fee not to exceed $125 for the filing of an original application for a license as a real estate inspector;

(C) a fee not to exceed $150 for the filing of an original application for a license as a professional inspector;

(D) a fee not to exceed $125 for the annual license renewal of an apprentice inspector;

(E) a fee not to exceed $175 for the annual license renewal of a real estate inspector;

(F) a fee not to exceed $200 for the annual license renewal of a professional inspector;

(G) a fee not to exceed $100 for taking a license examination; [~~and~~]

(H) a fee not to exceed $20 for a request for a change of place of business or to replace a lost or destroyed license; and

(I) a fee not to exceed $20 for filing a request for issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector.

SECTION 12. Section 23(k), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(k) Continuing education programs. The commission shall recognize, prepare, or administer continuing education programs for inspectors. Participation in the programs is mandatory. A real estate inspector must submit satisfactory evidence to the commission of successful completion of at least eight [~~four~~] classroom hours of core real estate inspection courses annually before a license [~~licensed~~] renewal is issued. A professional inspector must submit satisfactory evidence to the commission of successful completion of at least 16 [~~eight~~] classroom hours of core [~~related~~] real estate inspection courses annually before a license renewal is issued.

SECTION 13. Section 23(m)(2), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) An offense under this subsection is a Class A [~~B~~] misdemeanor.

SECTION 14. Sections 23(o)(3), (7), and (15), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(3) If at [~~on December 31 of~~] any time [~~year~~] the balance remaining in the real estate inspection recovery fund is less than $300,000, each inspector, on the next renewal of the person's license, shall pay, in addition to the license renewal fee, a fee of $75, or a pro rata share of the amount necessary to bring the fund to $450,000, whichever is less, which shall be deposited in the real estate inspection recovery fund. To ensure the availability of a sufficient amount to pay anticipated claims on the fund, the commission by rule may provide for the collection of assessments at different times and under conditions other than those specified by this Act.

(7) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show:

(A) that the judgment is based on facts allowing recovery under Subdivision (1) of this subsection;

(B) that the person is not a spouse of the debtor or the personal representative of the spouse and the person is not an inspector, as defined by this section;

(C) [~~that the person has obtained a judgment under Subdivision (6) of this subsection that is not subject to a stay or discharge in bankruptcy, stating the amount of the judgment and the amount owing on the judgment at the date of the application;~~

[~~(D)~~] that based on the best information available, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment; and

(D) [~~(E)~~] the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(15) Notwithstanding any other provision, payments from the real estate inspection recovery fund are subject to the following conditions and limitations:

(A) payments may be made only pursuant to an order of a court of competent jurisdiction, as provided by Subdivision (6) of this subsection, and in the manner prescribed by this subsection;

(B) payments for claims, including attorney fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to $12,500 [~~$7,500~~] regardless of the number of claimants; and

(C) payments for claims based on judgments against a licensed inspector may not exceed in the aggregate $30,000 [~~$15,000~~] until the fund has been reimbursed by the licensee for all amounts paid.

SECTION 15. Section 24(f), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) A person commits an offense if the person engages in business as a residential rental locator in this state without a license issued under this Act. An offense under this subsection is a Class A [~~B~~] misdemeanor.

SECTION 16. Section 18, Residential Service Company Act (Article 6573b, Revised Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) The commission may authorize a hearing examiner to conduct a hearing and enter a final decision in a proceeding under this section. A final

decision of a hearing examiner under this subsection is appealable to the commission as provided by commission rule.

(d) The sale of a residential service contract governed by this Act is not a good or service governed by Chapter 39, Business & Commerce Code.

SECTION 17. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2001.

(b) The changes in law made by this Act to Sections 7(d) and (e), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), take effect January 1, 2002, and apply only to an application for a real estate broker license or real estate salesperson license filed on or after that date. An application filed before January 1, 2002, is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) The changes in law made by this Act to Sections 8(f) and 23(o)(7) and (15), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), apply only to a cause of action that arises on or after the effective date of this Act. A cause of action that arises before the effective date of this Act is governed by the law in effect on the date the cause of action arose, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act to Sections 19(a), 23(m)(2), and 24(f), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), apply only to an offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(e) The changes in law made by this Act to Sections 23(f)(3)-(6), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), apply only to the renewal of a real estate inspector license or professional inspector license that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

(f) The change in law made by this Act to Section 23(k), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), applies only to the renewal of a real estate inspector license or professional inspector license that expires on or after December 31, 2001. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

(g) The changes in law made by this Act that relate to a disciplinary action or the imposition of an administrative penalty for a violation of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

Representative A. Reyna moved to adopt the conference committee report on **HB 695**.

The motion prevailed.

HB 981 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative T. King submitted the following conference committee report on **HB 981**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 981** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	T. King
Brown	Hawley
Bernsen	R. Lewis
Bivins	Kitchen
	Crabb
On the part of the Senate	On the part of the House

HB 981, A bill to be entitled An Act relating to oil and gas royalty reporting standards.

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

SECTION 1. Subchapter L, Chapter 91, Natural Resources Code, is amended by adding Section 91.5001 to read as follows:

Sec. 91.5001. DEFINITION. In this subchapter, "payor" has the meaning assigned by Section 91.401.

SECTION 2. Sections 91.501-91.506, Natural Resources Code, are amended to read as follows:

Sec. 91.501. INFORMATION REQUIRED. If payment is made to a royalty interest owner from the proceeds derived from the sale of oil or gas production pursuant to a division order, lease, servitude, or other agreement, the payor [~~person making the payment~~] shall include the information required by Section 91.502 [~~of this code~~] on the check stub, [~~or on~~] an attachment to the payment form, or another remittance advice.

Sec. 91.502. TYPES OF INFORMATION PROVIDED. Each check stub, [~~or~~] attachment to a payment form, or other remittance advice must include:

(1) the lease, property, or well name, [~~or~~] any lease, property, or well identification number used to identify the lease, property, or well, and a county and state in which the lease, property, or well is located;

(2) the month and year during which the sales occurred for which payment is being made;

(3) the total number of barrels of oil or the total amount of gas sold;

(4) the price per barrel or per MCF of oil or gas sold;

(5) the total amount of state severance and other production taxes paid;

(6) the windfall profit tax paid on the owner's interest;

(7) any other deductions or adjustments;

(8) the net value of total sales after deductions;

(9) the owner's interest in sales from the lease, property, or well expressed as a decimal;

(10) the owner's share of the total value of sales before any tax deductions;

(11) the owner's share of the sales value less deductions; and

(12) an address and telephone number at which additional information regarding the payment may be obtained and questions may be answered.

Sec. 91.503. LEASE, PROPERTY, OR WELL DESCRIPTION [~~NAME~~]. If a division order is not provided that includes the information required by Section 91.402(c)(1)(B) [~~lease, property, or well identification number is used under Subdivision (1) of Section 91.502 of this code~~], the payor [~~person making the payment~~] must, at a minimum, provide prior to or with the first payment to which this subchapter applies the information required by Section 91.402(c)(1)(B) for the lease, property, or well for which payment of proceeds is being reported [~~name to which the lease, property, or well number refers~~].

Sec. 91.504. PROVIDING INFORMATION ABOUT [~~EXPLANATION OF CERTAIN~~] PAYMENT DEDUCTIONS AND ADJUSTMENTS, HEATING VALUE, OR LEASE IDENTIFICATION. (a) If the payor [~~person making a payment~~] does not explain on the check stub, [~~or~~] attachment to the payment form, or other remittance advice, or by a separate mailing, deductions from or adjustments to payments, the payor [~~person making the payment~~] must provide an explanation by certified mail not later than the 60th day after the date the payor receives a [~~on~~] request from [~~of~~] the royalty interest owner. The royalty interest owner must send the request by certified mail.

(b) If a royalty interest owner requests information by certified mail concerning the heating value of the gas produced or sold from the lease, property, or well in which the owner has an interest, the payor must, not later than the 60th day after the date the payor receives the request, provide by certified mail:

(1) a copy of the Form G-1 filed with the commission; or

(2) a check stub or separate statement that includes the information.

(c) A royalty interest owner who received a payment from a payor during the preceding calendar year may request in writing by certified mail that the payor provide a report listing the following information for the preceding year:

(1) each lease, property, or well identification number;

(2) each lease, property, or well name;

(3) the field name;

(4) the county and state in which the property is located; and

(5) the commission lease identification number or commingling permit number or any other identification number under which the production for the lease, property, or well is being reported to the state.

(d) A payor who receives a request for information under Subsection (c) shall provide the information by certified mail not later than the 60th day after the date the payor receives the request.

(e) At least once every 12 months, a payor shall provide the following statement to each royalty interest owner to whom the payor makes a payment:

Section 91.504, Texas Natural Resources Code, gives an owner of a royalty interest in oil or gas produced in Texas the right to request from a payor information about itemized deductions, the heating value of the gas, and the Railroad Commission of Texas identification number for the lease, property, or well that may not have been provided to the royalty interest owner. The request must be in writing and must be made by certified mail. A payor must respond to a request regarding itemized deductions, the heating value of the gas, or the Railroad Commission of Texas identification number by certified mail not later than the 60th day after the date the request is received. Additional information regarding production and related information may be obtained by contacting the Railroad Commission of Texas' Office of Public Assistance or accessing the commission's website.

Sec. 91.505. PROVIDING OTHER INFORMATION. If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subchapter, other than information requested under Section 91.504, and the request is made by certified mail, the payor [~~person making the payment~~] must respond to the request by certified mail not later than 30 days after the request is received.

Sec. 91.506. EXEMPTION. If the information required by Section 91.502 [~~of this code~~] is provided in some other manner on a monthly basis, the payor [~~person making the payment~~] is not required to include the information on the check stub, [~~or~~] attachment to the payment form, or other remittance advice.

SECTION 3. Subchapter L, Chapter 91, Natural Resources Code, is amended by adding Section 91.507 to read as follows:

Sec. 91.507. ENFORCEMENT. (a) A royalty interest owner who does not receive the information required to be provided under Section 91.502 or 91.503 in a timely manner may send a written request for the information to the payor by certified mail.

(b) Not later than the 60th day after the date the payor receives the written request for information under this section, the payor shall provide the requested information by certified mail.

(c) If a payor fails to provide the requested information within the period specified by Subsection (b), either party may request mediation.

(d) If the royalty interest owner makes a written request for information under Section 91.504 or this section and the payor does not provide the information within the 60-day period, the royalty interest owner may bring a civil action against the payor to enforce the provisions of Section 91.504 or this section, as applicable. The prevailing party is entitled to recover reasonable court costs and attorney's fees.

SECTION 4. This Act takes effect January 1, 2002, except that Sections 91.501, 91.502, 91.504, and 91.506, Natural Resources Code, as amended by this Act, and Section 91.507, Natural Resources Code, as added by this Act, take effect September 1, 2002.

Representative T. King moved to adopt the conference committee report on **HB 981**.

The motion prevailed.

HR 1349 - ADOPTED
(by Pickett)

The following privileged resolution was laid before the house:

HR 1349

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the **HB1831**, relating to the general power of the Texas Department of Transportation to contract, to consider and take action on the following matter:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add a new section to the bill to read as follows:

SECTION 2. (a) Section 502.299, Transportation Code, as added by Chapter 433, Acts of the 76th Legislature, Regular Session, 1999, is amended by amending Subsections (b) and (c) and by adding Subsection (d) to read as follows:

(b) 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 [~~the~~] annual fee of $30 [~~established by the department under Subsection (c)~~], in addition to the fee prescribed by Section 502.161 or 502.162, and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(c) Of each fee collected under Subsection (b)(2), $5 shall be used by the department only to defray the cost of administering this section. The department shall deposit the remainder of each fee collected to the credit of the YMCA account established by Section 7.025, Education Code [~~The department by rule shall establish the annual fee for registration under this section in an amount that, when added to the other fees collected by the department, does not exceed the amount sufficient to recover the actual cost to the department of issuing license plates under this section~~].

(d) If the owner of a vehicle for which license plates were issued under this section disposes of the vehicle during a registration year, the owner shall return the special license plates to the department.

(b) Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.025 to read as follows:

Sec. 7.025. YMCA ACCOUNT. The YMCA account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.299, Transportation Code, as added by Chapter 433, Acts of the 76th Legislature, Regular Session, 1999. The Texas Education Agency administers the account and may spend money credited to the account only to make grants to benefit the youth and government programs sponsored by the Young Men's Christian Associations located in Texas.

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2001. The changes in law made by this section apply only

to the registration of a motor vehicle that is applied for on or after that date. The registration of a motor vehicle that was applied for before the effective date of this section is covered by the law in effect on the date the registration was applied for, and the former law is continued in effect for that purpose.

Explanation: This addition is necessary to provide for collection and disposition of fees in connection with special license plates in honor of the YMCA in Texas.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add a new section to the bill to read as follows:

SECTION 3. (a) Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2735 to read as follows:

Sec. 502.2735. TEXANS CONQUER CANCER LICENSE PLATES. (a) The department shall issue specially designed license plates for passenger cars and light trucks that include the words "Texans Conquer Cancer."

(b) The department shall design the license plates in consultation with the Texas Cancer Council.

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

(1) applies to the 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 or Section 502.162, and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(d) Of each fee collected under Subsection (c)(2), $5 shall be used by the department only to defray the cost of administering this section. The department shall deposit the remainder of each fee collected to the credit of the Texans Conquer Cancer account established by Section 102.017, Health and Safety Code.

(e) If the owner of a vehicle for which license plates were issued under this section disposes of the vehicle during a registration year, the owner shall return the special license plates to the department.

(b) Chapter 102, Health and Safety Code, is amended by adding Sections 102.017 and 102.018 to read as follows:

Sec. 102.017. TEXANS CONQUER CANCER ACCOUNT. (a) The Texans Conquer Cancer account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 502.2735, Transportation Code; and

(2) gifts, grants, and donations.

(b) The council administers the account. The council may spend money credited to the account only to:

(1) make grants to nonprofit organizations that provide support services for cancer patients and their families; and

(2) defray the cost of administering the account.

(c) The council:

(1) may accept gifts, donations, and grants from any source for the benefit of the account; and

(2) by rule shall establish guidelines for spending money credited to the account.

Sec. 102.018. TEXANS CONQUER CANCER ADVISORY COMMITTEE. (a) The council shall appoint a seven-member Texans Conquer Cancer advisory committee.

(b) The committee shall:

(1) assist the council in establishing guidelines for the expenditure of money credited to the Texans Conquer Cancer account; and

(2) review and make recommendations to the council on applications submitted to the council for grants funded with money credited to the Texans Conquer Cancer account.

(c) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Each member serves a term of four years, with the terms of three or four members expiring on January 31 of each odd-numbered year.

(d) Section 2110.008, Government Code, does not apply to the committee.

Explanation: This addition is necessary to provide for issuance of Texans Conquer Cancer license plates.

HR 1349 was adopted without objection.

HB 1831 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pickett submitted the following conference committee report on **HB 1831**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1831** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris	Pickett
Shapiro	Hamric
Lucio	Swinford
	Hawley
	Hill
On the part of the Senate	On the part of the House

HB 1831, A bill to be entitled An Act relating to the power of the Texas Department of Transportation to contract and to issue certain license plates.

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

SECTION 1. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.209 to read as follows:

Sec. 201.209. AUTHORITY TO CONTRACT. (a) The department may enter into an interlocal contract with one or more local governments in accordance with Chapter 791, Government Code.

(b) The department by rule shall adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding the contracts under this section.

SECTION 2. (a) Section 502.299, Transportation Code, as added by Chapter 433, Acts of the 76th Legislature, Regular Session, 1999, is amended by amending Subsections (b) and (c) and by adding Subsection (d) to read as follows:

(b) 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 [~~the~~] annual fee of $30 [~~established by the department under Subsection (c)~~], in addition to the fee prescribed by Section 502.161 or 502.162, and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(c) Of each fee collected under Subsection (b)(2), $5 shall be used by the department only to defray the cost of administering this section. The department shall deposit the remainder of each fee collected to the credit of the YMCA account established by Section 7.025, Education Code [~~The department by rule shall establish the annual fee for registration under this section in an amount that, when added to the other fees collected by the department, does not exceed the amount sufficient to recover the actual cost to the department of issuing license plates under this section~~].

(d) If the owner of a vehicle for which license plates were issued under this section disposes of the vehicle during a registration year, the owner shall return the special license plates to the department.

(b) Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.025 to read as follows:

Sec. 7.025. YMCA ACCOUNT. The YMCA account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.299, Transportation Code, as added by Chapter 433, Acts of the 76th Legislature, Regular Session, 1999. The Texas Education Agency administers the account and may spend money credited to the account only to make grants to benefit the youth and government programs sponsored by the Young Men's Christian Associations located in Texas.

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2001. The changes in law made by this section apply only to the registration of a motor vehicle that is applied for on or after that date. The registration of a motor vehicle that was applied for before the effective date of this section is covered by the law in effect on the date the registration was applied for, and the former law is continued in effect for that purpose.

SECTION 3. (a) Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2735 to read as follows:

Sec. 502.2735. TEXANS CONQUER CANCER LICENSE PLATES. (a) The department shall issue specially designed license plates for passenger cars and light trucks that include the words "Texans Conquer Cancer."

(b) The department shall design the license plates in consultation with the Texas Cancer Council.

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

(1) applies to the 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 or Section 502.162, and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(d) Of each fee collected under Subsection (c)(2), $5 shall be used by the department only to defray the cost of administering this section. The department shall deposit the remainder of each fee collected to the credit of the Texans Conquer Cancer account established by Section 102.017, Health and Safety Code.

(e) If the owner of a vehicle for which license plates were issued under this section disposes of the vehicle during a registration year, the owner shall return the special license plates to the department.

(b) Chapter 102, Health and Safety Code, is amended by adding Sections 102.017 and 102.018 to read as follows:

Sec. 102.017. TEXANS CONQUER CANCER ACCOUNT. (a) The Texans Conquer Cancer account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 502.2735, Transportation Code; and

(2) gifts, grants, and donations.

(b) The council administers the account. The council may spend money credited to the account only to:

(1) make grants to nonprofit organizations that provide support services for cancer patients and their families; and

(2) defray the cost of administering the account.

(c) The council:

(1) may accept gifts, donations, and grants from any source for the benefit of the account; and

(2) by rule shall establish guidelines for spending money credited to the account.

Sec. 102.018. TEXANS CONQUER CANCER ADVISORY COMMITTEE. (a) The council shall appoint a seven-member Texans Conquer Cancer advisory committee.

(b) The committee shall:

(1) assist the council in establishing guidelines for the expenditure of money credited to the Texans Conquer Cancer account; and

(2) review and make recommendations to the council on applications submitted to the council for grants funded with money credited to the Texans Conquer Cancer account.

(c) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Each member serves a term of four years, with the terms of three or four members expiring on January 31 of each odd-numbered year.

(d) Section 2110.008, Government Code, does not apply to the committee.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39,

Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Representative Pickett moved to adopt the conference committee report on **HB 1831**.

A record vote was requested.

The motion prevailed by (Record 627): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert.

Absent — Grusendorf; Hill; Marchant; Uher.

STATEMENT OF VOTE

When Record No. 627 was taken, I was absent because of important business. Had I been present I would have voted yes.

Hill

HB 2005 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Corte submitted the following conference committee report on **HB 2005**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2005** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth	Corte
Barrientos	Counts
Brown	Walker
Lucio	T. King
Nelson	Puente
On the part of the Senate	On the part of the House

HB 2005, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Trinity Glen Rose Groundwater Conservation District.

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

SECTION 1. CREATION. (a) A conservation and reclamation district, to be known as the Trinity Glen Rose Groundwater Conservation District, is created in that part of Bexar County overlying the Trinity Aquifer, subject to approval at a confirmation election under Section 9 of this Act. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

(c) The purpose of the district is to develop and implement regulatory, conservation, and recharge programs that preserve and protect the underground water resources located within the district.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board" means the board of directors of the district.

(2) "District" means the Trinity Glen Rose Groundwater Conservation District.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

SECTION 3. BOUNDARY. (a) The district includes the territory contained within that part of Bexar County defined as follows:

Beginning at the Bexar County - Kendall County - Bandera County line, said point being at the intersect of Balcones Creek;

Thence Southwest along the Bexar County - Bandera County line to the point of intersect of the Bexar County - Bandera County and Medina County line;

Thence South along the Bexar County - Medina County line to the point of intersect of Bexar County - Medina County line and Farm to Market Road 471;

Thence Southeast along the centerline of Farm to Market Road 471 to the point of intersect with the centerline of State Highway Loop 1604;

Thence Northeast and continuing East along the centerline of State Highway Loop 1604 to the point of intersect of the centerline of State Highway Loop 1604 and the centerline of the Union Pacific Railway line in Northeast Bexar County, said point being approximately 3000 feet Northwest of Farm to Market Road 2252 also known as Nacogdoches Road;

Thence East-Northeast along the centerline of the Union Pacific Railway to the point of intersect of the Union Pacific Railway and the Bexar County - Comal County Line, said point being the intersect of Cibolo Creek;

Thence Northwest and West along the centerline of Cibolo Creek to the confluence with Balcones Creek in Northwest Bexar County;
Thence West-Southwest along Balcones Creek to the point of intersect of Balcones Creek and the Bexar County - Kendall County - Bandera County line, said intersect being the point of beginning.

(b) The district may add territory inside the boundaries of the Edwards Aquifer Authority with the consent of the board of directors of the authority in the manner provided by Subchapter J, Chapter 36, Water Code.

SECTION 4. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefitted by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 5. POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution.

(b) This Act prevails over any provision of general law that is in conflict or inconsistent with this Act.

(c) The disqualification of directors of the district is governed by Section 49.052, Water Code.

SECTION 6. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS. (a) The temporary directors shall draw five numbered, single-member districts for electing directors.

(b) For the conduct of an election under Section 9 or Section 12 of this Act, the board shall provide for one director to be elected from each of the single-member districts. A director elected from a single-member district represents the residents of that single-member district.

(c) To be qualified to be a candidate for or to serve as director, a person must be a registered voter in the single-member district that the person represents or seeks to represent.

(d) The initial or permanent directors may revise the districts as necessary or appropriate. The board shall revise each single-member district after each federal decennial census to reflect population changes. At the first election after the single-member districts are revised, a new director shall be elected from each district. The directors shall draw lots to determine which two directors serve two-year terms and which three directors serve four-year terms.

SECTION 7. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) A vacancy in the office of director shall be filled by appointment of the board until the next election for directors. At the next election for directors, a person shall be elected to fill the position. If the position is not scheduled to be filled at the election, the person elected to fill the position shall serve only for the remainder of the unexpired term.

(c) To be eligible to serve as director, a person must be a registered voter in the district.

SECTION 8. TEMPORARY DIRECTORS. (a) The temporary board of directors consists of:

(1) Jack M. Mcginnis —Voting District No. 1
(2) John J. Waldrop —Voting District No. 2
(3) Daniel Kasprowicz —Voting District No. 3
(4) Gary A. Gibbons —Voting District No. 4
(5) Steve A. Peirce —Voting District No. 5

(b) If a temporary director fails to qualify for office, the temporary directors who have qualified shall appoint a person to fill the vacancy. If at any time there are fewer than three qualified temporary directors, the commission shall appoint the necessary number of persons to fill all vacancies on the board.

SECTION 9. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors' election, the temporary board of directors shall have placed on the ballot the names of the persons serving as temporary directors who intend to run for an initial director's position together with the name of any candidate filing for an initial director's position and blank spaces to write in the names of other persons.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors' election held as provided by this section.

(d) If a majority of the votes cast at the election favor the creation of the district, the temporary directors shall declare the district created. If a majority of the votes cast at the election oppose the creation of the district, the temporary directors shall declare the district defeated. The temporary directors shall file a copy of the election results with the commission.

(e) If a majority of the votes cast at the election oppose the creation of the district, the temporary directors may call and hold subsequent elections to confirm establishment of the district. A subsequent election may not be held earlier than the first anniversary after the date on which the previous election was held. If the district is not created within three years after the effective date of this Act, this Act expires.

(f) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

SECTION 10. INITIAL DIRECTORS. If creation of the district is confirmed under Section 9 of this Act, the initial directors shall draw lots to determine which two initial directors serve two-year terms and which three initial directors serve four-year terms.

SECTION 11. SERVICE OF DIRECTORS. (a) Temporary directors serve until initial directors are elected under Section 9 of this Act or until this Act expires under Section 9(e) of this Act, whichever occurs earlier.

(b) Initial directors serve until permanent directors are elected under Section 12 of this Act.

(c) Permanent directors serve staggered four-year terms.

(d) A director serves until the director's successor has qualified.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

SECTION 12. ELECTION OF PERMANENT DIRECTORS. Beginning in the second year after the year in which the district is authorized to be created

at a confirmation election, an election shall be held in the district on the first Saturday in May every two years to elect the appropriate number of directors to the board.

SECTION 13. DISTRICT FINANCES. (a) Except as provided by Subsection (i) of this section, the board may impose an operation and maintenance tax if approved by a majority of the qualified voters voting at an election called and held for that purpose in the manner provided by Section 36.201, Water Code.

(b) Except as provided by Subsection (i) of this section, the board of directors may impose reasonable fees on each nonexempt well in the district. The fees may be assessed annually, based on:

(1) the size of column pipe used in the well;

(2) the production capacity of the well; or

(3) actual, authorized, or anticipated pumpage.

(c) The board may use fees as a regulatory mechanism or a revenue-producing mechanism. Not later than December 1, 2003, the board shall adopt rules issuing appropriate recharge credits to persons in the district who pay fees or taxes to the district and who enhance, supplement, improve, or prevent pollution of recharge of the Trinity Aquifer.

(d) The board shall adopt rules regarding the fee rates, the manner and form for filing reports of fees, and the manner of collecting fees.

(e) To secure payment of a fee imposed under this section, a lien attaches to the property on which the well is located. The lien has the same priority and characteristics as a lien for district taxes. The district may use the lien and all other powers that it possesses to collect the payment of the fee.

(f) The district may use fees or taxes collected under this section to pay for the district's management and operation and to pay all or part of the principal of and interest on district bonds or notes.

(g) The board shall use fees or taxes collected under this section to pay for:

(1) studies and planning required to develop a scientifically based regulatory program;

(2) soil and water conservation measures, including water-retarding structures and brush management and the implementation of other best management practices to address natural resource concerns in the district;

(3) direct installation of water conservation devices and early retirement of older devices;

(4) educational material relating to soil and water conservation; and

(5) enforcement programs or regulatory programs.

(h) The district may spend fees or taxes for the purposes described by Subsection (g)(2) of this section independently or in conjunction with other natural resource programs in the district.

(i) If the district imposes a tax under this section, the district may not impose a fee. If the district imposes a fee under this section, the district may not impose a tax.

SECTION 14. ADDITIONAL REGULATORY AUTHORITY. (a) The board may require all or certain types of wells to be registered with the district.

(b) Notwithstanding Section 36.117, Water Code:

(1) the production capacity for an exempt well in the district is 10,000 gallons per day or less; and

(2) an exempt domestic well in the district may not serve more than five households.

(c) A well on or serving a tract of land of less than five acres that is installed after the effective date of this Act, regardless of whether a plat is required or whether the production capacity of the well is less than 10,000 gallons per day, is not an exempt well.

(d) This section does not affect the exempt status of public water supply wells under Section 16 of this Act.

(e) The district may:

(1) construct, implement, and maintain best management practices in the district;

(2) engage in and promote the acceptance of best management practices through education efforts sponsored by the district;

(3) include the construction and maintenance of terraces and other structures on land in the district;

(4) engage in and promote land treatment measures for soil conservation and improvement; and

(5) prepare and implement a plan for the control and management of brush within the district.

SECTION 15. PROHIBITED ACTS. (a) The district may not:

(1) sell, donate, lease, or otherwise grant rights in or to underground water located in the district unless the action has been approved by a majority vote of the residents of the district;

(2) enter into any contract or engage in any action to purchase, sell, transport, and distribute surface water or groundwater for any purpose other than a program for aquifer storage and recovery of water;

(3) assess an ad valorem property tax for administrative, operation, and maintenance expenses in excess of three cents for each $100 valuation; or

(4) impose a tax on or charge a fee to any person in the district who does not obtain water from the Trinity Aquifer.

(b) In this section, "person" has the meaning assigned by Section 311.005, Government Code.

SECTION 16. PUBLIC WATER SUPPLY WELLS. (a) A public water supply well is exempt from regulation by the district if:

(1) the well is in existence on the effective date of this Act and drilled in compliance with technical requirements in effect at the time the well was drilled; or

(2) the commission has approved plans submitted for the installation of the well before the effective date of this Act and the installation of the well is completed in accordance with the approved plans and the commission's technical requirements before the first anniversary of the effective date of this Act.

(b) The owner of a public water supply well shall register the well with the district and submit reports to the district. A public water supply well is subject to the district's prohibitions on the waste of groundwater.

(c) The district may not require a construction or operating permit for a public water supply well approved by the commission.

(d) Fees a retail public utility pays to the district shall be collected directly from the customers of the utility as a regulatory fee and shown as a separate line item on the customer's bill.

SECTION 17. EXEMPTION FOR MUNICIPAL SUPPLIER OR CONSUMER OF WATER FROM SOURCE OTHER THAN TRINITY AQUIFER. The district may not impose a fee or tax on:

(1) a person who provides water to a municipality, at least 50 percent of which annually is obtained from a source other than the Trinity Aquifer; or

(2) a resident of or other water user within a municipality that obtains its water from a person described by Subdivision (1), whose source of water is the municipality.

SECTION 18. BONDS. The district may not issue bonds before September 1, 2004.

SECTION 19. MUNICIPALITY'S OPTION TO CHOOSE DISTRICT. (a) If any part of a municipality, a part of which is included within the boundaries of the district, is included within the boundaries of one or more other groundwater conservation districts created by special Act of the 77th Legislature, Regular Session, 2001, and confirmed at a subsequent election called for the purpose, the municipality, not later than August 31, 2004, at an election called for the purpose, may vote to choose the one groundwater conservation district of which it will be a part.

(b) If, after a municipality has held an election authorized by Subsection (a), another groundwater conservation district created by special Act of the 77th Legislature, Regular Session, 2001, that includes any part of the municipality is confirmed at an election called for the purpose and if the district of which the municipality has chosen to be a part has not issued bonds secured by ad valorem taxes on any land within the boundaries of the municipality, the municipality may hold another election under this section to choose whether to remain within the groundwater conservation district of which it has chosen to be a part or to separate from that district and become part of the newly confirmed groundwater conservation district. The district may hold another election under this section, regardless of the number of previous elections under this section, at any time a district described by Subsection (a) is confirmed.

(c) An election under this section shall be held according to the requirements of the Election Code, except to the extent of any conflict with the requirements of this section. Section 41.001(a), Election Code, does not apply to an election under this section.

(d) This section and the results of an election held under this section prevail over the provisions of any other Act of the 77th Legislature, Regular Session, 2001, regardless of the relative dates on which this Act and the other Act may be enacted and become law.

SECTION 20. FINDINGS RELATING TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the commission.

(b) The commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 21. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Representative Corte moved to adopt the conference committee report on **HB 2005**.

The motion prevailed.

HR 1308 - ADOPTED
(by McCall)

The following privileged resolution was laid before the house:

HR 1308

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 2255**, relating to the continuation and functions of the State Securities Board; providing penalties, to consider and take action on the following matter:

House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text in Subdivision (3), Subsection E, Section 2, The Securities Act (Article 581-2, Vernon's Texas Civil Statutes), as amended by SECTION 1.01 of the bill, to read as follows:

(3) is ineligible for membership under Subsection B of this section or Subsection B or C of Section 2-1 of this Act;

Explanation: The change is necessary to correct a cross-reference.

HR 1308 was adopted without objection.

HB 2255 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the following conference committee report on **HB 2255**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2255** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser	Chisum
Jackson	Hartnett
Lucio	Tillery
Harris	McCall
On the part of the Senate	On the part of the House

HB 2255, A bill to be entitled An Act relating to the continuation and functions of the State Securities Board; providing penalties.

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

ARTICLE 1. GENERAL OPERATIONS AND ADMINISTRATION OF THE STATE SECURITIES BOARD

SECTION 1.01. Section 2, The Securities Act (Article 581-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. CREATING THE STATE SECURITIES BOARD AND PROVIDING FOR APPOINTMENT OF SECURITIES COMMISSIONER. A. The State Securities Board is hereby created. The Board shall consist of five [~~three~~] citizens of the state appointed by the governor with[~~. With~~] the advice and consent of the Senate[~~, the Governor shall biennially appoint one member~~]. Members of the Board serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring January 20 of each odd-numbered year [~~The term of each member shall be six (6) years from the time of his appointment and qualification, and until his successor shall qualify~~]. Vacancies shall be filled by the Governor for the unexpired term. Members shall be eligible for reappointment. Appointments to the Board shall be made without regard to the race, color, disability [~~creed~~], sex, religion, age, or national origin of the appointees.

B. Board members must be members of the general public. A person is not eligible for appointment as a member if the person or the person's spouse:

(1) is registered as a dealer, [~~salesman,~~] agent, [~~or~~] investment adviser, or investment adviser representative;

(2) has an active notice filing under this Act to engage in business in this state as an investment adviser or investment adviser representative;

(3) is employed by or participates in the management of a business entity engaged in business as a securities dealer or investment adviser; or

(4) [~~(3)~~] has, other than as a consumer, a financial interest in a business entity engaged in business as a securities dealer or investment adviser.

[~~C. A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation in or for a profession related to the operation of the Board, may not serve as a member of the Board or act as the general counsel to the Board.~~]

D. Each member of the Board is entitled to per diem as set by legislative appropriation for each day that the member engages in the business of the Board.

The Governor shall designate a member of the Board as the presiding officer of the Board to serve in that capacity at the will of the Governor [~~They~~

~~shall select their own chairman~~]. A majority of the members shall constitute a quorum for the transaction of any business.

E. It is a ground for removal from the Board that [~~if~~] a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Subsection A or B of this section for appointment to the Board;

(2) does not maintain during [~~the~~] service on the Board the qualifications required by Subsection A or B of this section for appointment to the Board; [~~or~~]

(3) is ineligible for membership under Subsection B of this section or Subsection B or C of Section 2-1 of this Act;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled Board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the Board [~~violates a prohibition established by Subsection C of this section~~].

F. The validity of an action of the Board is not affected by the fact that it is [~~was~~] taken when a ground for removal of a Board member exists [~~of the Board existed~~]. If the Commissioner has knowledge that a potential ground for removal exists, the Commissioner shall notify the presiding officer of the Board of the potential ground. The presiding officer shall then notify the Governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the Commissioner shall notify the next highest ranking officer of the Board, who shall then notify the Governor and the attorney general that a potential ground for removal exists.

G. The Board shall appoint a Securities Commissioner who serves at the pleasure of the Board and who shall, under the supervision of the Board, administer the provisions of this Act. Each member of the Board shall have access to all offices and records under his supervision, and the Board, or a majority thereof, may exercise any power or perform any act authorized to the Securities Commissioner by the provisions of this Act.

H. The Commissioner, with the consent of the Board, may designate a Deputy Securities Commissioner who shall perform all the duties required by law to be performed by the Securities Commissioner when the said Commissioner is absent or unable to act for any reason. The Commissioner shall appoint other persons as necessary to carry out the powers and duties of the Commissioner under this Act and other laws granting jurisdiction or applicable to the Board or the Commissioner. The Commissioner may delegate to the other persons appointed under this subsection powers and duties of the Commissioner as the Commissioner considers necessary.

I. Before assuming office, the Securities Commissioner shall first give a bond in the sum of Twenty-five Thousand Dollars ($25,000.00) payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. The same requirement is made of the Deputy Securities Commissioner, and the Securities Commissioner may require any or all of his staff and employees to be likewise bonded. The expense of all such bonds may be paid by the state.

J. On or before January 1 of each year, the Board, with the advice of the Commissioner, shall report to the Governor and the presiding officer of each house of the Legislature as to its administration of this Act, as well as plans and needs for future securities regulation. The report must include a detailed accounting of all funds received and disbursed by the Board during the preceding year.

K. The Commissioner or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least ten (10) days before any public posting. The Commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this section.

L. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and Commissioner and describing the Board's and Commissioner's procedures by which consumer complaints are filed with and resolved by the Board or Commissioner. The Board shall make the information available to the general public and appropriate state agencies. There shall be prominently displayed at all times in the place of business of each dealer, [~~salesman, or~~] agent, investment adviser, or investment adviser representative regulated under this Act, a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against a dealer, [~~salesman, or~~] agent, investment adviser, or investment adviser representative may be directed to the Board.

M. The financial transactions of the Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

N. The Board and Commissioner are subject to Chapters 551, 2001, and 2002, Government Code.

O. The State Securities Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2013 [~~2001~~].

SECTION 1.02. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Sections 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, and 2-8 to read as follows:

Sec. 2-1. CONFLICT OF INTEREST. A. In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

B. A person may not be a member of the Board and may not be a Board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the Board; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the Board.

C. A person may not be a member of the Board or act as the general counsel to the Board if the person is required to register as a lobbyist under

Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Board.

Sec. 2-2. INFORMATION ABOUT STANDARDS OF CONDUCT. The Commissioner or the Commissioner's designee shall provide to members of the Board and to Board employees, as often as necessary, information regarding the requirements for office or employment under this Act, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 2-3. TRAINING. A. A person who is appointed to and qualifies for office as a member of the Board may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program that complies with this section.

B. The training program must provide the person with information regarding:

(1) the legislation that created the Board;

(2) the programs operated by the Board;

(3) the role and functions of the Board;

(4) the rules of the Board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the Board;

(6) the results of the most recent formal audit of the Board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

C. A person appointed to the Board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 2-4. DIVISION OF POLICY AND MANAGEMENT RESPONSIBILITIES. The Board shall develop and implement policies that clearly separate the policymaking responsibilities of the Board and the management responsibilities of the Commissioner and employees of the Board.

Sec. 2-5. PUBLIC TESTIMONY. The Board by rule shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

Sec. 2-6. COMPLAINTS INFORMATION. A. The Commissioner or the Commissioner's designee shall maintain a file on each written complaint filed with the Commissioner or Board concerning an employee, former employee, or person registered under this Act. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the Commissioner or Board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the Commissioner closed the file without taking action other than to investigate the complaint.

B. The Commissioner or the Commissioner's designee shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the Board's policies and procedures relating to complaint investigation and resolution.

C. The Commissioner or the Commissioner's designee, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 2-7. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. A. The Commissioner or the Commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

B. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the Board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the Board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

C. The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection B(1) of this section; and

(3) be filed with the governor's office.

Sec. 2-8. INFORMATION ABOUT STATE EMPLOYEE INCENTIVE PROGRAM. The Commissioner or the Commissioner's designee shall provide to Board employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 1.03. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 43 to read as follows:

Sec. 43. INVESTOR EDUCATION. A. The Commissioner, with Board approval, shall develop and implement investor education initiatives to inform the public about the basics of investing in securities, with a special emphasis placed on the prevention and detection of securities fraud. Materials developed for and distributed as part of the initiatives must be published in both Spanish and English.

B. In developing and implementing the initiatives, the Commissioner shall use the Commissioner's best efforts to collaborate with public or nonprofit entities with an interest in investor education.

C. Subject to Chapter 575, Government Code, the Commissioner may accept grants and donations from a person who is not affiliated with the securities industry or from a nonprofit association, regardless of whether the entity is affiliated with the securities industry, for use in providing investor education initiatives.

SECTION 1.04. As soon as possible after the effective date of this Act, the governor shall appoint one member to the State Securities Board for a term expiring January 20, 2005, and another member to the State Securities Board for a term expiring January 20, 2007. As those terms expire, the governor shall appoint members to full six-year terms.

SECTION 1.05. Not later than September 1, 2002, the Securities Commissioner shall implement the investor education initiatives as required by Section 43, The Securities Act (Article 581-43, Vernon's Texas Civil Statutes), as added by this Act.

SECTION 1.06. The changes in law made by this Act in the prohibitions and qualifications applying to members of the State Securities Board do not affect the entitlement of a member serving on the board immediately before September 1, 2001, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 2001.

ARTICLE 2. REGULATORY PROVISIONS

SECTION 2.01. Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), is amended by amending Subsections B, C, D, and E and adding Subsections N, O, P, and Q to read as follows:

B. The terms "person" and "company" shall include a corporation, person, joint stock company, partnership, limited partnership, association, company, firm, syndicate, trust, incorporated or unincorporated, heretofore or hereafter formed under the laws of this or any other state, country, sovereignty or political subdivision thereof, and shall include a government, or a political subdivision or agency thereof. As used herein, the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity. [~~Under the criminal penal provisions of Section 29 of this Act, the word "person" shall mean a natural person.~~]

C. The term "dealer" shall include every person or company other than an agent [~~a salesman~~], who engages in this state, either for all or part of his or its time, directly or through an agent, in selling, offering for sale or delivery or soliciting subscriptions to or orders for, or undertaking to dispose of, or to invite offers for any security or securities [~~and every person or company who engages in rendering services as an investment adviser,~~] and every person or company who deals in any other manner in any security or securities within this state. Any issuer other than a registered dealer of a security or securities, who, directly or through any person or company, other than a registered dealer, offers for sale, sells or makes sales of its own security or securities shall be deemed a dealer and shall be required to comply with the provisions hereof; provided, however, this section or provision shall not apply to such issuer when such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; and provided further, this section or provision shall not apply to such

issuer if the transaction is within the exemptions contained in the provisions of Section 5 of this Act.

D. The term [~~"salesman" or~~] "agent" shall include every person or company employed or appointed or authorized by a dealer to sell, offer for sale or delivery, or solicit subscriptions to or orders for, or deal in any other manner, in securities within this state, whether by direct act or through subagents; provided, that the officers of a corporation or partners of a partnership shall not be deemed [~~salesmen or~~] agents solely because of their status as officers or partners, where such corporation or partnership is registered as a dealer hereunder.

E. The terms "sale" or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent [~~or salesman~~], by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in courts of law or equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act, if not exempt hereunder, or by other provisions of law.

N. "Investment adviser" includes a person who, for compensation, engages in the business of advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities, as may be further defined by Board rule. The term does not include:

(1) a bank or a bank holding company, as defined by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.), as amended, that is not an investment company;

(2) a lawyer, accountant, engineer, teacher, or geologist whose performance of the services is solely incidental to the practice of the person's profession;

(3) a dealer or agent who receives no special compensation for those services and whose performance of those services is solely incidental to transacting business as a dealer or agent;

(4) the publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

(5) a person whose advice, analyses, or report does not concern a security other than a security that is:

(A) a direct obligation of or an obligation the principal or interest of which is guaranteed by the United States government; or

(B) issued or guaranteed by a corporation in which the United States has a direct or indirect interest and designated by the United States Secretary of the Treasury under Section 3(a)(12), Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(12)), as amended, as an exempt security for purposes of that Act.

O. "Federal covered investment adviser" means an investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), as amended.

P. "Investment adviser representative" or "representative of an investment adviser" includes each person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who, on behalf of an investment adviser, provides investment advice, directly or through subagents, as defined by Board rule, to the investment adviser's clients. The term does not include a partner of a partnership or an officer of a corporation or other entity that is registered as an investment adviser under this Act solely because of the person's status as an officer or partner of that entity.

Q. "Registered investment adviser" means an investment adviser who has been issued a registration certificate by the Commissioner under Section 15 of this Act.

SECTION 2.02. Section 5, The Securities Act (Article 581-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. EXEMPT TRANSACTIONS. Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

A. At any judicial, executor's, administrator's, guardian's or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy.

B. The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business to liquidate a bona fide debt, of a security pledged in good faith as security for such debt.

C. (1) Sales of securities made by or in behalf of a vendor, whether by dealer or other agent, in the ordinary course of bona fide personal investment of the personal holdings of such vendor, or change in such investment, if such vendor is not engaged in the business of selling securities and the sale or sales are isolated transactions not made in the course of repeated and successive transactions of a like character; provided, that in no event shall

such sales or offerings be exempt from the provisions of this Act when made or intended by the vendor or his agent, for the benefit, either directly or indirectly, of any company or corporation except the individual vendor (other than a usual commission to said agent), and provided further, that any person acting as agent for said vendor shall be registered pursuant to this Act;

(2) Sales by or on behalf of any insurance company subject to the supervision or control of the Texas Department of Insurance of any security owned by such company as a legal and bona fide investment, provided that in no event shall any such sale or offering be exempt from the provisions of this Act when made or intended, either directly or indirectly, for the benefit of any other company as that term is defined in this Act.

D. The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus.

E. Any offer and any transaction pursuant to any offer by the issuer of its securities to its existing security holders (including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants) if no commission or other remuneration (other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holder in this State.

F. The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them.

G. The issue or sale of securities (a) by one corporation to another corporation or the security holders thereof pursuant to a vote by one or more classes of such security holders, as required by the certificate of incorporation or the applicable corporation statute, in connection with a merger, consolidation or sale of corporate assets, or (b) by one corporation to its own stockholders in connection with the change of par value stock to no par value stock or vice versa, or the exchange of outstanding shares for the same or a greater or smaller number of shares; provided that in any such case such security holders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued or sold other than the securities of the corporation then held by them.

H. The sale of any security to any bank, trust company, building and loan association, insurance company, surety or guaranty company, savings institution, investment company as defined in the Investment Company Act of 1940, small business investment company as defined in the Small Business Investment Act of 1958, as amended, or to any registered dealer actually engaged in buying and selling securities.

I. Provided such sale is made without any public solicitation or advertisements:

(a) the sale of any security by the issuer thereof so long as the total number of security holders of the issuer thereof does not exceed thirty-five (35) persons after taking such sale into account;

(b) the sale or distribution by an employer or its participating subsidiary, if any, of a security under a thrift, savings, stock purchase, retirement, pension, profit-sharing, option, bonus, appreciation right, incentive, or similar employee benefit plan for employees or directors of the employer or its subsidiary; or

(c) the sale by an issuer of its securities during the period of twelve (12) months ending with the date of the sale in question to not more than fifteen (15) persons (excluding, in determining such fifteen (15) persons, purchasers of securities in transactions exempt under other provisions of this Section 5, purchasers of securities exempt under Section 6 hereof and purchasers of securities which are part of an offering registered under Section 7 hereof), provided such persons purchased such securities for their own account and not for distribution.

J. Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction.

K. Any security or membership issued by a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual members, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof.

L. The sale by the issuer itself, or by a registered dealer, of any security issued or guaranteed by any bank organized and subject to regulation under the laws of the United States or under the laws of any State or territory of the United States, or any insular possession thereof, or by any savings and loan association organized and subject to regulation under the laws of this State, or the sale by the issuer itself of any security issued by any federal savings and loan association.

M. The sale by the issuer itself, or by a registered dealer, of any security either issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state of the United States, or political subdivision thereof (including but not limited to any county, city, municipal corporation, district, or authority), or by any public or governmental agency or instrumentality of any of the foregoing.

N. The sale and issuance of any securities issued by any farmers' cooperative marketing association organized under Chapter 52, Agriculture Code, or the predecessor of that law (Article 5737 et seq., Revised Statutes); the sale and issuance of any securities issued by any mutual loan corporation organized under Chapter 54, Agriculture Code, or the predecessor of that law (Article 2500 et seq., Revised Statutes); the sale and issuance of any equity securities issued by any cooperative association organized under the Cooperative Association Act, as amended (Article 1396-50.01, Vernon's Texas

Civil Statutes); and the sale of any securities issued by any farmers' cooperative society organized under Chapter 51, Agriculture Code, or the predecessor of that law (Article 2514 et seq., Revised Statutes). Provided, however, this exemption shall not be applicable to agents [~~and salesmen~~] of any farmers' cooperative marketing association, mutual loan corporation, cooperative association, or farmers' cooperative society when the sale of such securities is made to non-members, or when the sale of such securities is made to members or non-members and a commission is paid or contracted to be paid to the said agents [~~or salesmen~~].

O. The sale by a registered dealer of outstanding securities provided that:

(1) Such securities form no part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer thereof; and

(2) Securities of the same class, of the same issuer, are outstanding in the hands of the public; and

(3) Such securities are offered for sale, in good faith, at prices reasonably related to the current market price of such securities at the time of such sale; and

(4) No part of the proceeds of such sale are paid directly or indirectly to the issuer of such securities; and

(5) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provision of this Act; and

(6) The right to sell or resell such securities has not been enjoined by any court of competent jurisdiction in this State by proceedings instituted by an officer or agency of this State charged with enforcement of this Act; and

(7) The right to sell such securities has not been revoked or suspended by the commissioner under any of the provisions of this Act, or, if so, revocation or suspension is not in force and effect; and

(8) At the time of such sale, the issuer of such securities shall be a going concern actually engaged in business and shall then be neither in an organization stage nor in receivership or bankruptcy; and

(9) Such securities or other securities of the issuer of the same class have been registered by qualification, notification or coordination under Section 7 of this Act; or at the time of such sale at least the following information about the issuer shall appear in a recognized securities manual or in a statement, in form and extent acceptable to the commissioner, filed with the commissioner by the issuer or by a registered dealer:

(a) A statement of the issuer's principal business;

(b) A balance sheet as of a date within eighteen (18) months of the date of such sale; and

(c) Profit and loss statements and a record of the dividends paid, if any, for a period of not less than three (3) years prior to the date of such balance sheet or for the period of existence of the issuer, if such period of existence is less than three (3) years.

The term "recognized securities manual" means a nationally distributed manual of securities that is approved for use hereunder by the Board.

The Commissioner may issue a stop order or by order prohibit, revoke or suspend the exemption under this Subsection O with respect to any security if the Commissioner has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. Notice of any court injunction enjoining the sale, or resale, of any such security, or of an order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by certified or registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (6) and (7) above of this Subsection O shall be inapplicable to any dealer until the dealer has received actual notice from the commissioner of such revocation or suspension.

The Board may for cause shown revoke or suspend the recognition hereunder of any manuals previously approved under this Subsection but no such action may be taken unless upon notice and opportunity for hearing before the Board or a hearings officer as now or hereafter required by law. A judgment sustaining the Board in the action complained of shall not bar after one year an application by the plaintiff for approval of its manual or manuals hereunder, nor shall a judgment in favor of the plaintiff prevent the Board from thereafter revoking such recognition for any proper cause which may thereafter accrue or be discovered.

P. The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compensation from any source other than the purchaser.

Q. The sales of interests in and under oil, gas or mining leases, fees or titles, or contracts relating thereto, where (1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided in any single oil, gas or mineral lease, fee or title, or contract relating thereto, shall not exceed thirty-five (35) within a period of twelve (12) consecutive months and (2) no use is made of advertisement or public solicitation; provided, however, if such sale or sales are made by an agent for such owner or owners, such agent shall be licensed pursuant to this Act. No oil, gas or mineral unitization or pooling agreement shall be deemed a sale under this Act.

R. The sale by the issuer itself, or by a subsidiary of such issuer, of any securities which would be exempt if sold by a registered dealer under Section 6 (other than Section 6E) of this Act.

S. The sale by or through a registered dealer of any option if at the time of the sale of the option:

(1) the performance of the terms of the option is guaranteed by any broker-dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and broker-dealer are in compliance with such requirements or regulations as may be approved or adopted by the board;

(2) the option is not sold by or for the benefit of the issuer of the security which may be purchased or sold upon exercise of the option;

(3) the security which may be purchased or sold upon exercise of the option is either (a) exempted under Subsection F of Section 6 of this Act or (b) quoted on the NASDAQ stock market [~~National Association of Securities Dealers Automated Quotation system~~] and meets the requirements of Paragraphs (1), (6), (7), and (8) of Subsection O of Section 5 of this Act; and

(4) such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provisions of this Act.

For purposes of this subsection the term "option" shall mean and include any put, call, straddle, or other option or privilege of buying or selling a specified number of securities at a specified price from or to another person, without being bound to do so, on or prior to a specified date, but such term shall not include any option or privilege which by its terms may terminate prior to such specified date upon the occurrence of a specified event.

T. Such other transactions or conditions as the board by rule, regulation, or order may define or prescribe, conditionally or unconditionally.

SECTION 2.03. Section 6, The Securities Act (Article 581-6, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. EXEMPT SECURITIES. Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to any of the following securities when offered for sale, or sold, or dealt in by a registered dealer or agent [~~salesman~~] of a registered dealer:

D. Any security issued or guaranteed either as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided, that such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by the Railroad Commission of Texas, or by a public commission, agency, board or officers of the Government of the United States, or of any territory or insular possession thereof, or of any state or municipal corporation, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment trust certificates or equipment notes or bonds based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, provided that such corporation is subject to regulation or supervision as above; or equipment trust certificates, or equipment notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any state, territory or insular possession thereof, or of the District of Columbia, or the Dominion of Canada, or any province thereof, to secure the payment of such equipment trust certificates, bonds or notes.

E. Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit.

F. Securities which at the time of sale have been fully listed upon the American Stock Exchange, the Boston Stock Exchange, the Chicago [~~Midwest~~] Stock Exchange or the New York Stock Exchange, have been designated or approved for designation on notice of issuance on the national market system of the NASDAQ stock market [~~National Association of Securities Dealers~~

~~Automated Quotation National Market System~~], or have been fully listed upon any recognized and responsible stock exchange approved by the Commissioner as hereinafter in this section provided, and also all securities senior to, or if of the same issues, upon a parity with, any securities so listed or designated or represented by subscription rights which have been so listed or designated, or evidence of indebtedness guaranteed by any company, any stock of which is so listed or designated, such securities to be exempt only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section. Application for approval by the Commissioner may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Commissioner, but no approval of any exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect reasonable protection to the public;

(2) That the governing constitution, by-laws or regulations of such exchange shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein;

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income, and profit and loss statements;

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset or income value;

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial of the rights and interests of his customers;

The approval of any such exchange by the Commissioner shall be made only after a reasonable investigation and hearing, and shall be by a written order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided. The Commissioner, upon ten (10) days notice and hearing, shall have power at any time to withdraw approval theretofore granted by him to any such stock exchange which does not at the time of hearing meet the standards of approval under this Act, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Commissioner approving such exchange.

By the same procedure set out in the preceding paragraph with respect to exchanges approved by the Commissioner, the Commissioner may suspend the exempt status of any trading system exempted by the Legislature on or after January 1, 1989, if that system does not at the time of hearing meet the applicable standards for approval of exchanges prescribed by this Act. The suspension has the same effect as the removal of approval of an exchange. The suspension remains in effect until the Commissioner by order determines that

the trading system has corrected the deficiency or deficiencies on which the suspension was based and maintains standards and procedures that provide reasonable protection to the public.

H. Any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper that is likewise limited, or any guarantee of such paper or of any such renewal.

I. Notes, bonds, or other evidence of indebtedness or certificates of ownership which are equally and proportionately secured without reference of priority of one over another, and which, by the terms of the instrument creating the lien, shall continue to be so secured by the deposit with a trustee of recognized responsibility approved by the Commissioner of any of the securities specified in Subsection M of Section 5 or Subsection D of Section 6; such deposited securities, if of the classes described in Subsection M of Section 5, having an aggregate par value of not less than one hundred and ten per cent (110%) of the par value of the securities thereby secured, and if of class specified in Subsection D of Section 6, having an aggregate par value of not less than one hundred and twenty five per cent (125%) of the par value of the securities thereby secured.

J. Notes, bonds or other evidence of indebtedness of religious, charitable or benevolent corporations.

SECTION 2.04. Subsection A, Section 7, The Securities Act (Article 581-7, Vernon's Texas Civil Statutes), is amended to read as follows:

A. Qualification of Securities. (1) No dealer or [~~,~~] agent [~~or salesman~~] shall sell or offer for sale any securities issued after September 6, 1955, except those which shall have been registered by Notification under subsection B or by Coordination under subsection C of this Section 7 and except those which come within the classes enumerated in Section 5 or Section 6 of this Act, until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Commissioner; and no such permit shall be granted by the Commissioner until the issuer of such securities or a dealer registered under the provisions of this Act shall have filed with the Commissioner a sworn statement verified under the oath of an executive officer or partner of the issuer, or of such registered dealer, and attested by the secretary or partner thereof, setting forth the following information:

a. The names, residences and post office addresses of the officers and directors of the company;

b. The location of its principal office and of all branch offices in this State, if any;

c. A copy of its articles of incorporation or partnership or association, as the case may be, and of any amendments thereto, if any; if a corporation, a copy of all minutes of any proceedings of its directors, stockholders or members relating to or affecting the issue of said security; if a corporation, a copy of its bylaws and of any amendments thereto; if a trustee, a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared;

d. A statement showing the amount of capital stock, if any, and if no capital stock, the amount of capital of the issuer that is contemplated

to be employed; the number of shares into which such stock is divided, or if not divided into shares of stock, what division is to be made or is contemplated; the par value of each share, or if no par stock, the price at which such security is proposed to be sold; the promotional fees or commissions to be paid for the sale of same, including any and all compensations of every nature that are in any way to be allowed the promoters or allowed for the sale of same; and how such compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both; also, the amount of cash to be paid, or securities to be issued, given, transferred or sold to promoters for promotion or organization services and expenses, and the amount of promotion or organization services and expenses which will be assumed or in any way paid by the issuer;

e. Copies of certificates of the stock and all other securities to be sold, or offered for sale, together with application blanks therefor; a copy of any contract it proposes to make concerning such security; a copy of any prospectus or advertisement or other description of security prepared by or for it for distribution or publication;

f. 1. A detailed statement prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for State and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Commissioner the fullest possible information concerning same, and the Commissioner shall have the power to require the filing of such additional information as the Commissioner may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any repurchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within one year from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such

application shall also include a detailed income statement, prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, which shall cover the last three (3) years' operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said income statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, an income statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said income statement shall clearly reflect the amount of net income or net loss incurred during each of the years shown.

2. The financial statements required in subparagraph (1) of this paragraph for a small business issuer, as defined by Board rule, may be reviewed by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants in lieu of being audited and certified, provided that the small business issuer otherwise meets all of the requirements that the Board by rule, regulation, or order may prescribe, conditionally or unconditionally.

SECTION 2.05. Section 8, The Securities Act (Article 581-8, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. CONSENT TO SERVICE. Unless the Board by rule otherwise specifies, any application filed or notice filing submitted by an issuer, or by a dealer or investment adviser who [~~will offer such securities for sale as the agent of the issuer, and the issuer~~] is organized under the laws of any other state, territory, or government, or domiciled in any other state than Texas, shall contain a provision that appoints [~~written instrument appointing~~] the Commissioner the issuer's, dealer's, or investment adviser's true and lawful attorney upon whom all process may be served in any action or proceedings against such issuer, dealer, or investment adviser arising out of any transaction subject to this Act with the same effect as if such issuer, dealer, or investment adviser were organized or created under the laws of this state and had been lawfully served with process therein. The provision [~~Such instrument~~] shall be duly executed by an authorized agent of the issuer, dealer, or investment adviser [~~under proper resolution or authority~~]. Whenever the Commissioner shall have been served with any process as is herein provided, it shall be the duty of the Commissioner to forward same by United States mail to the last known address of such issuer, dealer, or investment adviser.

SECTION 2.06. Subsection C, Section 10, The Securities Act (Article 581-10, Vernon's Texas Civil Statutes), is amended to read as follows:

C. Use of Permit to Aid Sale of Securities Prohibited. It shall be unlawful for any dealer, [~~or~~] issuer, or agent [~~or salesman,~~] to use a permit authorizing the issuance of securities in connection with any sale or effort to sell any security.

SECTION 2.07. Section 11, The Securities Act (Article 581-11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. PAPERS FILED WITH COMMISSIONER; RECORDS OPEN TO INSPECTION. All information, papers, documents, instruments and affidavits

required by this Act to be filed with the Commissioner shall be deemed public records of this state, and shall be open to the inspection and examination of any purchaser or prospective purchaser of said securities or the agent or representative of such purchaser or prospective purchaser; and the Commissioner shall give out to any such purchaser or prospective purchaser or his agent or representative any information required to be filed with him under the provisions of this section, or any other part of this Act, and shall furnish any such purchaser, prospective purchaser, or his agent or representative requesting it, certified copies of any and all papers, documents, instruments and affidavits filed with him under the provisions of this section or of any part of this Act. The Commissioner shall maintain a record, which shall be open for public inspection, upon which shall be entered the names and addresses of all registered dealers, registered agents, registered investment advisers, registered investment adviser representatives, and persons who have submitted a notice filing under this Act, [~~and salesmen~~] and all orders of the Commissioner denying, suspending or revoking registration. This section does not affect information considered confidential by Section 13-1 or 28 of this Act or other law.

SECTION 2.08. Section 12, The Securities Act (Article 581-12, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. REGISTRATION OF PERSONS SELLING SECURITIES OR RENDERING INVESTMENT ADVICE. A. Except as provided in Section 5 of this Act, no person, firm, corporation or dealer shall, directly or through agents [~~or salesmen~~], offer for sale, sell or make a sale of any securities in this state without first being registered as in this Act provided. No [~~salesman or~~] agent shall, in behalf of any dealer, sell, offer for sale, or make sale of any securities within the state unless registered as an [~~a salesman or~~] agent for that particular [~~of a~~] registered dealer under the provisions of this Act.

B. Except as provided by Section 5 of this Act, a person may not, directly or through an investment adviser representative, render services as an investment adviser in this state unless the person is registered under this Act, submits a notice filing as provided by Section 12-1 of this Act, or is otherwise exempt under this Act. A person may not act or render services as an investment adviser representative for a certain investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided in Section 18 or 12-1 of this Act.

C. The Board may adopt rules and regulations exempting certain classes of persons from the dealer, [~~and~~] agent, investment adviser, and investment adviser representative registration requirements, or providing conditional exemptions from registration, if the Board determines that such rules and regulations are consistent with the purposes of this Act.

SECTION 2.09. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 12-1 to read as follows:

Sec. 12-1. NOTICE FILING FOR FEDERAL COVERED INVESTMENT ADVISERS AND REPRESENTATIVES OF FEDERAL COVERED INVESTMENT ADVISERS. A. This section does not apply to an investment adviser or investment adviser representative that is exempt from registration under this Act or Board rule.

B. The Board by rule shall authorize a federal covered investment adviser or a representative of a federal covered investment adviser to engage in rendering services as an investment adviser in this state on submission to and receipt by the Commissioner of:

(1) a notice filing on the form and containing the information prescribed by the Commissioner and, if applicable, a consent to service appointing the Commissioner as the adviser's agent for service of process as required by Section 8 of this Act; and

(2) a fee in the amount determined under Sections 35 and 41 of this Act.

C. After the notice filing fee is paid and all the requirements for a notice filing under Subsection B of this section are met, a notice filing submitted under this section takes effect and is valid for the remainder of the calendar year. A federal covered investment adviser or federal covered investment adviser representative may renew a notice filing on or before its expiration date on submission to and receipt by the Commissioner of:

(1) a renewal notice filing; and

(2) a renewal fee in the amount determined under Sections 35 and 41 of this Act.

SECTION 2.10. Section 13, The Securities Act (Article 581-13, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. METHOD AND CONDITION OF REGISTRATION REQUIRED FOR DEALER, AGENT, INVESTMENT ADVISER, OR INVESTMENT ADVISER REPRESENTATIVE [~~OF EACH DEALER AND EACH AGENT OR SALESMAN OF EACH DEALER~~]. A. A dealer or investment adviser to be registered must submit a sworn application therefor to the Commissioner, which shall be in such form as the Commissioner may determine and which shall state:

(1) The principal place of business of the applicant wherever situated;

(2) The location of the principal place of business and all branch offices in this state, if any;

(3) The name or style of doing business and the address of the applicant [~~dealer~~];

(4) The names, residences and the business addresses of all persons interested in the business as principal, officer, director or managing agent, specified as to each his capacity and title; and

(5) The general plan and character of business of such applicant and the length of time during and the places at which the applicant [~~dealer~~] has been engaged in the business.

B. An [~~Such~~] application filed by a dealer or investment adviser shall also contain such additional information as to the applicant's previous history, record, associations and present financial condition as may be required by the Commissioner, or as is necessary to enable the Commissioner to determine whether the sale of any securities proposed to be issued or dealt in by such applicant would result in fraud.

C. Each application shall be accompanied by certificates or other evidences satisfactory to the Commissioner establishing the good reputation of the applicant, his directors, officers, copartners or principals.

D. The Commissioner shall require as a condition of registration for all registrations granted after the effective date of this Subsection D that the applicant (and, in the case of a corporation or partnership, the officers, directors or partners to be licensed by the applicant) pass successfully a written examination to determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities as a dealer or agent [~~as a salesman~~], or rendering services as an investment adviser or investment adviser representative. This condition may be waived as to any applicant or class of applicants by action of the State Securities Board.

E. Not later than the 30th day after the date a person takes a registration [~~day on which an~~] examination [~~is administered~~] under this Act, the Board shall notify the person [~~each examinee~~] of the results of the examination. If the [~~However, if an~~] examination is graded or reviewed by a [~~national~~] testing service:

(1) [~~;~~] the Board shall notify the person [~~examinees~~] of the results of the examination not later than the 14th day after the date [~~day on which~~] the Board receives the results from the testing service; and

(2) if [~~. If the~~] notice of the examination results will be delayed for longer than 90 [~~ninety (90)~~] days after the examination date, the Board shall notify the person [~~examinee~~] of the reason for the delay before the 90th day.

F. The Board may require a testing service to notify a person of the results of the person's examination. If requested in writing by a person who fails a registration [~~an~~] examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

G. If the applicant is a corporation organized under the laws of any other state or territory or government or shall have its principal place of business therein, it shall accompany the application with a copy of its Articles of Incorporation and all amendments thereto, certified by the proper officer of such state or government or of the corporation, and its regulations and by laws.

H. If a limited partnership, either a copy of its Articles of Copartnership or a verified statement of the plan of doing business.

I. If an unincorporated association or organization under the laws of any other state, territory or government, or having its principal place of business therein, a copy of its Articles of Association, Trust Agreement or other form of organization.

J. It shall be the duty of the Commissioner to prepare a proper form to be used by the applicant under the terms of this Section, and the Commissioner shall furnish copies thereof to all persons desiring to make application to be registered as a dealer or investment adviser.

K. The Commissioner may accept some or all of the examinations administered by securities self-regulatory organizations [~~the National Association of Securities Dealers~~] to fulfill the examination requirements of Subsection D.

SECTION 2.11. Section 15, The Securities Act (Article 581-15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. ISSUANCE OF REGISTRATION CERTIFICATES TO DEALERS AND INVESTMENT ADVISERS. If the Commissioner is satisfied

that the applicant for a dealer's or investment adviser's certificate of registration has complied with the requirements of the Act above, that the applicant has filed a written consent to service as and when required by Section 8 [~~16~~] of this Act, and upon the payment of the fees required by Section 35 of this Act, the Commissioner shall register the applicant and issue to it or him a registration certificate, stating the principal place of business and address of the dealer or investment adviser, the names and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer or investment adviser has been registered for a current calendar year as a dealer in securities or as an investment adviser. Pending final disposition of an application, the Commissioner may, for special cause shown, grant temporary permission, revocable at any time and subject to such terms and conditions as the Commissioner may prescribe, to transact business as a dealer or investment adviser under this Act. Any dealer or investment adviser acting under such a temporary permission, shall be considered a registered dealer or investment adviser for all purposes of this Act.

SECTION 2.12. Section 17, The Securities Act (Article 581-17, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. FORM OF CERTIFICATES TO DEALERS AND INVESTMENT ADVISERS. The certificate shall be in such form as the Commissioner may determine. Any changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer or investment adviser shall be immediately certified under oath to the Commissioner and any change in the certificate necessitated thereby may be made at any time, upon written application setting forth the fact necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the Commissioner.

SECTION 2.13. Section 18, The Securities Act (Article 581-18, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. REGISTRATION OF AGENTS [~~OR SALESMEN~~] OF DEALERS OR OF REPRESENTATIVES OF INVESTMENT ADVISERS. Upon written application by a registered dealer or investment adviser, and upon satisfactory compliance with the requirements of the Act above, the Commissioner shall register as an agent [~~agents or salesmen~~] of such dealer or as a representative of the investment adviser such persons as the dealer or investment adviser may request. The application shall be in such form as the Commissioner may prescribe and shall state the residences and addresses of the persons whose registration is requested, together with such information as to such agent's or investment adviser representative's [~~salesman's~~] previous history, record and association as may be required by the Commissioner. Such application shall also be signed and sworn to by the agent or investment adviser representative [~~salesman~~] for whom registration is requested. The Commissioner shall issue to such dealer or investment adviser, to be retained by such dealer or investment adviser for each person so registered, evidence of registration stating the person's name, the address of the dealer or investment adviser, and the fact that the person is registered for the current calendar year as an agent or investment adviser representative [~~salesman~~] of the dealer or investment adviser, as appropriate. The evidence of registration shall be in such

form as the Commissioner shall determine. Upon application by the dealer or the investment adviser, the registration of any agent or investment adviser representative [~~salesman~~] shall be canceled.

SECTION 2.14. Subsection D, Section 19, The Securities Act (Article 581-19, Vernon's Texas Civil Statutes), is amended to read as follows:

D. The Board may recognize, prepare, or administer continuing education programs for a person who is registered under this Act [~~dealers, salesmen, or agents~~]. If participation is required by the Board as a condition of maintaining the certificate or evidence of registration, a person who is registered under this Act must participate in the continuing education programs [~~Participation in the programs is voluntary~~].

SECTION 2.15. Section 20, The Securities Act (Article 581-20, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. DISPLAY OR ADVERTISEMENT OF FACT OF REGISTRATION UNLAWFUL. It shall be unlawful for any dealer, agent, investment adviser, or investment adviser representative [~~salesman~~] to use the fact of his registry, by public display or advertisement, except as hereinafter expressly provided, for the registration certificate or evidence of registration or any certified copy thereof, in connection with any sale or effort to sell any security or any rendering of services as an investment adviser.

SECTION 2.16. Section 21, The Securities Act (Article 581-21, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. POSTING REGISTRATION CERTIFICATES [~~OF AUTHORITY~~]. Immediately upon receipt of the dealer's or investment adviser's registration certificate issued pursuant to the authority of this Act, the dealer or investment adviser named therein shall cause such certificate to be posted and at all times conspicuously displayed in such dealer's or investment adviser's principal place of business, if one is maintained in this state, and shall likewise forthwith cause a duplicate of such certificate to be posted and at all times conspicuously displayed in each branch office located within this state.

SECTION 2.17. Subsections A and B, Section 22, The Securities Act (Article 581-22, Vernon's Texas Civil Statutes), are amended to read as follows:

A. Permitted Written, Pictorial, or Broadcast Offers. A written or printed offer (including a pictorial demonstration with any accompanying script) or a broadcast offer (i.e., an offer disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State if:

(1) a copy of the offer is filed with the Commissioner within 10 days after the date of its first use in this State; and

(2) the person making or distributing the offer in this State is a registered dealer or a registered agent [~~salesman~~] of a registered dealer, as required by this Act; and

(3) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(4) if registration has not become effective under Subsection B or C of Section 7 or a permit has not been granted under Section 10, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:

(a)

INFORMATIONAL ADVERTISING ONLY.

THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATION TO THE CONTRARY OR CONSUMMATION OF SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE.

or

(b) other language required by the United States Securities and Exchange Commission that in the Commissioner's opinion will inform investors that the securities may not yet be sold; and

(5) the person making or distributing the offer in this State;

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(6) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or a permit is granted under Section 10.

B. Permitted Oral Offers. An oral offer (not broadcast, i.e., not disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State in person, by telephone, or by other direct individual communication if:

(1) the person making the offer in this State is a registered dealer or a registered agent [~~salesman~~] of a registered dealer, as required by this Act; and

(2) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(3) the person making or distributing the offer in this State:

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(4) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or before a permit is granted under Section 10.

SECTION 2.18. Section 26, The Securities Act (Article 581-26, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. NOTICES BY REGISTERED MAIL. Any notice required by this Act shall be sufficient if sent by registered or certified mail unless otherwise

specified in this Act, addressed to a person [~~the dealer, agent or salesman, as the case may be,~~] at the address designated in any filings submitted by the person to the Commissioner or the person's last known address [~~the application for registration~~]. A [~~All testimony taken at any hearing before the Commissioner shall be reported stenographically and a~~] full and complete record shall be kept of all proceedings had before the Commissioner on any hearing or investigation.

SECTION 2.19. Section 34, The Securities Act (Article 581-34, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 34. ACTIONS FOR COMMISSION; ALLEGATIONS AND PROOF OF COMPLIANCE. No person or company shall bring or maintain any action in the courts of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities, as that term is defined in this Act, without alleging and proving that such person or company was duly registered under the provisions of this Act (or duly exempt from such registration pursuant to rules adopted under Section 12C [~~12B~~] of this Act) and the securities so sold were duly registered under the provisions of this Act at the time the alleged cause of action arose; provided, however, that this section shall not apply to any company or person that rendered services in connection with any transaction exempted by Section 5 of this Act or by any rule promulgated by the Board pursuant to Subsection T of Section 5 of this Act if the company or person was not required to be registered by the terms of the exemption.

SECTION 2.20. Section 35, The Securities Act (Article 581-35, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 35. FEES. The Commissioner or Board shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

A. For the filing of any original application of a dealer or investment adviser or for the submission of a notice filing for a federal covered investment adviser, Seventy-five Dollars ($75.00), and for the filing of any renewal application of a dealer or investment adviser or for the submission of a renewal notice filing for a federal covered investment adviser, Forty Dollars ($40.00);

B. For the filing of any original application for each agent, officer, or investment adviser representative or for the submission of a notice filing for each representative of a federal covered investment adviser [~~salesman~~], Thirty-five Dollars ($35.00), and for the filing of any renewal application for each agent, officer, or investment adviser representative or for the submission of a renewal notice filing for each representative of a federal covered investment adviser [~~salesman~~], Twenty Dollars ($20.00);

C. For any filing to amend the registration certificate of a dealer or investment adviser or evidence of registration of an agent or investment adviser representative [~~a salesman~~], issue a duplicate certificate or evidence of registration, or register a branch office, Twenty-five Dollars ($25.00);

D. For the filing of any original, amended or renewal application to sell or dispose of securities, Ten Dollars ($10.00);

E. For the examination of any original or amended application filed under Subsection A, B, or C of Section 7 of this Act, regardless of whether the application is denied, abandoned, withdrawn, or approved, a fee of one-tenth

(1/10) of one percent (1%) of the aggregate amount of securities described and proposed to be sold to persons located within this state based upon the price at which such securities are to be offered to the public;

F. For certified copies of any papers filed in the office of the Commissioner, the Commissioner shall charge such fees as are reasonably related to costs; however, in no event shall such fees be more than those which the Secretary of State is authorized to charge in similar cases;

G. For the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of Ten Thousand Dollars ($10,000.00);

H. For the filing of a request to take the Texas Securities Law Examination, Thirty-five Dollars ($35.00);

I. For the filing of an initial notice required by the Commissioner to claim a secondary trading exemption, a fee of Five Hundred Dollars ($500.00), and for the filing of a secondary trading exemption renewal notice, a fee of Five Hundred Dollars ($500.00);

J. For the filing of an initial notice required by the Commissioner to claim a limited offering exemption, a fee of one-tenth (1/10) of one percent (1%) of the aggregate amount of securities described as being offered for sale, but in no case more than Five Hundred Dollars ($500.00); and

K. For an interpretation by the Board's general counsel of this Act or a rule adopted under this Act, a fee of One Hundred Dollars ($100.00), except that an officer or employee of a governmental entity and the entity that the officer or employee represents are exempt from the fee under this subsection when the officer or employee is conducting official business of the entity.

SECTION 2.21. Section 41(a), The Securities Act (Article 581-41, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Each of the following fees imposed by or under another section of this Act is increased by $200:

(1) fee for filing any original application of a dealer or investment adviser or for submitting a notice filing for a federal covered investment adviser;

(2) fee for filing any renewal application of a dealer or investment adviser or for submitting a renewal notice filing for a federal covered investment adviser;

(3) fee for filing any original application for agent, officer, or investment adviser representative or for submitting a notice filing for an investment adviser representative of a federal covered investment adviser [~~or salesman~~]; and

(4) fee for filing any renewal application for agent, officer, or investment adviser representative or for submitting a renewal notice filing for an investment adviser representative of a federal covered investment adviser [~~salesman~~].

SECTION 2.22. Section 42, The Securities Act (Article 581-42, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 42. REDUCED FEES. A. The Board by rule may adopt reduced fees, under Sections 35 and 41 of this Act, for original and renewal applications of dealers, agents, officers, investment advisers, or investment adviser

representatives [~~salesmen~~] who have assumed inactive status as defined by the Board.

B. The Board by rule may adopt reduced fees, under Sections 35 and 41 of this Act, as appropriate to accommodate a small business [~~for persons~~] required by this Act to register in two or more of the following capacities:

(1) dealer;

(2) agent [~~or salesman~~]; [~~or~~]

(3) investment adviser;

(4) investment adviser representative; or

(5) officer.

C. Notwithstanding Sections 35 and 41 of this Act, a person shall pay only one fee required under those sections to engage in business in this state concurrently for the same person or company as:

(1) a dealer and an investment adviser; or

(2) an agent and investment adviser representative.

SECTION 2.23. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.137 to read as follows:

Sec. 411.137. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: STATE SECURITIES BOARD. (a) The securities commissioner is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a certificate of registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(2) a holder of a certificate of registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(3) an applicant for employment by the State Securities Board; or

(4) an employee of the State Securities Board.

(b) Criminal history record information obtained by the securities commissioner under this section may not be released by any person or agency except on court order, unless the information is entered into evidence by the State Securities Board or a court at an administrative proceeding or a civil or criminal action under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

SECTION 2.24. Section 16, The Securities Act (Article 581-16, Vernon's Texas Civil Statutes), is repealed.

SECTION 2.25. The changes in law made by this Act apply only to a fee that becomes due on or after the effective date of this Act. A fee that becomes due before the effective date of this Act is governed by the law in effect on the date the fee is due, and the former law is continued in effect for that purpose.

ARTICLE 3. ENFORCEMENT PROVISIONS

SECTION 3.01. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 13-1 to read as follows:

Sec. 13-1. INSPECTION. A. The Commissioner, without notice, may inspect a registered dealer or registered investment adviser as necessary to ensure compliance with this Act and Board rules.

B. The Commissioner, during regular business hours, may:

(1) enter the business premises of a registered dealer or registered investment adviser; and

(2) examine and copy books and records pertinent to the inspection.

C. During the inspection, the dealer or investment adviser shall:

(1) provide to the Commissioner or the Commissioner's authorized representative immediate and complete access to the person's office, place of business, files, safe, and any other location in which books and records pertinent to the inspection are located; and

(2) allow the Commissioner or the Commissioner's authorized representative to make photostatic or electronic copies of books or records subject to inspection.

D. A dealer or investment adviser may not charge a fee for copying information under this section.

E. Information obtained under this section and any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations that are made in connection with the inspection are confidential and may not be disclosed to the public or released by the Commissioner except to the same extent provided for the release or disclosure of confidential documents or other information made or obtained in connection with an investigation under Section 28 of this Act.

SECTION 3.02. Section 14, The Securities Act (Article 581-14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION AS DEALER, AGENT, INVESTMENT ADVISER, OR INVESTMENT ADVISER REPRESENTATIVE [~~SALESMAN~~]. A. The Commissioner may deny, revoke, or suspend a registration issued under this Act, place on probation a dealer, agent, investment adviser, or investment adviser representative [~~salesman~~] whose registration has been suspended under this Act, or reprimand a person registered under this Act if the person:

(1) has been convicted of any felony;

(2) has been convicted of any misdemeanor which directly relates to the person's securities-related duties and responsibilities;

(3) has engaged in any inequitable practice in the sale of securities or in rendering services as an investment adviser, or in any fraudulent business practice;

(4) is a dealer or investment adviser who is insolvent;

(5) meets one of the following criteria:

(a) is a dealer who is selling or has sold securities in this state through an agent [~~a salesman~~] other than a registered agent;

(b) is an investment adviser who is engaging or has engaged in rendering services as an investment adviser in this state through a representative who is not registered to perform services for that investment adviser as required by this Act;

(c) [~~salesman, or,~~] is an agent [~~a salesman~~] who is selling or has sold securities in this state for a dealer, issuer or controlling person with knowledge that such dealer, issuer or controlling person has not complied with the provisions of this Act; or

(d) is an investment adviser representative who is rendering or has rendered services as an investment adviser for an investment adviser in this state for whom the representative is not or was not registered to represent as required by this Act;

(6) has violated any of the provisions of this Act or a rule of the Board;

(7) has made any material misrepresentation to the Commissioner or Board in connection with any information deemed necessary by the Commissioner or Board to determine a dealer's or investment adviser's financial responsibility or a dealer's, agent's, investment adviser's or investment adviser representative's [~~or salesman's~~] business repute or qualifications, or has refused to furnish any such information requested by the Commissioner or Board;

(8) became registered as a dealer, agent, investment adviser, or investment adviser representative [~~or salesman~~] after August 23, 1963, and has not complied with a condition imposed by the Commissioner under Section 13-D;

(9) is the subject of any of the following orders that are currently effective and were issued within the last five years:

(a) an order by the securities agency or administrator of any [~~another~~] state, by the financial regulatory authority of a foreign country, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's license as a dealer, agent, [~~salesman, or~~] investment adviser, or investment adviser representative or the substantial equivalent of those terms;

(b) a suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(c) a United States Postal Service fraud order;

(d) an order by the securities agency or administrator of any [~~another~~] state, the financial regulatory authority of a foreign country, the Securities and Exchange Commission, or by the Commodity Futures Trading Commission, finding, after notice and opportunity for hearing, that the person engaged in acts involving fraud, deceit, false statements or omissions, or wrongful taking of property;

(e) an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;

(10) is subject to any order, judgment, or decree entered by any court of competent jurisdiction which permanently restrains or enjoins such person from engaging in or continuing any conduct, action, or practice in connection with any aspect of the purchase or sale of securities or the rendering of security investment advice; or

(11) has violated any provision of any order issued by the Commissioner or has violated any provision of any undertaking or agreement with the Commissioner.

B. [~~The Commissioner shall keep an information file about each complaint filed with the Commissioner or Board relating to a person registered under this Act.~~

[~~C. If a written complaint is filed with the Commissioner or Board relating to a person registered under this Act, the Commissioner, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.~~

[~~D.~~] If the Commissioner proposes to suspend or revoke a person's registration, the person is entitled to a hearing before the Commissioner or a hearings officer as now or hereafter required by law. Proceedings for the suspension or revocation of a registration are governed by Chapter 2001, Government Code.

C. [~~E.~~] This section does not affect the confidentiality of investigative records maintained by the Commissioner or Board.

SECTION 3.03. Section 23, The Securities Act (Article 581-23, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. CEASE AND DESIST ORDERS; CEASE PUBLICATION ORDERS; LIST OF SECURITIES OFFERED.

Anything in this Act to the contrary notwithstanding,

A. If it appears to the commissioner at any time that the sale or proposed sale or method of sale of any securities, whether exempt or not, is a fraudulent practice or would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the commissioner may hold a hearing on a date determined by the commissioner within 30 days after the date of receipt of actual notice by, or notice by registered or certified mail to the person's last known address is given to, the issuer, the registrant, the person on whose behalf such securities are being or are to be offered, or any person acting as a dealer or agent in violation of this Act. If the commissioner shall determine at such hearing that such sale would not be in compliance with the Act, is a fraudulent practice, or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the commissioner may issue a written cease and desist order, prohibiting or suspending the sale of such securities or denying or revoking the registration of such securities, [~~or~~] prohibiting an unregistered person from acting as a dealer or an agent, or prohibiting the fraudulent conduct. No dealer or[~~,~~] agent [~~or salesman~~] shall thereafter knowingly sell or offer for sale any security named in such cease and desist order.

B. If it appears to the Commissioner at any time that an investment adviser or investment adviser representative is engaging or is likely to engage in fraud or a fraudulent practice with respect to rendering services as an investment adviser or investment adviser representative or that a person is acting as an investment adviser or investment adviser representative in violation of this Act, the Commissioner may hold a hearing not later than the 30th day after the date on which the person receives actual notice or is provided notice by registered or certified mail, return receipt requested, to the person's last known address. After the hearing, the Commissioner shall issue or decline to issue a cease and desist order. An order issued under this subsection must:

(1) require the investment adviser or investment adviser representative to immediately cease and desist from the fraudulent conduct; or

(2) prohibit an unregistered or other unauthorized person who is not exempt from the registration or notice filing requirements of this Act from acting as an investment adviser or investment adviser representative in violation of this Act.

C. If it appears to the Commissioner at any time that an offer contains any statement that is materially false or misleading or is otherwise likely to deceive

the public, the Commissioner may issue a cease publication order. No person shall make an offer prohibited by such cease publication order.

D. [~~C.~~] The commissioner may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the commissioner a list of securities which he has offered for sale or has advertised for sale within this State during the preceding six months, or which he is at the time offering for sale or advertising, or any portion thereof.

SECTION 3.04. Subsection A, Section 23-1, The Securities Act (Article 581-23-1 et seq., Vernon's Texas Civil Statutes), is amended to read as follows:

A. After giving notice and opportunity for a hearing, the Commissioner may issue an order which assesses an administrative fine against any person or company found to have:

(1) engaged in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment adviser or investment adviser representative;

(2) made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or

(3) engaged in an act or practice that violates [~~violated any provision of~~] this Act or a[;] Board rule[;] or [~~Board~~] order.

SECTION 3.05. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 23-2 to read as follows:

Sec. 23-2. EMERGENCY CEASE AND DESIST ORDER. A. On the Commissioner's determination that the conduct, act, or practice threatens immediate and irreparable public harm, the Commissioner may issue an emergency cease and desist order to a person whom the Commissioner reasonably believes:

(1) is engaging in or is about to engage in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment adviser or investment adviser representative;

(2) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or

(3) is engaging or is about to engage in an act or practice that violates this Act or a Board rule.

B. The order must:

(1) be sent on issuance to each person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the specific charges and require the person to immediately cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be filed under this section.

C. Unless a person against whom the emergency order is directed requests a hearing in writing before the 31st day after the date it is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the Commissioner; and

(2) state the grounds for the request to set aside or modify the order.

D. On receiving a request for a hearing, the Commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the Commissioner has the burden of proof and must present evidence in support of the order.

E. After the hearing, the Commissioner shall affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the emergency order is immediately final for purposes of enforcement and appeal.

F. An emergency order continues in effect unless the order is stayed by the Commissioner. The Commissioner may impose any condition before granting a stay of the order.

SECTION 3.06. Subsection A, Section 24, The Securities Act (Article 581-24, Vernon's Texas Civil Statutes), is amended to read as follows:

A. If any person or company should take exception to the action of the Commissioner [~~under Sections 15 or 18,~~] in failing or refusing to register and issue certificate for a dealer or investment adviser or evidence of registration for an investment adviser representative or agent under Section 15 or 18 of this Act, in issuing an order [~~salesman,~~] under Section 23 or 23-2 of this Act [~~in issuing an order against the sale of securities or the use of materials therein~~], or in any other particular where this Act specifies no other procedure, the complaining party may request a hearing before the Commissioner or before a hearings officer as now or hereafter required by law.

SECTION 3.07. Section 25, The Securities Act (Article 581-25, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. REVOCATION OF REGISTRATION OF ANY DEALER, AGENT, INVESTMENT ADVISER, OR INVESTMENT ADVISER REPRESENTATIVE [~~SALESMAN~~]. The revocation of a dealer's or investment adviser's registration shall constitute a revocation of the registration of any agent [~~or salesman~~] of the dealer or any investment adviser representative of the investment adviser and notice of its operation on such agent or investment adviser representative [~~salesman~~] shall be forthwith sent by the Commissioner to each of such agents or investment adviser representatives [~~salesmen~~]. All registrations and evidences of registration revoked shall at once be surrendered to the Commissioner upon request.

SECTION 3.08. Subsections A and B, Section 25-1, The Securities Act (Article 581-25-1, Vernon's Texas Civil Statutes), are amended to read as follows:

A. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that:

(1) any person or company acting as a dealer, agent, investment adviser, investment adviser representative [~~salesman~~], or issuer (as defined in Section 4 of this Act), or an affiliate of a dealer, agent, investment adviser, investment adviser representative [~~salesman~~], or issuer, whether or not required to be registered by the commissioner as in this Act provided, shall have

engaged in any act, transaction, practice, or course of business declared by Section 32 of this Act to be a fraudulent practice;

(2) such person or company shall have acted as a dealer, agent, investment adviser, investment adviser representative [~~salesman~~], or issuer or an affiliate of a dealer, agent, investment adviser, investment adviser representative [~~salesman~~], or issuer in connection with such fraudulent practice; and

(3) the appointment of a receiver for such person or company, or the assets of such a person or company is necessary in order to conserve and protect the assets of such person or company for the benefit of customers, security holders, and other actual and potential claimants of such person or company the commissioner may request the attorney general to bring an action for the appointment of a receiver for such person or company or the assets of such person or company.

B. Upon request by the commissioner pursuant to Subsection A of this Section 25-1, and if it appears to the attorney general that the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25-1 exist with respect to any person or company, the attorney general may bring an action in the name and on behalf of the State of Texas for the appointment of a receiver for such person or company. The facts set forth in the petition for such relief shall be verified by the commissioner upon information and belief. Such action may be brought in a district court of any county wherein the fraudulent practice complained of has been committed in whole or part, or of any county wherein any defendant with respect to whom appointment of a receiver is sought has its principal place of business, and such district court shall have jurisdiction and venue of such action; this provision shall be superior to any other provision of law fixing jurisdiction or venue with regard to suits for receivership. In any such action the attorney general may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and his employees, investment adviser representatives [~~salesmen~~], or agents and the production of documents, books, and records as may appear necessary for any hearing, to testify and give evidence concerning matters relevant to the appointment of a receiver.

SECTION 3.09. Section 28, The Securities Act (Article 581-28, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 28. INVESTIGATIONS, INVESTIGATORY MATERIALS, AND REGISTRATION RELATED MATERIALS. A. [~~Subpoenas or Other Process in~~] Investigations by Commissioner. The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect the violation of this Act or a Board rule or order. For this purpose, the Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of all [~~any books, accounts, records, papers and correspondence or other~~] records, whether maintained by electronic or other means, relating to any matter which the Commissioner has authority by this Act to consider or investigate, and[~~. For this purpose the Commissioner~~] may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature received in connection

with an investigation and all internal notes, memoranda, reports, or communications made in connection with an investigation [~~contained therein~~] shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court for good cause shown. [~~However, except for good cause the order may not extend to a record or communication received from other law enforcement or regulatory agencies or to the internal notes, memoranda, reports, or communications made in connection with a matter that the Commissioner has the authority by this Act to consider or investigate.~~] Nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner nor shall this limitation apply if disclosure is made, in the discretion of the Commissioner, as part of an administrative proceeding or a civil or criminal action to enforce this Act [~~to hearings provided for in Sections 24 and 25 of this Act~~]. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the Commissioner, the Commissioner may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof.

In the course of an investigation looking to the enforcement of this Act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records and reports of and to any department or agency of the state government. In the event, however, that the Commissioner or Deputy Commissioner should give out any information which the law makes confidential, the affected corporation, firm or person shall have a right of action on the official bond of the Commissioner or Deputy for the corporation's, firm's, or person's injuries, in a suit brought in the name of the state at the relation of the injured party.

The Commissioner may in any investigation cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions under the laws of Texas.

Each witness required to attend before the Commissioner shall receive a fee, for each day's attendance, in an amount set by Board rule. All disbursements made in the payment of such fees shall be made in accordance with Board rule and shall be included in, and paid in the same manner as is provided for, the payment of other expenses incident to the administration and enforcement of this Act.

The sheriff's or constable's fee for serving the subpoena shall be the same as those paid the sheriff or constable for similar services. The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Commissioner upon any party to the record, or may be divided between any and all parties to the record in such proportions as the Commissioner may determine.

Any subpoena, summons, or other process issued by the Commissioner may be served, at the Commissioner's discretion, by the Commissioner, the Commissioner's authorized agent, a sheriff, or a constable.

The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule[~~; to any quasi-governmental authority charged with overseeing securities activities which is approved by Board rule;~~] or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

B. Confidentiality of Certain Registration-Related and Other Materials. To the extent not already provided for by this Act, any intraagency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations shall be treated as confidential by the Commissioner and shall not be disclosed to the public, except under order of court, for good cause shown. The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule[~~; to any quasi-governmental authority charged with overseeing securities activities which is approved by Board rule;~~] or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

SECTION 3.10. Section 29, The Securities Act (Article 581-29, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29. PENAL PROVISIONS. Any person who shall:

A. Sell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a registered dealer [~~or salesman~~] or agent as in this Act provided shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not less than two or more than 10 years, or by both such fine and imprisonment.

B. Sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after September 6, 1955, unless said security or securities have been registered or granted a permit as provided in Section 7 of this Act, shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not less than two or more than 10 years, or by both such fine and imprisonment.

C. In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, whether or not the transaction or security is exempt under Section 5 or 6 of this Act, directly or indirectly:

(1) engage in any fraud or fraudulent practice;

(2) employ any device, scheme, or artifice to defraud;

(3) knowingly make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(4) engage in any act, practice or course of business which operates or will operate as a fraud or deceit upon any person, is guilty of a felony and upon conviction shall be:

(a) imprisoned for not less than 2 or more than 10 years and fined not more than $10,000, if the amount involved in the offense is less than $10,000;

(b) imprisoned for not less than 2 or more than 20 years and fined not more than $10,000, if the amount involved in the offense is $10,000 or more but less than $100,000; or

(c) imprisoned for life or for not less than 5 or more than 99 years and fined not more than $10,000, if the amount involved is $100,000 or more.

D. Knowingly violate a cease and desist order issued [~~Sell or offer for sale any security or securities named or listed in a notice in writing given him~~] by the commissioner under the authority of Section 23A, 23B, or 23-2 of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

E. Knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under this Act, whether or not such document or proceeding relates to a transaction or security exempt under the provisions of Sections 5 or 6 of this Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not less than two or more than 10 years, or by both such fine and imprisonment.

F. Knowingly make any false statement or representation concerning any registration made under the provisions of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

G. Make an offer of any security within this State that is not in compliance with the requirements governing offers set forth in Section 22 of this Act shall be deemed guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

H. Knowingly make an offer of any security within this State prohibited by a cease publication order issued by the Commissioner under Section 23C [~~23B~~] of this Act shall be deemed guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

SECTION 3.11. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 29-3 to read as follows:

Sec. 29-3. CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. A. In this section:

(1) "Association" and "corporation" have the meanings assigned by Section 1.07, Penal Code.

(2) "High managerial agent" has the meaning assigned by Section 7.21, Penal Code.

B. If conduct constituting an offense under Section 29 of this Act is performed by an agent acting in behalf of a corporation or association and within the scope of the person's office or employment, the corporation or association is criminally responsible for the offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of the high managerial agent's office or employment.

C. It is an affirmative defense to prosecution of a corporation or association under Subsection B of this section that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

SECTION 3.12. Section 30, The Securities Act (Article 581-30, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 30. CERTIFIED COPIES OF PAPERS FILED WITH COMMISSIONER AS EVIDENCE. Copies of all papers, instruments, or documents filed in the office of the Commissioner, certified by the Commissioner, shall be admitted to be read in evidence in all courts of law and elsewhere in this state in all cases where the original would be admitted in evidence; provided, that in any proceeding in the court having jurisdiction, the court may, on cause shown, require the production of the originals.

The Commissioner shall assume custody of all records of the Securities Divisions within the offices of the Secretary of State and of the Board of Insurance Commissioners, and henceforth these prior records shall be proven under certificate of the Commissioner.

In any prosecution, action, suit or proceeding before any of the several courts of this state based upon or arising out of or under the provisions of this Act, a certificate under the state seal, duly signed by the Commissioner, showing compliance or non-compliance with the provisions of this Act respecting compliance or non-compliance with the provisions of this Act by any dealer, agent, investment adviser, or investment adviser representative [~~salesman~~], shall constitute prima facie evidence of such compliance or of such non-compliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

SECTION 3.13. Subsection A, Section 32, The Securities Act (Article 581-32, Vernon's Texas Civil Statutes), is amended to read as follows:

A. Whenever it shall appear to the Commissioner either upon complaint or otherwise, that any person has engaged or is about to engage in fraud or a fraudulent practice in connection with the sale of a security, has engaged or is about to engage in fraud or a fraudulent practice in the rendering of services as an investment adviser or investment adviser representative, has made an offer containing a statement that is materially misleading or is otherwise likely to

deceive the public, or is engaging or is about to engage in an act or practice that violates this Act or a Board rule or order [~~in the issuance, sale, promotion, negotiations, advertisement or distribution of any securities within this state, including any security embraced in the subsections of Section 6, and including any transaction exempted under the provisions of Section 5, any person or company who shall have employed or is about to employ any device, scheme or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or that any such person or company shall have made, makes or attempts to make in this state fictitious or pretended purchases or sales of securities or shall have engaged in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities which is in violation of law or which is fraudulent or which has operated or which would operate as a fraud upon the purchaser, any one or all of which devices, schemes, artifices, fictitious or pretended purchases, or sales of securities, practices, transactions and courses of business are hereby declared to be and are hereafter referred to as fraudulent practices; or that any person or company is acting as dealer or salesman within this state without being duly registered as such dealer or salesman as provided in this Act, the Commissioner and Attorney General may investigate, and whenever he shall believe from evidence satisfactory to him that any such person or company has engaged in, is engaged in, or is about to be engaged in any of the practices or transactions heretofore referred to as and declared to be fraudulent practices, or is selling or offering for sale any securities in violation of this Act or is acting as a dealer or salesman without being duly registered as provided in this Act~~], the Attorney General may, on request by the Commissioner, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any person who, with intent to deceive or defraud or with reckless disregard for the truth or the law, has materially aided, is materially aiding, or is about to materially aid such person and any other person or persons heretofore concerned in or in any way participating in or about to participate in such acts or [~~fraudulent~~] practices [~~or acting in such violation of this Act~~], to enjoin such person or company and such other person or persons from continuing such acts or [~~fraudulent~~] practices [~~or engaging therein~~] or doing any act or acts in furtherance thereof. The Commissioner shall verify, on information and belief, the facts contained in an application for injunction under this section [~~or in violation of this Act~~]. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and the defendant's [~~his~~] employees[~~, salesmen~~] or agents and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county, wherein it is shown that the acts complained of have been or are about to be committed, or a district court in Travis County shall have jurisdiction of any action brought under this section, and this provision shall be superior to any provision fixing the jurisdiction or venue with regard to suits for injunction. No bond for injunction shall be required of the Commissioner or Attorney General in any such proceeding.

SECTION 3.14. The heading of Section 33, The Securities Act (Article 581-33, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 33. CIVIL LIABILITY WITH RESPECT TO ISSUANCE OR SALE OF A SECURITY [~~LIABILITIES~~].

SECTION 3.15. Subsection L, Section 33, The Securities Act (Article 581-33, Vernon's Texas Civil Statutes), is amended to read as follows:

L. Waivers Void. A condition, stipulation, or provision binding a buyer or seller of a security or a purchaser of services rendered by an investment adviser or investment adviser representative to waive compliance with a provision of this Act or a rule or order or requirement hereunder is void.

SECTION 3.16. Subsection A, Section 33, The Securities Act (Article 581-33, Vernon's Texas Civil Statutes), is amended to read as follows:

A. Liability of Sellers. (1) Registration and Related Violations. A person who offers or sells a security in violation of Section 7, 9 (or a requirement of the Commissioner thereunder), 12, 23C [~~23B~~], or an order under 23A or 23-2 of this Act is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security.

(2) Untruth or Omission. A person who offers or sells a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the buyer knew of the untruth or omission or (b) he (the offeror or seller) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. The issuer of the security (other than a government issuer identified in Section 5M) is not entitled to the defense in clause (b) with respect to an untruth or omission (i) in a prospectus required in connection with a registration statement under Section 7A, 7B, or 7C, or (ii) in a writing prepared and delivered by the issuer in the sale of a security.

SECTION 3.17. Subsection D, Section 33, The Securities Act (Article 581-33, Vernon's Texas Civil Statutes), is amended to read as follows:

D. Rescission and Damages. For this Section 33:

(1) On rescission, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).

(2) On rescission, a seller shall recover the security (or a security of the same class and series) upon tender of (a) the consideration he received for the security plus interest thereon at the legal rate from the date of receipt by him, less (b) the amount of any income the buyer received on the security.

(3) In damages, a buyer shall recover (a) the consideration the buyer [~~he~~] paid for the security plus interest thereon at the legal rate from the date of payment by the buyer [~~him~~], less (b) the greater of:

(i) the value of the security at the time the buyer

[~~he~~] disposed of it plus the amount of any income the buyer [~~he~~] received on the security; or

(ii) the actual consideration received for the security at the time the buyer disposed of it plus the amount of any income the buyer received on the security.

(4) In damages, a seller shall recover (a) the value of the security at the time of sale plus the amount of any income the buyer received on the security, less (b) the consideration paid the seller for the security plus interest thereon at the legal rate from the date of payment to the seller.

(5) For a buyer suing under Section 33C, the consideration he paid shall be deemed the lesser of (a) the price he paid and (b) the price at which the security was offered to the public.

(6) On rescission or as a part of damages, a buyer or a seller shall also recover costs.

(7) On rescission or as a part of damages, a buyer or a seller may also recover reasonable attorney's fees if the court finds that the recovery would be equitable in the circumstances.

SECTION 3.18. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 33-1 to read as follows:

Sec. 33-1. CIVIL LIABILITY OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES. A. Liability of Investment Advisers and Investment Adviser Representatives. (1) An investment adviser or investment adviser representative who renders services as an investment adviser in violation of Section 12 or an order under Section 23B or 23-2 of this Act is liable to the purchaser, who may sue at law or in equity, for damages in the amount of any consideration paid for the services.

(2) Except as provided by Subsection C of this section, an investment adviser or investment adviser representative who commits fraud or engages in a fraudulent practice in rendering services as an investment adviser is liable to the purchaser, who may sue at law or in equity, for damages.

B. Damages. In damages under Subsection A(2) of this section, the purchaser is entitled to recover:

(1) the amount of any consideration paid for the services, less the amount of any income the purchaser received from acting on the services;

(2) any loss incurred by the person in acting on the services provided by the adviser or representative;

(3) interest at the legal rate for judgments accruing from the date of the payment of consideration; and

(4) to the extent the court considers equitable, court costs and reasonable attorney's fees.

C. Untruth or Omission. An investment adviser or investment adviser representative who in rendering services as an investment adviser makes a false statement of a material fact or omits to state a material fact necessary in order to make the statement made, in light of the circumstances under which the statement is made, not misleading, may not be found liable under Subsection A(2) of this section if the adviser or representative proves:

(1) the purchaser knew of the truth or omission; or

(2) the adviser or representative did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

D. Statute of Limitations. (1) A person may not sue under Subsection A(1) of this section more than three years after the violation occurred.

(2) A person may not sue under Subsection A(2) of this section more than five years after the violation occurs or more than three years after the person knew or should have known, by the exercise of reasonable diligence, of the occurrence of the violation.

E. Liability of Control Persons and Assistants. (1) A person who directly or indirectly controls an investment adviser is jointly and severally liable with the investment adviser under this section, and to the same extent as the investment adviser, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which liability is alleged to exist.

(2) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids an investment adviser in conduct for which a cause of action is authorized by this section is jointly and severally liable with the investment adviser in an action to recover damages under this section.

F. A remedy provided by this section is not exclusive of any other applicable remedy provided by law.

SECTION 3.19. (a) A change in law made by this Act that applies to a criminal or civil penalty applies only to an offense committed or a violation that occurs on or after the effective date of this Act. For the purposes of this Act, an offense is committed or a violation occurs before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense committed or violation that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the violation occurred, and the former law is continued in effect for that purpose.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 54.6385, Education Code, is amended to read as follows:

Sec. 54.6385. EXEMPTION FROM SECURITIES LAWS. The registration requirements of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) do not apply to the sale of a prepaid tuition contract by the board or by a registered securities dealer or registered investment adviser.

SECTION 4.02. Section 153.117(a), Finance Code, as amended by Chapters 62, 344, and 356, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

(a) The following persons are not required to be licensed under this chapter:

(1) a federally insured financial institution, as that term is defined by Section 201.101 [~~as that term is defined by state law governing bank holding companies and interstate bank operations~~], that is organized under the laws of this state, another state, or the United States;

(2) a foreign bank branch or agency in the United States established under the federal International Banking Act of 1978 (12 U.S.C. Section 3101 et seq.), as amended;

(3) [~~(2)~~] a license holder under Chapter 152, except that the license holder is required to comply with the other provisions of this chapter to the extent the license holder engages in currency exchange, transportation, or transmission transactions;

(4) a person registered as a securities dealer or investment adviser under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(5) an attorney or title company that in connection with a real property transaction receives and disburses only domestic currency on behalf of a party to the transaction;

(6) a Federal Reserve bank;

(7) a clearinghouse exercising bank payment, collection, and clearing functions; or

(8) another person that the commissioner may exempt by rule if the commissioner finds that the licensing of the person is not necessary or appropriate to achieve the objectives of this chapter.

SECTION 4.03. Subchapter A, Chapter 182, Finance Code, is amended by adding Section 182.0211 to read as follows:

Sec. 182.0211. CONFORMANCE WITH SECURITIES ACT. For the purposes of Section 182.021(7), "salesman" includes "agent" and "advisor" includes "investment adviser" or "investment adviser representative."

SECTION 4.04. Section 2051.005, Occupations Code, is amended to read as follows:

Sec. 2051.005. CERTAIN PROFESSIONAL SERVICES EXEMPT. This chapter does not apply to a person who directly or indirectly recruits or solicits an athlete to enter into a contract with the person in which, for compensation, the person performs financial services for the athlete if:

(1) the person is licensed or registered by the state as:

(A) a dealer, agent, investment adviser, or investment adviser representative [~~agent, or securities salesperson~~];

(B) a real estate broker or salesperson;

(C) an insurance agent; or

(D) another professional;

(2) the financial services performed by the person are of a type that are customarily performed by a person licensed in that profession; and

(3) the person does not:

(A) recruit or solicit the athlete to enter into an agent contract or a professional services contract on behalf of the person, an affiliate, a related entity, or a third party; or

(B) procure, offer, promise, or attempt to obtain for the athlete employment with a professional sports team.

SECTION 4.05. Section 452.107(c), Transportation Code, is amended to read as follows:

(c) The executive committee may authorize the negotiation of a contract without competitive sealed bids or proposals if:

(1) the aggregate amount involved in the contract is $25,000 or less;

(2) the contract is for construction for which not more than one bid or proposal is received;

(3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;

(4) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;

(5) the contract is for personal or professional services or services for which competitive bidding is precluded by law; or

(6) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including:

(A) a credit support agreement, such as a line or letter of credit or other debt guaranty;

(B) a bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreement;

(C) an agreement with a securities dealer or investment adviser, broker, or underwriter; and

(D) any other contract or agreement considered by the executive committee to be appropriate or necessary in support of the authority's financing activities.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. This Act takes effect September 1, 2001.

Representative McCall moved to adopt the conference committee report on **HB 2255**.

The motion prevailed.

HB 2530 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Junell submitted the following conference committee report on **HB 2530**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff

President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2530** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis	Junell
Sibley	Hartnett
Lucio	McReynolds
Bivins	Averitt
	Martinez Fischer
On the part of the Senate	On the part of the House

HB 2530, A bill to be entitled An Act relating to certain prohibitions applicable to a person offering a sweepstakes; providing a civil penalty.

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

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 43 to read as follows:

CHAPTER 43. SWEEPSTAKES

Sec. 43.001. DEFINITIONS. In this chapter:

(1) "Catalogues" means promotional booklets listing merchandise for sale that are at least 24 pages long, have a circulation of at least 250,000, and either:

(A) require customers to go to a physical location to purchase the advertised items; or

(B) are published by a company that derives more than 50 percent of its total gross revenue from sales occurring at physical locations.

(2) "Conducting" a sweepstakes means distributing any material that promotes a sweepstakes, describes the prize or prizes, states one or more of the sweepstakes rules, includes any current or future opportunity to enter the sweepstakes, or provides any method for the recipient of the material to obtain additional information about the sweepstakes.

(3) "Credit card" means:

(A) a card that, if covered by Texas law, would be a lender credit card, as defined by Section 301.002, Finance Code; or

(B) a card that, if covered by Texas law, would be a lender credit card under Section 301.002, Finance Code, except that the obligations under the card are payable in full each month, not deferred, and no finance charge is assessed when the obligations are paid.

(4) "Debit card" means a card offered by an institution whose deposits are insured by the Federal Deposit Insurance Corporation or by another agency, corporation, or instrumentality chartered by the United States government.

(5) "Imply" means all methods and means by which an implication can be conveyed, including a statement, a question, a request, conduct, a graphic, a symbol, lettering, coloring, font size, font style, or formatting.

(6) "Magazines" and "newspapers" mean publications:

(A) in which more than 40 percent of the total column inches in each issue consist of advertising space purchased by companies other than the publisher, its affiliates, and the vendors for any of them; and

(B) for which more than 50 percent of the total number of copies distributed of each issue go to customers who paid for the copy.

(7) "Sweepstakes" means a contest that awards one or more prizes based on chance or the random selection of entries.

Sec. 43.002. OFFENSES. A person conducting a sweepstakes through the mail may not:

(1) require an individual to order or purchase a good or service, or promise to purchase a good or service in the future, to enter a sweepstakes;

(2) automatically enter an individual in a sweepstakes because the individual ordered or purchased a good or service or because the individual promised to order or purchase a good or service;

(3) solicit business using an order form or purchasing mechanism that has any role in the operation of a sweepstakes;

(4) use a mechanism for entering a sweepstakes that:

(A) has any connection to ordering or purchasing a good or service;

(B) is not identical for all individuals entering the sweepstakes; and

(C) does not have printed on the entry form in a font size at least as large as the largest font size used on the entry form the following language: "Buying Will Not Help You Win. Your chances of winning without making a purchase are the same as the chances of someone who purchases something. It is illegal to give any advantage to buyers in a sweepstakes.";

(5) solicit an individual to enter a sweepstakes by invitation or other opportunity and allow the individual to choose or indicate the preferred characteristics of a prize to be awarded in the sweepstakes, unless those choices:

(A) are made on the sweepstakes entry form; and

(B) do not appear on and are not connected in any way to an order form or other purchasing mechanism;

(6) offer through the mail any nonsweepstakes prize, gift, premium, giveaway, or skill contest during the 30-day period immediately following the last date on which the person conducted a sweepstakes through the mail;

(7) offer through the mail any opportunity to enter a sweepstakes during the 30-day period immediately following the last date on which the person conducted a sweepstakes through the mail;

(8) ask an individual for any information or any action by that individual that would be consistent with the individual winning a sweepstakes prize, unless the individual has won a sweepstakes prize;

(9) provide an individual who has not yet won the sweepstakes with any document or other item that simulates any event, circumstance, or condition connected with being the winner of the sweepstakes;

(10) send material accompanying or relating to a sweepstakes or an offer to enter a sweepstakes that states or implies that an individual must comply with a restriction or condition to enter the sweepstakes, unless all individuals entering the sweepstakes are required to comply with the identical restriction or condition;

(11) use a scratch-off device or any other game piece that suggests an element of chance or luck to convey information about a sweepstakes or an offer to enter a sweepstakes;

(12) send material accompanying or relating to a sweepstakes or an offer to enter a sweepstakes that:

(A) states or implies that an individual's chances of winning a prize in the sweepstakes are raised, lowered, or different in any way because of a factor or circumstance that has no relation to the manner in which a winner of the sweepstakes is selected;

(B) states or implies that a winner of a sweepstakes prize will be selected at a time or place or in a manner that is different from the actual time or place at which or manner in which a winner is selected;

(C) states or implies falsely that the individual receiving the advertisement has received any special treatment or personal attention from the offer or of the sweepstakes or any officer, employee, or agent of the offer or of the sweepstakes;

(D) states or implies that an individual who orders or purchases a good or service will receive a benefit in the sweepstakes or be

treated differently in the sweepstakes compared with an individual who did not order or purchase a good or service;

(E) states or implies that an individual who does not order or purchase a good or service will suffer a disadvantage in the sweepstakes or be treated differently in the sweepstakes compared with an individual who ordered or purchased a good or service; or

(F) states that the recipient of the material:

(i) is a winner if the recipient is not a winner;

(ii) may be a winner;

(iii) will be a winner if certain conditions are met or if certain events occur in the future;

(iv) may be or will be among the group from which a winner will be selected; or

(v) has in any way a better chance than another individual of being chosen as a winner;

(13) publish or cause to be published different advertisements for the same sweepstakes that contain inconsistent descriptions of the grand prize awarded through the sweepstakes;

(14) award multiple prizes in a sweepstakes unless all prizes are awarded on the same date and through the same selection process;

(15) publish or cause to be published official rules of a sweepstakes that do not uniquely identify the prizes to be awarded and the date they will be awarded; or

(16) provide for entry by mail in a sweepstakes and use:

(A) more than one address to accept entries in the sweepstakes; or

(B) the address for entry in the sweepstakes for any purpose other than entry in the sweepstakes.

Sec. 43.003. APPLICATION OF CHAPTER; ACTS NOT PROHIBITED. (a) This chapter does not apply to any sweepstakes that is conducted through advertisements or inserts in magazines, newspapers, or catalogues sent through the mail.

(b) This chapter does not apply to any charitable raffle regulated by Chapter 2002, Occupations Code.

(c) This chapter does not apply to any sweepstakes regulated by the Alcoholic Beverage Code.

(d) This chapter does not apply to any company regulated under the Public Utility Regulatory Act (Title 2, Utilities Code).

(e) This chapter does not apply to any company that is an air carrier subject to Title 49 of the United States Code.

(f) This chapter does not apply to a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

(g) If the only use of the mail is for consumers to return their entry forms to the sponsor of the contest, then this chapter does not apply to that sweepstakes.

(h) This chapter does not prohibit a sweepstakes sponsor from making a statement in the official rules of the sweepstakes describing the method to be

used in choosing a winner, and this chapter does not prohibit a sweepstakes sponsor from notifying the winner after the winner has been selected.

(i) This chapter does not prohibit a sweepstakes sponsor, after determining the winner, from obtaining an affidavit from the person selected to verify that the person is eligible to win the prize and has complied with the rules of the sweepstakes.

(j) This chapter does not apply to a sweepstakes conducted through the mail if the most valuable prize to be awarded is less than $50,000. The value of a prize is measured by the highest number among its face value, its fair market value, and its financial present value.

(k) Sections 43.002(3) and (4)(A) do not apply to a single sheet of paper that contains both a contest entry form and an order form if the order form is perforated or detachable and if the entry form must be separated from the order form and returned to an address different from the return address for the order form.

(l) Sections 43.002(2), (3), and (4) do not apply to a contest that is offered to promote a credit card or a debit card if the official rules of the contest provide that consumers are entered in the contest based on the number of purchases made or the amount of money spent. A person who did not qualify as an issuer as of January 1, 2001, is not eligible for the exceptions under this subsection.

(m) Sections 43.002(2), (3), and (4) do not apply to a company that is offering a sweepstakes in which the consumer must go to a physical location to obtain or use the goods or services that are being sold by the company offering the sweepstakes.

(n) This chapter does not apply to any sweepstakes that is promoting one or more food products that are regulated by the federal Food and Drug Administration or the United States Department of Agriculture.

(o) This chapter does not apply to any company whose primary business is the production, distribution, sale, and marketing of audiovisual entertainment works, products, or sound recordings. For purposes of this subsection, "primary business" means that 75 percent or more of a company's business is the production, distribution, sale, and marketing of audiovisual entertainment works, products, or sound recordings, and "production" means the systematic development, planning, and execution of creating the audiovisual works, products, or sound recordings.

Sec. 43.004. CIVIL PENALTY. (a) The attorney general may initiate an action under this chapter by filing suit in a district court in Travis County or in any county in which a violation occurred.

(b) For each violation found, the court shall award the attorney general a civil penalty of not less than $5,000 or more than $50,000.

(c) If the material accompanying or relating to a sweepstakes or an offer to enter a sweepstakes contains multiple statements, implications, representations, or offers that are prohibited by this chapter, each statement, implication, representation, or offer is a separate violation and shall result in a separate civil penalty. Each individual who receives the material constitutes an additional and separate group of violations of this chapter.

(d) Any person who provides names or addresses of residents of this state

that are used in conducting a sweepstakes that the person knows to be in violation of this chapter is liable for the cumulative civil penalties that result from the person's conduct. The liability of a person who provides names or addresses does not reduce the liability of the person who conducted the sweepstakes.

(e) If the attorney general substantially prevails, the court shall award the attorney general reasonable expenses incurred in recovering a civil penalty under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

(f) A civil penalty recovered under this section shall be deposited in the state treasury.

(g) A court may also award injunctive relief or other equitable or ancillary relief that is reasonably necessary to prevent future violations of this chapter.

(h) This chapter does not create any private right of action for any person.

SECTION 2. This Act takes effect November 1, 2001.

Representative Junell moved to adopt the conference committee report on **HB 2530**.

The motion prevailed.

HB 2684 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Kuempel submitted the following conference committee report on **HB 2684:**

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2684** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Kuempel
Cain	Kolkhorst
Truan	Truitt
Bernsen	E. Jones
	Y. Davis
On the part of the Senate	On the part of the House

HB 2684, A bill to be entitled An Act relating to the authority of the Texas Transportation Commission to acquire certain protected property.

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

SECTION 1. Section 51.005, Transportation Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The commission may not:

(1) acquire oil, gas, sulphur, or other minerals that may be recovered without using the surface of land acquired by the commission for exploration, drilling, or mining purposes; [~~or~~]

(2) condemn any submerged public land under the jurisdiction of the School Land Board; or

(3) acquire property, before September 1, 2005, for use as a disposal site for dredged material from the Laguna Madre if the property, on October 1, 1997, was subject to a habitat conservation plan.

(d) In this section, "habitat conservation plan" has the meaning assigned by Section 83.011, Parks and Wildlife Code.

SECTION 2. (a) The House Committee on Land and Resource Management shall conduct an interim study on placement and use options for dredged material from the Gulf Intracoastal Waterway, including:

(1) open and contained bay placement;

(2) upland placement;

(3) placement in the Gulf of Mexico;

(4) placement to maintain, expand, or enhance dredged material islands;

(5) other placement and use options providing environmental, recreational, economic, or other benefits; and

(6) a determination on whether differences in the composition of the dredged material or other factors require different placement or use policies for different reaches of the Gulf Intracoastal Waterway.

(b) Not later than November 1, 2002, the House Committee on Land and Resource Management shall report its findings and recommendations to the speaker of the house of representatives and the legislature.

(c) This section expires on November 2, 2002.

SECTION 3. If the Texas Department of Transportation is prohibited by a federal study from using open water disposal methods for Laguna Madre dredge spoils, Section 51.005(b)(3) expires:

(1) on September 1, 2003, if the federal study is issued on or before September 1, 2003, and filed by the Texas Department of Transportation with the Texas Transportation Commission; or

(2) on the date on which the federal study is filed by the Texas Department of Transportation with the Texas Transportation Commission, if the study is issued after September 1, 2003.

SECTION 4. This Act takes effect September 1, 2001.

Representative Kuempel moved to adopt the conference committee report on **HB 2684**.

The motion prevailed.

HR 1351 - ADOPTED
(by Martinez Fischer)

The following privileged resolution was laid before the house:

HR 1351

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 3305**, relating to changing the deadlines and authority for ordering the election and filing for candidacy in political subdivision elections, to consider and take action on the following matter:

House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text that is not in disagreement by substituting "November" for "September" so that the effective date of the bill reads as follows:

This Act takes effect November 1, 2001.

Explanation: The changed text is necessary to allow political subdivisions adequate time to modify their election cycles to comply with the bill.

HR 1351 was adopted without objection.

HB 3305 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Danburg submitted the following conference committee report on **HB 3305**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3305** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Van de Putte	Martinez Fischer
Gallegos	Danburg
Madla	Denny
	Madden
	Gallego
On the part of the Senate	On the part of the House

HB 3305, A bill to be entitled An Act relating to changing the deadlines and authority for ordering the election and filing for candidacy in political subdivision elections.

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

SECTION 1. Section 3.005, Election Code, is amended to read as follows:

Sec. 3.005. TIME FOR ORDERING ELECTION. (a) An election ordered by an authority of a political subdivision shall be ordered not later than the 45th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~].

(b) This section supersedes a law outside this code to the extent of any conflict.

SECTION 2. Section 143.007(a), Election Code, is amended to read as follows:

(a) Except as otherwise provided by this code, an application for a place on the ballot must be filed not later than 5 p.m. of the 45th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~]. An application may not be filed earlier than the 30th day before the date of the filing deadline.

SECTION 3. Section 143.008(b), Election Code, is amended to read as follows:

(b) If at the deadline prescribed by Section 143.007 no candidate has filed an application for a place on the ballot for an office, the filing deadline for that office is extended to 5 p.m. of the 40th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~].

SECTION 4. Section 144.005, Election Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) An [~~Except as otherwise provided by law, an~~] application for a place on the ballot must be filed not later than 5 p.m. of the 45th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~].

(c) The governing body of a political subdivision for which a deadline for filing for candidacy is prescribed by a law outside this code shall take appropriate action to comply with Subsection (a) and to adjust any affected date, deadline, or procedure to allow the same interval of time in relation to the filing deadline as would be provided by application of the other law. The secretary of state shall prescribe any rules necessary to facilitate the implementation of this subsection.

SECTION 5. Section 145.092(b), Election Code, is amended to read as follows:

(b) A candidate in an election for which the filing deadline for an application for a place on the ballot is not later than 5 p.m. of the 45th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~] may not withdraw from the election after 5 p.m. of the 36th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~].

SECTION 6. Section 145.094(a), Election Code, is amended to read as follows:

(a) The name of a candidate shall be omitted from the ballot if the candidate:

(1) dies before the second day before the date of the deadline for filing the candidate's application for a place on the ballot;

(2) withdraws or is declared ineligible before 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a); or

(3) withdraws or is declared ineligible before 5 p.m. of the 36th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~], in an election subject to Section 145.092(b).

SECTION 7. Section 145.096(a), Election Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a candidate's name shall be placed on the ballot if the candidate:

(1) dies on or after the second day before the deadline for filing the candidate's application for a place on the ballot;

(2) is declared ineligible after 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a); or

(3) is declared ineligible after 5 p.m. of the 36th day before the earliest allowable date for the beginning of early voting by personal appearance in the election [~~day~~], in an election subject to Section 145.092(b).

SECTION 8. Section 63.0945(d), Water Code, is amended to read as follows:

(d) A declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed [~~45th day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 48th day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 42nd day before election day~~].

SECTION 9. Section 130.0825(b), Education Code, is amended to read as follows:

(b) A declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed [~~45th day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 48th day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 42nd day before election day~~].

SECTION 10. Section 285.131(d), Health and Safety Code, is amended to read as follows:

(d) A declaration of [~~for~~] write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed [~~45th day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 48th day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 42nd day before election day~~].

SECTION 11. Section 11.055(a), Education Code, is amended to read as follows:

(a) An application of a candidate for a place on the ballot must be filed not later than 5 p.m. of the 45th day before the earliest allowable date for the beginning of early voting by personal appearance in [~~date of~~] the election. An application may not be filed earlier than the 30th day before the date of the filing deadline.

SECTION 12. This Act takes effect November 1, 2001.

Representative Danburg moved to adopt the conference committee report on **HB 3305**.

The motion prevailed.

LEAVE OF ABSENCE GRANTED

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

Miller on motion of J. Davis.

HB 3572 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative George submitted the following conference committee report on **HB 3572**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3572** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lindsay	George
Fraser	E. Jones
Moncrief	Gray
Nelson	Coleman
Zaffirini	Puente
On the part of the Senate	On the part of the House

HB 3572, A bill to be entitled An Act relating to establishing an unrelated donor umbilical cord blood bank.

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

SECTION 1. DEFINITIONS. In this Act:

(1) "Commissioner" means the commissioner of health and human services.

(2) "Commission" means the Health and Human Services Commission.

SECTION 2. GRANT PROGRAM. (a) Subject to available funds, the commission shall establish a program to award a grant of start-up money for the establishment in this state of an umbilical cord blood bank for recipients of blood and blood components who are unrelated to the donors of the blood.

(b) The commissioner by rule shall establish eligibility criteria for awarding the grant. In awarding the grant, the commission shall consider:

(1) the ability of the applicant to establish, operate, and maintain an unrelated donor umbilical cord blood bank and to provide related services;

(2) the demonstrated experience of the applicant in operating similar facilities in this state; and

(3) the applicant's commitment to continue to operate and maintain an unrelated donor umbilical cord blood bank after the expiration of the term of the contract required by Subsection (c) of this section.

(c) The recipient of the grant awarded under this Act must enter into a contract under which the recipient agrees to:

(1) operate and maintain an unrelated donor umbilical cord blood bank in this state at least until the eighth anniversary of the date of the award of the grant under this Act;

(2) gather, collect, and preserve umbilical cord blood only from live births; and

(3) comply with any financial or reporting requirements imposed on the recipient under rules adopted by the commissioner.

(d) The grant awarded under this Act is governed by Chapter 783, Government Code, and rules adopted under that chapter.

SECTION 3. ONE-TIME GRANT ONLY. The grant authorized by this Act shall be awarded in the fiscal biennium beginning September 1, 2001, and may be awarded in subsequent bienniums only if money is specifically appropriated for that purpose.

SECTION 4. RULES. Not later than January 1, 2002, the commissioner shall adopt rules necessary to implement this Act.

SECTION 5. EFFECTIVE DATE. This Act takes effect September 1, 2001.

Representative George moved to adopt the conference committee report on **HB 3572**.

The motion prevailed.

SB 45 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Naishtat submitted the conference committee report on **SB 45**.

Representative Naishtat moved to adopt the conference committee report on **SB 45**.

The motion prevailed.

HR 1243 - ADOPTED
(by A. Reyna)

The following privileged resolution was laid before the house:

HR 1243

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 1432**, relating to truancy, high school equivalency programs, and the authority of justice, municipal, and certain juvenile courts in relation to children and providing criminal penalties, to consider and take action on the following matter:

House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text that is not in disagreement by substituting "article" for "section" so that added Articles 45.054(c) and (d), Code of Criminal Procedure, read as follows:

(c) A court having jurisdiction under this article shall endorse on the summons issued to the parent of the individual who is the subject of the hearing an order directing the parent to appear personally at the hearing and

directing the person having custody of the individual to bring the individual to the hearing.

(d) An individual commits an offense if the individual is a parent who fails to attend a hearing under this article after receiving notice under Subsection (c) that the individual's attendance is required. An offense under this subsection is a Class C misdemeanor.

Explanation: The changed text is necessary to correct an inadvertent drafting error.

HR 1243 was adopted without objection.

SB 1432 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative A. Reyna submitted the conference committee report on **SB 1432**.

Representative A. Reyna moved to adopt the conference committee report on **SB 1432**.

The motion prevailed.

SB 11 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gray submitted the conference committee report on **SB 11**.

Representative Gray moved to adopt the conference committee report on **SB 11**.

The motion prevailed. (Corte recorded voting no)

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).

SB 826 - VOTE RECONSIDERED

Representative Grusendorf moved to suspend all necessary rules and reconsider the vote by which **SB 826** was passed.

The motion to reconsider prevailed.

SB 826 ON THIRD READING
(Grusendorf and Hochberg - House Sponsors)

SB 826, A bill to be entitled An Act relating to the location of public education schools, programs, and classes.

Amendment No. 2 - Vote Reconsidered

Representative Grusendorf moved to suspend all necessary rules and reconsider the vote by which Amendment No. 2 was adopted.

The motion to reconsider prevailed.

Amendment No. 2 was withdrawn.

Amendment No. 1 - Vote Reconsidered

Representative Grusendorf moved to suspend all necessary rules and reconsider the vote by which Amendment No. 1 was adopted.

The motion to reconsider prevailed.

Amendment No. 1 was withdrawn.

Amendment No. 3

Representative Grusendorf offered the following amendment to **SB 826**:

Amend **SB 826** on third reading by striking the text of Second Reading Amendment No. 2 by Phil King.

SB 826 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE CHAVEZ: Representative Grusendorf, I'd like to have a short dialogue; maybe this will clarify the intent of this bill.

REPRESENTATIVE GRUSENDORF: Yes.

CHAVEZ: Okay, please tell me if it is correct to state as follows the intent of **SB 826**, including house floor amendment which creates a new Section 11.166 in the education code:

In January, Attorney General Cornyn issued an advisory opinion that called into question a longstanding practice of school districts. For many years, school districts across the state have operated some facilities and programs outside their geographic boundaries and these can include everything from a sports stadium to a class conducted at a nearby university to a dropout recovery program that we have done very successfully in El Paso. The advisory opinion from Attorney General Cornyn raised a new doubt about this practice, claiming that no specific provision of law authorizes it. So, as I understand, **SB 826**, including my amendment, merely responds to that AG opinion by specifically stating that school districts still have authority to do what they already have been doing under the general powers granted to them by the education code, and that is operating some facilities and programs outside their geographic boundaries. Have I correctly stated the intent of **SB 826**?

GRUSENDORF: I believe so, Ms. Chavez. As I quoted earlier from Section 11.151(b), I think the AG's opinion that you referred to is not consistent with what the members of the committee, when we adopted that language, had in mind, and this simply corrects that.

CHAVEZ: Thank you, Mr. Grusendorf.

REMARKS ORDERED PRINTED

Representative Olivo moved to print remarks by Representative Grusendorf and Representative Chavez.

The motion prevailed without objection.

Amendment No. 3 was adopted without objection.

A record vote was requested.

SB 826, as amended, was passed by (Record 628): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum;

Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

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

Absent, Excused — Hilbert; Miller.

Absent — Goolsby; Hill.

STATEMENT OF VOTE

When Record No. 628 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

HR 1384 - ADOPTED
(by Walker)

The following privileged resolution was laid before the house:

HR 1384

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 510**, relating to the procurement methods a political subdivision or a related entity may use, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text on a matter that is not included in either the house or senate version of the bill, to read as follows:

SECTION 13. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.043 to read as follows:

Sec. 44.043. RIGHT TO WORK. (a) This section applies to a school district while the school district is engaged in:

(1) procuring goods or services;

(2) awarding a contract; or

(3) overseeing procurement or construction for a public work or public improvement.

(b) Notwithstanding any other provision of this chapter, a school district:

(1) may not consider whether a vendor is a member of or has another relationship with any organization; and

(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Explanation: This change is necessary to ensure that a school district, in procuring goods or services, awarding a contract, or overseeing procurement or construction of public works or public improvements, does not consider a vendor's or other person's relationship with any organization.

HR 1384 was adopted without objection.

SB 510 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Walker submitted the conference committee report on **SB 510**.

Representative Walker moved to adopt the conference committee report on **SB 510**.

The motion prevailed.

SB 312 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the conference committee report on **SB 312**.

Representative Chisum moved to adopt the conference committee report on **SB 312**.

The motion prevailed.

HB 900 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 900, A bill to be entitled An Act relating to the administration of statutory probate courts and to the assignment of statutory probate court judges.

Representative Thompson moved to discharge the conferees and concur in the senate amendments to **HB 900**.

The motion prevailed.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 900** by striking SECTION 2 of the bill and renumbering the existing sections accordingly.

HCR 325 - ADOPTED
(by Thompson)

The following privileged resolution was laid before the house:

HCR 325

WHEREAS, **HB 900** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

WHEREAS, The bill contains a technical error that should be corrected; now, therefore, be it

RESOLVED by the 77th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct **HB 900**, in proposed Section 25.0022(d)(3), Government Code, by striking "under Section 25.00224".

HCR 325 was adopted without objection.

HB 3313 - HOUSE DISCHARGES CONFEREES HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3313, A bill to be entitled An Act relating to elementary class size limits in public schools.

Representative Dunnam moved to discharge the conferees and concur in the senate amendments to **HB 3313**.

A record vote was requested.

The motion prevailed by (Record 629): 143 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller.

Absent — Green; Hill; Kuempel; Shields.

STATEMENTS OF VOTE

When Record No. 629 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

When Record No. 629 was taken, I was in the house but away from my desk. I would have voted yes.

Kuempel

When Record No. 629 was taken, I was in the house but away from my desk. I would have voted yes.

Shields

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 3313**, Senate Committee Printing, as follows:
(1) On page 1, line 17, strike "; or" and substitute a period
(2) On page 1, strike lines 18-24

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 39).

SB 342 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Alexander submitted the conference committee report on **SB 342**.

Representative Alexander moved to adopt the conference committee report on **SB 342**.

The motion prevailed.

HR 1398 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1398**, suspending the limitations on the conferees for **HB 1862**.

HR 1399 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1399**, suspending the limitations on the conferees for **HB 1317**.

HR 1400 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1400**, suspending the limitations on the conferees for **HB 1784**.

HR 1386 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1386**, suspending the limitations on the conferees for **HB 1203**.

HR 1299 - ADOPTED
(by Gray)

The following privileged resolution was laid before the house:

HR 1299

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 1094**, relating to the creation of a state prescription drug program for certain Medicare beneficiaries, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Subsection (c) to proposed Section 531.302, Government Code, to read as follows:

(c) In adopting rules for the state prescription drug program, the commission shall consult with an advisory panel composed of an equal number of physicians, pharmacists, and pharmacologists appointed by the commissioner.

Explanation: This change is necessary to require the Health and Human Services Commission to consult with an advisory panel in adopting rules for the state prescription drug program.

HR 1299 was adopted without objection.

HB 1094 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gray submitted the following conference committee report on **HB 1094**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1094** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Moncrief	Gray
Shapleigh	Keffer
Sibley	Junell
Harris	Coleman
Ellis	
On the part of the Senate	On the part of the House

HB 1094, A bill to be entitled An Act relating to the creation of a state prescription drug program for certain Medicare beneficiaries.

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. STATE PRESCRIPTION DRUG PROGRAM

Sec. 531.301. DEVELOPMENT AND IMPLEMENTATION OF STATE PROGRAM; FUNDING. (a) The commission shall develop and implement a state prescription drug program that operates in the same manner as the vendor drug program operates in providing prescription drug benefits to recipients of medical assistance under Chapter 32, Human Resources Code.

(b) A person is eligible for prescription drug benefits under the state program if the person is:

(1) a qualified Medicare beneficiary, as defined by 42 U.S.C. Section 1396d(p)(1), as amended;

(2) a specified low-income Medicare beneficiary who is eligible for medical assistance for Medicare cost-sharing payments under 42 U.S.C. Section 1396a(a)(10)(E)(iii), as amended;

(3) a qualified disabled and working individual, as defined by 42 U.S.C. Section 1396d(s), as amended;

(4) a qualifying individual who is eligible for that assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)(I), as amended; or

(5) a qualifying individual who is eligible for that assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)(II), as amended.

(c) Prescription drugs under the state program may be funded only with state money, unless funds are available under federal law to fund all or part of the program.

Sec. 531.302. RULES. (a) The commission shall adopt all rules necessary for implementation of the state prescription drug program.

(b) In adopting rules for the state prescription drug program, the commission may:

(1) require a person who is eligible for prescription drug benefits to pay a cost-sharing payment;

(2) authorize the use of a prescription drug formulary to specify which prescription drugs the state program will cover;

(3) to the extent possible, require clinically appropriate prior authorization for prescription drug benefits in the same manner as prior authorization is required under the vendor drug program; and

(4) establish a drug utilization review program to ensure the appropriate use of prescription drugs under the state program.

(c) In adopting rules for the state prescription drug program, the commission shall consult with an advisory panel composed of an equal number of physicians, pharmacists, and pharmacologists appointed by the commissioner.

Sec. 531.303. GENERIC EQUIVALENT AUTHORIZED. In adopting rules under the state program, the commission may require that, unless the practitioner's signature on a prescription clearly indicates that the prescription must be dispensed as written, the pharmacist may select a generic equivalent of the prescribed drug.

Sec. 531.304. PROGRAM FUNDING PRIORITIES. If money available for the state prescription drug program is insufficient to provide prescription drug benefits to all persons who are eligible under Section 531.301(b), the

commission shall limit the number of enrollees based on available funding and shall provide the prescription drug benefits to eligible persons in the following order of priority:

(1) persons eligible under Section 531.301(b)(1);

(2) persons eligible under Section 531.301(b)(2); and

(3) persons eligible under Sections 531.301(b)(3), (4), and (5).

SECTION 2. Not later than January 1, 2002, the Health and Human Services Commission shall develop and implement the state prescription drug program under Subchapter I, Chapter 531, Government Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2001.

Representative Gray moved to adopt the conference committee report on **HB 1094**.

The motion prevailed.

HB 2890 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McClendon submitted the following conference committee report on **HB 2890**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2890** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Madla	McClendon
Armbrister	Hinojosa
Barrientos	Naishtat
Shapiro	Kitchen
On the part of the Senate	On the part of the House

HB 2890, A bill to be entitled An Act relating to the creation of an offense prohibiting certain persons in custody for sex offenses from contacting juvenile victims of their offenses, to the liability of a correctional facility or its officers and employees for contacts between certain persons in custody for sex offenses and the juvenile victims of their offenses, and to the confidentiality of certain information identifying juvenile sex offense victims.

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

SECTION 1. Chapter 38, Penal Code, is amended by adding Section 38.111 to read as follows:

Sec. 38.111. IMPROPER CONTACT WITH VICTIM. (a) A person commits an offense if the person, while confined in a correctional facility after being charged with or convicted of an offense listed in Article 62.01(5), Code of Criminal Procedure, contacts by letter, telephone, or any other means, either

directly or through a third party, a victim of the offense or a member of the victim's family, if:

(1) the victim was younger than 17 years of age at the time of the commission of the offense for which the person is confined; and

(2) the director of the correctional facility has not, before the person makes contact with the victim:

(A) received written and dated consent to the contact from:

(i) a parent of the victim;

(ii) a legal guardian of the victim;

(iii) the victim, if the victim is 17 years of age or older at the time of giving the consent; or

(iv) a member of the victim's family who is 17 years of age or older; and

(B) provided the person with a copy of the consent.

(b) The person confined in a correctional facility may not give the written consent required under Subsection (a)(2)(A).

(c) It is an affirmative defense to prosecution under this section that the contact was:

(1) indirect contact made through an attorney representing the person in custody; and

(2) solely for the purpose of representing the person in a criminal proceeding.

(d) An offense under this section is a Class A misdemeanor unless the actor is confined in a correctional facility after being convicted of a felony described by Subsection (a), in which event the offense is a felony of the third degree.

SECTION 2. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 97 to read as follows:

CHAPTER 97. LIABILITY OF CORRECTIONAL FACILITIES AND OFFICERS BARRED FOR CERTAIN ACTS OF INMATES

Sec. 97.001. LIABILITY BARRED. A correctional facility or an officer or employee of a correctional facility is not liable for damages arising from an act committed by a person confined in the correctional facility that is in violation of Section 38.111, Penal Code. This section does not apply if the officer or employee of the correctional facility knowingly assists or participates in the conduct prohibited by Section 38.111, Penal Code.

SECTION 3. Article 57.02, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) Except as required or permitted by other law or by court order, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the parent, conservator, or guardian is a defendant in the case.

SECTION 4. Article 57.03, Code of Criminal Procedure, is amended to read as follows:

Art. 57.03. OFFENSE. (a) A public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen [~~to be designated by~~] a pseudonym under this chapter commits an offense if the public servant [~~intentionally or~~] knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

(b) Unless the disclosure is required or permitted by other law, a public servant or other person commits an offense if the person:

(1) has access to or obtains the name, address, or telephone number of a victim younger than 17 years of age; and

(2) knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order of a court of competent jurisdiction.

(c) It is an affirmative defense to prosecution under Subsection (b) that the actor is:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the actor is a defendant in the case.

(d) An offense under this article is a Class C misdemeanor.

SECTION 5. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act in adding Article 57.02(h), Code of Criminal Procedure, applies only to an offense committed against a juvenile sex offense victim on or after the effective date of this Act. An offense committed against a juvenile sex offense victim 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.

(b) The change in law made by this Act in amending Article 57.03, Code of Criminal Procedure, applies only to an offense committed on or after the effective date of this Act. 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.

(c) For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. This Act takes effect September 1, 2001.

Representative McClendon moved to adopt the conference committee report on **HB 2890**.

The motion prevailed.

HB 915 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gray submitted the following conference committee report on **HB 915**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 915** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Moncrief	Gray
Nelson	Junell
Carona	F. Brown
Harris	Eiland
Sibley	Maxey
On the part of the Senate	On the part of the House

HB 915, A bill to be entitled An Act relating to bulk purchasing of prescription drugs by certain state agencies.

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

SECTION 1. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. INTERAGENCY COUNCIL ON PHARMACEUTICALS BULK PURCHASING

Sec. 110.001. DEFINITION. In this chapter, "council" means the Interagency Council on Pharmaceuticals Bulk Purchasing.

Sec. 110.002. BULK PURCHASING COUNCIL. The Interagency Council on Pharmaceuticals Bulk Purchasing is composed of an officer or employee from each of the following agencies, appointed by the administrative head of that agency:

(1) the Texas Department of Health;

(2) the Texas Department of Mental Health and Mental Retardation;

(3) the Correctional Managed Health Care Committee;

(4) the Employees Retirement System of Texas;

(5) the Teacher Retirement System of Texas; and

(6) any other agency that purchases pharmaceuticals designated by the commissioner of health and human services.

Sec. 110.003. PRESIDING OFFICER. The position of presiding officer rotates among the members of the council according to the procedures adopted by the council. A term as presiding officer is two years and expires on February 1 of each odd-numbered year.

Sec. 110.004. COMPENSATION. Service on the council is an additional duty of a member's office or employment. A member of the council is not entitled to compensation, but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the council, as provided in the General Appropriations Act.

Sec. 110.005. SUPPORT STAFF. The council's member agencies shall provide the staff for the council.

Sec. 110.006. COUNCIL POWERS AND DUTIES. (a) The council shall develop procedures that member agencies must follow in purchasing pharmaceuticals. A member agency may elect not to follow the council's procedures if the agency can purchase the pharmaceuticals for a lower price than through the council. An agency that does not follow the council's procedures shall report to the council:

(1) the purchase price for the pharmaceuticals; and

(2) the name of the wholesaler, retailer, or manufacturer selling the pharmaceuticals.

(b) The council shall designate one member agency to be the central purchasing agency for purchasing pharmaceuticals.

(c) The council shall use existing distribution networks, including wholesale and retail distributors, to distribute the pharmaceuticals.

(d) The council shall:

(1) investigate any and all options for better purchasing power, including expanding Medicaid purchasing, qualifying for participation in purchasing programs under 42 U.S.C. Section 256b, as amended, and using rebate programs, hospital disproportionate share purchasing, and health department and federally qualified health center purchasing; and

(2) make recommendations regarding drug utilization review, prior authorization, the use of restrictive formularies, the use of mail order programs, and copayment structures to member agencies.

(e) In conducting the investigation under Subsection (d), the council shall monitor the progress of the demonstration project for certain medications and related services established by Section 32.053, Human Resources Code, as added by **SB 1156**, Acts of the 77th Legislature, Regular Session, 2001, and make no recommendations inconsistent with a prescribed medical regime for those medications.

(f) The council may enter into agreements with a local governmental entity to purchase pharmaceuticals for the local governmental entity.

(g) The council shall develop procedures under which the council may disclose information relating to the prices that manufacturers or wholesalers charge for pharmaceuticals by category of pharmaceutical. The council may not disclose information that identifies a specific manufacturer or wholesaler or the prices charged by a specific manufacturer or wholesaler for a specific pharmaceutical.

SECTION 2. Subchapter E, Chapter 431, Health and Safety Code, is amended by adding Section 431.116 to read as follows:

Sec. 431.116. AVERAGE MANUFACTURER PRICE. (a) In this section, "average manufacturer price" has the meaning assigned by 42 U.S.C. Section 1396r-8(k), as amended.

(b) A person who manufactures a drug, including a person who manufactures a generic drug, that is sold in this state shall file with the department:

(1) the average manufacturer price for the drug; and

(2) the price that each wholesaler in this state pays the manufacturer to purchase the drug.

(c) The information required under Subsection (b) must be filed annually or more frequently as determined by the department.

(d) The department and the attorney general may investigate the manufacturer to determine the accuracy of the information provided under Subsection (b). The attorney general may take action to enforce this section.

(e) The department shall report the information collected under Subsection (b) to the Interagency Council on Pharmaceuticals Bulk Purchasing.

SECTION 3. Subchapter I, Chapter 431, Health and Safety Code, is amended by adding Section 431.208 to read as follows:

Sec. 431.208. REPORTING OF PURCHASE PRICE. (a) On the department's request, a person who engages in the wholesale distribution of drugs in this state shall file with the department information showing the actual price at which the wholesale distributor sells a particular drug to a retail pharmacy.

(b) The department shall adopt rules to implement this section.

(c) The department and the attorney general may investigate the distributor to determine the accuracy of the information provided under Subsection (a). The attorney general may take action to enforce this section.

(d) The department shall report the information collected under Subsection (a) to the Interagency Council on Pharmaceuticals Bulk Purchasing.

SECTION 4. This Act takes effect September 1, 2001.

Representative Gray moved to adopt the conference committee report on **HB 915**.

The motion prevailed.

HB 2204 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gutierrez submitted the following conference committee report on **HB 2204**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2204** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Moncrief	Gutierrez
Carona	McReynolds
Truan	Alexander
Shapiro	Walker
Shapleigh	Hardcastle
On the part of the Senate	On the part of the House

HB 2204, A bill to be entitled An Act relating to the construction of facilities and trails for bicycles, electric bicycles, and pedestrians and to the safe operation of bicycles and electric bicycles.

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

SECTION 1. This Act may be called the Matthew Brown Act.

SECTION 2. Section 411.0175, Government Code, is amended to read as follows:

Sec. 411.0175. ACCIDENT REPORTS. The department shall:

(1) tabulate and analyze the [~~motor~~] vehicle accident reports it receives;

(2) annually or more frequently publish statistical information derived from the accident reports as to the number, cause, and location of highway accidents, including information regarding the number of accidents involving injury to, death of, or property damage to a bicyclist or pedestrian; and

(3) provide an abstract of the statistical information for each preceding biennium to the governor and the legislature, with its conclusions and findings and recommendations for decreasing highway accidents and increasing highway safety.

SECTION 3. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.614 to read as follows:

Sec. 201.614. SAFE ROUTES TO SCHOOL PROGRAM. (a) The department shall establish and administer a Safe Routes to School Program to distribute money received under the Hazard Elimination Program (23 U.S.C. Section 152), as amended, to political subdivisions for projects to improve safety in and around school areas. Projects eligible to receive money under this program may include:

(1) installation of new crosswalks and bike lanes;

(2) construction of multi use trails;

(3) construction and replacement of sidewalks;

(4) implementation of traffic-calming programs in neighborhoods around schools; and

(5) construction of wide outside lanes to be used as bike routes.

(b) The department, in considering project proposals under this section, shall consider:

(1) the demonstrated need of the applicant;

(2) the potential of the proposal to reduce child injuries and fatalities;

(3) the potential of the proposal to encourage walking and bicycling among students;

(4) identification of safety hazards;

(5) identification of current and potential walking and bicycling routes to school; and

(6) support for the projects proposed by local school-based associations, traffic engineers, elected officials, law enforcement agencies, and school officials.

(c) The department may allocate money received by the department from the federal government under the Hazard Elimination Program (23 U.S.C. Section 152), as amended, to projects under this section.

(d) The department shall adopt rules to implement this section.

SECTION 4. Subchapter A, Chapter 502, Transportation Code, is amended by adding Section 502.0075 to read as follows:

Sec. 502.0075. ELECTRIC BICYCLES. (a) In this section, "electric bicycle" has the meaning assigned by Section 541.201.

(b) This chapter does not require the owner of an electric bicycle to register the electric bicycle.

SECTION 5. Section 541.201, Transportation Code, is amended by amending Subdivisions (10) and (11) and adding Subdivision (24) to read as follows:

(10) "Motor-driven cycle" means a motorcycle equipped with a motor that has an engine piston displacement of 250 cubic centimeters or less. The term does not include an electric bicycle.

(11) "Motor vehicle" means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. The term does not include an electric bicycle.

(24) "Electric bicycle" means a bicycle that:

(A) is designed to be propelled by an electric motor, exclusively or in combination with the application of human power;

(B) cannot attain a speed of more than 20 miles per hour without the application of human power; and

(C) does not exceed a weight of 100 pounds.

SECTION 6. Section 542.202(a), Transportation Code, is amended to read as follows:

(a) This subtitle does not prevent a local authority, with respect to a highway under its jurisdiction and in the reasonable exercise of the police power, from:

(1) regulating traffic by police officers or traffic-control devices;

(2) regulating the stopping, standing, or parking of a vehicle;

(3) regulating or prohibiting a procession or assemblage on a highway;

(4) regulating the operation and requiring registration and licensing of a bicycle or electric bicycle, including payment of a registration fee, except as provided by Section 551.106;

(5) regulating the time, place, and manner in which a roller skater may use a highway;

(6) regulating the speed of a vehicle in a public park;

(7) regulating or prohibiting the turning of a vehicle or specified type of vehicle at an intersection;

(8) designating an intersection as a stop intersection or a yield intersection and requiring each vehicle to stop or yield at one or more entrances to the intersection;

(9) designating a highway as a through highway;

(10) designating a highway as a one-way highway and requiring each vehicle on the highway to move in one specific direction;

(11) designating school crossing guards and school crossing zones;

(12) altering a speed limit as authorized by this subtitle; or

(13) adopting other traffic rules specifically authorized by this subtitle.

SECTION 7. Sections 545.065(a) and (c), Transportation Code, are amended to read as follows:

(a) The Texas Transportation Commission by resolution or order recorded in its minutes may prohibit the use of a limited-access or controlled-access highway under the jurisdiction of the commission by a parade, funeral

procession, pedestrian, bicycle, electric bicycle, motor-driven cycle, or nonmotorized traffic.

(c) A local authority by ordinance may prohibit the use of a limited-access or controlled-access roadway under the jurisdiction of the authority by a parade, funeral procession, pedestrian, bicycle, electric bicycle, motor-driven cycle, or nonmotorized traffic.

SECTION 8. Section 547.002, Transportation Code, is amended to read as follows:

Sec. 547.002. APPLICABILITY. Unless a provision is specifically made applicable, this chapter and the rules of the department adopted under this chapter do not apply to:

(1) an implement of husbandry;

(2) road machinery;

(3) a road roller;

(4) a farm tractor;

(5) a bicycle, a bicyclist, or bicycle equipment; [~~or~~]

(6) an electric bicycle, an electric bicyclist, or electric bicycle equipment; or

(7) a golf cart not required to be registered under Section 502.284.

SECTION 9. Section 551.002, Transportation Code, is amended to read as follows:

Sec. 551.002. MOPED AND ELECTRIC BICYCLE INCLUDED. A provision of this subtitle applicable to a bicycle also applies to:

(1) a moped, other than a provision that by its nature cannot apply to a moped; and

(2) an electric bicycle, other than a provision that by its nature cannot apply to an electric bicycle.

SECTION 10. Section 551.103(a), Transportation Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a person operating a bicycle on a roadway who is moving slower than the other traffic on the roadway shall ride as near as practicable to the right curb or edge of the roadway, unless:

(1) the person is passing another vehicle moving in the same direction;

(2) the person is preparing to turn left at an intersection or onto a private road or driveway; [~~or~~]

(3) a condition on or of the roadway, including a fixed or moving object, parked or moving vehicle, pedestrian, animal, or surface hazard[~~, or substandard width lane,~~] prevents the person from safely riding next to the right curb or edge of the roadway; or

(4) the person is operating a bicycle in an outside lane that is:

(A) less than 14 feet in width and does not have a designated bicycle lane adjacent to that lane; or

(B) too narrow for a bicycle and a motor vehicle to safely travel side by side.

SECTION 11. Section 551.104, Transportation Code, is amended to read as follows:

Sec. 551.104. SAFETY EQUIPMENT. (a) A person may not operate a bicycle unless the bicycle is equipped with a brake capable of making a braked wheel skid on dry, level, clean pavement.

(b) A person may not operate a bicycle at nighttime unless the bicycle is equipped with:

(1) a lamp on the front of the bicycle that emits a white light visible from a distance of at least 500 feet in front of the bicycle; and

(2) on the rear of the bicycle:

(A) a red reflector [~~on the rear of the bicycle~~] that is:

(i) [~~(A)~~] of a type approved by the department; and

(ii) [~~(B)~~] visible when directly in front of lawful upper beams of motor vehicle headlamps from all distances from 50 to 300 feet to the rear of the bicycle; or

(B) [~~:~~

[~~(c) In addition to the reflector required by Subsection (b), a person operating a bicycle at nighttime may use~~] a lamp [~~on the rear of the bicycle~~] that emits a red light visible from a distance of 500 feet to the rear of the bicycle.

SECTION 12. Subchapter B, Chapter 551, Transportation Code, is amended by adding Section 551.106 to read as follows:

Sec. 551.106. REGULATION OF ELECTRIC BICYCLES. (a) The department or a local authority may not prohibit the use of an electric bicycle on a highway that is used primarily by motor vehicles. The department or a local authority may prohibit the use of an electric bicycle on a highway used primarily by pedestrians.

(b) The department shall establish rules for the administration of this section.

SECTION 13. Section 551.103(d), Transportation Code, is repealed.

SECTION 14. This Act takes effect September 1, 2001.

Representative Gutierrez moved to adopt the conference committee report on **HB 2204**.

The motion prevailed.

HB 2404 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative R. Lewis submitted the following conference committee report on **HB 2404**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2404** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Brown	R. Lewis
Bivins	Corte
Lucio	Hope
Wentworth	Cook
	T. King
On the part of the Senate	On the part of the House

HB 2404, A bill to be entitled An Act relating to the submetering and allocation of water service in apartment houses, manufactured home rental communities, condominiums, and other multiple use facilities.

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

SECTION 1. Section 13.502, Water Code, is amended to read as follows:

Sec. 13.502. SUBMETERING. (a) An apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may provide for submetering of each dwelling unit or rental unit for the measurement of the quantity of water, if any, consumed by the occupants of that unit.

(b) Except as provided by Subsections (c) and (d), a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction begins after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:

(1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or

(2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.

(c) An owner of an apartment house on which construction begins after January 1, 2003, and which provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.

(d) On request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction begins after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the executive director approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the commission.

SECTION 2. Subchapter M, Chapter 13, Water Code, is amended by adding Section 13.506 to read as follows:

Sec. 13.506. PLUMBING FIXTURES. (a) After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program

to bill tenants for submetered or allocated water service, the owner or manager must:

(1) meet the standards prescribed by Section 372.002, Health and Safety Code, for sink or lavatory faucets, faucet aerators, and showerheads; and

(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found.

(b) Not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service under Subsection (a), the owner or manager shall:

(1) remove any toilets that exceed a maximum flow of 3.5 gallons of water per flushing; and

(2) install 1.6-gallon toilets that meet the standards prescribed by Section 372.002, Health and Safety Code.

(c) Subsections (a) and (b) do not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

SECTION 3. (a) This Act takes effect September 1, 2001.

(b) The Texas Natural Resource Conservation Commission shall enact rules to implement Section 13.506, Water Code, as added by this Act, and the changes in law made by this Act to Section 13.502, Water Code, not later than September 1, 2002.

Representative R. Lewis moved to adopt the conference committee report on **HB 2404**.

The motion prevailed.

HB 2572 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McReynolds submitted the following conference committee report on **HB 2572**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2572** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples	McReynolds
Lucio	Christian
Haywood	R. Lewis
Bivins	Walker
Bernsen	Cook
On the part of the Senate	On the part of the House

HB 2572, A bill to be entitled An Act relating to the creation, administration, powers, duties, operations, and financing of the Pineywoods Groundwater Conservation District.

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

SECTION 1. CREATION. (a) A groundwater conservation district, to be known as the Pineywoods Groundwater Conservation District, is created in Angelina and Nacogdoches counties subject to approval at a confirmation election held under Section 10 of this Act. The district is a governmental agency and body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 2. DEFINITION. In this Act, "district" means the Pineywoods Groundwater Conservation District.

SECTION 3. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Angelina and Nacogdoches counties.

SECTION 4. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefitted by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 5. POWERS. (a) Except as provided by this section, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. Chapter 49, Water Code, does not apply to the district. This Act prevails over any provision of general law that is in conflict or inconsistent with this Act.

(b) The district by rule may require a person to obtain a permit from the district for the transfer of groundwater out of the district consistent with Section 36.122, Water Code, and may regulate the terms on which a permit holder under those rules may conduct such a transfer. A retail public utility as defined by Section 13.002, Water Code, is not required to obtain a permit to transfer groundwater out of the district if:

(1) the source of the water is one or more wells located within the district; and

(2) the water is used by the retail public utility to provide retail water utility service, as defined by Section 13.002, Water Code.

(c) The district may not require a permit for a well incapable of producing more than 25,000 gallons of groundwater a day.

(d) The district may not levy or collect taxes in the district.

(e) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. The fee shall be based on the amount of water to be withdrawn from the well and may not exceed $0.01 per thousand gallons for groundwater withdrawn for any purpose.

(f) A well meeting the criteria established under Section 36.117, Water Code, including a well used for dewatering and monitoring in the production

of coal and lignite, is exempt from permit requirements, regulations, and fees imposed by the district.

(g) The district may not:

(1) exercise the power of eminent domain;

(2) issue and sell any bonds or notes that pledge revenue derived from taxation in the name of the district; or

(3) purchase groundwater rights unless the purchased rights are acquired for conservation purposes and are permanently held in trust not to be produced.

SECTION 6. BOARD OF DIRECTORS. (a) The district is governed by a board of seven directors. Directors are appointed as provided by Section 7 of this Act. When a county is added to the district, the board may change the number of directors so that an equal number of directors is appointed from each county and one director is appointed jointly by the counties.

(b) Except for the initial term, all directors serve three-year terms. The terms of two initial directors expire on December 31, 2004. The terms of two initial directors expire on December 31, 2003. The terms of the three remaining directors, including the term of the initial director who will serve as the joint two-county representative, expire on December 31, 2002.

(c) Subject to Subsection (b) of this section, the three initial directors from each county shall draw lots to determine their terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) Directors may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 7. APPOINTMENT OF DIRECTORS. (a) The Angelina County Commissioners Court shall appoint two directors. One director shall represent the rural water and utilities and small municipal water supply interests, and one director shall represent the large industrial groundwater supply interests of the county.

(b) The Nacogdoches County Commissioners Court shall appoint two directors. One director shall represent the rural water and utilities and small municipal water supply interests, and one director shall represent the forestry or agricultural groundwater supply interests of the county.

(c) The Lufkin City Council shall appoint one director.

(d) The Nacogdoches City Council shall appoint one director.

(e) The Angelina County Commissioners Court and the Nacogdoches County Commissioners Court shall jointly appoint one director to represent the forestry, agricultural, or landowner groundwater interests of both counties.

(f) If the creation of the district is confirmed at a confirmation election under Section 10 of this Act in only one of the counties:

(1) the directors appointed from the county in which the creation of the district is not confirmed and the director appointed jointly by the two commissioners courts are not eligible to serve as directors of the district; and

(2) the commissioners court and the specified city council in the county in which the creation of the district is confirmed shall jointly appoint two additional directors, at least one of whom must represent the forestry, agricultural, or landowner groundwater interests of the county.

SECTION 8. ORGANIZATIONAL MEETING. As soon as practicable after all the initial directors are appointed as provided in this Act, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors at which time the directors will take office. If no location can be agreed upon, the organizational meeting of the directors shall be at the Nacogdoches County Courthouse.

SECTION 9. LANDOWNERS' RIGHTS. The rights of landowners and their lessees and assigns in groundwater within the district are recognized. Nothing in this Act shall be construed to deprive or divest the owners or their lessees and assigns of their rights, subject to district rules.

SECTION 10. CONFIRMATION ELECTION. (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district. If the majority of qualified voters in a county who vote in the election vote not to confirm the creation of the district, that county is excluded from the district.

(d) If the creation of the district is not confirmed by an election held under this section before the second anniversary of the effective date of this Act, the district is dissolved and this Act expires on that date.

SECTION 11. ADDITION OF OTHER COUNTIES TO DISTRICT. (a) An adjacent county that wishes to join the district shall petition the district by resolution of the commissioners court of the county.

(b) If the board finds after a hearing on the resolution that the addition of the county would benefit the district and the county to be added, the board by resolution may approve the addition of the county to the district.

(c) The addition of a county to the district under this section is not final until ratified by a majority vote of the qualified voters in the county to be added voting in an election held for that purpose.

(d) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of _____ County in the Pineywoods Groundwater Conservation District."

(e) The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and the qualifications of the voters are governed by the Election Code.

SECTION 12. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to

introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and the laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All the requirements of the constitution and the laws of this state and rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 13. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Representative McReynolds moved to adopt the conference committee report on **HB 2572**.

A record vote was requested.

The motion prevailed by (Record 630): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

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

Absent, Excused — Hilbert; Miller.

Absent — Hill; Ramsay.

STATEMENT OF VOTE

When Record No. 630 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

SB 310 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the conference committee report on **SB 310**.

Representative Chisum moved to adopt the conference committee report on **SB 310**.

A record vote was requested.

The motion prevailed by (Record 631): 145 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller.

Absent — Hill; Wilson.

STATEMENT OF VOTE

When Record No. 631 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

HB 152 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative F. Brown submitted the following conference committee report on **HB 152**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 152** have had the

same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ogden	F. Brown
Truan	West
West	Uher
Wentworth	Rangel
	Morrison
On the part of the Senate	On the part of the House

HB 152, A bill to be entitled An Act relating to a pilot program to provide for reduced undergraduate tuition during a summer term or session at certain institutions of higher education.

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

SECTION 1. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.0514 to read as follows:

Sec. 54.0514. SPECIAL SUMMER TUITION RATES AT CERTAIN INSTITUTIONS: PILOT PROGRAM. (a) This section applies only to a resident undergraduate student enrolled for a summer term or session at one of the following general academic teaching institutions:

(1) Texas A&M University; and

(2) Texas A&M University—Kingsville.

(b) Tuition, other than tuition under Section 54.0513, charged to a student to whom this section applies is one-half of the amount otherwise provided by this subchapter.

(c) The amount that the governing board of an institution may charge as tuition under Section 54.0513 to a student to whom this section applies may not exceed one-half of the amount the governing board would otherwise be authorized to charge to the student under Section 54.0513.

(d) This section applies to an institution listed in Subsection (a) only if the legislature specifically appropriates money to the institution for the state fiscal biennium ending August 31, 2003, to cover the tuition revenue lost to the institution by the application of this section.

(e) This section applies only to a summer term or session in 2002 or 2003. This section expires January 1, 2004.

SECTION 2. This Act takes effect September 1, 2001.

Representative F. Brown moved to adopt the conference committee report on **HB 152**.

The motion prevailed.

HB 1148 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Cook submitted the following conference committee report on **HB 1148**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1148** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Cook
Lucio	Ritter
Jackson	Ramsay
	Hardcastle
On the part of the Senate	On the part of the House

HB 1148, A bill to be entitled An Act relating to notice of proposed construction sent to the county commissioners court and others regarding, and the marking, location, and removal of, certain wireless communication facilities.

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

SECTION 1. This Act may be cited as the LeClair-Jennings Act.

SECTION 2. Chapter 35, Business & Commerce Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. WIRELESS COMMUNICATION FACILITY

Sec. 35.111. DEFINITION. In this subchapter, "wireless communication facility" means an equipment enclosure, antenna, antenna support structure, and any associated facility used for the reception or transmittal of a radio frequency, microwave, or other signal for a commercial communications purpose.

Sec. 35.112. FILING REQUIREMENTS REGARDING CONSTRUCTION. (a) A person wishing to construct a wireless communication facility that is taller than 100 feet shall, before the 30th day before the date construction begins, file with the county clerk or the county official designated by the commissioners court of the county in which the person wishes to construct a wireless communication facility:

(1) a statement that construction is proposed and that provides the date on or after which the construction will begin;

(2) the correct phone number and address of the person proposing the construction;

(3) the legal description of the proposed site of construction, including a graphic depiction showing the location, height, longitude, latitude, pad size, location of any guy wires, roadway access, and proposed use of the wireless communication facility; and

(4) a phone number that is operational 24 hours a day, seven days a week, for emergency purposes.

(b) A person wishing to construct a wireless communication facility shall assign each proposed wireless communication facility a unique identification and shall provide the county clerk or official with that unique identification.

Sec. 35.113. NOTICE OF CONSTRUCTION. (a) A person proposing to construct a wireless communication facility that is taller than 100 feet shall, before the 30th day before the date the construction begins, mail a letter to:

(1) each of the following:

(A) a public airport located within three miles of the proposed facility location; and

(B) the Texas Department of Agriculture, which shall notify the boll weevil eradication foundation; and

(2) one of the following:

(A) each owner of land within two miles of the proposed facility location if the proposed location is not within a metropolitan statistical area; or

(B) a newspaper of general circulation in the county of construction.

(b) The letter must state:

(1) the legal description of the proposed site of construction, including a graphic depiction showing the location, height, longitude, latitude, pad size, location of any guy wires, roadway access, and proposed use of the wireless communication facility;

(2) at a minimum, the name, phone number, and mailing address of the person proposing construction of the wireless communication facility;

(3) the unique identification of the wireless communication facility; and

(4) a phone number that is operational 24 hours a day, seven days a week, for emergency purposes.

Sec. 35.114. TRANSFER OF OWNERSHIP. If a transfer of ownership of a wireless communication facility occurs that results in a change in the information required under Section 35.113(b)(2), (3), or (4), the lessee of the real property used for the wireless communication facility shall give written notice to the county clerk or official of the county of construction and the lessor of the real property.

Sec. 35.115. REMOVAL. A contract entered into by a property owner that conveys to a person a property interest for the purpose of allowing the person to construct a wireless communication facility must contain a provision relating to the removal of the facility and any appurtenances to the facility that prescribes the circumstances under which removal shall be accomplished.

Sec. 35.116. EXCEPTIONS. This subchapter does not apply to any structure whose main purpose is to provide electric service, a wireless communication facility used by an entity only for internal communications, a wireless communication facility constructed by a municipality, a wireless communication facility used for emergency communications, a radio or television reception antenna, a satellite or microwave parabolic antenna not used by a wireless communication service provider, a receive-only antenna, an antenna owned and operated by a federally licensed amateur radio station operator, a cable television company facility if the company holds a valid and current franchise, a radio or television broadcasting facility, a collocation antenna, or a wireless communication facility installed for collocation purposes.

Sec. 35.117. EFFECT ON CERTAIN ORDINANCES. This subchapter does not preempt a local ordinance regulating a wireless communication facility.

Sec. 35.118. PROHIBITION. To the extent not already governed by and not inconsistent with the federal Telecommunications Act of 1996 (47 U.S.C. Section 251 et seq.), as amended, a wireless communication facility that is more

than 15 feet in height above ground level may not be located within three miles of the castor railroad crossing, located on the eastern side of a peak that is an oblong promontory with rimrock edges on the north and west sides that is 1,712 feet above sea level and that is in a county with a population of less than 5,500, whose county seat has a population of less than 2,500.

SECTION 3. Subchapter B, Chapter 21, Transportation Code, is amended by adding Section 21.069 to read as follows:

Sec. 21.069. MARKING OF WIRELESS COMMUNICATION FACILITY. (a) In this section:

(1) "Cultivated field" means any open space or pasture larger than five acres in which a plant or tree nursery is located or an agricultural crop, including cotton, corn, grain, grapes, beets, peanuts, and rice, but not including grass grown for hay, is grown on a continuing basis.

(2) "Wireless communication facility" has the meaning assigned by Section 35.111, Business & Commerce Code.

(b) Absence of plants, seedlings, or a crop on a temporary basis due to crop rotation or other farm management techniques does not remove an open area from the definition of "cultivated field."

(c) This section applies only to an antenna structure that is used to provide commercial wireless communications services and that is located in a cultivated field or within 100 feet of a cultivated field.

(d) A person who proposes to construct a wireless communication facility that is at least 100 feet but not more than 200 feet in height above ground level shall mark the highest guy wires on the facility, if any. The markings required under this section must be of a kind generally used for marking antennae structures.

SECTION 4. (a) The changes in law made by this Act apply only to a wireless communication facility constructed on or after the effective date of this Act.

(b) This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Representative Cook moved to adopt the conference committee report on **HB 1148**.

The motion prevailed.

HB 3578 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Villarreal submitted the following conference committee report on **HB 3578**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3578** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapleigh	Villarreal
Lucio	Maxey
Carona	Naishtat
	Martinez Fischer
On the part of the Senate	On the part of the House

HB 3578, A bill to be entitled An Act relating to the use of certain child care development funds for quality child care programs.

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

SECTION 1. Subchapter G, Chapter 2308, Government Code, is amended by adding Section 2308.317 to read as follows:

Sec. 2308.317. EXPENDITURES FOR CERTAIN CHILD CARE QUALITY IMPROVEMENT ACTIVITIES. (a) Notwithstanding any other law, the Texas Workforce Commission shall ensure that, to the extent federal child care development funds dedicated to quality improvement activities are used to improve quality and availability of child care, those funds are used only for quality child care programs.

(b) For purposes of this section, a quality child care program is a program that:

(1) promotes:

(A) the physical, social, emotional, and intellectual development of young children;

(B) frequent, positive, warm interactions appropriate to a child's age and development; and

(C) regular communication with parents who are welcomed by the program at all times to participate in activities and to observe, discuss, and recommend policies; and

(2) provides:

(A) a healthy, safe, and nurturing environment for young children;

(B) planned learning activities appropriate to a child's age and development;

(C) specially trained child care providers;

(D) a sufficient number of adults to respond to the needs of each child;

(E) a variety of age-appropriate materials;

(F) nutritious meals and snacks;

(G) an effective program administration; and

(H) an ongoing, systematic evaluation process for the program.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Representative Villarreal moved to adopt the conference committee report on **HB 3578**.

The motion prevailed.

SB 317 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the conference committee report on **SB 317**.

Representative McCall moved to adopt the conference committee report on **SB 317**.

The motion prevailed.

SB 1128 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Coleman submitted the conference committee report on **SB 1128**.

Representative Coleman moved to adopt the conference committee report on **SB 1128**.

The motion prevailed.

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).

HR 1401 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1401**, suspending the limitations on the conferees for **HB 6**.

HR 1402 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1402**, suspending the limitations on the conferees for **HB 3343**.

HB 1323 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 1323, A bill to be entitled An Act Relating to the expunction of arrest records and files when an indictment or information is dismissed or quashed and to the procedures for expunction following an acquittal.

Representative Shields moved to discharge the conferees and concur in the senate amendments to **HB 1323**.

The motion prevailed without objection.

Senate Committee Substitute

CSHB 1323, A bill to be entitled An Act relating to the expunction of arrest records and files when an indictment or information is dismissed or quashed.

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

SECTION 1. Subsection (a), Article 55.01, Code of Criminal Procedure, is amended to read as follows:

(a) A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c) of this section; or

(B) convicted and subsequently pardoned; or

(2) each of the following conditions exist:

(A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information [~~it~~] has been dismissed or quashed, and:

(i) the limitations period expired before the date on which a petition for expunction was filed under Article 55.02; or

(ii) [~~and~~] the court finds that the indictment or information [~~it~~] was dismissed or quashed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(B) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered community supervision under Article 42.12 [~~of this code~~]; and

(C) the person has not been convicted of a felony in the five years preceding the date of the arrest.

SECTION 2. Section 3(c), Article 55.02, Code of Criminal Procedure, is amended to read as follows:

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to the Crime Records Service of the Department of Public Safety and by hand delivery or certified mail, return receipt requested, to each official or agency or other entity of this state or of any political subdivision of this state designated by the person who is the subject of the order. The clerk of the court must receive a receipt for each order delivered by hand under this subsection. The Department of Public Safety shall notify any central federal depository of criminal records by any means, including electronic transmission, of the order with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the order, be destroyed or returned to the court.

SECTION 3. Article 55.03, Code of Criminal Procedure, is amended to read as follows: [~~After entry of an expunction order:~~] When the order of expunction is final:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

SECTION 4. The change in law made by this Act applies to arrest records and files created before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

SB 248 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Brimer submitted the conference committee report on **SB 248**.

Representative Brimer moved to adopt the conference committee report on **SB 248**.

The motion prevailed. (Hamric recorded voting no)

HB 2146 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the following conference committee report on **HB 2146**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2146** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins	Chisum
Shapiro	Allen
Lucio	Haggerty
Sibley	
On the part of the Senate	On the part of the House

HB 2146, A bill to be entitled An Act relating to provision of certain health benefit claims information to employers.

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

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-19 to read as follows:

Art. 21.49-19. HEALTH BENEFIT CLAIM COST INFORMATION REQUIRED TO BE PROVIDED TO EMPLOYER

Sec. 1. DEFINITION OF GROUP HEALTH BENEFIT PLAN. (a) In this article, "group health benefit plan" means a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including a group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage or similar group coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 20 of this code;

(3) a fraternal benefit society operating under Chapter 10 of this code;

(4) a stipulated premium insurance company operating under Chapter 22 of this code;

(5) a reciprocal exchange operating under Chapter 19 of this code;

(6) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(7) a multiple employer welfare arrangement that holds a certificate of authority under Article 3.95-2 of this code; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Article 21.52F of this code.

(b) The term "group health benefit plan" includes a small employer health benefit plan written under Chapter 26 of this code.

Sec. 2. APPLICABILITY OF ARTICLE. This article applies only to a group health benefit plan issued to provide health benefits to the employees of one or more employers that sponsor the plan.

Sec. 3. CLAIM COST INFORMATION. (a) On the request of an employer sponsoring a group health benefit plan, the issuer of the plan shall provide to the employer the claims cost information for employees covered by the plan during the preceding calendar year. The information must be reported separately for each month during which the plan was in effect.

(b) Claims cost information provided under this section may be provided either in the aggregate or on a detailed basis, but may not include:

(1) any information through which a specific individual enrolled in the group health benefit plan may be identified; or

(2) diagnosis codes or other information through which a diagnosis of a specific individual enrolled in the group health benefit plan may be identified.

(c) Information obtained by the employer under this section is confidential and may be used by the employer only for purposes relating to obtaining and maintaining group health benefit plan coverage for the employer's employees.

SECTION 2. This Act takes effect September 1, 2001, and applies only to a group health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2002. A plan that is delivered, issued for delivery, or renewed before January 1, 2002, 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.

Representative Chisum moved to adopt the conference committee report on **HB 2146**.

The motion prevailed.

HB 3507 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Maxey submitted the following conference committee report on **HB 3507**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3507** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Moncrief	Maxey
Carona	Wohlgemuth
Brown	Gray
Sibley	Thompson
On the part of the Senate	On the part of the House

HB 3507, A bill to be entitled An Act relating to the regulation of dentistry and the provision of dental services.

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

ARTICLE 1. DENTAL SERVICES UNDER THE MEDICAL ASSISTANCE PROGRAM

SECTION 1.01. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.053 to read as follows:

Sec. 32.053. DENTAL SERVICES. (a) For purposes of this section, the "dental necessity" for a dental service or product is based on whether a prudent dentist, acting in accordance with generally accepted practices of the professional dental community and within the American Dental Association's Parameters of Care for Dentistry and within the quality assurance criteria of the American Academy of Pediatric Dentistry, as applicable, would provide the service or product to a patient to diagnose, prevent, or treat orofacial pain, infection, disease, dysfunction, or disfiguration.

(b) A dental service or product may not be provided under the medical assistance program unless there is a dental necessity for the service or product.

(c) In providing dental services under the medical assistance program, the department shall:

(1) ensure that a stainless steel crown is not used as a preventive measure;

(2) require a dentist participating in the medical assistance program to document, through x-rays or other methods established by department rule, the dental necessity for a stainless steel crown before the crown is applied;

(3) require a dentist participating in the medical assistance program to comply with a minimum standard of documentation and record keeping for each of the dentist's patients, regardless of whether the patient's costs are paid privately or through the medical assistance program;

(4) replace the 15-point system used for determining the dental necessity for hospitalization and general anesthesia with a more objective and comprehensive system developed by the department; and

(5) take all necessary action to eliminate unlawful acts described by Section 36.002 in the provision of dental services under the medical assistance program, including:

(A) aggressively investigating and prosecuting any dentist who abuses the system for reimbursement under the medical assistance program; and

(B) conducting targeted audits of dentists whose billing activities under the medical assistance program are excessive or otherwise inconsistent with the billing activities of other similarly situated dentists.

(d) In setting reimbursement rates for dental services under the medical assistance program, the department shall:

(1) reduce the amount of the hospitalization fee in effect on December 1, 2000, and redistribute amounts made available through reduction of that fee to other commonly billed dental services for which adequate accountability measures exist;

(2) eliminate the nutritional consultation fee and redistribute amounts made available through elimination of that fee to other commonly billed dental services for which adequate accountability measures exist;

(3) provide for reimbursement of a behavior management fee only if:

(A) the patient receiving dental treatment has been previously diagnosed with mental retardation or a mental disability or disorder, and extraordinary behavior management techniques are necessary for therapeutic dental treatment because of the patient's uncooperative behavior; and

(B) the dentist includes in the patient's records and on the claim form for reimbursement a narrative description of:

(i) the specific behavior problem demonstrated by the patient that required the use of behavior management techniques;

(ii) the dentist's initial efforts to manage the patient's behavior through routine behavior management techniques; and

(iii) the dentist's extraordinary behavior management techniques subsequently required to manage the patient's behavior; and

(4) redistribute amounts made available through limitation of the behavior management fee under Subdivision (3) to other commonly billed dental services for which adequate accountability measures exist.

(e) The department shall develop the minimum standard described by Subsection (c)(3) in cooperation with the State Board of Dental Examiners.

SECTION 1.02. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

ARTICLE 2. REGULATION OF TELEDENTISTRY

SECTION 2.01. For purposes of this article, a licensed dentist may delegate orally, in writing, or through advanced audio and video telecommunications services a service, task, or procedure to a dental hygienist who is under the supervision and responsibility of the dentist, if:

(1) the dental hygienist is licensed to perform the service, task, or procedure;

(2) the supervising dentist examines the patient either in person or through advanced audio and video telecommunications services:

(A) at the time the service, task, or procedure is performed by the dental hygienist; or

(B) during the 12 calendar months preceding the date of performance of the service, task, or procedure by the dental hygienist; and

(3) the dental hygienist does not:

(A) diagnose a dental disease or ailment;

(B) prescribe a treatment or a regimen;

(C) prescribe, order, or dispense medication; or

(D) perform any procedure that is irreversible or involves the intentional cutting of soft or hard tissue by any means.

SECTION 2.02. (a) In this section:

(1) "Dental professional" means:

(A) a dentist licensed under Subtitle D, Title 3, Occupations Code; or

(B) a dental hygienist licensed under Chapter 262, Occupations Code, practicing under the supervision of a dentist.

(2) "Student" means a person who is under 19 years of age, is enrolled in a public school, and receives dental services under Chapter 32, Human Resources Code.

(3) "Teledentistry dental services" means a dental service that utilizes, in whole or in part, advanced telecommunications technology including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission via computer imaging for teleradiology or telepathology; and

(C) other technology that facilitates access in rural and underserved counties to dental services or dental specialty expertise.

(b) The commissioner of health and human services shall appoint a program administrator to administer a pilot program that uses teledentistry and other methods of delivering dental services to provide dental services to students in one public school district in the state.

(c) The program administrator shall establish an advisory committee to assist the program administrator in developing and implementing the pilot program.

(d) In developing the pilot program, the program administrator shall design the program in a manner that:

(1) increases access to dental services and enhances the delivery of dental services to students;

(2) ensures the provision of oral health education services;

(3) provides for effective and appropriate supervision by a dentist of other dental professionals providing care under the program; and

(4) enables the state to determine whether extension of the use of teledentistry would improve the delivery of dental services.

(e) The program administrator shall adopt procedures as necessary to:

(1) ensure that appropriate care, including quality of care, is provided to students who receive teledentistry dental services;

(2) ensure adequate supervision of dental professionals who are not dentists and who provide teledentistry dental services;

(3) establish the maximum number of dental professionals who are not dentists that a dentist may supervise; and

(4) require a face-to-face consultation with a dentist within a certain number of days following a teledentistry dental service.

(f) Only a teledentistry dental service initiated or provided by a licensed dentist in this state may be reimbursed under the Medicaid program. Medicaid reimbursement for a teledentistry dental service shall be at the same rate as the Medicaid program reimburses for a comparable in-person dental service. A request for reimbursement may not be denied solely because an in-person consultation between a dentist or other dental professional and a patient did not occur. Reimbursement for a dental hygienist for service shall be made through the supervising dentist.

(g) A dental hygienist must act under the remote supervision of a local dentist. Both the dentist and the hygienist must be located within the boundaries of the school district served by the pilot program.

(h) Images and assessment information shall be sent by the dental hygienist to a supervising dentist either live or by means of store and forward technology. After a dentist has reviewed the required information, the dentist may authorize the provision of preventive services by the dental hygienist located at the school.

(i) A dental hygienist participating in the pilot program may initiate screening and assessment services and, under the supervision of a dentist, may perform any procedure the hygienist is authorized to perform under law.

(j) A teledentistry dental service may not be provided if an in-person consultation with a dentist is reasonably available to a student. Dentists and other dental professionals participating in the pilot program shall make a good faith effort to identify and coordinate with existing providers to preserve and protect existing dental care systems and dental relationships.

(k) The program administrator shall establish a control group not to exceed 1,000 students to provide a benchmark for measuring the performance of the pilot program. Each student in the control group shall be examined by a dentist, in person, at the end of the program to evaluate the effectiveness of teledentistry dental services provided during the program. The examining dentist must practice in a dental office located outside the boundaries of the school district served by the pilot program.

(l) The program administrator shall use the results of the pilot program to:

(1) determine the efficacy of teledentistry; and

(2) determine the effectiveness of teledentistry in increasing access to dental services and improving oral health of students.

(m) A dental professional who provides teledentistry dental services shall ensure that the informed consent of the student or a person authorized to provide consent for the student is obtained before teledentistry dental services are provided.

(n) Students participating in the pilot program must be referred to local

dentists for restorative care and monitored to ensure that restorative services are provided.

(o) Not later than December 31, 2002, the program administrator shall submit a report to the legislature containing the following:

(1) the number of students who received teledentistry dental services;

(2) the types of teledentistry dental services provided;

(3) the cost and level of utilization of teledentistry dental services;

(4) the effect of the pilot program on school absenteeism of students in the control group;

(5) a description of improvements in the oral health of students in the pilot program; and

(6) recommendations for changes in or the expansion of the pilot program.

(p) This article expires and the advisory committee is abolished December 31, 2002.

SECTION 2.03. (a) The commissioner of health and human services shall appoint a program administrator for the teledentistry pilot program not later than the 30th day after the effective date of this article.

(b) The program administrator shall appoint an advisory committee and shall begin implementing the teledentistry pilot program not later than the 30th day after the date the program administrator is appointed.

ARTICLE 3. ALTERNATIVE TRAINING OF DENTAL HYGIENISTS

SECTION 3.01. Section 256.053, Occupations Code, is amended to read as follows:

Sec. 256.053. ELIGIBILITY FOR LICENSE. To qualify for a license, an applicant must be:

(1) at least 18 years of age;

(2) a graduate of an accredited high school or hold a certificate of high school equivalency; and

(3) a graduate of a recognized school of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board <u>or an alternative dental hygiene training program</u>.

SECTION 3.02. Subchapter B, Chapter 256, Occupations Code, is amended by adding Section 256.0531 to read as follows:

<u>Sec. 256.0531. ALTERNATIVE DENTAL HYGIENE TRAINING PROGRAMS. (a) It is the intent of the legislature that programs approved by the board under this section provide hygiene training that is substantially equivalent to training provided under traditional programs.</u>

<u>(b) An alternative dental hygiene training program must meet the following requirements:</u>

<u>(1) the program must be determined to be eligible for accreditation by the Commission on Dental Accreditation of the American Dental Association before students can enroll in the program;</u>

<u>(2) the program must require hygiene students to complete four semesters of didactic education from a school of dentistry, dental hygiene school, or other educational institution approved by the board;</u>

<u>(3) didactic education shall be provided by instruction in the classroom</u>

or by distance learning, remote coursework, or similar modes of instruction offered by an institution accredited by the Commission on Dental Accreditation of the American Dental Association;

(4) didactic education shall include instruction in anatomy, pharmacology, x-ray, ethics, jurisprudence, hygiene, and any other subject regularly taught in reputable schools of dentistry and dental hygiene that the board may require;

(5) the program must require hygiene students to complete not less than 1,000 hours of clinical training under the direct supervision of a dentist qualified under Subsection (d) or a dental hygienist qualified under Subsection (f) during a 12-month period. Students must satisfactorily complete 75 full-mouth prophylaxes and demonstrate the ability to accurately record the location and extent of dental restorations, chart mobility, furcations, gingival recession, keratinized gingiva, and pocket depth on six aspects of each tooth; and

(6) clinical training may occur simultaneously with didactic education.

(c) Prior to commencing training, a hygiene student must have completed no less than two years of full-time employment in a position involving clinical duties with dental patients.

(d) To be qualified to train a hygiene student under this section, a dentist must:

(1) be licensed in Texas and have practiced in Texas for at least five years;

(2) have completed a certification or calibration course approved by the board for purposes of this section;

(3) meet recertification requirements at intervals of no more than three years;

(4) also practice in a dental office located outside a standard metropolitan statistical area, as defined by the United States Census Bureau, or practice in an area that the Texas Department of Health has determined is underserved or an area that has been designated by the United States as having a shortage of dental professionals; and

(5) have posted a notice visible to patients stating: "This practice has been approved as an alternative dental hygiene training program. Students in the program may be performing services."

(e) A hygiene student who completes the requirements of a program under this section must satisfactorily pass the examination required for all hygiene license applicants under this chapter.

(f) A dental hygienist may train hygiene students under this section if:

(1) the dental hygienist is employed by a dentist who provides training under this section and the hygienist works under the direct supervision of the dentist in the same office as the dentist;

(2) the dental hygienist has practiced full-time dental hygiene for the five years immediately preceding the time the training is provided; and

(3) the dental hygienist has completed a certification or calibration course approved by the board and meets recertification requirements at intervals of no more than five years.

(g) A dentist who supervises a dental hygienist trained under this section has the same liability for acts performed by the hygienist as if the hygienist were trained in a different manner.

(h) The board shall adopt an alternative dental hygiene training program no later than January 1, 2002.

(i) The board shall appoint an advisory committee to advise the board in developing the alternative dental hygiene training program. The advisory committee consists of the following members appointed by the board:

(1) two dental hygienists nominated by a statewide association of dental hygienists;

(2) two dentists nominated by a statewide association of dentists;

(3) two dental educators nominated by the State Board of Dental Examiners; and

(4) two dental hygienist educators nominated by the Dental Hygiene Advisory Committee to the State Board of Dental Examiners.

(j) In developing the program, the advisory committee shall consider the standards adopted by the Commission on Dental Accreditation.

(k) A student in an alternative dental hygiene training program is not considered to be practicing dentistry as described by Section 251.003.

(l) The board shall adopt rules requiring the dentist to give written notice to patients, where applicable, that services will be performed by a student in an alternative dental hygiene training program, and requiring the dentist or the dentist's staff to give oral notice to patients, where applicable, at the time the patient's hygiene appointment is made or confirmed, that services will be performed by a student in an alternative dental hygiene training program.

(m) The board may adopt rules necessary to implement this section. The board shall adopt a rule requiring notification to dental hygiene students that accreditation of the alternative dental hygiene training program is a requirement for obtaining a license under this chapter.

SECTION 3.03. The program, including the clinical training component, must be accredited by the Commission on Dental Accreditation by December 31, 2004, or the program expires.

SECTION 3.04. The board may not issue a license to a graduate of an alternative training program under Section 256.0531, Occupations Code, unless the program is accredited by the Commission on Dental Accreditation.

ARTICLE 4. DELEGATION OF CERTAIN ACTS BY DENTISTS

SECTION 4.01. Section 258.002, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A licensed dentist may delegate, under Subsection (a), the application of a pit and fissure sealant to a dental assistant if the dentist is a Medicaid provider. Cleansing of the occlusal and smooth surfaces of the teeth by a dental assistant is allowed immediately prior to and for the sole purpose of preparing the tooth area for the placement of pit and fissure sealants or orthodontic bonding resin, and shall not be billed as a prophylaxis.

(c) The board by rule shall establish guidelines regarding the types of dental acts that may be properly or safely delegated by a dentist, including a determination of which delegated dental acts, if any, require competency testing before a person may perform the act.

SECTION 4.02. Subchapter D, Chapter 262, Occupations Code, is amended by adding Section 262.1515 to read as follows:

Sec. 262.1515. DELEGATION OF DUTIES TO DENTAL HYGIENIST

PRACTICING IN CERTAIN LONG-TERM CARE FACILITIES AND SCHOOL-BASED HEALTH CENTERS. (a) A licensed dentist may delegate a service, task, or procedure, pursuant to this section, to a dental hygienist, without complying with Section 262.151(a)(2) if:

(1) the dental hygienist has at least two years' experience in the practice of dental hygiene; and

(2) the service, task, or procedure is performed in one of the following locations:

(A) a nursing facility as defined in Section 242.301, Health and Safety Code; or

(B) a school-based health center established under Section 38.011, Education Code, as added by Chapter 1418, Acts of the 76th Legislature, Regular Session, 1999.

(b) The patient must be referred to a licensed dentist after the completion of a service, task, or procedure performed under Subsection (a).

(c) A dental hygienist may not perform a second set of delegated tasks or procedures until the patient has been examined by a dentist in compliance with Section 262.151(a)(2).

(d) A dental hygienist may not perform any service, task, or procedure under this section without the express authorization of a dentist.

(e) The nursing facility or school-based health center shall note each delegated service, task, or procedure performed by the dental hygienist under this section in the patient's medical records.

SECTION 4.03. Section 265.003, Occupations Code, is amended to read as follows:

Sec. 265.003. PERMITTED DUTIES. (a) A dental assistant who is not professionally licensed may:

(1) be employed by and work in the office of a licensed and practicing dentist; and

(2) perform one or more delegated dental acts under the direct supervision, direction, and responsibility of the dentist, including the application of a pit and fissure sealant.

(b) A dental assistant may apply a pit and fissure sealant under Subsection (a) only if:

(1) the assistant is certified to apply a pit and fissure sealant under Section 265.004; and

(2) the dentist described by Subsection (a) is a Medicaid provider.

SECTION 4.04. Chapter 265, Occupations Code, is amended by adding Section 265.004 to read as follows:

Sec. 265.004. PIT AND FISSURE SEALANT CERTIFICATE. (a) The board shall issue a pit and fissure sealant certificate to a dental assistant who qualifies under this section.

(b) To qualify for a certificate, an applicant must:

(1) have at least two years' experience as a dental assistant; and

(2) have successfully completed a minimum of 16 hours of clinical and didactic education in pit and fissure sealants taken through an accredited dental hygiene program approved by the board.

(c) The educational program under Subsection (b) must include courses on:

(1) infection control;

(2) cardiopulmonary resuscitation;

(3) treatment of medical emergencies;

(4) microbiology;

(5) chemistry;

(6) dental anatomy;

(7) ethics related to pit and fissure sealant application;

(8) jurisprudence related to pit and fissure sealant application; and

(9) the correct application of sealants, including the actual clinical application of sealants.

(d) To maintain a certificate under this section, the dental assistant must complete at least six hours of continuing education in technical and scientific coursework each year.

(e) The board shall adopt rules as necessary to implement this section, including rules regarding renewal requirements for a certificate issued under this section.

SECTION 4.05. Not later than March 1, 2002, the State Board of Dental Examiners shall adopt the rules required by Section 265.004, Occupations Code, as added by this Act.

ARTICLE 5. TEMPORARY LICENSE

SECTION 5.01. Subchapter C, Chapter 256, Occupations Code, is amended by adding Section 256.1015 to read as follows:

Sec. 256.1015. TEMPORARY LICENSE. (a) The board, upon payment by the applicant of a fee set by the board, shall grant a temporary license to practice dentistry to any reputable dentist or a temporary license to practice dental hygiene to any reputable dental hygienist who:

(1) meets all requirements of Section 256.101 except those of Subsection (a)(8); and

(2) is employed by a nonprofit corporation that accepts Medicaid reimbursement.

(b) A license granted under this section expires immediately when a licensee fails to meet the requirements of this section.

ARTICLE 6. REPAYMENT OF DENTAL LOANS

SECTION 6.01. Section 61.904(a), Education Code, is amended to read as follows:

(a) The board may provide repayment assistance for the repayment of any student loan for education at a public or private institution of higher education [~~in this state~~], including loans for undergraduate education, received by a dentist through any lender.

SECTION 6.02. Section 61.903, Education Code, is repealed.

ARTICLE 7. EFFECTIVE DATE

SECTION 7.01. This Act takes effect September 1, 2001.

Representative Maxey moved to adopt the conference committee report on **HB 3507**.

The motion prevailed. (F. Brown recorded voting no)

SB 732 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Farabee submitted the conference committee report on **SB 732**.

Representative Farabee moved to adopt the conference committee report on **SB 732**.

The motion prevailed.

SB 1458 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the conference committee report on **SB 1458**.

Representative McCall moved to adopt the conference committee report on **SB 1458**.

A record vote was requested.

The motion prevailed by (Record 632): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller.

Absent — Gallego; Hill; Reyna, E.

STATEMENT OF VOTE

When Record No. 632 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

SB 1573 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hawley submitted the conference committee report on **SB 1573**.

Representative Hawley moved to adopt the conference committee report on **SB 1573**.

A record vote was requested.

The motion prevailed by (Record 633): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller.

Absent — Bailey; Berman; Hill.

STATEMENT OF VOTE

When Record No. 633 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

HB 1925 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Haggerty submitted the following conference committee report on **HB 1925**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1925** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples	Haggerty
Armbrister	Hinojosa
Jackson	Allen
Bivins	Ritter
On the part of the Senate	On the part of the House

HB 1925, A bill to be entitled An Act relating to the creation of an offense prohibiting certain weapons within 1,000 feet of a place of execution.

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

SECTION 1. Section 46.03(a), Penal Code, as amended by Chapters 1043 and 1221, Acts of the 75th Legislature, Regular Session, 1997, is reenacted and amended to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack; [~~or~~]

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

SECTION 2. Section 46.03, Penal Code, is amended by adding Subsection (i) to read as follows:

(i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:

(1) while in a vehicle being driven on a public road; or

(2) at the actor's residence or place of employment.

SECTION 3. Section 46.15, Penal Code, is amended by adding Subsection (f) to read as follows:

(f) Section 46.03(a)(6) does not apply to a person who possesses a firearm or club while in the actual discharge of official duties as:

(1) a member of the armed forces or state military forces, as defined by Section 431.001, Government Code; or

(2) an employee of a penal institution.

SECTION 4. This Act takes effect September 1, 2001, and applies only to an offense committed on or after that date. 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. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Representative Haggerty moved to adopt the conference committee report on **HB 1925**.

The motion prevailed.

HR 1355 - ADOPTED
(by Chavez)

The following privileged resolution was laid before the house:

HR 1355

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 2585**, relating to motorcycle operator and passenger safety, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add a new section to the bill to read as follows:

SECTION 5. Section 661.003(c), Transportation Code, is amended to read as follows:

(c) It is an exception to the application of Subsection (a) or (b) that at the time the offense was committed, the person required to wear protective headgear was at least 21 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. A peace officer may not arrest a person or issue a citation to a person for a violation of Subsection (a) or (b) if the person required to wear protective headgear is at least 21 years of age and presents evidence sufficient to show that the person required to wear protective headgear has successfully completed a motorcycle operator training and safety course or is covered by a health insurance plan as described by this subsection.

Explanation: This addition is necessary to prohibit a peace officer from arresting a motorcycle operator or passenger for a violation of the law that requires the wearing of protective headgear and from issuing a citation for a violation of that law if the motorcycle operator or passenger produces evidence to show that the operator or passenger is excepted from the requirement to wear protective headgear.

HR 1355 was adopted without objection.

HB 2585 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chavez submitted the following conference committee report on **HB 2585**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2585** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapleigh	Chavez
Armbrister	B. Turner
Bernsen	G. Lewis
Madla	Villarreal
On the part of the Senate	On the part of the House

HB 2585, A bill to be entitled An Act relating to motorcycle operator and passenger safety.

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

SECTION 1. Sections 661.003(c) and (d), Transportation Code, are amended to read as follows:

(c) It is an exception to the application of Subsection (a) or (b) that at the time the offense was committed, the person required to wear protective headgear was at least 21 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. A peace officer may not arrest a person or issue a citation to a person for a violation of Subsection (a) or (b) if the person required to wear protective headgear is at least 21 years of age and presents evidence sufficient to show that the person required to wear protective headgear has successfully completed a motorcycle operator training and safety course or is covered by a health insurance plan as described by this subsection.

(d) The department shall issue a sticker to a person who:

(1) is at least 21 years old;

(2) applies to the department on a form provided by the department;

(3) [~~(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

(4) [~~(3)~~] pays a fee of $5 for the sticker.

SECTION 2. Section 662.011, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller shall report to the governor and legislature not later than the first Monday in November of each even-numbered year on the condition of the account. The report must contain:

(1) a statement of the amount of money deposited to the credit of the account for the year;

(2) a statement of the amount of money disbursed by the comptroller from the account for the year;

(3) a statement of the balance of money in the account;

(4) a list of persons and entities that have received money from the account, including information for each person or entity that shows the amount of money received; and

(5) a statement of any significant problems encountered in administering the account, with recommendations for their solution.

SECTION 3. Chapter 662, Transportation Code, is amended by adding Section 662.012 to read as follows:

Sec. 662.012. REPORTS. (a) The designated state agency shall require each provider of a motorcycle operator training and safety program to compile and forward to the agency each month a report on the provider's programs. The report must include:

(1) the number and types of courses provided in the reporting period;

(2) the number of persons who took each course in the reporting period;

(3) the number of instructors available to provide training under the provider's program in the reporting period;

(4) information collected by surveying persons taking each course as to the length of any waiting period the person experienced before being able to enroll in the course;

(5) the number of persons on a waiting list for a course at the end of the reporting period; and

(6) any other information the agency reasonably requires.

(b) The designated state agency shall maintain a compilation of the reports submitted under Subsection (a) on a by-site basis. The agency shall update the compilation as soon as practicable after the beginning of each month.

(c) The designated state agency shall provide without charge a copy of the most recent compilation under Subsection (b) to any member of the legislature on request.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

SECTION 5. This Act takes effect September 1, 2001.

(Speaker pro tempore in the chair)

Representative Chavez moved to adopt the conference committee report on **HB 2585**.

The motion prevailed.

HR 1403 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1403**, suspending the limitations on the conferees for **SB 1839**.

HB 2809 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wolens submitted the following conference committee report on **HB 2809**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2809** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Cain	Wolens
Brown	Uher
Harris	P. King
Armbrister	Thompson
On the part of the Senate	On the part of the House

HB 2809, A bill to be entitled An Act relating to statutory revision and statutory construction.

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

SECTION 1. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.033 to read as follows:

Sec. 311.033. EFFECT OF NONSUBSTANTIVE REVISION. The codification of a statute under the continuing statutory revision program provided for by Section 323.007 in an act stating that no substantive change in law is intended does not affect the meaning or effect of the statute. A court or other entity interpreting and applying the codified statute shall give the codified statute the same effect and meaning that was or would have been given the statute before its codification, notwithstanding the repeal of the prior statute and regardless of an omission or change that the court or other entity would otherwise find to be direct, unambiguous, and irreconcilable with prior law. An omission or change for which the court finds no direct evidence of legislative intent to change the sense, meaning, or effect of the statute shall be considered unintended and shall be treated as if the omission or change were a typographical or similar error.

SECTION 2. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.034 to read as follows:

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. A statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction.

SECTION 3. The legislature finds the decision of the Texas Supreme Court in Fleming Foods of Texas, Inc. v. Rylander, 6 S.W. 3d 278 (Tex. 1999), to be inconsistent with the clear and repeatedly expressed intent of the legislature in the enactment of the Tax Code and other nonsubstantive codes enacted under the state's continuing statutory revision program under Section 323.007, Government Code. The absence of any legislative action subsequent to the holding in Fleming Foods of Texas, Inc. v. Rylander shall not be construed as legislative acceptance of the holding in that case.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

Representative Wolens moved to adopt the conference committee report on **HB 2809**.

A record vote was requested.

The motion prevailed by (Record 634): 143 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Smith; Smithee; Solis; Solomons; Swinford; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nays — Shields; Talton.

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

Absent, Excused — Hilbert; Miller.

Absent — Hill.

STATEMENT OF VOTE

When Record No. 634 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

HB 3016 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Haggerty submitted the following conference committee report on **HB 3016**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3016** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro	Allen
Nelson	Haggerty
Van de Putte	Solomons
Carona	
Zaffirini	
On the part of the Senate	On the part of the House

HB 3016, A bill to be entitled An Act relating to the use of certain electronically readable information to comply with certain provisions of the Alcoholic Beverage Code; providing a penalty.

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

SECTION 1. Subchapter D, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.61 to read as follows:

Sec. 109.61. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with this code or a rule of the commission, including for the purpose of preventing the person from committing an offense under this code.

(b) A person may not retain information accessed under this section unless the commission by rule requires the information to be retained. The person may not retain the information longer than the commission requires.

(c) Information accessed under this section may not be marketed in any manner.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

SECTION 2. This Act takes effect September 1, 2001.

Representative Haggerty moved to adopt the conference committee report on **HB 3016**.

Representative Hupp moved to table the motion to adopt the conference committee on **HB 3016**.

A record vote was requested.

The motion to table was lost by (Record 635): 49 Yeas, 87 Nays, 4 Present, not voting.

Yeas — Berman; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Christian; Clark; Corte; Crabb; Craddick; Crownover; Davis, J.; Delisi; Denny; Driver; Dutton; Ehrhardt; Eiland; Garcia; George; Giddings; Goolsby; Green; Hartnett; Heflin; Hochberg; Howard; Hupp; Isett; Jones, E.; Jones, J.; Keffer; Kitchen; Lewis, G.; McReynolds; Mowery; Naishtat; Nixon; Olivo; Reyna, E.; Shields; Smith; Swinford; Talton; Truitt; Williams; Wohlgemuth; Woolley.

Nays — Alexander; Allen; Averitt; Bailey; Bosse; Brimer; Capelo; Carter; Chavez; Chisum; Coleman; Cook; Counts; Danburg; Davis, Y.; Deshotel; Dukes; Dunnam; Edwards; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Glaze; Goodman; Gray; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hawley; Hilderbran; Hinojosa; Hodge; Homer; Hope; Hopson; Hunter; Janek; Jones, D.; Junell; Keel; King, P.; Krusee; Kuempel; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; Menendez; Merritt; Moreno, J.; Morrison; Najera; Noriega; Pickett; Pitts; Puente; Ramsay; Raymond; Reyna, A.; Ritter; Sadler; Smithee; Solis; Solomons; Thompson; Tillery; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Wilson; Wise; Wolens; Yarbrough; Zbranek.

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

Absent, Excused — Hilbert; Miller.

Absent — Hill; King, T.; Moreno, P.; Oliveira; Rangel; Salinas; Seaman; Telford.

STATEMENTS OF VOTE

When Record No. 635 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

I was shown voting no on Record No. 635. I intended to vote yes.

Maxey

The motion to adopt the conference committee report on **HB 3016** prevailed. (Heflin and Marchant recorded voting no)

HR 1408 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 1408**, suspending the limitations on the conferees for **HB 2879**.

HB 3244 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gallego submitted the following conference committee report on **HB 3244**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3244** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Duncan	Gallego
Armbrister	Heflin
Ogden	Glaze
On the part of the Senate	On the part of the House

HB 3244, A bill to be entitled An Act relating to authorizing the Texas Department of Health to temporarily transfer money appropriated for the purpose of a tobacco endowment program administered by the department to use for another tobacco endowment program administered by the department.

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

SECTION 1. Section 403.105, Government Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c), (e), [~~and~~] (f), and (h), money in the fund may not be appropriated for any purpose.

(h) The department may direct the comptroller to temporarily transfer money appropriated under Subsection (c) to pay an obligation that the department is authorized to incur under and for which money is appropriated under Section 403.1055(c), 403.106(c), or 403.1066(c) if the department determines that the transfer is necessary for cash management purposes. As soon as possible after the transfer but not later than the 90th day after the date of the transfer, the department shall direct the comptroller to transfer back the transferred amount from amounts appropriated under Section 403.1055(c), 403.106(c), or 403.1066(c), as applicable, to the appropriation item for Subsection (c).

SECTION 2. Section 403.1055, Government Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c), (e), [~~and~~] (f), and (h), money in the fund may not be appropriated for any purpose.

(h) The department may direct the comptroller to temporarily transfer money appropriated under Subsection (c) to pay an obligation that the department is authorized to incur under and for which money is appropriated under Section 403.105(c), 403.106(c), or 403.1066(c) if the department determines that the transfer is necessary for cash management purposes. As

soon as possible after the transfer but not later than the 90th day after the date of the transfer, the department shall direct the comptroller to transfer back the transferred amount from amounts appropriated under Section 403.105(c), 403.106(c), or 403.1066(c), as applicable, to the appropriation item for Subsection (c).

SECTION 3. Section 403.106, Government Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c), (e), [~~and~~] (f), and (h), money in the fund may not be appropriated for any purpose.

(h) The department may direct the comptroller to temporarily transfer money appropriated under Subsection (c) to pay an obligation that the department is authorized to incur under and for which money is appropriated under Section 403.105(c), 403.1055(c), or 403.1066(c) if the department determines that the transfer is necessary for cash management purposes. As soon as possible after the transfer but not later than the 90th day after the date of the transfer, the department shall direct the comptroller to transfer back the transferred amount from amounts appropriated under Section 403.105(c), 403.1055(c), or 403.1066(c), as applicable, to the appropriation item for Subsection (c).

SECTION 4. Section 403.1066, Government Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) Except as provided by Subsections (c), (d), [~~and~~] (e), and (i), the money in the fund may not be appropriated for any purpose.

(i) The department may direct the comptroller to temporarily transfer money appropriated under Subsection (c) to pay an obligation that the department is authorized to incur under and for which money is appropriated under Section 403.105(c), 403.1055(c), or 403.106(c) if the department determines that the transfer is necessary for cash management purposes. As soon as possible after the transfer but not later than the 90th day after the date of the transfer, the department shall direct the comptroller to transfer back the transferred amount from amounts appropriated under Section 403.105(c), 403.1055(c), or 403.106(c), as applicable, to the appropriation item for Subsection (c).

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

Representative Gallego moved to adopt the conference committee report on **HB 3244**.

A record vote was requested.

The motion prevailed by (Record 636): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam;

Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

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

Absent, Excused — Hilbert; Miller.

Absent — Hill; Telford.

STATEMENT OF VOTE

When Record No. 636 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

HB 3348 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Counts submitted the following conference committee report on **HB 3348**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3348** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples	Counts
Brown	Chisum
Bernsen	Merritt
On the part of the Senate	On the part of the House

HB 3348, A bill to be entitled An Act relating to the Texas Energy Resource Council; authorizing the imposition of an assessment on producers of oil, gas, and condensate.

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

SECTION 1. Title 70, Revised Statutes, is amended by adding Article 4413(47g) to read as follows:

Art. 4413(47g). TEXAS ENERGY RESOURCE COUNCIL

PART 1. GENERAL PROVISIONS

Sec. 1.01. DEFINITIONS. In this article:

(1) "Condensate" has the meaning assigned by Section 201.001, Tax Code.

(2) "First purchaser" has the meaning assigned by Section 201.001 or 202.001, Tax Code, as applicable.

(3) "Gas" has the meaning assigned by Section 201.001, Tax Code.

(4) "Oil" has the meaning assigned by Section 202.001, Tax Code.

(5) "Person" includes an individual or group of individuals and a partnership, corporation, association, cooperative, or other legal entity.

(6) "Producer" has the meaning assigned by Section 201.001 or 202.001, Tax Code, as applicable.

PART 2. TEXAS ENERGY RESOURCE COUNCIL

Sec. 2.01. COMPOSITION OF COUNCIL. (a) The Texas Energy Resource Council is composed of 15 members.

(b) The executive officer, or a person designated by the executive officer, of each of the following organizations serves on the council:

(1) the Texas Oil & Gas Association;

(2) the Texas Independent Producers and Royalty Owners Association;

(3) the Permian Basin Petroleum Association;

(4) The Texas Alliance of Energy Producers; and

(5) The Panhandle Producers and Royalty Owners Association.

(c) The governor shall appoint to serve on the council seven members from lists of nominees provided by the organizations listed in Subsection (b) of this section.

(d) The members of the council by majority vote shall appoint to serve on the council three members as follows:

(1) one representative of the crude oil purchasing industry;

(2) one representative of the pipeline industry; and

(3) one representative of royalty owners.

Sec. 2.02. TERMS; VACANCIES. (a) The members of the council appointed under Sections 2.01(c) and (d) of this article serve for staggered six-year terms, with the terms of three or four members, as applicable, expiring February 1 of each odd-numbered year.

(b) A vacancy in an appointive position on the council shall be filled for the unexpired portion of the term in the same manner as the original appointment.

Sec. 2.03. OFFICERS. (a) The members of the council annually shall elect a presiding officer of the council.

(b) The council may elect other officers it considers necessary.

Sec. 2.04. COMPENSATION. A member of the council may not receive compensation for service performed for the council. A member is entitled to reimbursement, subject to any applicable limitation provided by the General Appropriations Act, for actual or necessary expenses incurred in performing services as a member of the council. Money paid to a council member under this section shall be paid from the energy resource account.

PART 3. POWERS AND DUTIES OF COUNCIL

Sec. 3.01. POWERS AND DUTIES OF COUNCIL. The council shall:

(1) coordinate a program designed to:

(A) promote environmentally sound energy production methods and technologies;

(B) support educational activities regarding the development of energy resources in this state;

(C) support job training and research activities regarding energy production;

(D) educate the public regarding the importance of the oil, natural gas, and pipeline industries;

(E) promote the exploration for and production of energy; and

(F) promote pipeline safety; and

(2) implement the other provisions of this article.

PART 4. ENERGY RESOURCE ACCOUNT

Sec. 4.01. ENERGY RESOURCE ACCOUNT. (a) The energy resource account is an account in the general revenue fund that may be appropriated only to the council for the purposes of this article.

(b) The energy resource account consists of:

(1) gifts and grants;

(2) transfers of money to the account by the legislature; and

(3) assessments collected under Part 5 of this article.

PART 5. ASSESSMENT

Sec. 5.01. IMPOSITION OF ASSESSMENT. (a) An assessment is imposed on each producer of oil, gas, or condensate. The amount of the assessment is four-hundredths of one percent of the market value of oil, gas, or condensate produced and saved in this state by the producer. The market value of oil, gas, or condensate is its value at the mouth of the well from which it is produced.

(b) Notwithstanding Subsection (a) of this section, a producer may not be assessed more than $150,000 in any year. For purposes of the limitation provided by this subsection on assessments imposed on a producer, assessments imposed on an affiliate or subsidiary, as defined by Article 13.02, Texas Business Corporation Act, of a producer are considered to have been imposed on the producer.

(c) Except as otherwise provided by this article, Chapters 201 and 202, Tax Code, apply to the assessment imposed by this article as if the assessment were a tax imposed by those chapters.

(d) The assessment imposed by this article is not an occupation tax.

(e) A first purchaser or producer, as applicable, shall include as a separate item in any report required by Chapter 201 or 202, Tax Code, any required information relating to the assessment imposed by this article.

Sec. 5.02. DEPOSIT OF ASSESSMENT. (a) Except as provided by Subsection (b) of this section, the comptroller shall deposit an assessment collected under this article to the credit of the energy resource account.

(b) The comptroller shall retain a portion of an assessment collected under this article to cover the cost of administering the imposition and collection of

the assessment. The comptroller by rule shall specify the portion of the assessment to be retained.

Sec. 5.03. COLLECTION OF ASSESSMENT. (a) The council is responsible for taking appropriate legal action to collect any assessment that is not paid to the comptroller. The comptroller is not responsible for collecting any assessment that is not paid to the comptroller.

(b) The comptroller shall report to the council any information the comptroller obtains regarding the failure of any person to properly pay an assessment and shall provide to the council any documentation the comptroller may have of that failure.

Sec. 5.04. REFUND OF ASSESSMENT. (a) A person is entitled to a refund of an assessment paid by the person during the preceding state fiscal year if the person submits a request for a refund as provided by this section.

(b) A request for a refund must be made to the comptroller not later than the third calendar month following the state fiscal year for which the refund is requested. The request must be in the form and include the information required by the comptroller.

(c) If the assessment was paid by the producer, the producer must submit the refund request, and any refund made shall be paid to the producer. If the assessment was paid by a first purchaser on behalf of the producer, the first purchaser, at the request of the producer, shall submit a request for a refund, and any refund made shall be paid to the first purchaser. The first purchaser shall refund to the producer the amount refunded not later than the 60th day after the date the first purchaser receives the refund.

(d) The council shall give notice of the right to request a refund through:

(1) press releases;

(2) paid advertisements placed in the newspaper with the largest circulation in each county of the state; and

(3) other means it considers appropriate.

(e) The comptroller shall determine the validity of a request for a refund. The comptroller shall perform the comptroller's duties under this section in a manner that minimizes, to the extent practicable and appropriate, the burden on persons providing information to the comptroller.

(f) If the comptroller determines that a person is entitled to a refund, the comptroller shall refund the amount of the assessment paid during the preceding state fiscal year, together with interest at a rate equal to the average rate paid over the preceding calendar year on United States treasury bills with a 12-month maturity date.

(g) The comptroller shall make refunds under this section in the order in which the comptroller receives requests for refunds. Notwithstanding the other provisions of this section, the comptroller may not make refunds in a state fiscal year in an amount that, in the aggregate, exceeds 60 percent of the total amount of assessments collected during the preceding state fiscal year.

(h) The comptroller may adopt rules to implement this section.

SECTION 2. (a) As soon as practicable after receiving the lists described by Section 2.01(c), Article 4413(47g), Revised Statutes, as added by this Act, the governor shall appoint persons to serve on the Texas Energy Resource Council. The governor shall designate two persons to serve on the council for

terms expiring February 1, 2003, two persons to serve on the council for terms expiring February 1, 2005, and three persons to serve on the council for terms expiring February 1, 2007.

(b) As soon as practicable after taking office, the members of the Texas Energy Resource Council designated or appointed under Sections 2.01(b) and (c), Article 4413(47g), Revised Statutes, as added by this Act, shall appoint one person to serve on the council for a term expiring February 1, 2003, one person to serve on the council for a term expiring February 1, 2005, and one person to serve on the council for a term expiring February 1, 2007.

SECTION 3. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2001.

(b) Part 5 of Article 4413(47g), Revised Statutes, as added by this Act, takes effect January 1, 2002, and applies only to oil, gas, and condensate produced and saved on or after that date.

Representative Counts moved to adopt the conference committee report on **HB 3348**.

The motion prevailed.

SB 896 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hamric submitted the conference committee report on **SB 896**.

Representative Hamric moved to adopt the conference committee report on **SB 896**.

The motion prevailed.

HB 1763 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the following conference committee report on **HB 1763**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1763** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Carona	Chisum
Fraser	Gallego
Shapleigh	Hochberg
Lucio	McCall
Sibley	
On the part of the Senate	On the part of the House

HB 1763, A bill to be entitled An Act relating to the continuation and functions of the Finance Commission of Texas and the regulation of certain financial institutions and businesses.

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

SECTION 1. Section 11.001, Finance Code, is amended to read as follows:

Sec. 11.001. DEFINITIONS. (a) The definitions provided by Section 31.002 apply to this chapter.

(b) In this chapter, "finance agency" means:

(1) the Texas Department of Banking;

(2) the Savings and Loan Department; or

(3) the Office of Consumer Credit Commissioner.

SECTION 2. Subchapter A, Chapter 11, Finance Code, is amended by adding Section 11.002 to read as follows:

Sec. 11.002. PURPOSE OF COMMISSION; STRATEGIC PLAN. (a) The finance commission is responsible for overseeing and coordinating the Texas Department of Banking, the Savings and Loan Department, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. The finance commission is the policy-making body for those finance agencies and is not a separate state agency. The finance commission shall carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

(b) The finance commission shall prepare and periodically update a strategic plan for coordination of the state financial system. Each finance agency shall cooperate in preparation of the plan.

SECTION 3. Sections 11.102(b), (c), (d), and (e), Finance Code, are amended to read as follows:

(b) One member [~~Two members~~] of the finance commission must be a banking executive, one member [~~executives and two members~~] of the finance commission must be a savings executive, one member of the finance commission must be a consumer credit executive, and one member of the finance commission must be a mortgage broker [~~executives~~].

(c) Five members of the finance commission must be representatives of the general public [~~may not be banking executives, savings executives, or controlling shareholders in a bank, savings association, or savings bank but must be selected by the governor on the basis of recognized business ability~~]. At least one of those members must be a certified public accountant.

(d) A person may not be a public member of the finance commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in an industry regulated by a finance agency;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from a finance agency;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from a finance agency; or

(4) uses or receives a substantial amount of tangible goods, services, or money from a finance agency other than compensation or reimbursement authorized by law for finance commission membership, attendance, or expenses. [~~A member or employee of the finance commission may not be:~~

[~~(1) an officer, employee, or paid consultant of a trade association representing an industry regulated by the finance commission, the banking commissioner, the savings and loan commissioner, or the consumer credit commissioner;~~

[~~(2) a person required to register as a lobbyist under Chapter 305, Government Code, because of activities for a member of an industry described by Subdivision (1); or~~

[~~(3) related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a trade association representing an industry described by Subdivision (1).~~]

(e) For the purposes of this section:

(1) "Banking executive" means a person who:

(A) has had five years' or more executive experience in a bank during the seven-year period preceding the person's appointment; and

(B) [~~at the time of the person's appointment~~] is an officer of a state bank.

(2) "Savings executive" means a person who:

(A) has had five years' or more executive experience in a savings association or savings bank during the seven-year period preceding the person's appointment; and

(B) [~~at the time of the person's appointment~~] is an officer of a state savings association or savings bank.

(3) "Consumer credit executive" means a person who:

(A) has had five years' or more executive experience in an entity regulated by the consumer credit commissioner during the seven-year period preceding the person's appointment; and

(B) is an officer of an entity regulated by the consumer credit commissioner.

(4) "Mortgage broker" means a person who:

(A) has had five years' or more experience as a mortgage broker, as defined by Section 156.002, during the seven-year period preceding the person's appointment; and

(B) is a mortgage broker, as defined by Section 156.002.

SECTION 4. Subchapter B, Chapter 11, Finance Code, is amended by adding Section 11.1021 to read as follows:

Sec. 11.1021. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the finance commission if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by a finance agency; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by a finance agency.

(c) A person may not be a member of the finance commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of a finance agency.

SECTION 5. Section 11.103, Finance Code, is amended to read as follows:

Sec. 11.103. REMOVAL OF MEMBERS[~~; VACANCIES~~]. (a) It is a ground for removal from the finance commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 11.102;

(2) does not maintain during service on the finance commission the qualifications required by Section 11.102;

(3) is ineligible for membership under Section 11.102 or 11.1021;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled finance commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the finance commission.

(b) If the banking commissioner, savings and loan commissioner, or consumer credit commissioner has knowledge that a potential ground for removal exists, the banking commissioner, savings and loan commissioner, or consumer credit commissioner shall notify the presiding officer of the finance commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the banking commissioner, savings and loan commissioner, or consumer credit commissioner shall notify the next highest ranking officer of the finance commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(c) [~~(a) A ground for removal from the finance commission exists if a member:~~

[~~(1) did not have at the time of appointment the qualifications required by Section 11.102 for appointment to the finance commission;~~

[~~(2) does not maintain the qualifications required by Section 11.102 during service on the finance commission;~~

[~~(3) violates a prohibition established by Section 11.105;~~

[~~(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or~~

[~~(5) is absent from more than half of the regularly scheduled finance commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the finance commission.~~

[~~(b) The governor shall appoint a qualified person to fill any vacancy that occurs on the finance commission for the unexpired term.~~

[~~(c) The executive director of the finance commission shall notify the presiding officer of the finance commission of any potential ground for removal of which the executive director has knowledge. The presiding officer then shall notify the governor that a potential ground for removal exists.~~

[~~(d)~~] The validity of an action of the finance commission is not affected by the fact that it was taken when a ground for removal of a member of the finance commission existed.

SECTION 6. Section 11.108, Finance Code, is amended to read as follows:

Sec. 11.108. SUNSET PROVISION. The finance commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2013 [~~2001~~].

SECTION 7. Subchapter B, Chapter 11, Finance Code, is amended by adding Sections 11.109-11.112 to read as follows:

Sec. 11.109. STANDARDS OF CONDUCT. The presiding officer of the finance commission or the presiding officer's designee shall provide to members of the finance commission, as often as necessary, information regarding the requirements for office under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Sec. 11.110. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the finance commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the finance agencies and the finance commission;

(2) the programs operated by the finance agencies;

(3) the role and functions of the finance agencies;

(4) the rules of the finance commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the finance agencies;

(6) the results of the most recent formal audit of the finance agencies;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the finance commission or the Texas Ethics Commission.

(c) A person appointed to the finance commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 11.111. SEPARATION OF FUNCTIONS. The finance commission shall develop and implement policies that clearly separate the policymaking responsibilities of the finance commission and the management responsibilities

of the banking commissioner, savings and loan commissioner, and consumer credit commissioner and staff of the finance agencies.

Sec. 11.112. PUBLIC TESTIMONY. The finance commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the finance commission and to speak on any issue under the jurisdiction of the finance agencies.

SECTION 8. Section 11.202, Finance Code, is amended to read as follows:

Sec. 11.202. HEARINGS OFFICER AND AUDITOR. (a) The finance commission shall direct a finance agency to [~~may~~] employ [~~a hearings officer and~~] an internal auditor to provide services to and facilitate commission oversight and control over the finance agencies [~~Texas Department of Banking, Savings and Loan Department, and Office of Consumer Credit Commissioner~~].

(b) The Texas Department of Banking may employ a hearings officer to serve the finance agencies as determined by interagency agreement. For the purposes of Section 2003.021, Government Code, a hearings officer employed under this section is considered to be an employee of each agency for which hearing services are provided. The hearings officer's only duty is to preside over matters related to contested cases before a finance [~~the~~] agency or the finance commission.

SECTION 9. Section 11.203, Finance Code, is amended to read as follows:

Sec. 11.203. LIMITATION ON DIRECTION OF AUDITOR [~~STAFF~~]. The [~~executive director, hearings officer,~~] internal auditor reports to the finance commission and is[~~, and any other staff employed under this subchapter are~~] not subject to direction by the employing finance agency [~~Texas Department of Banking, Savings and Loan Department, or Office of Consumer Credit Commissioner~~].

SECTION 10. Section 11.204, Finance Code, is amended to read as follows:

Sec. 11.204. SHARING OF STAFF, EQUIPMENT, AND FACILITIES; ALLOCATION OF COSTS. (a) The finance commission shall use the [~~reduce administrative costs by sharing of support~~] staff, equipment, and facilities of [~~among~~] the finance agencies [~~Texas Department of Banking, Savings and Loan Department, and Office of Consumer Credit Commissioner~~] to the extent necessary to carry out the finance commission's duties. To reduce administrative costs, the finance agencies shall share staff, equipment, and facilities to the extent that the sharing contributes to cost efficiency without detracting from the staff expertise needed for individual areas of agency responsibility. [~~The finance commission may employ staff and purchase equipment and facilities to meet these objectives and pay for its activities from appropriations or as provided by Chapter 771, Government Code.~~]

(b) An interagency agreement [~~regarding shared staff~~] must provide that the cost of staff used by the finance commission, including the internal auditor, [~~each member of shared staff other than the executive director~~] is to be charged to the finance agencies [~~Texas Department of Banking, Savings and Loan Department, or Office of Consumer Credit Commissioner~~] in proportion to the amount of time devoted to each agency's business. All other costs of operation of the finance commission are [~~The cost of the executive director and the unallocated cost of operation of the finance commission is~~] to be shared by and

included in the budgets of the finance agencies [~~department, Savings and Loan Department, and Office of Consumer Credit Commissioner~~] in proportion to the amount of cash receipts of each of those agencies.

SECTION 11. Section 11.305, Finance Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) The finance commission shall assign the banking commissioner, savings and loan commissioner, or consumer credit commissioner to conduct research on:

(1) the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state; and

(2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

(b) The banking commissioner, savings and loan commissioner, or consumer credit commissioner [~~finance commission~~] may:

(1) apply for and receive public and private grants and gifts to conduct the research authorized by this section; and

(2) contract with public and private entities to carry out studies and analyses under this section.

(d) The Texas Department of Banking and the Savings and Loan Department shall jointly conduct a continuing review of the condition of the state banking system. The review must include a review of all available national and state economic forecasts and an analysis of changing banking practices and new banking legislation. Periodically the departments shall submit a report to the finance commission on the results of the review, including information relating to the condition of the state banking system at the time of the report and the predicted condition of that system in the future.

SECTION 12. Section 11.306, Finance Code, is amended to read as follows:

Sec. 11.306. MORTGAGE BROKER RULES [~~BROKERS~~]. The finance commission may adopt mortgage broker rules as provided by[~~:~~

[~~(1) review any action or rule adopted by the savings and loan commissioner under Chapter 156; and~~

[~~(2) direct the savings and loan commissioner to adopt, repeal, or amend any rule or other action the savings and loan commissioner may undertake under~~] Chapter 156.

SECTION 13. Subchapter D, Chapter 11, Finance Code, is amended by adding Section 11.307 to read as follows:

Sec. 11.307. RULES RELATING TO CONSUMER COMPLAINTS. (a) The finance commission shall adopt rules applicable to each entity regulated by the Texas Department of Banking or the Savings and Loan Department specifying the manner in which the entity provides consumers with information on how to file complaints with the appropriate agency.

(b) The finance commission shall adopt rules applicable to each entity regulated by a finance agency requiring the entity to include information on how to file complaints with the appropriate agency in each privacy notice that the entity is required to provide consumers under law, including Pub. L. No. 106-102.

SECTION 14. Section 12.101(a), Finance Code, is amended to read as follows:

(a) The banking commissioner is the chief executive officer of the Texas Department of Banking. The finance commission, by at least five affirmative votes, shall appoint the banking commissioner. The banking commissioner serves at the will of the finance commission[~~, is an employee of the finance commission,~~] and is subject to the finance commission's orders and directions.

SECTION 15. Section 13.002(a), Finance Code, is amended to read as follows:

(a) The savings and loan commissioner is the chief executive officer of the Savings and Loan Department. The finance commission, by at least five affirmative votes, shall appoint the savings and loan commissioner. The savings and loan commissioner serves at the will of the finance commission[~~, is an employee of the finance commission,~~] and is subject to the finance commission's orders and direction.

SECTION 16. Section 13.008(a), Finance Code, is amended to read as follows:

(a) The [~~savings and loan commissioner and the~~] finance commission shall establish reasonable and necessary fees for the administration of Subtitles B and C, Title 3, and for the support of the finance commission as provided by Subchapter C, Chapter 11.

SECTION 17. Section 14.051(b), Finance Code, is amended to read as follows:

(b) The commissioner:

(1) [~~is an employee of the finance commission;~~

[~~(2)~~] serves at the will of the commission; and

(2) [~~(3)~~] is subject to orders and directions of the commission.

SECTION 18. Section 14.107, Finance Code, is amended to read as follows:

Sec. 14.107. FEES. The finance commission [~~commissioner~~] shall establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, and Chapters 392 and 394 and under Chapters 38-41, Business & Commerce Code.

SECTION 19. Section 14.157, Finance Code, is amended to read as follows:

Sec. 14.157. RULES. The finance commission [~~commissioner~~] shall adopt rules governing the custody and use of information obtained under this subchapter.

SECTION 20. Section 14.206(b), Finance Code, is amended to read as follows:

(b) A witness required to attend a hearing before the commissioner shall receive for each day's attendance a fee and a travel and transportation allowance as authorized by law or a rule adopted by the finance commission [~~commissioner~~].

SECTION 21. Section 33.007(a), Finance Code, is amended to read as follows:

(a) If the banking commissioner believes that a person has violated or is about to violate this subchapter or a rule of the finance commission or order of the banking commissioner pertaining to this subchapter, the attorney general

on behalf of the banking commissioner may apply to a district court of Travis County for an order enjoining the violation and for other equitable relief the nature of the case requires.

SECTION 22. Section 61.007, Finance Code, is amended to read as follows:

Sec. 61.007. FEES. The [~~commissioner and~~] finance commission by rule shall:

(1) set the amount of fees the commissioner charges for:

(A) supervision and examination of associations;

(B) filing an application or other documents; and

(C) other services the commissioner performs; and

(2) specify the time and manner of payment of the fees.

SECTION 23. Section 62.001(b), Finance Code, is amended to read as follows:

(b) An application must contain:

(1) two copies of the association's articles of incorporation identifying:

(A) the name of the association;

(B) the location of the principal office; and

(C) the names and addresses of the initial directors;

(2) two copies of the association's bylaws;

(3) data sufficiently detailed and comprehensive to enable the commissioner to make a determination under Section 62.007, including statements, exhibits, and maps;

(4) other information relating to the association and its operation that the [~~commissioner and the~~] finance commission by rule requires [~~require~~]; and

(5) financial information about each applicant, incorporator, director, or shareholder that the finance commission by rule requires.

SECTION 24. Section 62.052(b), Finance Code, is amended to read as follows:

(b) The application must include information required by [~~the commissioner or by~~] rule of the [~~commissioner and the~~] finance commission.

SECTION 25. Section 62.152, Finance Code, is amended to read as follows:

Sec. 62.152. MINIMUM NET WORTH REQUIREMENT. An association shall meet minimum net worth requirements prescribed by rule of the [~~commissioner and the~~] finance commission.

SECTION 26. Section 62.553(c), Finance Code, is amended to read as follows:

(c) Unless the commissioner expressly waives a requirement of this subsection, the application must contain:

(1) the identity, personal history, business background and experience, and financial condition of each person by whom or on whose behalf the acquisition is to be made, including a description of:

(A) the managerial resources and future prospects of each acquiring party; and

(B) any material pending legal or administrative proceedings to which the person is a party;

(2) the terms of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the money or other consideration used or to be used in making the acquisition and, if any part of the money or other consideration has been or will be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with the parties;

(4) any plan or proposal of an acquiring party to liquidate the association, sell the association's assets, merge the association with another company, or make other major changes in the association's business or corporate structure or management;

(5) the terms of any offer, invitation, agreement, or arrangement under which a voting security will be acquired and any contract affecting that security or its financing after it is acquired;

(6) information establishing that the requirements under Section 62.555(b) are satisfied; and

(7) other information [~~the commissioner~~]:

(A) the finance commission by rule requires to be furnished in an application; or

(B) the commissioner orders to be included in a particular application.

SECTION 27. Section 62.560(a), Finance Code, is amended to read as follows:

(a) The attorney general on behalf of the commissioner may apply for equitable relief, including an order enjoining a violation, if the commissioner believes a person has violated or is about to violate this subchapter or a rule of the finance commission or order of the commissioner adopted under this subchapter.

SECTION 28. Section 64.001(a), Finance Code, is amended to read as follows:

(a) The [~~commissioner and the~~] finance commission shall adopt rules relating to the power of associations operating under this subtitle to make loans and investments.

SECTION 29. Section 64.083, Finance Code, is amended to read as follows:

Sec. 64.083. RULES. The [~~commissioner and the~~] finance commission shall adopt rules to implement this subchapter, including rules that define the categories of loans and investments described by Section 64.081.

SECTION 30. Section 65.009(c), Finance Code, is amended to read as follows:

(c) An association shall compute and pay interest and dividends according to rules of the [~~commissioner and the~~] finance commission.

SECTION 31. Section 66.002, Finance Code, is amended to read as follows:

Sec. 66.002. ADOPTION OF RULES. The [~~commissioner and the~~] finance commission may adopt rules relating to:

(1) the minimum amounts of capital stock and paid-in surplus required for incorporation as a capital stock association;

(2) the minimum amounts of savings liability and expense funds required for incorporation as a mutual association;

(3) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department under this subtitle;

(4) the books and records that an association is required to keep and the location at which the books and records are required to be maintained;

(5) the accounting principles and practices that an association is required to observe;

(6) the conditions under which records may be copied or reproduced for permanent storage before the original records are destroyed;

(7) the form, contents, and time of publication of statements of condition;

(8) the form and contents of annual reports and other reports that an association is required to prepare and publish or file;

(9) the manner in which assets, liabilities, and transactions in general are to be described when entered in the books of an association, so that the entry accurately describes the subject matter of the entry; and

(10) the conditions under which the commissioner may require an asset to be charged off or reserves established by transfer from surplus or paid-in capital because of the depreciation of or overstated value of the asset.

SECTION 32. Section 89.004, Finance Code, is amended to read as follows:

Sec. 89.004. INITIATION OF RULEMAKING BY ASSOCIATIONS. The finance commission [~~commissioner~~] shall initiate rulemaking proceedings if at least 20 percent of the associations petition the finance commission [~~commissioner~~] in writing requesting the adoption, amendment, or repeal of a rule.

SECTION 33. Section 91.002(20), Finance Code, is amended to read as follows:

(20) "Regulatory capital" means a common stockholders' equity, including retained earnings, noncumulative perpetual preferred stock and related earnings, minority interests in the equity accounts of fully consolidated subsidiaries, and other elements established by rules of the [~~commissioner and the~~] finance commission.

SECTION 34. Section 91.007, Finance Code, is amended to read as follows:

Sec. 91.007. FEES. The [~~commissioner and the~~] finance commission by rule shall:

(1) set the amount of fees the commissioner charges for:

(A) supervision and examination of savings banks;

(B) filing an application or other documents;

(C) conducting a hearing; and

(D) other services the commissioner performs; and

(2) specify the time and manner of payment of the fees.

SECTION 35. Section 92.051(b), Finance Code, is amended to read as follows:

(b) An application must contain:

(1) two copies of the savings bank's articles of incorporation identifying:

(A) the name of the savings bank;

(B) the location of the principal office; and

(C) the names and addresses of the initial directors;

(2) two copies of the savings bank's bylaws;

(3) data sufficiently detailed and comprehensive to enable the commissioner to make findings under Section 92.058, including statements, exhibits, and maps;

(4) other information relating to the savings bank and its operation that the [~~commissioner and the~~] finance commission by rule requires [~~require~~]; and

(5) financial information about each applicant, incorporator, director, officer, or shareholder that the [~~commissioner and the~~] finance commission by rule requires [~~require~~].

SECTION 36. Section 92.052(b), Finance Code, is amended to read as follows:

(b) Before approving the application of a capital stock savings bank, the commissioner shall require the savings bank to have an aggregate amount of capital in the form of stock and paid-in surplus the [~~commissioner and the~~] finance commission by rule specifies [~~specify~~].

SECTION 37. Section 92.053(b), Finance Code, is amended to read as follows:

(b) Before approving the articles of incorporation of a mutual savings bank, the commissioner shall require the savings bank to have subscriptions for an aggregate amount of deposit accounts and an expense fund in an aggregate amount the [~~commissioner and the~~] finance commission by rule establishes [~~establish~~] as necessary for the successful operation of a mutual savings bank.

SECTION 38. Section 92.054(a), Finance Code, is amended to read as follows:

(a) The [~~commissioner and the~~] finance commission by rule shall set the minimum initial capital of a savings bank in an amount not less than the greater of:

(1) the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation; or

(2) the amount required of a national bank.

SECTION 39. Section 92.057(a), Finance Code, is amended to read as follows:

(a) On the filing of a complete application to incorporate, as defined by rules adopted by the [~~commissioner and the~~] finance commission, the commissioner shall:

(1) issue public notice of the application; and

(2) give any interested person an opportunity to appear, present evidence, and be heard for or against the application.

SECTION 40. Sections 92.063(a) and (b), Finance Code, are amended to read as follows:

(a) Only with the prior approval of the commissioner given in accordance with rules of the [~~commissioner and the~~] finance commission may a savings bank:

(1) establish an office other than the principal office stated in the savings bank's articles of incorporation;

(2) move an office from its immediate vicinity; or

(3) change the savings bank's name.

(b) The commissioner may permit a savings bank to establish additional offices in this state or another state in accordance with rules of the [~~commissioner and the~~] finance commission.

SECTION 41. Section 92.102(b), Finance Code, is amended to read as follows:

(b) The application must include information required by the commissioner or by rule of the [~~commissioner and the~~] finance commission.

SECTION 42. Sections 92.155(a) and (b), Finance Code, are amended to read as follows:

(a) Except as the [~~commissioner and the~~] finance commission by rule provides [~~provide~~], a director or officer may not:

(1) receive directly or indirectly a commission on or benefit from a loan made by the savings bank;

(2) pay for services rendered to a borrower from the savings bank in connection with a loan;

(3) direct or require a borrower on a mortgage to negotiate an insurance policy on the mortgage property through a particular insurance company;

(4) attempt to divert to a particular insurance broker the business of borrowers from the savings bank;

(5) refuse to accept an insurance policy on the mortgaged property because the policy was not negotiated through a particular insurance broker;

(6) become an obligor, including an endorser, surety, or guarantor, on a loan made by the savings bank;

(7) borrow or use, individually or as agent or partner of another, directly or indirectly, money of the savings bank;

(8) become the owner of real property on which the savings bank holds a mortgage unless the loan is fully secured by:

(A) a first-lien mortgage on property that:

(i) is to be occupied as the director's or officer's primary residence; and

(ii) is specifically approved in writing by the board; or

(B) a deposit maintained by the officer or director with the savings bank; or

(9) engage in any other activity [~~the commissioner and~~] the finance commission by rule prohibits [~~prohibit~~].

(b) Except as the [~~commissioner and the~~] finance commission by rule provides [~~provide~~], a savings bank may not make a loan to a corporation in which:

(1) a director or officer of the savings bank holds stock, options, or warrants to purchase stock in the amount of five percent or more of the outstanding stock; or

(2) the directors of the savings bank together hold stock, options, or warrants to purchase stock in the amount of five percent or more of the outstanding stock.

SECTION 43. Section 92.201, Finance Code, is amended to read as follows:

Sec. 92.201. BOOKS AND RECORDS. A savings bank shall maintain its books and records according to generally accepted accounting principles and to rules adopted by the [~~commissioner and the~~] finance commission.

SECTION 44. Section 92.202, Finance Code, is amended to read as follows:

Sec. 92.202. LIQUIDITY. Unless approved in advance by the commissioner, a savings bank shall maintain an amount equal to at least 10 percent of its average daily deposits for the most recently completed calendar quarter in:

(1) cash;

(2) balances in a federal reserve bank or passed through a federal home loan bank or another depository institution to a federal reserve bank under the Federal Reserve Act (12 U.S.C. Section 221 et seq.); or

(3) other readily marketable investments, including unencumbered federal government sponsored enterprises securities, as allowed by rules adopted by the [~~commissioner and the~~] finance commission.

SECTION 45. Section 92.203, Finance Code, is amended to read as follows:

Sec. 92.203. REGULATORY CAPITAL. A savings bank shall maintain regulatory capital in the amount prescribed by rule of the [~~commissioner and the~~] finance commission. The amount may not be less than the amount of regulatory capital required for a corresponding national bank.

SECTION 46. Section 92.209(d), Finance Code, is amended to read as follows:

(d) The extent to which preferred stock may be included as regulatory capital of a savings bank is subject to the rules adopted by the [~~commissioner and the~~] finance commission.

SECTION 47. Section 92.303(b), Finance Code, is amended to read as follows:

(b) After the examination, the commissioner shall approve the conversion without a hearing if the commissioner determines that the converting financial institution is in sound condition and meets all requirements of Subchapter B and relevant rules of the [~~commissioner and the~~] finance commission.

SECTION 48. Section 92.553(c), Finance Code, is amended to read as follows:

(c) Unless the commissioner expressly waives a requirement of this subsection, the application must contain:

(1) the identity, history, business background and experience, and financial condition of each person by whom or on whose behalf the acquisition is to be made, including a description of:

(A) the managerial resources and future prospects of each acquiring party; and

(B) any material pending legal or administrative proceedings to which the applicant is a party;

(2) the terms of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the money or other consideration used or to be used in making the acquisition and, if any part of the money or other consideration was or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with those parties;

(4) any plan or proposal of an acquiring party to liquidate the savings bank, sell the savings bank's assets, merge the savings bank with another company, or make other major changes in the savings bank's business, corporate structure, or management;

(5) the terms of any offer, invitation, agreement, or arrangement under which a voting security of the savings bank will be acquired and any contract affecting that security or its financing after it is acquired;

(6) information establishing that the requirements under Section 92.556(a) are satisfied; and

(7) other information that [~~the commissioner~~]:

(A) the finance commission by rule requires; or

(B) the commissioner orders to be included in a particular application.

SECTION 49. Section 92.560(a), Finance Code, is amended to read as follows:

(a) The attorney general on behalf of the commissioner may apply for equitable relief as the case may require, including an order prohibiting the violation, if it appears to the commissioner that a person has violated or is about to violate this subchapter or a rule of the finance commission or order of the commissioner adopted under this subchapter.

SECTION 50. Section 93.001(c), Finance Code, is amended to read as follows:

(c) A savings bank may:

(1) sue and be sued in its corporate name;

(2) adopt and operate a reasonable bonus plan, profit-sharing plan, stock bonus plan, stock option plan, pension plan, or similar incentive plan for its directors, officers, or employees, subject to any limitations under this subtitle or rules adopted under this subtitle;

(3) make reasonable donations for the public welfare or for a charitable, scientific, religious, or educational purpose;

(4) pledge its assets to secure deposits of public money of the United States, if required by the United States, including revenue and money the deposit of which is subject to control or regulation of the United States;

(5) pledge its assets to secure deposits of public money of any state or of a political corporation or political subdivision of any state;

(6) become a member of or deal with any corporation or agency of the United States or this state, to the extent that the corporation or agency assists in furthering the purposes or powers of savings banks, and for that purpose may purchase stock or securities of the corporation or agency or deposit money with the corporation or agency and may comply with any other condition of membership credit;

(7) become a member of a federal home loan bank or the Federal Reserve System;

(8) hold title to any assets acquired because of the collection or liquidation of a loan, investment, or discount and may administer those assets as necessary;

(9) receive and repay any deposit or account in accordance with this subtitle and rules of the finance commission [~~and the commissioner~~]; and

(10) lend and invest its money as authorized by this subtitle and rules of the finance commission [~~and the commissioner~~].

SECTION 51. Section 93.004, Finance Code, is amended to read as follows:

Sec. 93.004. POWER TO BORROW. (a) A savings bank may borrow and give security, subject to rules adopted by the finance commission [~~and the commissioner~~].

(b) A savings bank at any time through action of its board may issue a capital note, debenture, or other capital obligation authorized by rules adopted by the finance commission [~~and the commissioner~~].

SECTION 52. Section 93.008, Finance Code, is amended to read as follows:

Sec. 93.008. POWERS RELATIVE TO OTHER FINANCIAL INSTITUTIONS. Subject to limitations prescribed by rule of the finance commission [~~and the commissioner~~], a savings bank may make a loan or investment or engage in an activity permitted:

(1) under state law for a bank or savings and loan association; or

(2) under federal law for a federal savings and loan association, savings bank, or national bank if the financial institution's principal office is located in this state.

SECTION 53. Section 94.001(a), Finance Code, is amended to read as follows:

(a) The [~~commissioner and the~~] finance commission by rule may limit loans to one borrower. Those limits may not be less restrictive than the limits imposed on savings associations under Section 5(u), Home Owners' Loan Act (12 U.S.C. Section 1464(u)).

SECTION 54. Section 94.002(a), Finance Code, is amended to read as follows:

(a) Subject to rules adopted by the [~~commissioner and the~~] finance commission, a savings bank may lend or invest not more than 40 percent of the savings bank's total assets in commercial loans.

SECTION 55. Section 94.203, Finance Code, is amended to read as follows:

Sec. 94.203. RULES. The [~~commissioner and the~~] finance commission shall adopt rules to implement this subchapter, including rules that define the categories of loans and investments described by Section 94.201.

SECTION 56. Section 94.251(a), Finance Code, is amended to read as follows:

(a) A savings bank or a subsidiary may not invest in an equity security unless the security qualifies as an investment grade security under rules adopted by the [~~commissioner and the~~] finance commission.

SECTION 57. Section 94.253, Finance Code, is amended to read as follows:

Sec. 94.253. RULES. The [~~commissioner and the~~] finance commission may adopt rules necessary to implement this subchapter, including rules relating to eligible investment criteria, investment diversification, and resource management requirements.

SECTION 58. Section 94.301, Finance Code, is amended to read as follows:

Sec. 94.301. AUTHORIZATION. With the prior consent of the commissioner and subject to rules adopted by the [~~commissioner and the~~] finance commission, a savings bank may invest in a subsidiary corporation created under general corporation law.

SECTION 59. Section 94.304, Finance Code, is amended to read as follows:

Sec. 94.304. RULES. The [~~commissioner and the~~] finance commission shall adopt rules on permitted activities of a subsidiary corporation in which a savings bank invests under Section 94.301.

SECTION 60. Section 95.007(b), Finance Code, is amended to read as follows:

(b) A savings bank shall compute and pay interest and dividends according to rules adopted by the [~~commissioner and the~~] finance commission.

SECTION 61. Section 96.002(a), Finance Code, is amended to read as follows:

(a) The [~~commissioner and the~~] finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, including rules relating to:

(1) the minimum amounts of capital required to incorporate and operate as a savings bank, which may not be less than the amounts required of corresponding national banks;

(2) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department under this subtitle;

(3) the books and records that a savings bank is required to keep and the location at which the books and records are required to be maintained;

(4) the accounting principles and practices that a savings bank is required to observe;

(5) the conditions under which records may be copied or reproduced for permanent storage before the originals are destroyed;

(6) the form, content, and time of publication of statements of condition;

(7) the form and content of annual reports and other reports that a savings bank is required to prepare and publish or file;

(8) the manner in which assets, liabilities, and transactions in general are to be described when entered in the books of a savings bank, so that the entry accurately describes the subject matter of the entry;

(9) the conditions under which the commissioner may require an asset to be charged off or reserves established by transfer from surplus or paid-in capital because of depreciation of or overstated value of the asset;

(10) the change of control of a savings bank;

(11) the conduct, management, and operation of a savings bank;

(12) the withdrawable accounts, bonuses, plans, and contracts for savings programs;

(13) the merger, consolidation, reorganization, conversion, and liquidation of a savings bank;

(14) the establishment of an additional office or the change of office location or name of a savings bank;

(15) the requirements for a savings bank's holding companies, including those relating to:

(A) registration and periodic reporting of a holding company with the commissioner; and

(B) transactions between a holding company, an affiliate of a holding company, or a savings bank; and

(16) the powers of a savings bank to make loans and investments that contain provisions reasonably necessary to ensure that a loan made by a savings bank is consistent with sound lending practices and that the savings bank's investment will promote the purposes of this subtitle, including provisions governing:

(A) the type of loans and the conditions under which a savings bank may originate, make, or sell loans;

(B) the conditions under which a savings bank may purchase or participate in a loan made by another lender;

(C) the conditions for the servicing of a loan for another lender;

(D) the conditions under which a savings bank may lend money on the security of a loan made by another person;

(E) the conditions under which a savings bank may pledge loans held by it as collateral for borrowing by the savings bank;

(F) the conditions under which a savings bank may invest in securities and debt instruments;

(G) the documentation that a savings bank must have in its files at the time of funding or purchase of a loan, an investment, or a participation in a loan;

(H) the form and content of statements of expenses and fees and other charges that are paid by a borrower or that a borrower is obligated to pay;

(I) the title information that must be maintained;

(J) the borrower's insurance coverage of property securing a loan;

(K) an appraisal report;

(L) the financial statement of a borrower;

(M) the fees or other compensation that may be paid to a person in connection with obtaining a loan for a savings bank, including an officer, director, employee, affiliated person, consultant, or third party;

(N) the conditions under which the savings bank may advance money to pay a tax, assessment, insurance premium, or other similar charge for the protection of the savings bank's interest in property securing the savings bank's loans;

(O) the terms under which a savings bank may acquire and deal in real property;

(P) the valuation on a savings bank's books of real property held by the savings bank;

(Q) the terms governing the investment by a savings bank in a subsidiary, the powers that may be exercised by a subsidiary, and the activities that may be engaged in by a subsidiary; and

(R) any other matter considered necessary to administer each type of transaction.

SECTION 62. Section 96.051(c), Finance Code, is amended to read as follows:

(c) The [~~commissioner and the~~] finance commission may adopt rules as necessary to implement this section.

SECTION 63. Section 97.001, Finance Code, is amended to read as follows:

Sec. 97.001. RULES. (a) The [~~commissioner and the~~] finance commission shall adopt rules:

(1) providing for the registration of and reporting by holding companies;

(2) setting limitations on the activities and investments of holding companies; and

(3) concerning other matters as appropriate under this chapter.

(b) The [~~commissioner and the~~] finance commission may adopt rules governing transactions between a subsidiary savings bank of a holding company and an affiliate of the subsidiary.

SECTION 64. Section 119.006, Finance Code, is amended to read as follows:

Sec. 119.006. INITIATION OF RULEMAKING BY SAVINGS BANKS. The finance commission [~~commissioner~~] shall initiate rulemaking proceedings under Chapter 2001, Government Code, if at least 20 percent of the savings banks petition the finance commission [~~commissioner~~] in writing requesting the adoption, amendment, or repeal of a rule.

SECTION 65. Section 152.102(b), Finance Code, is amended to read as follows:

(b) The commission [~~commissioner~~] may adopt and enforce reasonable rules to prevent unsafe and unsound practices with respect to a permissible investment required by this chapter.

SECTION 66. Section 152.103, Finance Code, is amended to read as follows:

Sec. 152.103. EXCEPTIONS TO REQUIREMENTS. The commission [~~commissioner~~] by rule may exempt a person from this chapter or reduce a requirement of Section 152.102(b), 152.104, 152.205, 152.206, 152.207, 152.208(a), 152.209, 152.304(b), 152.305, 152.403, 152.503, or 152.504 if:

(1) the person does not engage in the business of selling checks to the public and the sale of checks by the person is:

(A) ancillary to the person's business; and

(B) limited to commercial contracts in interstate commerce; and

(2) the commission [~~commissioner~~] determines that the exemption or reduced requirement is in the public interest.

SECTION 67. Section 152.202(b), Finance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a)(5), a person who meets the requirements of that subsection is subject to:

(1) any other provision of this chapter to the extent the person engages in the business of selling checks; and

(2) rules adopted by the commission [~~commissioner~~] to administer and carry out that subsection, including rules to:

(A) define a term used in that subsection; and

(B) establish limits or requirements on the bonding and net worth of the person and the person's activities relating to the sale of checks other than those specified by that subsection.

SECTION 68. Section 153.110(c), Finance Code, is amended to read as follows:

(c) The commission [~~commissioner~~] may adopt rules to implement this section.

SECTION 69. Section 153.117(a), Finance Code, as amended by Chapters 62, 344, and 356, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

(a) The following persons are not required to be licensed under this chapter:

(1) a federally insured financial institution, as that term is defined by Section 201.101 [~~as that term is defined by state law governing bank holding companies and interstate bank operations~~], that is organized under the laws of this state, another state, or the United States;

(2) a foreign bank branch or agency in the United States established under the federal International Banking Act of 1978 (12 U.S.C. Section 3101 et seq.), as amended;

(3) [~~(2)~~] a license holder under Chapter 152, except that the license holder is required to comply with the other provisions of this chapter to the extent the license holder engages in currency exchange, transportation, or transmission transactions;

(4) a person registered as a securities dealer under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(5) an attorney or title company that in connection with a real property transaction receives and disburses only domestic currency on behalf of a party to the transaction;

(6) a Federal Reserve bank;

(7) a clearinghouse exercising bank payment, collection, and clearing functions; or

(8) another person that the commission [~~commissioner~~] may exempt by rule if the commission [~~commissioner~~] finds that the licensing of the person is not necessary or appropriate to achieve the objectives of this chapter.

SECTION 70. Section 153.205(b), Finance Code, is amended to read as follows:

(b) The commission [~~commissioner~~] by rule may establish requirements regarding content and the size and type of lettering used in an advertisement for prices or rates.

SECTION 71. Section 153.303(a), Finance Code, is amended to read as follows:

(a) The commission [~~commissioner~~] shall set the license application fees, license fees, license renewal fees, and examination fees in amounts that are reasonable and necessary to defray the cost of administering this chapter.

SECTION 72. Section 154.002, Finance Code, is amended to read as follows:

Sec. 154.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Finance Commission of Texas.

(2) "Commissioner" means the banking commissioner of Texas.

(3) [~~(2)~~] "Department" means the Texas Department of Banking.

(4) [~~(3)~~] "Earnings" means the amount in an account in excess of the amount paid by the purchaser of a prepaid funeral benefits contract that is deposited in the account as provided by Section 154.253, including accrued interest, accrued income, and enhanced or increased value.

(5) [~~(4)~~] "Financial institution" has the meaning assigned by Section 201.101.

(6) [~~(5)~~] "Funeral provider" means the funeral home designated in a prepaid funeral benefits contract that has agreed to provide the specified prepaid funeral benefits.

(7) [~~(6)~~] "Insurance policy" means a life insurance policy or annuity contract.

(8) [~~(7)~~] "Person" means an individual, firm, partnership, corporation, or association.

(9) [~~(8)~~] "Prepaid funeral benefits" means prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for a funeral service or funeral merchandise to which this chapter applies.

(10) [~~(9)~~] "Seller" means a person selling, accepting money or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid funeral benefits in this state.

(11) [~~(10)~~] "Crypt," "grave," "lawn crypt," "niche," and "plot" have the meanings assigned by Section 711.001, Health and Safety Code.

(12) [~~(11)~~] "Funeral merchandise" or "merchandise" means goods sold or offered for sale on a preneed basis directly to the public for use in connection with funeral services.

(13) [~~(12)~~] "Funeral service" or "service" means a service sold or offered for sale on a preneed basis that may be used to:

(A) care for and prepare a deceased human body for burial, cremation, or other final disposition; and

(B) arrange, supervise, or conduct a funeral ceremony or the final disposition of a deceased human body.

SECTION 73. Section 154.051(b), Finance Code, is amended to read as follows:

(b) The commission [~~department~~] may adopt reasonable rules concerning:

(1) fees to defray the cost of administering this chapter;

(2) the keeping and inspection of records relating to the sale of prepaid funeral benefits;

(3) the filing of contracts and reports;

(4) changes in the management or control of an organization; and

(5) any other matter relating to the enforcement and administration of this chapter.

SECTION 74. Section 154.054(a), Finance Code, is amended to read as follows:

(a) For each examination conducted under Section 154.053, the commissioner or the commissioner's agent shall impose on the seller a fee in an amount set by the commission [~~department~~] under Section 154.051 and based on the seller's total outstanding contracts.

SECTION 75. Section 154.102, Finance Code, is amended to read as follows:

Sec. 154.102. PERMIT APPLICATION; FEE. To obtain a permit to sell or continue to sell prepaid funeral benefits, a person must:

(1) file an application for a permit with the department on a form prescribed by the department;

(2) pay a filing fee in an amount set by the commission [~~department~~] under Section 154.051; and

(3) if applicable, pay extraordinary expenses required for out-of-state investigation of the person.

SECTION 76. Section 154.104(b), Finance Code, is amended to read as follows:

(b) The commission [~~department~~] by rule may adopt a system under which permits expire on various dates during the year.

SECTION 77. Section 154.108, Finance Code, is amended to read as follows:

Sec. 154.108. RENEWAL FEE. The commission [~~department~~] shall set the renewal fee under Section 154.051.

SECTION 78. Section 154.109(a), Finance Code, is amended to read as follows:

(a) The commissioner by order may cancel or suspend a permit if the commissioner finds, by examination or other credible evidence, that the permit holder:

(1) violated this chapter or another law of this state relating to the sale of prepaid funeral benefits, including a final order of the commissioner or rule of the commission [~~commissioner or department~~];

(2) misrepresented or concealed a material fact in the permit application; or

(3) obtained, or attempted to obtain, the permit by misrepresentation, concealment, or fraud.

SECTION 79. Section 154.111(a), Finance Code, is amended to read as follows:

(a) The commission [~~department~~] shall adopt rules governing the selection of a successor permit holder.

SECTION 80. Section 154.351, Finance Code, is amended to read as follows:

Sec. 154.351. MAINTENANCE OF GUARANTY FUND. The commission [~~department~~] by rule shall establish and the department shall maintain a fund to guarantee performance by sellers of prepaid funeral benefits contracts of their obligations to the purchasers under the provisions of this chapter governing prepaid funeral trusts.

SECTION 81. Section 154.356(b), Finance Code, is amended to read as follows:

(b) The assessments shall be deposited in the fund and administered by the department and the advisory council in accordance with commission [~~department~~] rules.

SECTION 82. Section 154.406(a), Finance Code, is amended to read as follows:

(a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the commission [~~commissioner or department~~]; and

(2) does not correct the violation before the 31st day after the date the person receives written notice of the violation from the department.

SECTION 83. Section 154.407, Finance Code, is amended to read as follows:

Sec. 154.407. INJUNCTIVE RELIEF. The commissioner may sue in a district court in Travis County to enjoin a violation or threatened violation of:

(1) this chapter; or

(2) a final order of the commissioner or rule of the commission [~~commissioner or the department~~].

SECTION 84. Section 154.408(a), Finance Code, is amended to read as follows:

(a) The commissioner may issue a cease and desist order to a person if the commissioner finds by examination or other credible evidence that the person has violated a law of this state relating to the sale of prepaid funeral benefits, including a violation of this chapter or a final order of the commissioner or rule of the commission [~~commissioner or the department~~].

SECTION 85. Section 156.004, Finance Code, is amended to read as follows:

Sec. 156.004. DISCLOSURE TO APPLICANT. At the time an applicant submits an application to a mortgage broker, the mortgage broker shall provide to the applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated. The finance commission [~~commissioner~~], by rule, shall promulgate a standard disclosure form to be used by the mortgage broker.

SECTION 86. Section 156.102, Finance Code, is amended to read as follows:

Sec. 156.102. RULEMAKING AUTHORITY. (a) The finance commission [~~Subject to review and compliance with the directives of the finance commission as provided by Section 11.306, the commissioner~~] may adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter.

(b) The finance commission [~~commissioner~~] may adopt rules to prohibit false, misleading, or deceptive practices by mortgage brokers and loan officers but may not adopt any other rules restricting competitive bidding or advertising by mortgage brokers or loan officers. When adopting rules under this subsection, the finance commission [~~commissioner~~] may not restrict:

(1) the use of any medium for an advertisement;

(2) the personal appearance of or voice of a person in an advertisement;

(3) the size or duration of an advertisement; or

(4) a mortgage broker's or loan officer's advertisement under a trade name.

(c) The finance commission [~~commissioner~~] may adopt rules regarding books and records that a person licensed under this chapter is required to keep, including the location at which the books and records must be kept.

(d) The finance commission [~~commissioner~~] shall consult with the mortgage broker advisory committee when proposing and adopting rules under this chapter.

SECTION 87. Section 156.104(h), Finance Code, is amended to read as follows:

(h) In addition to other powers and duties delegated to it by the commissioner, the advisory committee shall advise the finance commission and commissioner with respect to:

(1) the proposal and adoption of rules relating to:

(A) the licensing of mortgage brokers and loan officers;

(B) the education and experience requirements for licensing mortgage brokers and loan officers;

(C) conduct and ethics of mortgage brokers and loan officers;

(D) continuing education for licensed mortgage brokers and loan officers and the types of courses acceptable as continuing education courses under this chapter; and

(E) the granting or denying of an application or request for renewal for a mortgage broker license or loan officer license;

(2) the form of or format for any applications or other documents under this chapter; and

(3) the interpretation, implementation, and enforcement of this chapter.

SECTION 88. Section 156.206(b), Finance Code, is amended to read as follows:

(b) The commissioner shall obtain criminal history record information on an applicant that is maintained by the Department of Public Safety. By rule, the finance commission [~~commissioner~~] may require applicants to submit information and fingerprints necessary for the commissioner to obtain criminal background information from the Federal Bureau of Investigation. The commissioner may also obtain criminal history record information from any court or any local, state, or national governmental agency.

SECTION 89. Section 156.207(c), Finance Code, is amended to read as follows:

(c) In accordance with any rules adopted by the finance commission under this subsection, the commissioner may issue a provisional license to an

applicant if a significant delay is necessary to process the application, review information related to the application, or obtain information related to the application. The commissioner may revoke a provisional license issued under this subsection on a ground listed under Section 156.303 or on any ground that the commissioner could have denied issuance of the license on the application.

SECTION 90. Sections 156.208(a), (b), (f), and (g), Finance Code, are amended to read as follows:

(a) A mortgage broker license issued under this chapter is valid for two years and may be renewed on or before its expiration date if the mortgage broker:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed $375 and a recovery fund fee provided by Section 156.502;

(2) has not been convicted of a felony the commissioner determines is directly related to the occupation of a mortgage broker under Article 6252-13c, Revised Statutes; and

(3) provides the commissioner with satisfactory evidence that the mortgage broker:

(A) has attended, during the term of the current license, 15 hours of continuing education courses that the commissioner, in accordance with the rules adopted by the finance commission under this section, has approved as continuing education courses; or

(B) maintains an active license in this state as:

(i) a real estate broker;

(ii) a real estate salesperson;

(iii) an attorney; or

(iv) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or an equivalent license under Chapter 21, Insurance Code.

(b) A loan officer license issued under this chapter is valid for two years and may be renewed on or before its expiration date if the loan officer:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed $175 and a recovery fund fee provided by Section 156.502;

(2) has not been convicted of a felony the commissioner determines is directly related to the occupation of a loan officer under Article 6252-13c, Revised Statutes; and

(3) provides the commissioner with satisfactory evidence that the loan officer:

(A) has attended, during the term of the current license, 15 hours of continuing education courses that the commissioner, in accordance with the rules adopted by the finance commission under this section, has approved as continuing education courses, including courses provided by or through the licensed mortgage broker with whom the loan officer is associated after submission to and approval by the commission; or

(B) maintains an active license in this state as:

(i) a real estate broker;

(ii) a real estate salesperson;

(iii) an attorney; or

(iv) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or an equivalent license under Chapter 21, Insurance Code.

(f) The finance commission [~~commissioner~~] by rule may adopt a system under which licenses expire on a date or dates other than December 31. If a system is adopted under this subsection, dates relating to expiration and issuance of licenses shall be adjusted accordingly. For the biennium in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(g) The finance commission [~~commissioner~~] shall adopt rules related to the approval of courses for continuing education credit under this section that provide for the acceptance of continuing education courses that are related to finance, financial consulting, lending, real estate contracts, discrimination laws, deceptive trade practices, real property conveyances, and other topics that are relevant to mortgage brokers and that are acceptable as continuing education courses to other professional licensing agencies.

SECTION 91. Section 156.210, Finance Code, is amended to read as follows:

Sec. 156.210. PROBATIONARY LICENSE. The commissioner may issue a probationary license. The finance commission [~~commissioner~~] by rule shall adopt reasonable terms and conditions for a probationary license.

SECTION 92. Section 156.303(a), Finance Code, is amended to read as follows:

(a) The commissioner may order disciplinary action against a licensed mortgage broker or a licensed loan officer when the commissioner, after a hearing, has determined that the person:

(1) obtained a license under this chapter through a false or fraudulent representation or made a material misrepresentation in an application for a license under this chapter;

(2) published or caused to be published an advertisement related to the business of a mortgage broker or loan officer that:

(A) is misleading;

(B) is likely to deceive the public;

(C) in any manner tends to create a misleading impression;

(D) fails to identify as a mortgage broker or loan officer the person causing the advertisement to be published; or

(E) violates federal or state law;

(3) while performing an act for which a license under this chapter is required, engaged in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) failed to notify the commissioner not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud;

(5) failed to use a fee collected in advance of closing of a mortgage loan for a purpose for which the fee was paid;

(6) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a mortgage loan before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds of the mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304;

(7) failed within a reasonable time to honor a check issued to the commissioner after the commissioner has mailed a request for payment by certified mail to the person's last known business address as reflected by the commissioner's records;

(8) paid compensation to a person who is not licensed or exempt under this chapter for acts for which a license under this chapter is required;

(9) induced or attempted to induce a party to a contract to breach the contract so the person may make a mortgage loan;

(10) published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the person's actions or services as a mortgage broker or loan officer, as applicable;

(11) established an association, by employment or otherwise, with a person not licensed or exempt under this chapter who was expected or required to act as a mortgage broker or loan officer;

(12) aided, abetted, or conspired with a person to circumvent the requirements of this chapter;

(13) acted in the dual capacity of a mortgage broker or loan officer and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law;

(14) discriminated against a prospective borrower on the basis of race, color, religion, sex, national origin, ancestry, familial status, or a disability;

(15) failed or refused on demand to:

(A) produce a document, book, or record concerning a mortgage loan transaction conducted by the mortgage broker or loan officer for inspection by the commissioner or the commissioner's authorized personnel or representative;

(B) give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the person's business kept by an officer, agent, or employee of the person or any business entity through which the person conducts mortgage brokerage activities, including a subsidiary or holding company affiliate; or

(C) provide information requested by the commissioner as a result of a formal or informal complaint made to the commissioner;

(16) failed without just cause to surrender, on demand, a copy of a document or other instrument coming into the person's possession that was provided to the person by another person making the demand or that the person making the demand is under law entitled to receive; or

(17) disregarded or violated this chapter or a rule adopted by the finance commission [~~commissioner~~] under this chapter.

SECTION 93. Section 156.506(d), Finance Code, is amended to read as follows:

(d) This section does not limit the authority of the commissioner to take disciplinary action against a mortgage broker or loan officer for a violation of this chapter or the rules adopted by the finance commission [~~commissioner~~] under this chapter. The repayment in full to the fund of all obligations of a mortgage broker or loan officer does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

SECTION 94. Section 202.005(a), Finance Code, is amended to read as follows:

(a) The commissioner may:

(1) examine a bank holding company that controls a Texas bank to the same extent as if the bank holding company were a Texas state bank; and

(2) bring an enforcement proceeding under Chapter 35 against a bank holding company that violates or participates in a violation of this subtitle, an agreement filed with the commissioner under this chapter, or a rule adopted by the finance commission or order issued by the commissioner [~~or the finance commission~~] under this subtitle, as if the bank holding company were a Texas state bank.

SECTION 95. Section 273.204, Finance Code, is amended to read as follows:

Sec. 273.204. CONDITIONS UNDER WHICH CORPORATION MAY EXERCISE POWERS AND DUTIES. The corporation may not exercise a power or perform a duty under Section 273.203 or 273.205 or Subchapter E until the Office of Thrift Supervision and the Federal Deposit Insurance Corporation have:

(1) officially recognized that the corporation in exercising that power or performing that duty will reduce and minimize the liability of the Federal Deposit Insurance Corporation; and

(2) taken any necessary action to permit member associations to use without restraint all of the operational power the member associations have under the laws of this state, including rules of the Finance Commission of Texas [~~Savings and Loan Department~~].

SECTION 96. Section 345.351(b), Finance Code, is amended to read as follows:

(b) The finance commission [~~commissioner~~] by rule may establish procedures to facilitate the registration and collection of fees under this section, including rules staggering throughout the year the dates on which fees are due.

SECTION 97. Section 347.451(b), Finance Code, is amended to read as follows:

(b) The finance commission [~~commissioner~~] by rule may establish procedures to facilitate the registration and collection of fees under this section, including rules staggering the due dates of the fees throughout the year.

SECTION 98. Section 348.401(b), Finance Code, is amended to read as follows:

(b) The finance commission [~~commissioner~~] by rule may establish procedures to facilitate the registration and collection of fees under this section, including rules staggering throughout the year the dates on which fees are due.

SECTION 99. Sections 371.006(a) and (d), Finance Code, are amended to read as follows:

(a) The Finance Commission of Texas [~~commissioner~~] may adopt rules to enforce this chapter.

(d) On application by any person and on payment of any associated cost, the commissioner shall furnish the person a certified copy of a rule adopted by the Finance Commission of Texas [~~commissioner~~].

SECTION 100. Section 371.007(a), Finance Code, is amended to read as follows:

(a) The Finance Commission of Texas [~~commissioner~~] by rule may adopt a system under which licenses issued under this chapter expire on various dates during the year.

SECTION 101. Section 371.181(b), Finance Code, is amended to read as follows:

(b) The Finance Commission of Texas [~~commissioner~~] shall adopt rules that allow:

(1) a consumer who has filed an offense report with a local law enforcement agency to request that a pawnbroker search the records of the pawnshop; and

(2) the pawnbroker to assist the consumer and the local law enforcement agency in locating and recovering stolen property.

SECTION 102. Section 371.183, Finance Code, is amended to read as follows:

Sec. 371.183. CONSUMER INFORMATION. The Finance Commission of Texas [~~commissioner~~] by rule may require a pawnshop to display, in an area in the pawnshop accessible to a consumer, materials provided by the commissioner that are designed to:

(1) inform a consumer of the duties, rights, and responsibilities of parties to a transaction regulated by the commissioner; and

(2) inform and assist a robbery, burglary, or theft victim.

SECTION 103. Section 11.201, Finance Code, is repealed.

SECTION 104. (a) The Finance Commission of Texas and the Department of Information Resources shall create and direct a committee consisting of representatives of the pawnbroker industry, law enforcement, and the computer software industry to devise one or more standard formats for pawnbrokers to electronically provide reportable data to law enforcement agencies. The committee shall also consider all privacy issues related to reporting such data to ensure the protection of the financial information of the individuals who use the services of the pawnbroker industry.

(b) The committee shall report its findings and recommendations to the Texas Legislature not later than June 30, 2002.

SECTION 105. A rule adopted by the Texas Department of Banking, the Banking Commissioner of Texas, the Savings and Loan Commissioner, or the Consumer Credit Commissioner that is in effect on the effective date of this Act and that is not inconsistent with this Act remains in effect as a rule or regulation of the Finance Commission of Texas until superseded by action of the finance commission.

SECTION 106. The changes made by this Act in the prohibitions and qualifications applying to members of the Finance Commission of Texas do not affect the entitlement of a member serving on the commission immediately before the effective date of this Act to continue to serve and function as a

member of the finance commission for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act. This Act does not prohibit a person who is a member of the finance commission on the effective date of this Act from being reappointed to the finance commission if the person has the qualifications required for a member under Chapter 11, Finance Code, as amended by this Act.

SECTION 107. This Act takes effect September 1, 2001.

Representative McCall moved to adopt the conference committee report on **HB 1763**.

The motion prevailed.

HB 2912 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bosse submitted the following conference committee report on **HB 2912**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2912** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris	Bosse
Armbrister	Chisum
Bernsen	Counts
Brown	Dukes
Sibley	Puente
On the part of the Senate	On the part of the House

CSHB 2912, A bill to be entitled An Act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties.

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

ARTICLE 1. ADMINISTRATION AND POLICY

SECTION 1.01. Section 5.013, Water Code, is amended by adding Subsection (c) to read as follows:

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

SECTION 1.02. Section 5.014, Water Code, is amended to read as follows:

Sec. 5.014. SUNSET PROVISION. The Texas Natural Resource Conservation Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2013 [~~2001~~].

SECTION 1.03. Section 5.052(c), Water Code, is amended to read as follows:

(c) Appointments to the commission shall be made without regard to the race, color, disability [~~handicap~~], sex, religion, age, or national origin of the appointees.

SECTION 1.04. Section 5.053(a), Water Code, is amended to read as follows:

(a) A person may not be a member of [~~is not eligible to serve on~~] the commission if the person or the person's spouse:

(1) is registered, certified, licensed, permitted, or otherwise authorized by the commission;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving money [~~funds~~] from the commission;

(3) [~~(2)~~] owns or[~~,~~] controls, [~~or has,~~] directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by [~~the commission~~] or receiving funds from the commission; or

(4) [~~(3)~~] uses or receives a substantial amount of tangible goods, services, or money [~~funds~~] from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 1.05. Subchapter C, Chapter 5, Water Code, is amended by adding Section 5.0535 to read as follows:

Sec. 5.0535. REQUIRED TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of recent significant internal and external audits of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred

in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 1.06. Section 5.054, Water Code, is amended to read as follows:

Sec. 5.054. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission that [~~if~~] a member:

(1) does not have at the time of taking office the qualifications required by Section 5.053(b);

(2) does not maintain during the service on the commission the qualifications required by Section 5.053(b) [~~for appointment to the commission~~];

(3) is ineligible for membership under Section 5.053(a), 5.059, or 5.060 [~~(2) violates a prohibition established by Sections 5.059 and 5.060 of this code~~];

(4) cannot, because of illness or disability, [~~(3) is unable to~~] discharge the member's [~~his~~] duties for a substantial part of the member's term [~~portion of the term for which he was appointed because of illness or disability~~]; or

(5) [~~(4)~~] is absent from more than one-half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year without an excuse approved [~~, except when the absence is excused~~] by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is [~~was~~] taken when a ground for removal of a member of the commission exists [~~existed~~].

(c) If the executive director or a member [~~of the commission~~] has knowledge that a potential ground for removal exists, the executive director or member [~~he~~] shall notify the presiding officer [~~chairman~~] of the commission of the potential [~~that~~] ground. The presiding officer [~~chairman of the commission~~] shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director or another member of the commission shall notify the member of the commission with the most seniority, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 1.07. Sections 5.058(a)-(d), Water Code, are amended to read as follows:

(a) The governor shall designate a member of the commission as the presiding officer [~~the chairman~~] of the commission to serve in that capacity at the pleasure of[~~. He shall serve as chairman until~~] the governor [~~designates a different chairman~~].

(b) The presiding officer [~~chairman~~] may designate another commissioner to act for the presiding officer [~~him~~] in the presiding officer's [~~his~~] absence.

(c) The presiding officer [~~chairman~~] shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The presiding officer [~~chairman~~] or acting presiding officer [~~chairman~~] shall give the other members reasonable notice before holding a special meeting.

SECTION 1.08. Sections 5.059 and 5.060, Water Code, are amended to read as follows:

Sec. 5.059. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the commission [~~An officer, employee, or paid consultant of a trade association in an industry regulated by the commission may not be a member of the commission or employee of the commission, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in an industry regulated by the commission be a member of the commission or an employee of the commission grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act~~].

Sec. 5.060. LOBBYIST PROHIBITION. A person may not be a member of the commission or act as general counsel to the commission if the person [~~who~~] is required to register as a lobbyist under Chapter 305, Government Code, because [~~by virtue~~] of the person's [~~his~~] activities for compensation [~~in or~~] on behalf of a profession related to the operation of the commission [~~may not serve as a member of the commission or act as the general counsel to the commission~~].

SECTION 1.09. Section 5.103, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall include as a part of each rule the commission adopts, and each proposed rule for adoption after the effective date of this subsection, a citation to the statute that grants the specific regulatory authority under which the rule is justified and a citation of the specific regulatory authority that will be exercised. If no specific statutory authority exists and the agency is depending on this section, citation of this section, or Section 5.102 or 5.013, is sufficient. A rule adopted in violation of this subsection is void.

SECTION 1.10. Section 5.107, Water Code, is amended to read as follows:

Sec. 5.107. ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES [~~COUNCILS~~]. (a) The commission or the executive director may create and consult with advisory committees, work groups, or task forces [~~councils~~], including committees, work groups, or task forces [~~councils~~] for the environment, [~~councils~~] for public information, or for any other matter [~~councils~~] that the commission or the executive director may consider appropriate.

(b) The commission shall identify affected groups of interested persons for advisory committees, work groups, and task forces and shall make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces. This subsection does not require the commission to ensure that all representatives attend a scheduled meeting. A rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

(c) The commission shall monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and shall maintain that information in a form and location that is easily accessible to the public, including making the information available on the Internet.

SECTION 1.11. Subchapter D, Chapter 5, Water Code, is amended by adding Sections 5.1191-5.1193 to read as follows:

Sec. 5.1191. RESEARCH MODEL. (a) In this section, "research model" means a mechanism for developing a plan to address the commission's practical regulatory needs. The commission's plan shall be prioritized by need and shall identify short-term, medium-term, and long-term research goals. The plan may address preferred methods of conducting the identified research.

(b) The commission shall develop a research model. The commission may appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate in developing the research model and to make recommendations regarding research topics specific to this state. The research advisory board must include representatives of the academic community, representatives of the regulated community, and public representatives of the state at large.

Sec. 5.1192. COORDINATION OF RESEARCH. (a) The commission shall facilitate and coordinate environmental research in the state according to the research model developed under Section 5.1191.

(b) The commission shall explore private and federal funding opportunities for research needs identified in the research model. The commission may conduct, direct, and facilitate research to implement the commission's research model by administering grants or by contracting for research if money is appropriated to the commission for those purposes.

(c) To the degree practicable, the commission, through the research model, shall coordinate with or make use of any research activities conducted under existing state initiatives, including research by state universities, the Texas Higher Education Coordinating Board, the United States Department of Agriculture, the Texas Department of Agriculture, and other state and federal agencies as appropriate.

(d) This section does not authorize the commission to initiate or direct the research efforts of another entity except under the terms of a grant or contract.

Sec. 5.1193. REPORT. The commission shall include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and results of particular research projects conducted.

SECTION 1.12. Subchapter D, Chapter 5, Water Code, is amended by adding Sections 5.127-5.131 to read as follows:

Sec. 5.127. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS. (a) The commission may accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b).

(b) The commission may accept for use in commission decisions data and analysis prepared by:

(1) an on-site or in-house environmental testing laboratory if the laboratory is periodically inspected by the commission;

(2) an environmental testing laboratory that is accredited under federal law; or

(3) if the data and analysis are necessary for emergency response activities and the required data and analysis are not otherwise available, an environmental testing laboratory that is not accredited by the commission under Subchapter R or under federal law.

(c) The commission by rule may require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

(d) The commission shall periodically inspect on-site or in-house environmental testing laboratories described in Subsection (b).

Sec. 5.128. ELECTRONIC REPORTING TO COMMISSION; REDUCTION OF DUPLICATE REPORTING. (a) The commission shall encourage the use of electronic reporting through the Internet, to the extent practicable, for reports required by the commission. An electronic report must be submitted in a format prescribed by the commission. The commission may consult with the Department of Information Resources on developing a simple format for use in implementing this subsection.

(b) The commission shall strive to reduce duplication in reporting requirements throughout the agency.

Sec. 5.129. SUMMARY FOR PUBLIC NOTICES. (a) The commission by rule shall provide for each public notice issued or published by the commission or by a person under the jurisdiction of the commission as required by law or by commission rule to include at the beginning of the notice a succinct statement of the subject of the notice. The rules must provide that a summary statement must be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice.

(b) The summary statement may not be grounds for challenging the validity of the proposed action for which the notice was published.

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. The commission shall:

(1) develop and implement policies, by specific environmental media, to protect the public from cumulative risks in areas of concentrated operations; and

(2) give priority to monitoring and enforcement in areas in which regulated facilities are concentrated.

Sec. 5.131. ENVIRONMENTAL MANAGEMENT SYSTEMS. (a) In this section, "environmental management system" means a documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(b) The commission by rule shall adopt a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems by regulated entities, state agencies, local governments, and other entities as determined by the commission. The incentives may include:

(1) on-site technical assistance;

(2) accelerated access to information about programs; and

(3) to the extent consistent with federal requirements:

(A) inclusion of information regarding an entity's use of an environmental management system in the entity's compliance history and compliance summaries; and

(B) consideration of the entity's implementation of an environmental management system in scheduling and conducting compliance inspections.

(c) The commission shall:

(1) integrate the use of environmental management systems into its regulatory programs, including permitting, compliance assistance, and enforcement;

(2) develop model environmental management systems for small businesses and local governments; and

(3) establish environmental performance indicators to measure the program's performance.

SECTION 1.13. Subchapter E, Chapter 5, Water Code, is amended by adding Section 5.1733 to read as follows:

Sec. 5.1733. ELECTRONIC POSTING OF INFORMATION. The commission shall post public information on its website. Such information shall include but not be limited to the minutes of advisory committee meetings, pending permit and enforcement actions, compliance histories, and emissions inventories by county and facility name.

SECTION 1.14. Subchapter E, Chapter 5, Water Code, is amended by adding Section 5.1765 to read as follows:

Sec. 5.1765. PUBLICATION OF INFORMATION REGARDING COMPLAINT PROCEDURES AND POLICIES. The commission shall establish a process for educating the public regarding the commission's complaint policies and procedures. As part of the public education process, the commission shall make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public.

SECTION 1.15. Sections 5.176 and 5.177, Water Code, are amended to read as follows:

Sec. 5.176. COMPLAINT FILE. (a) The commission shall maintain a [~~keep an information~~] file on [~~about~~] each written complaint filed with the commission about a matter within the commission's regulatory jurisdiction [~~relating to an entity regulated by the commission~~]. The file must include:

(1) the name of the person who filed the complaint, unless the person has specifically requested anonymity;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(b) The commission shall establish and implement procedures for receiving complaints submitted by means of the Internet and orally and shall maintain files on those complaints as provided by Subsection (a).

Sec. 5.177. NOTICE OF COMPLAINT PROCEDURES; NOTICE OF INVESTIGATION STATUS. (a) The agency shall provide to the person filing the complaint about a matter within the commission's regulatory jurisdiction and to each person who is the subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(b) The [~~If a written complaint is filed with the commission relating to an entity regulated by the commission, the~~] commission, at least [~~as frequently as~~] quarterly [~~and~~] until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of [~~parties to~~] the complaint of the status of the investigation [~~complaint~~] unless the notice would jeopardize an undercover investigation.

(c) The commission is not required to provide the information described in Subsection (a) or (b) to a complainant who files an anonymous complaint or provides inaccurate contact information.

SECTION 1.16. Subchapter E, Chapter 5, Water Code, is amended by adding Sections 5.1771, 5.1772, and 5.1773 to read as follows:

Sec. 5.1771. COORDINATION OF COMPLAINT INVESTIGATIONS WITH LOCAL ENFORCEMENT OFFICIALS: TRAINING. (a) The commission shall share information regarding a complaint about a matter within the commission's regulatory jurisdiction made to the commission with local officials with authority to act on the complaint in the county or municipality in which the alleged action or omission that is the subject of the complaint occurred or is threatening to occur.

(b) On request, the commission shall provide training for local enforcement officials in investigating complaints and enforcing environmental laws relating to matters under the commission's jurisdiction under this code or the Health and Safety Code. The training must include, at a minimum:

(1) procedures for local enforcement officials to use in addressing citizen complaints if the commission is unavailable or unable to respond to the complaint; and

(2) an explanation of local government authority to enforce state laws and commission rules relating to the environment.

(c) The commission may charge a reasonable fee for providing training to local enforcement officials as required by Subsection (b) in an amount sufficient to recover the costs of the training.

Sec. 5.1772. AFTER-HOURS RESPONSE TO COMPLAINTS. (a) The commission shall adopt and implement a policy to provide timely response to complaints during periods outside regular business hours.

(b) This section does not:

(1) require availability of field inspectors for response 24 hours a day, seven days a week, in all parts of the state; or

(2) authorize additional use of overtime.

Sec. 5.1773. COMPLAINT ASSESSMENT. (a) The commission annually shall conduct a comprehensive analysis of the complaints it receives, including analysis by the following categories:

(1) air;

(2) water;

(3) waste;

(4) priority classification;

(5) region;

(6) commission response;

(7) enforcement action taken; and

(8) trends by complaint type.

(b) In addition to the analysis required by Subsection (a), the commission shall assess the impact of changes made in the commission's complaint policy.

SECTION 1.17. Section 5.178(b), Water Code, is amended to read as follows:

(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, [~~361.485,~~] 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; and

(C) a summary of the analyses and assessments required by Section 5.1773 of this code.

SECTION 1.18. Section 5.227, Water Code, is amended to read as follows:

Sec. 5.227. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee shall prepare and maintain a written policy statement that implements [~~to assure implementation of~~] a program of equal employment opportunity to ensure that [~~whereby~~] all personnel decisions [~~transactions~~] are made without regard to race, color, disability [~~handicap~~], sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, [~~appointment,~~] training, and promotion of personnel, that

show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) a comprehensive analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law [~~work force that meets federal and state guidelines;~~

[~~(3) procedures by which a determination can be made of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

[~~(4) reasonable methods to address appropriately areas of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance~~].

(c) [~~(b)~~] The policy statement must:

(1) [~~shall be filed with the governor's office before November 1, 1985, cover an annual period, and~~] be updated [~~at least~~] annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office. [~~The governor's office shall develop a biennial report to the legislature based on the information submitted. This report may be made individually or as a part of other biennial reports made to the legislature.~~]

SECTION 1.19. Subchapter F, Chapter 5, Water Code, is amended by adding Section 5.2275 to read as follows:

Sec. 5.2275. STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 1.20. Section 5.228, Water Code, is amended to read as follows:

Sec. 5.228. APPEARANCES AT HEARINGS. (a) The position of and information developed by the commission shall be presented by the executive director or his designated representative at hearings of the commission and the hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's environment and natural resources, including matters that have been determined to be policies of the state.

(b) The executive director shall be named a party in hearings before the commission in a matter in which the executive director bears the burden of proof.

(c) The executive director may participate as a party in contested case permit hearings before the commission or the State Office of Administrative Hearings for the sole purpose of providing information to complete the administrative record. The commission by rule shall specify the factors the executive director must consider in determining, case by case, whether to participate as a party in a contested case permit hearing. In developing the rules under this subsection the commission shall consider, among other factors:

(1) the technical, legal, and financial capacity of the parties to the proceeding;

(2) whether the parties to the proceeding have participated in a previous contested case hearing;

(3) the complexity of the issues presented; and

(4) the available resources of commission staff.

(d) In a contested case hearing relating to a permit application, the executive director or the executive director's designated representative may not rehabilitate the testimony of a witness unless the witness is a commission employee testifying for the sole purpose of providing information to complete the administrative record.

(e) The executive director or the executive director's designated representative may not assist a permit applicant in meeting its burden of proof in a hearing before the commission or the State Office of Administrative Hearings unless the permit applicant fits a category of permit applicant that the commission by rule has designated as eligible to receive assistance. The commission shall adopt rules establishing categories of permit applicants eligible to receive assistance.

(f) The fact that the executive director is not named as a party in a hearing before the commission is not grounds for appealing a commission decision.

SECTION 1.21. Subchapter F, Chapter 5, Water Code, is amended by adding Section 5.2291 to read as follows:

Sec. 5.2291. SCIENTIFIC AND TECHNICAL SERVICES. (a) In this section, "scientific and technical environmental services" means services, other than engineering services, of a scientific or technical nature the conduct of which requires technical training and professional judgment. The term includes modeling, risk assessment, site characterization and assessment, studies of the magnitude, source, and extent of contamination, contaminant fate and transport analysis, watershed assessment and analysis, total maximum daily load studies, scientific data analysis, and similar tasks, to the extent those tasks are not defined as the "practice of engineering" under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

(b) The procurement of a contract for scientific and technical environmental services shall be conducted under the procedures for professional services selection provided in Subchapter A, Chapter 2254, Government Code.

SECTION 1.22. Section 5.234(b), Water Code, is amended to read as follows:

(b) After an application, petition, or other document is processed, it shall be presented to the commission for action as required by law and rules of the commission. If, in the course of reviewing an application and preparing a draft permit, the executive director has required changes to be made to the applicant's proposal, the executive director shall prepare a summary of the changes that were made to increase protection of public health and the environment.

SECTION 1.23. Sections 5.273 and 5.274, Water Code, are amended to read as follows:

Sec. 5.273. DUTIES OF THE PUBLIC INTEREST COUNSEL. (a) The counsel shall represent the public interest and be a party to all proceedings before the commission.

(b) The counsel may recommend needed legislative and regulatory changes.

Sec. 5.274. STAFF; OUTSIDE TECHNICAL SUPPORT. (a) The office shall be adequately staffed to carry out its functions under this code.

(b) The counsel may obtain and use outside technical support to carry out its functions under this code.

SECTION 1.24. Subchapter A, Chapter 7, Water Code, is amended by adding Section 7.0025 to read as follows:

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) The commission may initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on information it receives from a private individual if that information, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(b) The executive director or the executive director's designated representative may evaluate the value and credibility of information received from a private individual and the merits of any proposed enforcement action based on that information.

(c) The commission by rule may adopt criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.

(d) A private individual who submits information on which the commission relies for all or part of an enforcement case may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence. If the commission relies on the information submitted by a private individual to prove an enforcement case, any physical or sampling data must have been collected or gathered in accordance with commission protocols.

SECTION 1.25. Section 361.0231(a), Health and Safety Code, is amended to read as follows:

(a) To protect the public health and environment taking into consideration the economic development of the state,[~~, encourage economic development,~~] and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

SECTION 1.26. Section 26.003, Water Code, is amended to read as follows:

Sec. 26.003. POLICY OF THIS SUBCHAPTER. It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration [~~and~~] the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

SECTION 1.27. Section 27.003, Water Code, is amended to read as follows:

Sec. 27.003. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and[~~,~~] the operation

of existing industries, taking into consideration [~~and~~] the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy.

ARTICLE 2. NOTICE REQUIREMENTS

SECTION 2.01. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0666 to read as follows:

Sec. 361.0666. PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES. (a) An applicant for a permit under this chapter for a new facility that accepts municipal solid wastes shall hold a public meeting in the county in which the proposed facility is to be located. The meeting must be held before the 45th day after the date the application is filed.

(b) The applicant shall publish notice of the public meeting at least once each week during the three weeks preceding the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county.

(c) The applicant shall present to the commission an affidavit certifying that the notice was published as required by Subsection (b). The commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).

(d) The published notice may not be smaller than 96.8 square centimeters or 15 square inches, with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the application.

(e) The applicant shall pay the cost of the notice required under this section. The commission by rule may establish a procedure for payment of those costs.

SECTION 2.02. Section 382.056, Health and Safety Code, is amended by adding Subsections (q) and (r) to read as follows:

(q) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(r) This section does not apply to:

(1) the relocation or change of location of a portable facility to a site where a facility permitted by the commission is located if no portable facility has been located at the proposed site at any time during the previous two years; or

(2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

ARTICLE 3. FEES AND RATES

SECTION 3.01. Chapter 5, Water Code, is amended by adding a heading for Subchapter P to read as follows:

SUBCHAPTER P. FEES

SECTION 3.02. Section 5.235, Water Code, is transferred to new Subchapter P, Chapter 5, Water Code, redesignated as Section 5.701, and amended to read as follows:

Sec. 5.701 [~~5.235~~]. FEES. (a) The executive director shall charge and collect the fees prescribed by law. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise. Except as otherwise provided, a fee assessed and collected under this section shall be deposited to the credit of the water resource management account.

(1) Notwithstanding other provisions, the commission by rule may establish due dates, schedules, and procedures for assessment, collection, and remittance of fees due the commission to ensure the cost-effective administration of revenue collection and cash management programs.

(2) Notwithstanding other provisions, the commission by rule shall establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Except as otherwise provided by law, the fee for filing an application or petition is $100 plus the cost of any required notice. The fee for a by-pass permit shall be set by the commission at a reasonable amount to recover costs, but not less than $100.

(c) The fee for filing a water permit application is $100 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is $100 plus the cost of required notice.

(e) A person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion must pay a one-time nonrefundable application fee. The commission by rule may establish [~~set~~] the application fee in an amount sufficient to cover [~~not to exceed~~] the costs of reviewing and processing the application, plus the cost of required notice. The commission may also use the application fee to cover other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Subsection (p). This fee is the only fee that the commission may charge with regard to the processing of an application for creation of a water district, addition of sewage or drainage powers, or conversion under this code.

(f) A person who files a bond issue application with the commission must pay an application fee set by the commission. The commission by rule may set the application fee in an amount not to exceed the costs of reviewing and processing the application, plus the cost of required notice. If the bonds are approved by the commission, the seller shall pay to the commission a percentage of the bond proceeds not later than the seventh business day after receipt of the bond proceeds. The commission by rule may set the percentage of the proceeds in an amount not to exceed 0.25 percent of the principal amount of the bonds actually issued. Proceeds of the fees shall be used to supplement any other funds available for paying expenses of the commission in supervising the various bond and construction activities of the districts filing the applications.

(g) The fee for recording an instrument in the office of the commission is $1.25 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level.

(j) The fee for other uses of water not specifically named in this section is $1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution.

(k) A fee charged under Subsections (h) through (j) of this section for one use of water under a permit from the commission may not exceed $50,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed $10,000.

(l) The fees prescribed by Subsections (h) through (j) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds $1,000, the applicant shall pay one-half of the fee when the application is filed and one-half within 180 days after notice is mailed to him that the permit is granted. If the applicant does not pay all of the amount owed before beginning to use water under the permit, the permit is annulled.

(m) If a permit is annulled, the matter reverts to the status of a pending, filed application and, on the payment of use fees as provided by Subsections (h) through (l) of this section together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

(n)(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:

(A) A public utility as defined in Section 13.002 of this code shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) A water supply or sewer service corporation as defined in Section 13.002 of this code shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(C) A district as defined in Section 49.001 of this code that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(2) The regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) The commission shall use the assessments collected under this subsection solely to pay costs and expenses incurred by the commission in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13, Water Code.

(4) The commission shall annually use a portion of the assessments

to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.

(5) The commission by rule may establish due dates, collection procedures, and penalties for late payment related to regulatory assessments under this subsection. The executive director shall collect all assessments from the utility service providers.

(6) The commission shall assess a penalty against a municipality with a population of more than 1.5 million that does not provide municipal water and sewer services in an annexed area in accordance with Section 43.0565, Local Government Code. A penalty assessed under this paragraph shall be not more than $1,000 for each day the services are not provided after March 1, 1998, for areas annexed before January 1, 1993, or not provided within 4 ½ years after the effective date of the annexation for areas annexed on or after January 1, 1993. A penalty collected under this paragraph shall be deposited to the credit of the water resource management account to be used to provide water and sewer service to residents of the city.

(7) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(o) A fee imposed under Subsection (j) of this section for the use of saline tidal water for industrial processes shall be $1 per acre-foot of water diverted for the industrial process, not to exceed a total fee of $5,000.

(p) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsection (b), to the extent those fees are paid by water districts, and Subsections (e), (f), and (n);

(2) Sections 13.4521 and 13.4522; or

(3) Section 54.037(c).

(q) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsections (b) and (c), to the extent those fees are collected in connection with water use or water quality permits;

(2) Subsections (h)-(l);

(3) Section 11.138(g);

(4) Section 11.145;

(5) Section 26.0135(h);

(6) Sections 26.0291, 26.044, and 26.0461;

(7) Sections 341.041, 366.058, and 366.059, Health and Safety Code; or

(8) Section 372.002(d), Health and Safety Code.

SECTION 3.03. New Subchapter P, Chapter 5, Water Code, is amended by adding Sections 5.702-5.708 to read as follows:

Sec. 5.702. PAYMENT OF FEES REQUIRED WHEN DUE. (a) A fee due the commission under this code or the Health and Safety Code shall be paid on the date the fee is due, regardless of whether the fee is billed by the commission to the person required to pay the fee or is calculated and paid to the commission by the person required to pay the fee.

(b) A person required to pay a fee to the commission may not dispute the assessment of or amount of a fee before the fee has been paid in full.

Sec. 5.703. FEE ADJUSTMENTS. (a) The commission may not consider adjusting the amount of a fee due the commission under this code or the Health and Safety Code:

(1) before the fee has been paid in full; or

(2) if the request for adjustment is received after the first anniversary of the date on which the fee was paid in full.

(b) A person who pays an amount that exceeds the amount of the fee due because the commission incorrectly calculated the fee or the person made a duplicate payment may request a refund of the excess amount paid before the fourth anniversary of the date on which the excess amount was paid.

(c) A request for a refund or credit in an amount that exceeds $5,000 shall be forwarded for approval to the commission fee audit staff, together with an explanation of the grounds for the requested refund or credit. Approval of a refund or credit does not prevent the fee audit staff from conducting a subsequent audit of the person for whom the refund or credit was approved.

Sec. 5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE. The commission shall promptly notify each person required to pay a commission fee under this code or the Health and Safety Code of any change in fee payment procedures.

Sec. 5.705. NOTICE OF VIOLATION. (a) The commission may issue a notice of violation to a person required to pay a commission fee under this code or the Health and Safety Code for knowingly violating reporting requirements or knowingly calculating the fee in an amount less than the amount actually due.

(b) The executive director may modify audit findings reported by a commission fee auditor only if the executive director provides a written explanation showing good cause for the modification.

Sec. 5.706. PENALTIES AND INTEREST ON DELINQUENT FEES. (a) Except as otherwise provided by law, the commission may collect, for a delinquent fee due the commission under this code or the Health and Safety Code:

(1) a penalty in an amount equal to five percent of the amount of the fee due, if the fee is not paid on or before the day on which the fee is due; and

(2) an additional penalty in an amount equal to five percent of the amount due, if the fee is not paid on or before the 30th day after the date on which the fee was due.

(b) Unless otherwise required by law interest accrues, beginning on the 61st day after the date on which the fee was due, on the total amount of fee and penalties that have not been paid on or before the 61st day after the date on which the fee was due. The yearly interest rate is the rate of interest established for delinquent taxes under Section 111.060, Tax Code.

(c) The executive director may modify a penalty or interest on a fee and penalties authorized by this section if the executive director provides a written explanation showing good cause for the modification.

(d) Penalties and interest collected by the commission under this section or under other law, unless that law otherwise provides, shall be deposited to the credit of the fund or account to which the fee is required to be deposited.

Sec. 5.707. TRANSFERABILITY OF APPROPRIATIONS AND FUNDS DERIVED FROM FEES. Notwithstanding any law that provides specific purposes for which a fund, account, or revenue source may be used and expended by the commission and that restricts the use of revenues and balances by the commission, the commission may transfer a percentage of appropriations from one appropriation item to another appropriation item consistent with the General Appropriations Act for any biennium authorizing the commission to transfer a percentage of appropriations from one appropriation item to another appropriation item. The use of funds in dedicated accounts under this section for purposes in addition to those provided by statutes restricting their use may not exceed seven percent or $20 million, whichever is less, of appropriations to the commission in the General Appropriations Act for any biennium. A transfer of $500,000 or more from one appropriation item to another appropriation item under this section must be approved by the commission at an open meeting subject to Chapter 551, Government Code.

Sec. 5.708. PERMIT FEE EXEMPTION FOR CERTAIN RESEARCH PROJECTS. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2) "State agency" has the meaning assigned by Section 572.002, Government Code.

(b) If a permit issued by the commission is required for a research project by an institution of higher education or a state agency, payment of a fee is not required for the permit.

SECTION 3.04. Section 26.0291, Water Code, is amended to read as follows:

Sec. 26.0291. WATER QUALITY [~~WASTE TREATMENT INSPECTION~~] FEE. (a) An annual water quality [~~waste treatment inspection~~] fee is imposed on:

(1) each wastewater [~~permittee for each waste~~] discharge permit holder for each wastewater discharge permit held; and

(2) each user of water in proportion to the user's water right, through permit or contract, as reflected in the commission's records, provided that the commission by rule shall ensure that no fee shall be assessed for the portion of a municipal or industrial water right directly associated with a facility or operation for which a fee is assessed under Subdivision (1) of this subsection [~~by the permittee~~].

(b) The fee is to supplement any other funds available to pay expenses of the commission related to:

(1) [~~in~~] inspecting waste treatment facilities; and

(2) enforcing the laws of the state and the rules of the commission governing:

(A) waste discharge and waste treatment facilities, including any expenses [~~of the commission~~] necessary [~~to obtain from the federal government delegation of and~~] to administer the national pollutant discharge elimination system (NPDES) program;

(B) the water resources of this state, including the water quality management programs under Section 26.0135; and

(C) any other water resource management programs reasonably related to the activities of the persons required to pay a fee under this section.

(c) The fee for each year is imposed on each permit or water right in effect during any part of the year. The commission may establish reduced fees for inactive permits.

(d) Irrigation water rights are not subject to a fee under this section.

(e) [~~(b)~~] The commission by rule shall adopt a fee schedule for determining the amount of the fee to be charged. The amount of the fee may not exceed $75,000 [~~$25,000~~] for each [~~waste discharge~~] permit or contract [~~held by a permittee~~]. The maximum annual fee under this section for a wastewater discharge or waste treatment facility that holds a water right for the use of water by the facility may not exceed $75,000. In determining the amount of a fee under this section, the commission may consider:

(1) waste discharge permitting factors such as flow volume, toxic pollutant potential, level of traditional pollutant, and heat load;

(2) [~~. The commission may consider~~] the designated uses and segment ranking classification of the water affected by discharges from the permitted facility;

(3) [~~. Finally, the commission also may consider~~] the expenses necessary to obtain and administer the NPDES program;

(4) the reasonable costs of administering the water quality management programs under Section 26.0135; and

(5) any other reasonable costs necessary to administer and enforce a water resource management program reasonably related to the activities of the persons required to pay a fee under this section. [~~The commission shall not adopt any rule designed to increase the fee imposed under this section on a treatment works owned by a local government, as those terms are defined in Section 26.001 of this code, before August 31, 1999.~~]

(f) [~~(c)~~] The fees collected under this section shall be deposited to the credit of the water resource management account, an account in the general revenue fund.

(g) [~~(d)~~] The commission may adopt rules necessary to administer this section.

(h) [~~(e)~~] A fee collected under this section is in addition to any other fee that may be charged under this chapter.

SECTION 3.05. Section 26.0135(h), Water Code, is amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section [~~from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater~~

~~in the watershed. Irrigation water rights will not be subject to this assessment~~]. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, [~~that program funds are equitably apportioned among basins,~~] that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed the cost for any efforts under this section that duplicate water quality management activities described in Section 26.177 of this chapter. [~~The rules concerning the apportionment and assessment of reasonable costs shall provide for a recovery of not more than $5,000,000 annually. Costs recovered by the commission are to be deposited to the credit of the water resource management account and may be used only to accomplish the purposes of this section. The commission may apply not more than 10 percent of the costs recovered annually toward the commission's overhead costs for the administration of this section and the implementation of regional water quality assessments. The commission, with the assistance and input of each river authority, shall file a written report accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.~~]

SECTION 3.06. Section 26.0135(j), Water Code, is repealed.

SECTION 3.07. Section 341.041(a), Health and Safety Code, is amended to read as follows:

(a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system [~~to recover the costs of public drinking water supply system programs or services authorized by this subchapter or performed pursuant to the requirements of the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.)~~]. The commission may establish a schedule of fees. The amount of the fees must be sufficient to cover [~~may not exceed~~] the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). Among other factors, the commission shall consider equity among persons required to pay the fees as a factor in determining the amount of the fees. The commission may also use the fees to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

SECTION 3.08. Section 366.058(a), Health and Safety Code, is amended to read as follows:

(a) The commission by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system. The commission may also use the fee to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

SECTION 3.09. Section 366.059, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The commission may assess a reasonable and appropriate charge-back fee, not to exceed $500, to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected. The commission shall base the amount of a charge-back fee under this subsection on the actual cost of issuing a permit under this section. The commission may assess a charge-back fee to a local governmental entity under this subsection if the local governmental entity is an authorized agent that:

(1) has repealed the order, ordinance, or resolution that established the entity as an authorized agent; or

(2) has had its authorization as an authorized agent revoked by the commission.

(d) The commission may not assess a charge-back fee to a local governmental entity if the local governmental entity has repealed the order, ordinance, or resolution that established the entity as an authorized agent or has lost its designation as an authorized agent due to material change in the commission's rules under this chapter.

SECTION 3.10. Section 13.187(a), Water Code, is amended to read as follows:

(a) A utility may not make changes in its rates except by delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 60 [~~30~~] days before the effective date of the proposed change. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include the information required by the regulatory authority's rules. A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules. When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported expenses. If the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) [~~5.235(n)~~] of this code.

ARTICLE 4. PERFORMANCE-BASED REGULATION

SECTION 4.01. Chapter 5, Water Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters 26 and 27 of this code and Chapters 361, 382, and 401, Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

Sec. 5.752. DEFINITIONS. In this subchapter:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent, decree, or other requirement.

(2) "Innovative program" means:

(A) a program developed by the commission under this subchapter, Chapter 26 or 27 of this code, or Chapter 361, 382, or 401, Health and Safety Code, that provides incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction;

(B) the flexible permit program administered by the commission under Chapter 382, Health and Safety Code; or

(C) the regulatory flexibility program administered by the commission under Section 5.758.

(3) "Permit" includes a license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the commission under this code or the Health and Safety Code.

(4) "Region" means a region of the commission's field operations division or that division's successor.

(5) "Strategically directed regulatory structure" means a program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

Sec. 5.753. STANDARD FOR EVALUATING COMPLIANCE HISTORY. (a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop a uniform standard for evaluating compliance history.

(b) The components of compliance history must include:

(1) enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government relating to compliance with applicable legal requirements under the jurisdiction of the commission or the United States Environmental Protection Agency;

(2) notwithstanding any other provision of this code, orders issued under Section 7.070;

(3) to the extent readily available to the commission, enforcement orders, court judgments, and criminal convictions relating to violations of environmental laws of other states; and

(4) changes in ownership.

(c) The set of components must also include any information required by other law or any requirement necessary to maintain federal program authorization.

(d) The set of components shall include notices of violations. A notice of violation administratively determined to be without merit shall not be included in a compliance history. A notice of violation that is included in a compliance history shall be removed from the compliance history if the commission subsequently determines the notice of violation to be without merit.

(e) Except as required by other law or any requirement necessary to maintain federal program authorization, the commission by rule shall establish a period for compliance history.

Sec. 5.754. CLASSIFICATION AND USE OF COMPLIANCE HISTORY. (a) The commission by rule shall establish a set of standards for the classification of a person's compliance history.

(b) Rules adopted under this section must, at a minimum, provide for three classifications of compliance history in a manner adequate to distinguish among:

(1) poor performers, or regulated entities that in the commission's judgment perform below average;

(2) average performers, or regulated entities that generally comply with environmental regulations; and

(3) high performers, or regulated entities that have an above-average compliance record.

(c) In classifying a person's compliance history, the commission shall:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) establish criteria for classifying a repeat violator, giving consideration to the number and complexity of facilities owned or operated by the person; and

(3) consider the significance of the violation and whether the person is a repeat violator.

(d) The commission by rule shall establish methods of assessing the compliance history of regulated entities for which it does not have adequate compliance information. The methods may include requiring a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

(e) The commission by rule shall provide for the use of compliance history classifications in commission decisions regarding:

(1) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(2) enforcement;

(3) the use of announced inspections; and

(4) participation in innovative programs.

(f) The assessment methods shall specify the circumstances in which the commission may revoke the permit of a repeat violator and shall establish enhanced administrative penalties for repeat violators.

(g) Rules adopted under Subsection (e) for the use of compliance history shall provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is in the lowest classification developed under this section.

(h) The commission by rule shall, at a minimum, prohibit a person whose compliance history is classified in the poor performer classification developed under this section from:

(1) receiving an announced inspection; and

(2) obtaining or renewing a flexible permit under the program administered by the commission under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by the commission under Section 5.758.

(i) The commission shall consider the compliance history of a regulated

entity when determining whether to grant the regulated entity's application for a permit or permit amendment for any activity under the commission's jurisdiction to which this subchapter applies. Notwithstanding any provision of this code or the Health and Safety Code relating to the granting of permits or permit amendments by the commission, the commission, after an opportunity for a hearing, shall deny a regulated entity's application for a permit or permit amendment if the regulated entity's compliance history is unacceptable based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.

Sec. 5.755. STRATEGICALLY DIRECTED REGULATORY STRUCTURE. (a) The commission by rule shall develop a strategically directed regulatory structure to provide incentives for enhanced environmental performance.

(b) The strategically directed regulatory structure shall offer incentives based on:

(1) a person's compliance history classification; and

(2) any voluntary measures undertaken by the person to improve environmental quality.

(c) An innovative program offered as part of the strategically directed regulatory structure must be consistent with other law and any requirement necessary to maintain federal program authorization.

Sec. 5.756. COLLECTION AND ANALYSIS OF COMPLIANCE PERFORMANCE INFORMATION. (a) The commission shall collect data on:

(1) the results of inspections conducted by the commission; and

(2) whether inspections are announced or unannounced.

(b) The commission shall collect data on and make available to the public on the Internet:

(1) the number and percentage of all violations committed by persons who previously have committed the same or similar violations;

(2) the number and percentage of enforcement orders issued by the commission that are issued to entities that have been the subject of a previous enforcement order;

(3) whether a violation is of major, moderate, or minor significance, as defined by commission rule;

(4) whether a violation relates to an applicable legal requirement pertaining to air, water, or waste; and

(5) the region in which the facility is located.

(c) The commission annually shall prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission.

(d) The commission shall include in the annual enforcement report required by Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997, the comparative performance analysis required by Subsection (c), organized by region and regulated medium.

Sec. 5.757. COORDINATION OF INNOVATIVE PROGRAMS. (a) The commission shall designate a single point of contact within the agency to coordinate all innovative programs.

(b) The coordinator shall:

(1) inventory, coordinate, and market and evaluate all innovative programs;

(2) provide information and technical assistance to persons participating in or interested in participating in those programs; and

(3) work with the pollution prevention advisory committee to assist the commission in integrating the innovative programs into the commission's operations, including:

(A) program administration;

(B) strategic planning; and

(C) staff training.

SECTION 4.02. Section 5.123, Water Code, as added by Chapter 1203, Acts of the 75th Legislature, Regular Session, 1997, is transferred to new Subchapter Q, Chapter 5, Water Code, redesignated as Section 5.758, and amended to read as follows:

Sec. 5.758 [~~5.123~~]. REGULATORY FLEXIBILITY. (a) The commission by order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:

(1) more [~~at least as~~] protective of the environment and the public health than [~~as~~] the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(2) not inconsistent with federal law.

(b) The commission may not exempt an applicant under this section unless the applicant can present to the commission documented evidence of benefits to environmental quality that will result from the project the applicant proposes.

(c) The commission by rule shall specify the procedure for obtaining an exemption under this section. The rules must provide for public notice and for public participation in a proceeding involving an application for an exemption under this section.

(d) [~~(c)~~] The commission's order must provide a specific description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

(e) [~~(d)~~] The commission by rule may establish a reasonable fee for applying for an exemption under this section.

(f) [~~(e)~~] A violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order grants an exemption.

[~~(f) A permit may satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts.~~]

(g) This section does not authorize exemptions to statutes or regulations for storing, handling, processing, or disposing of low-level radioactive materials.

(h) In implementing the program of regulatory flexibility authorized by this section, the commission shall:

(1) market the program to businesses in the state through all available appropriate media;

(2) endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business;

(3) fix and enforce environmental standards, allowing businesses flexibility in meeting the standards in a manner that clearly enhances environmental outcomes; and

(4) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

SECTION 4.03. Section 7.067(a), Water Code, is amended to read as follows:

(a) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred. The commission may approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). The commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, [~~or~~] that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

SECTION 4.04. Section 361.0215, Health and Safety Code, is amended to read as follows:

Sec. 361.0215. POLLUTION PREVENTION [~~WASTE REDUCTION~~] ADVISORY COMMITTEE. (a) The pollution prevention [~~waste reduction~~] advisory committee is composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission and interagency coordination council on:

(1) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(2) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(3) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(4) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

(c) The committee shall advise the commission on the creation and implementation of the strategically directed regulatory structure developed under Section 5.755, Water Code.

(d) The committee shall report quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters the committee considers important.

SECTION 4.05. Section 361.088, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall review a permit issued under this chapter every five years to assess the permit holder's compliance history.

ARTICLE 5. REGULATION OF AIR POLLUTION

SECTION 5.01. (a) Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0215 and 382.0216 to read as follows:

Sec. 382.0215. ASSESSMENT OF EMISSIONS DUE TO EMISSIONS EVENTS. (a) In this section, "emissions event" means an upset, or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emissions of air contaminants from an emissions point. Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

(1) the owner or operator of the facility provides any prior notice or final report that the commission, by rule, may establish;

(2) the notice or final report includes the information required in Subsection (b)(3); and

(3) the actual emissions do not exceed the estimates submitted in the notice.

(b) The commission shall require the owner or operator of a facility that experiences emissions events:

(1) to maintain a record of all emissions events at the facility in the manner and for the periods prescribed by commission rule;

(2) to notify the commission, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting facility;

(B) the location of the reporting facility;

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(c) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at concentrations of less than 0.02 percent by weight that is equipped with a continuous emission monitoring system that completes a minimum of one cycle per operation (sampling, analyzing, and data recording) for each successive 15-minute interval who is required to submit excess emission reports by other state or federal regulations, shall, by commission rule, be allowed to submit information from that monitoring system to meet the requirements under Subsection (b)(3) so long as the notice submitted under Subsection (b)(2) contains the information required under Subsection (b)(3). Such excess emission reports shall satisfy the record keeping requirements of Subsection (b)(1) so long as the information in such reports meets commission requirements. This subsection does not require the commission to revise the reportable quantity for boilers and combustion turbines.

(d) The commission shall centrally track emissions events and collect information relating to:

(1) inspections or enforcement actions taken by the commission in response to emissions events; and

(2) the number of emissions events occurring in each commission region and the quantity of emissions from each emissions event.

(e) The commission shall develop the capacity for electronic reporting and shall incorporate reported emissions events into a permanent centralized database for emissions events. The commission shall develop a mechanism whereby the reporting entity shall be allowed to review the information relative to its reported emissions events prior to such information being included in the database. The database shall be accessible to the public. The commission shall evaluate information in the database to identify persons who repeatedly fail to report reportable emissions events. The commission shall enforce against such persons pursuant to Section 382.0216(i). The commission shall describe such enforcement actions in the report required in Subsection (g).

(f) An owner or operator of a facility required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the facility experienced no emissions events during the prior year. An owner or operator of a facility required by Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(g) The commission annually shall assess the information received under this section, including actions taken by the commission in response to the emissions events, and shall include the assessment in the report required by Section 5.123, Water Code, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) In this section, "emissions event" has the meaning assigned by Section 382.0215.

(b) The commission shall establish criteria for determining when emissions events are excessive. The criteria must include consideration of:

(1) the frequency of the facility's emissions events;

(2) the cause of the emissions event;

(3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(c) The commission shall require a facility to take action to reduce emissions from excessive emissions events. Consistent with commission rules, a facility required to take action under this subsection must either file a corrective action plan or file a letter of intent to obtain authorization for emissions from the excessive emissions events, provided that the emissions are sufficiently frequent, quantifiable, and predictable. If the intended authorization is a permit, a permit application shall be filed within 120 days of the filing of the letter of intent. If the intended authorization is a permit by rule or standard exemption, the authorization must be obtained within 120 days of the filing of the letter of intent. If the commission denies the requested authorization, within 45 days of receiving notice of the commission's denial, the facility shall file a corrective action plan to reduce emissions from the excessive emissions events.

(d) A corrective action plan filed under Subsection (c) must identify the cause or causes of each emissions event, specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future, and specify a time within which the corrective action plan will be implemented. A corrective action plan must be approved by the commission. A corrective action plan shall be deemed approved 45 days after filing, if the commission has not disapproved the plan; however, an owner or operator may request affirmative commission approval, in which case the commission must take final written action to approve or disapprove the plan within 120 days. An approved corrective action plan shall be made available to the public by the commission, except to the extent information in the plan is confidential information protected under Chapter 552, Government Code. The commission shall establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events. The implementation schedule shall be enforceable by the commission.

(e) The rules may not exclude from the requirement to submit a corrective action plan emissions events resulting from the lack of preventive maintenance or from operator error, or emissions that are a part of a recurring pattern of emissions events indicative of inadequate design or operation.

(f) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1)-(6).

(g) The burden of proof in any claim of a defense to commission enforcement action for an emissions event is on the person claiming the defense.

(h) A person may not claim an affirmative defense to a commission

enforcement action if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

(i) In the event the owner or operator of a facility fails to report an emissions event, the commission shall initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely unless the owner or operator knew or should have known that the information in the report was incomplete, inaccurate or untimely.

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's compliance history.

(b) The Texas Natural Resource Conservation Commission shall implement all technical and equipment changes necessary for compliance with Sections 382.0215(d) and (e), Health and Safety Code, as added by this Act, not later than January 1, 2003. After implementation of the necessary technical and equipment changes, the Texas Natural Resource Conservation Commission by rule shall require reporting of reportable emissions events to the centralized database, and may exempt businesses considered so small that electronic reporting is impracticable.

SECTION 5.02. Sections 382.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate an existing facility affected by Section 382.0518(g) [~~under a voluntary emissions reduction permit~~]; or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519; [~~or~~]

(7) an existing facility permit or existing facility flexible permit under Section 382.05183;

(8) a small business stationary source permit under Section 382.05184;

(9) an electric generating facility permit under Section 382.05185 of this code and Section 39.264, Utilities Code;

(10) a pipeline facilities permit under Section 382.05186; or

(11) other permits as necessary.

SECTION 5.03. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.05181-382.05186 to read as follows:

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003, if the facility is located in the East Texas region; or

(2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

(1) March 1, 2007, if the facility is located in the East Texas region; or

(2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

(1) contains all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and

(2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The West Texas region includes all counties not contained in the East Texas region.

(e) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(g) An owner or operator of a facility affected by Section 382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(h) A permit application under this chapter for a facility affected by

Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.05191.

(i) This section does not apply to a facility eligible for a permit under Section 382.05184.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that the facility will use a control method at least as beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site affected by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 382.0365(h), and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) A permit application under this section is not subject to notice and hearing requirements and is not subject to Chapter 2001, Government Code.

(g) The commission may adopt rules as necessary to implement and administer this section.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for criteria pollutants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons of any air contaminant annually.

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For the purposes of this section, a natural gas-fired electric generating facility includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or pumping facilities affected by Section 382.0518(g) connected to or part of a gathering or transmission pipeline. Pipeline facilities affected by Section 382.0518(g) other than reciprocating internal combustion engines may apply for an existing facility permit or other applicable permit under this chapter other than a pipeline facilities permit.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one reciprocating internal combustion facility connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate permits under this section for discrete and separate reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section are to be achieved at one source, the reduction may include emissions reductions achieved since January 1, 2001, in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section for a facility or facilities located in the East Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require a 50 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require a 50 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(f) The commission shall grant a permit under this section for facilities located in the West Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require up to a 20 percent reduction of the hourly emissions rate of nitrogen oxides,

expressed in terms of grams per brake horsepower-hour. The commission may also require up to a 20 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(i) The commission may adopt rules as necessary to implement and administer this section.

SECTION 5.04. Section 382.05191, Health and Safety Code, is amended to read as follows:

Sec. 382.05191. [~~VOLUNTARY~~] EMISSIONS REDUCTION PERMITS [~~PERMIT~~]: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 382.0365(h) [~~382.0365(g)(2)~~] to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a [~~voluntary emissions reduction~~] permit under Section 382.05183, 382.05185(c) or (d), or 382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

SECTION 5.05. Section 382.05192, Health and Safety Code, is amended to read as follows:

Sec. 382.05192. REVIEW AND RENEWAL OF [~~VOLUNTARY~~] EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185(c) or (d), 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

SECTION 5.06. Section 361.082, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

SECTION 5.07. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.065 to read as follows:

Sec. 382.065. CERTAIN LOCATIONS FOR CRUSHING FACILITY

PROHIBITED. The commission by rule shall prohibit the location of or operation of a crushing facility for concrete production within one-half mile of a building used as a single or multifamily residence, school, or place of worship that is located within the municipal boundaries of a municipality.

SECTION 5.08. (a) Subchapter L, Chapter 5, Water Code, is amended by adding Section 5.5145 to read as follows:

Sec. 5.5145. EMERGENCY ORDER CONCERNING OPERATION OF ROCK CRUSHER OR CONCRETE PLANT WITHOUT PERMIT. The commission shall issue an emergency order under this subchapter suspending operations of a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under Section 382.0518, Health and Safety Code, and is operating without the necessary permit.

(b) Section 7.052, Water Code, is amended by adding a new Subsection (b), relettering existing Subsection (b) as Subsection (c), and amending and relettering existing Subsection (c) as Subsection (d) to read as follows:

(b) The amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is $10,000. Each day that a continuing violation occurs is a separate violation.

(c) The amount of the penalty for all other violations within the jurisdiction of the commission to enforce may not exceed $10,000 a day for each violation.

(d) Except as provided by Subsection (b), each [~~(c) Each~~] day that a continuing violation occurs may be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057 or assessed after a hearing under Section 7.058.

(c) The changes in law made by Section 5.5145, Water Code, as added by this Act, and Section 7.052, Water Code, as amended by this Act, apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect at the time the violation occurred, and the former law is continued in effect for that purpose.

ARTICLE 6. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

SECTION 6.01. Chapter 421, Health and Safety Code, as added by Chapter 447, Acts of the 76th Legislature, Regular Session, 1999, is transferred to Chapter 5, Water Code, redesignated as Subchapter R, and amended to read as follows:

SUBCHAPTER R [~~CHAPTER 421~~]. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

Sec. 5.801 [~~421.001~~]. DEFINITION [~~DEFINITIONS~~]. In this subchapter, "environmental [~~chapter:~~

[~~(1) "Board" means the Texas Board of Health.~~

[~~(2) "Department" means the Texas Department of Health.~~

[~~(3) "Environmental~~] testing laboratory" means a scientific laboratory that[~~:~~

[~~(A)~~)] performs analyses to determine the chemical, molecular, or pathogenic components of environmental media [~~drinking water, wastewater, hazardous wastes, soil, or air~~] for regulatory compliance purposes[~~; and~~

[~~(B) is either a commercial laboratory or an environmental laboratory that is required to be accredited under federal law~~].

Sec. 5.802 [~~421.002~~]. ADMINISTRATION BY COMMISSION [~~DEPARTMENT~~]. The commission [~~department~~] shall adopt rules for the administration of [~~administer~~] the voluntary environmental testing laboratory accreditation program established by this chapter. The program must be consistent with national accreditation standards approved by the National Environmental Laboratory Accreditation Program.

Sec. 5.803 [~~421.003~~]. APPLICATION; FEE. (a) To be accredited under the accreditation program adopted under this subchapter [~~chapter~~], an environmental testing laboratory must submit an application to the commission [~~department~~] on a form prescribed by the commission [~~department~~], accompanied by the accreditation fee. The application must contain the information that the commission [~~department~~] requires.

(b) The commission by rule [~~board~~] shall establish a schedule of reasonable [~~an~~] accreditation fees designed to recover the costs of the accreditation program, including the costs associated with:

(1) application review;

(2) initial, routine, and follow-up inspections by the commission; and

(3) preparation of reports [~~fee in an amount sufficient to defray the cost of administering this chapter~~].

Sec. 5.804 [~~421.004~~]. ISSUANCE OF ACCREDITATION; RECIPROCITY. (a) The commission [~~department~~] may accredit an environmental testing laboratory that complies with the commission requirements established under this subchapter [~~chapter~~].

(b) The commission [~~board~~] by rule may provide for the accreditation of an environmental testing laboratory that is accredited or licensed in [~~by~~] another state by an authority that is approved by the National Environmental Laboratory Accreditation Program.

Sec. 5.805 [~~421.005~~]. RULES; MINIMUM STANDARDS. The commission [~~board~~] shall adopt rules to implement this subchapter [~~chapter~~] and minimum performance and quality assurance standards for accreditation of an environmental testing laboratory.

Sec. 5.806 [~~421.006~~]. DISCIPLINE. After notice and an opportunity for hearing, the commission [~~department~~] may suspend or revoke the accreditation of an environmental testing laboratory that does not comply with the minimum performance and quality assurance standards established under this subchapter [~~chapter~~].

Sec. 5.807. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION ACCOUNT. All fees collected under this subchapter shall be deposited to the credit of the environmental testing laboratory accreditation account and may be appropriated to the commission only for paying the costs of the accreditation program.

ARTICLE 7. CERTIFICATION OF WATER TREATMENT SPECIALISTS

SECTION 7.01. Section 3A, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is transferred to Chapter 341, Health and Safety

Code, redesignated as Subchapter G, Chapter 341, and amended to read as follows:

SUBCHAPTER G. CERTIFICATION OF WATER TREATMENT SPECIALISTS

Sec. 341.101 [~~Sec. 3A. CERTIFICATION RELATING TO RESIDENTIAL WATER TREATMENT FACILITIES~~]. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Installation of water treatment appliances" includes connecting the appliances to all necessary utility connections in residential, commercial, or industrial facilities.

(3) "Water treatment" means a business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system.

(4) "Water treatment equipment" includes appliances used to alter or purify water or to alter a mineral, chemical, or bacterial content or substance.

Sec. 341.102. WATER TREATMENT SPECIALIST CERTIFICATION PROGRAM. (a) The commission by rule [~~Commissioner of Health or his designee~~] shall establish a program to certify persons [~~as being~~] qualified to install, exchange, service [~~for the installation, exchange, servicing~~], and repair [~~of~~] residential, commercial, or industrial water treatment equipment and appliances [~~facilities as defined by Subsection (g) of Section 2 of this Act~~].

(b) The rules must establish:

(1) [~~Texas Board of Health shall set~~] standards for certification to ensure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment;

(2) classes of certification;

(3) duration of certification; and

(4) reasonable annual certification fees in an amount sufficient to pay the administrative costs of the certification program, but not to exceed $150 a year for any class of certification.

Sec. 341.103. CERTIFICATION REQUIRED. A person may not engage in water treatment unless the person first obtains a certificate from the commission under the program established under this subchapter.

Sec. 341.104. APPLICATION FOR CERTIFICATION. A person desiring to obtain certification under the program established under this subchapter shall file with the commission:

(1) an application in the form prescribed by the commission and containing the information required by the commission; and

(2) the appropriate certification fee.

Sec. 341.105. ISSUANCE OF CERTIFICATE. (a) [~~Nothing in this section shall be construed to require that persons licensed pursuant to this Act are subject to certification under this section.~~

[~~(b) Before a certificate is issued or renewed under this section, an applicant or holder of a certificate shall be required to pay a fee of $10 a year.~~]

On receipt of an application that meets commission requirements and the required fee, the commission [~~Texas Department of Health~~] shall issue to a [~~qualified~~] person who meets commission standards for certification a certificate stating that the person is qualified to install, exchange, service [~~for the installation, exchange, servicing~~], and repair [~~of~~] residential, commercial, or industrial water treatment facilities.

(b) [~~The Texas Board of Health shall adopt rules establishing classes of certificates, duration of certificates, and fees.~~

[~~(c)~~] All fees received by the commission [~~Texas Department of Health~~] under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(c) A person who holds a license under The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) is exempt from the requirements of this subchapter.

(d) This subchapter does not apply to an employee of an industrial facility installing or servicing water treatment equipment.

ARTICLE 8. REGISTRATION OF IRRIGATORS AND ON-SITE SEWAGE DISPOSAL SYSTEM INSTALLERS

SECTION 8.01. Section 34.008(a), Water Code, is amended to read as follows:

(a) The commission may waive any prerequisite [~~certify~~] for obtaining registration for [~~without examination~~] an applicant who is registered as a licensed irrigator or licensed installer by [~~in~~] another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for registration by reciprocity [~~state or country that has requirements for registration that are at least substantially equivalent to the requirements of this state and that extends the same privilege of reciprocity to licensed irrigators or licensed installers registered in this state~~].

SECTION 8.02. Section 34.009(f), Water Code, is amended to read as follows:

(f) The commission by rule may adopt a system under which certificates of registration expire on various dates during the year. For the year in which the expiration date is changed, the commission shall prorate registration [~~renewal~~] fees [~~payable on August 31 shall be prorated~~] on a monthly basis so that each registrant pays [~~will pay~~] only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is due.

SECTION 8.03. Section 366.076, Health and Safety Code, is amended to read as follows:

Sec. 366.076. REGISTRATION RENEWAL. The commission by rule may adopt a system under which registrations expire on various dates during the year. For each year in which the registration expiration date is changed, the commission shall prorate registration fees on a monthly basis so that each registrant pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable [~~provide for periodic renewal of registrations~~].

ARTICLE 9. REGULATION OF SOLID WASTE

SECTION 9.01. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1125 to read as follows:

Sec. 361.1125. IMMEDIATE REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCE AT SCRAP TIRE SITE. (a) In this section:

(1) "Scrap tire" has the meaning assigned by Section 361.112.

(2) "Scrap tire site" includes any site at which more than 500 scrap tires are located.

(b) If the executive director after investigation finds that there exists a release or threat of release of a hazardous substance at a scrap tire site and immediate action is appropriate to protect human health and the environment, the commission may, with money available from money appropriated to the commission, undertake immediate remedial or removal action at the scrap tire site to achieve the necessary protection.

(c) The reasonable expenses of immediate remedial or removal action by the commission under this section are recoverable from the persons described in Section 361.271, and the state may bring an action to recover the commission's reasonable expenses.

SECTION 9.02. Section 361.114, Health and Safety Code, is amended to read as follows:

Sec. 361.114. PROHIBITION OF [~~GRANT OF PERMIT FOR~~] DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS [~~SALT DOMES~~]. [~~(a)~~] The commission by rule shall prohibit the storage, processing, or disposal of [~~may not issue a permit for a~~] hazardous waste [~~injection well~~] in a solution-mined salt dome cavern or a sulphur mine [~~unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate that activity~~].

[~~(b) Before issuing a permit for a hazardous waste injection well in a solution-mined salt dome cavern, the commission by order must find that there is an urgent public necessity for the hazardous waste injection well. The commission, in determining whether an urgent public necessity exists for the permitting of the hazardous waste injection well in a solution-mined salt dome cavern, must find that:~~

[~~(1) the injection well will be designed, constructed, and operated in a manner that provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies;~~

[~~(2) consistent with the need and desire to manage within the state hazardous wastes generated in the state, there is a substantial or obvious public need for additional hazardous waste disposal capacity and the hazardous waste injection well will contribute additional capacity toward servicing that need;~~

[~~(3) the injection well will be constructed and operated in a manner so as to safeguard public health and welfare and protect physical property and the environment;~~

[~~(4) the applicant has demonstrated that groundwater and surface waters, including public water supplies, will be protected from the release of hazardous waste from the salt-dome waste containment cavern; and~~

[~~(5) any other criteria required by the commission to satisfy that the test of urgency has been met.~~]

SECTION 9.03. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.119 to read as follows:

Sec. 361.119. REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. (a) The commission by rule shall ensure that a solid waste processing facility is regulated as a solid waste facility under this chapter and is not allowed to operate unregulated as a recycling facility.

(b) The commission shall adopt rules, including record keeping and reporting requirements and limitations on the storage of recyclable material, to ensure that:

(1) recyclable material is reused and not abandoned or disposed of; and

(2) recyclable material does not create a nuisance or threaten or impair the environment or public health and safety.

(c) A facility that reuses or smelts recyclable materials or metals and the operations conducted and materials handled at the facility are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(2) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under this chapter, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(d) A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste is not subject to the requirements of record keeping and reporting adopted under Subsection (b).

(e) A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section.

SECTION 9.04. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.120 to read as follows:

Sec. 361.120. NOTICE OF HEARING AND REQUIREMENTS FOR REOPENING OF CLOSED OR INACTIVE LANDFILLS. (a) This section applies to any municipal solid waste landfill facility permitted by the commission or any of its predecessor or successor agencies that have either stopped accepting waste, or only accepted waste pursuant to an emergency authorization, for a period of five years or longer. This section shall not apply to any solid waste landfill facility that has received a permit but never received waste.

(b) The commission or its successor agencies shall allow any municipal solid waste landfill facility covered by this section to be reopened and to accept waste again only if the permittee demonstrates compliance with all current state, federal, and local requirements, including but not limited to the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and the implementing Texas State regulations.

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of January 1, 2001, the scope of the public hearing is to be limited to land use, as provided by Section 361.069.

SECTION 9.05. (a) Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.121 to read as follows:

Sec. 361.121. LAND APPLICATION OF CERTAIN SLUDGE; PERMIT REQUIRED. (a) In this section:

(1) "Class B sludge" is sewage sludge that meets one of the pathogen reduction requirements of 30 T.A.C. 312.82(b).

(2) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.

(3) "Responsible person" means the person with ultimate responsibility for the land application of the Class B sludge at a land application unit. The responsible person is:

(A) the owner of the land application unit if the sludge being land applied was generated outside this state; or

(B) the person who is land applying the sludge if the sludge being land applied was generated in this state.

(b) A responsible person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit for that land application unit issued by the commission under this section on or after September 1, 2003.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal.

(d) In each permit, the commission shall prescribe the conditions under which it is issued, including:

(1) the duration of the permit;

(2) the location of the land application unit;

(3) the maximum quantity of Class B sludge that may be applied or disposed of under the permit;

(4) any monitoring and reporting requirements prescribed by the commission for the permit holder; and

(5) a requirement that the permit holder must report to the commission any noncompliance by the permit holder with the permit conditions or applicable commission rules.

(e) A permit does not become a vested right in the permit holder.

(f) A permit may be issued under this section for a term set by the board not to exceed six years from the date of issuance.

(g) The commission shall charge a fee for the issuance of a permit under this section in an amount not less than $1,000 and not more than $5,000. In determining the fee under this subsection, the commission shall consider the amount of sludge to be applied under the permit.

(h) The commission by rule shall require an applicant for a permit under this section to submit with the application, at a minimum, information regarding:

(1) the applicant;

(2) the source, quality, and quantity of sludge to be applied; and

(3) the hydrologic characteristics of the surface water and groundwater at and within one-quarter of a mile of the land application unit.

(i) The commission may expand the definition of Class B sludge only by expanding the definition to include sludge that meets more stringent pathogen reduction requirements.

(b) For the purposes of administrative efficiency, the Texas Natural Resource Conservation Commission by rule may develop catagories of persons required to obtain a permit under Section 361.121(b), Health and Safety Code, as added by this Act, and may require certain categories of persons to obtain a permit earlier than the date prescribed by that section.

SECTION 9.06. Subchapter N, Chapter 361, Health and Safety Code, is amended by adding Section 361.431 to read as follows:

Sec. 361.431. PRIORITIZATION OF NEW TECHNOLOGY. (a) A political subdivision or solid waste producer shall give preference in contracting for the disposal of solid waste to license or permit holders who use processes and technologies that reduce the volume of sludge and hazardous waste that is being disposed of through beneficial use land application, landfill disposal, and other methods.

(b) Technology that reduces the volume of solid waste, destroys the solid waste, or renders the solid waste inert is preferred to methods referred to under Subsection (a), to minimize the possibility of hazardous materials entering the state's air, waterways, and water sources.

SECTION 9.07. Section 7.031, Water Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) If[~~, before the issuance of a permit,~~] the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

(1) issue an order requiring corrective action or other response measures considered necessary to protect human health or the environment; or

(2) institute a civil action under Subchapter D.

(f) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

SECTION 9.08. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.122 to read as follows:

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used

as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

ARTICLE 10. EDWARDS AQUIFER

SECTION 10.01. As used in this article, "Edwards Aquifer" has the meaning defined in Section 26.046, Water Code.

SECTION 10.02. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.050 to read as follows:

Sec. 26.050. DIGITAL COPIES OF BOUNDARY LINES. The commission shall make available to the public digital copies of the Recharge, Transition, and Contributing Zone boundary lines, when they become available.

SECTION 10.03. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.051 to read as follows:

Sec. 26.051. ANNUAL REPORT ON EDWARDS AQUIFER PROGRAM. The commission shall report annually on the Edwards Aquifer Program expenses and allocation of fees.

SECTION 10.04. Subchapter D, Chapter 26, Water Code, is amended by adding Section 26.137 to read as follows:

Sec. 26.137. COMMENT PERIOD FOR EDWARDS AQUIFER PROTECTION PLANS. The commission shall provide for a 30-day comment period in the review process for Edwards Aquifer Protection Plans in the Contributing Zone of the Edwards Aquifer as provided in 30 T.A.C. Section 213.4(a)(2).

ARTICLE 11. MATTERS RELATED TO REMEDIATION

SECTION 11.01. Subchapter F, Chapter 361, Health and Safety Code, is amended by adding Section 361.1875 to read as follows:

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. The commission may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter appear to originate from an up-gradient, off-site source that is not owned or operated by the person;

(2) additional corrective action is not required at the site owned or operated by the person; and

(3) the commission will not undertake a formal enforcement action in the matter.

ARTICLE 12. REGULATION OF CERTAIN ANIMAL FEEDING OPERATIONS

SECTION 12.01. Sections 26.001(10) and (13), Water Code, are amended to read as follows:

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities,

including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) ["~~agricultural waste~~"] does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) ["~~pollutant~~"] does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

SECTION 12.02. Chapter 26, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROTECTION OF CERTAIN WATERSHEDS

Sec. 26.501. DEFINITIONS. In this subchapter:

(1) "Concentrated animal feeding operation" has the meaning assigned by 30 T.A.C. Section 321.32 on the effective date of this subchapter.

(2) "New concentrated animal feeding operation" means a proposed concentrated animal feeding operation, any part of which is located on property not previously authorized by the state to be operated as a concentrated animal feeding operation.

(3) "Historical waste application field" means an area of land that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation on which agricultural waste from a concentrated animal feeding operation has been applied.

Sec. 26.502. APPLICABILITY. This subchapter applies only to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone. In this subchapter, "major sole source impairment zone" means a watershed that contains a reservoir:

(1) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(2) at least half of the water flowing into which is from a source that, on the effective date of this subchapter, is on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d), as amended:

(A) at least in part because of concerns regarding pathogens and phosphorus; and

(B) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Sec. 26.503. REGULATION OF CERTAIN CONCENTRATED ANIMAL FEEDING OPERATION WASTES. (a) The commission may authorize the construction or operation of a new concentrated animal feeding operation, or an increase in the animals confined under an existing operation, only by a new or amended individual permit.

(b) The individual permit issued or amended under Subsection (a) must:

(1) provide for management and disposal of waste in accordance with Subchapter B, Chapter 321, Title 30, Texas Administrative Code;

(2) require that 100 percent of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

(A) disposed of or used outside of the watershed;

(B) delivered to a composting facility approved by the executive director;

(C) applied as directed by the commission to a waste application field owned or controlled by the owner of the concentrated animal feeding operation, if the field is not a historical waste application field;

(D) put to another beneficial use approved by the executive director; or

(E) applied to a historical waste application field that is owned or operated by the owner or operator of the concentrated animal feeding operation only if:

(i) results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer parts per million of extractable phosphorus (reported as P); or

(ii) the manure is applied, with commission approval, in accordance with a detailed nutrient utilization plan approved by the commission that is developed by:

(a) an employee of the United States Department of Agriculture's Natural Resources Conservation Service;

(b) a nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;

(c) the State Soil and Water Conservation Board;

(d) the Texas Agricultural Extension Service;

(e) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(f) a professional agronomist or soil scientist certified by the American Society of Agronomy.

(c) The commission may approve a detailed nutrient utilization plan approved by the commission that is developed by a professional agronomist or soil scientist certified by the American Society of Agronomy only if the commission finds that another person listed by Subsection (b)(2)(E)(ii) cannot develop a plan in a timely manner.

(d) The commission may not issue a general permit to authorize the discharge of agricultural waste into or adjacent to waters in this state from an animal feeding operation if such waters are within a major sole source impairment zone.

(e) The commission and employees or agents of the commission may enter public or private property at any reasonable time for activities related to the purposes of this subchapter. The commission may enforce this authority as provided by Section 7.032, 7.051, 7.052, or 7.105.

(f) This section does not limit the commission's authority to include in an individual or general permit under this chapter provisions necessary to protect a water resource in this state.

Sec. 26.504. WASTE APPLICATION FIELD SOIL SAMPLING AND TESTING. (a) The operator of a concentrated animal feeding operation shall contract with a person described by Section 26.503(b)(2)(E)(ii) selected by the executive director to collect one or more representative composite soil samples from each waste application field. The operator shall have sampling performed under this subsection not less often than once every 12 months.

(b) Each sample collected under this section must be tested for phosphorus and any other nutrient designated by the executive director. The test results must be made available to the executive director and the operator of the concentrated animal feeding operation. The test results are public records of the commission.

(c) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 500 parts per million, the operator shall file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(d) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 200 parts per million but not more than 500 parts per million, the operator shall:

(1) file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii); or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(e) The owner or operator of a waste application field required by this section to have a nutrient utilization plan with a phosphorus reduction component for which the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus is subject to enforcement for a violation of this subchapter at the discretion of the executive director. The executive director, in determining whether to take an enforcement action under this subsection, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

(f) The commission shall adopt rules to implement this section. The rules must provide for the scheduling and manner of the required soil testing and the form, content, and deadlines for plans required under this section.

ARTICLE 13. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS

SECTION 13.01. Subchapter I, Chapter 26, Water Code, is amended by adding Section 26.3476 to read as follows:

Sec. 26.3476. SECONDARY CONTAINMENT REQUIRED FOR TANKS LOCATED OVER CERTAIN AQUIFERS. (a) In this section, "secondary containment" means a method by which a secondary wall or barrier is installed around an underground storage tank system in a manner designed to prevent a release of a regulated substance from migrating beyond the secondary wall or barrier before the release can be detected. A secondary containment system may include an impervious liner or vault surrounding a primary tank or piping system or a double-wall tank or piping system.

(b) An underground storage tank system, at a minimum, shall incorporate a method for secondary containment if the system is located in:

(1) the outcrop of a major aquifer composed of limestone and associated carbonate rocks of Cretaceous age or older; and

(2) a county that:

(A) has a population of at least one million and relies on groundwater for at least 75 percent of the county's water supply; or

(B) has a population of at least 75,000 and is adjacent to a county described by Paragraph (A).

(c) Section 26.3475(e) applies to an underground storage tank system that is subject to this section as if a violation of this section were a violation of Section 26.3475.

(d) Notwithstanding Section 26.359(b), a political subdivision under this section may adopt standards for the containment of underground storage tank systems.

ARTICLE 14. REGULATION AND REMEDIATION OF UNDERGROUND AND ABOVEGROUND STORAGE TANKS

SECTION 14.01. Section 26.342, Water Code, is amended by amending Subdivisions (9)-(17) and adding Subdivision (18) to read as follows:

(9) "Owner" means a person who holds legal possession or ownership of an interest in an underground storage tank system or an aboveground storage tank. If the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person. A person that has registered as an owner of an underground storage tank system or aboveground storage tank with the commission under Section 26.346 after September 1, 1987, shall be considered the tank system owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the tank system was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Section 26.3514 (Limits on Liability of Lender), Section 26.3515 (Limits on Liability of Corporate Fiduciary), and Section 26.3516 (Limits on Liability of Taxing Unit).

(10) "Person" means an individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

(11) [~~(10)~~] "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(12) [~~(11)~~] "Petroleum storage tank" means:

(A) any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by the commission; or

(B) any one or combination of underground storage tanks and any connecting underground pipes that contain petroleum products and that are regulated by the commission.

(13) [~~(12)~~] "Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment.

(14) [~~(13)~~] "Release" means any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground or aboveground storage tank into groundwater, surface water, or subsurface soils.

(15) [~~(14)~~] "Risk-based corrective action" means site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground or aboveground storage tank.

(16) [~~(15)~~] "Spent oil" means a regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use

by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(17) [~~(16)~~] "Underground storage tank" means any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

(18) [~~(17)~~] "Vehicle service and fueling facility" means a facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

SECTION 14.02. Sections 26.346(a) and (c), Water Code, are amended to read as follows:

(a) An underground or aboveground storage tank must be registered with the commission unless the tank is exempt from regulation under Section 26.344 of this code or the tank is covered under Subsection (b) of this section. The commission by rule shall establish the procedures and requirements for establishing and maintaining current registration information concerning underground and aboveground storage tanks. The commission shall also require that an owner or operator of an underground storage tank used for storing motor fuels (as defined in commission rule) complete an annual underground storage tank compliance certification form.

(c) The commission shall issue to each person who owns or operates a petroleum storage tank that is registered under this section a registration and compliance confirmation certificate that includes a brief description of:

(1) the responsibility of the owner or operator under Section 26.3512 of this code;

(2) the rights of the owner or operator to participate in the petroleum storage tank remediation account and the groundwater protection cleanup program established under this subchapter; and

(3) the responsibility of the owner or operator of an underground storage tank to accurately complete the part of the registration form pertaining to the certification of compliance with underground storage tank administrative requirements and technical standards if the tank is used for storing motor fuels (as defined in commission rule).

SECTION 14.03. Section 26.351, Water Code, is amended by adding Subsections (f), (g), and (h) to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete Corrective Action Plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a

demonstration that a Corrective Action Plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a Corrective Action Plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a Corrective Action Plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a Corrective Action Plan or groundwater monitoring, all deadlines set by the executive director concerning the Corrective Action Plan or approved groundwater monitoring plan shall be met; and

(6) site closure requests for all sites where the executive director agreed in writing that no Corrective Action Plan was required must be received by the agency no later than September 1, 2005. The request must be complete, as judged by the executive director.

(g) For persons regulated under Subsection (f), their failure to comply with any deadline listed in Subsection (f) is a violation of this section, and the executive director may enforce such a violation under Chapter 7 of this code. A missed deadline that is the fault of the person, his agent, or contractor shall also eliminate reimbursement eligibility as described by Section 26.3571(b). If it can be established to the executive director's satisfaction that the deadline was not missed at the fault of the person, his agent, or contractor, then reimbursement eligibility is not affected under this subsection.

(h) A person's liability to perform corrective action under this chapter is unrelated to any possible reimbursements the person may be eligible for under Section 26.3571.

SECTION 14.04. Section 26.3512(b), Water Code, is amended to read as follows:

(b) Funds from the petroleum storage tank remediation account may not be used to pay, and the owner or operator of a petroleum storage tank ordered by the commission to take corrective action is responsible for payment of, the following:

(1) the owner or operator contribution described by Subsections (e)-(k);

(2) any expenses for corrective action that exceed the applicable amount specified by Section 26.3573(m);

(3) any expenses for corrective action that are not covered by payment from the petroleum storage tank remediation account under the rules or decisions of the commission under this subchapter;

(4) any expenses for corrective action not ordered or agreed to by the commission; [~~or~~]

(5) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the commission after December 22, 1998; and

(6) any corrective action expenses for which reimbursement is prohibited under Section 26.3571, 26.3573, or 26.361.

SECTION 14.05. Section 26.355(d), Water Code, is amended to read as follows:

(d) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement and if the costs are recovered under this section, the commission may not recover more than the amount of the applicable owner or operator contribution described by Section 26.3512[~~(e)~~] of this code from an eligible owner or operator for corrective action for each occurrence. However, this limitation is not applicable to cost recovery actions initiated by the executive director at sites where the executive director has determined that the owner or operator is in violation of Section 26.351(f).

SECTION 14.06. Section 26.3571, Water Code, is amended by amending Subsection (b) and adding Subsections (g) and (h) to read as follows:

(b) To be an eligible owner or operator for purposes of this subchapter, a person must not have missed any of the deadlines described in Section 26.351(f) and must:

(1) be one of the following:

(A) an owner or operator of a petroleum storage tank that is subject to regulation under this subchapter;

(B) an owner of land that can clearly prove that the land has been contaminated by a release of petroleum products from a petroleum storage tank that is subject to regulation under this subchapter, whether or not the tank is still attached to that land; or

(C) a lender that has a bona fide security or lienhold interest in or mortgage lien on any property contaminated by the release of petroleum products from a petroleum storage tank subject to regulation under this subchapter, or that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of such property;

(2) be in compliance with this subchapter as determined by the commission; and

(3) meet qualifying criteria established by the commission under Subsection (a) of this section.

(g) An otherwise eligible owner or operator who misses a deadline referenced in Subsection (b) shall be considered ineligible for reimbursement under this subchapter.

(h) Nothing in this section reduces the liability to perform corrective action created under Section 26.351 and other parts of this subchapter.

SECTION 14.07. Section 26.3572(b), Water Code, is amended to read as follows:

(b) In administering the program, the commission shall:

(1) negotiate with or direct responsible parties in site assessment and remediation matters using risk-based corrective action;

(2) approve site-specific corrective action plans for each site as necessary, using risk-based corrective action;

(3) review and inspect site assessment and remedial activities and reports;

(4) use risk-based corrective action procedures as determined by commission rule to establish cleanup levels;

(5) adopt by rule criteria for assigning a priority to each site using risk-based corrective action and assign a priority to each site according to those criteria;

(6) adopt by rule criteria for:

(A) risk-based corrective action site closures; and

(B) the issuance of a closure letter to the owner or operator of a tank site on completion of the commission's corrective action requirements; and

(7) process claims for petroleum storage tank remediation account disbursement in accordance with this subchapter.

SECTION 14.08. Section 26.3573, Water Code, is amended by amending Subsection (d) and by adding Subsections (r) and (s) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program, not to exceed an amount equal to: 11.8 [~~6.7~~] percent of the gross receipts of that account for FY 02/03; 16.40 percent of the gross receipts of that account for FY 04/05; and 21.1 percent of the gross receipts of that account for FY 06/07;

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) of this section, expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2006.

SECTION 14.09. Sections 26.3574(b), (x), (y), (z), and (aa), Water Code, are amended to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) $12.50 [~~$18.75~~] for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2002 and Fiscal Year 2003; $10 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2004 and Fiscal Year 2005; $5 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2006; and $2 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2007;

(2) $25 [~~$37.50~~] for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2002 and Fiscal Year 2003; $20 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2004 and Fiscal Year 2005; $10 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2006; and $4 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2007;

(3) $37.50 [~~$56.25~~] for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2002 and Fiscal Year 2003; $30 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2004 and Fiscal Year 2005; $15 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2006; and $6 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2007;

(4) $50 [~~$75~~] for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2002 and Fiscal Year 2003; $40 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2004 and Fiscal Year 2005; $20 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2006; and $8 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2007; and

(5) a $25 [~~$37.50~~] fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2002 and Fiscal Year 2003; $20 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2004 and Fiscal Year 2005; $10 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2006; and $4 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2007.

(x) [~~After the deposits have been made to the credit of the general revenue fund under Section 403.092(c)(1), Government Code, as added by Chapter 533, Acts of the 73rd Legislature, 1993, the fee imposed under this section may not be collected or required to be paid on or after the first day of the second month following notification by the commission of the date on which the unobligated balance in the petroleum storage tank remediation account equals or exceeds $100 million. The commission shall notify the comptroller in writing of the date on which the unobligated balance equals or exceeds $100 million.~~

[~~(y) If the unobligated balance in the petroleum storage tank remediation account falls below $25 million, the fee shall be reinstated, effective on the first day of the second month following notification by the commission, in amounts determined as follows:~~

[~~(1) $9.38 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;~~

[~~(2) $18.75 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;~~

[~~(3) $28.13 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;~~

[~~(4) $37.50 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and~~

[~~(5) an $18.75 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.~~

[~~(z) For purposes of Subsections (x) and (y) of this section, the unobligated balance in the petroleum storage tank remediation account shall be determined by subtracting from the cash balance of the account at the end of each month the sum of the total balances remaining on all contracts entered by the commission or an eligible owner for corrective action plus the total estimates made by the commission of allowable costs for corrective action that are unpaid relating to all commission orders issued before that date to enforce this subchapter.~~

[~~(aa)~~] The commission shall report to the Legislative Budget Board at the end of each fiscal quarter on the financial status of the petroleum storage tank remediation account.

SECTION 14.10. Sections 26.359 and 26.361, Water Code, are amended to read as follows:

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. (a) In this section, "local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(b) A [~~This subchapter establishes a unified statewide program for underground and surface water protection, and any local~~] regulation or ordinance adopted by a local government that imposes standards [~~is effective only to the extent the regulation or ordinance does not conflict with the standards adopted~~] for the design, construction, installation, or operation of underground storage tanks is not valid [~~under this subchapter~~].

(c) This section does not apply to a regulation or ordinance in effect as of January 1, 2001.

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. [~~(a)~~] Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2006 [~~2003~~]. On or after September 1, 2006 [~~2003~~], the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

[~~(b) On or after March 1, 2002, the commission may not collect a fee under Section 26.3574 of this code.~~]

ARTICLE 15. REGULATION OF AIR POLLUTION

SECTION 15.01. Section 382.019(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 382.037(g), or another provision of this chapter, the [~~The~~] commission by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

SECTION 15.02. Section 382.037, Health and Safety Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive [~~other~~] than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (h) unless the fuel is specifically authorized by the legislature [~~or unless it is demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Texas Department of Health, it is determined to be necessary for the protection of public health~~].

(h) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(i) The commission may consider, as an alternative method of compliance with Subsection (h), fuels to achieve equivalent emissions reductions.

SECTION 15.03. Section 382.039(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 382.037(g) or another provision of this chapter, the [~~The~~] commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

SECTION 15.04. The changes in law made by this Act do not apply to fuel standards adopted by the Texas Natural Resource Conservation Commission before September 1, 2000.

ARTICLE 16. CONFORMING AMENDMENTS

SECTION 16.01. Section 5.174(a), Water Code, is amended to read as follows:

(a) Except as otherwise specifically provided by this code and subject to the specific limitations provided by this code, on application of any person the commission shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the commission. A certified copy with the seal of the commission and the signature of the presiding officer [~~chairman~~] of the commission or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.

SECTION 16.02. Section 11.323(a), Water Code, is amended to read as follows:

(a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the presiding officer of the commission [~~chairman~~] and bearing the seal of the commission.

SECTION 16.03. Sections 26.0135(a) and (b), Water Code, are amended to read as follows:

(a) To ensure clean water, the commission shall establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. In order to conserve public funds and avoid duplication of effort, subject to adequate funding under Section 26.0291 [~~Subsection (h)~~], river authorities shall, to the greatest extent possible and under the supervision of the commission, conduct water quality monitoring and assessments in their own watersheds. Watershed monitoring and assessments involving agricultural or silvicultural nonpoint source pollution shall be coordinated through the State Soil and Water Conservation Board with local soil and water conservation districts. The water quality monitoring and reporting duties under this section apply only to a river authority that has entered into an agreement with the commission to perform those duties. The commission, either directly or through cooperative agreements and contracts with local governments, shall conduct monitoring and assessments of watersheds where a river authority is unable to perform an adequate assessment of its own watershed. The monitoring program shall provide data to identify significant long-term water quality trends, characterize water quality conditions, support the permitting process, and classify unclassified waters. The commission shall consider available monitoring data and assessment results in developing or reviewing wastewater permits and stream standards and in conducting other water quality management activities. The assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed. The monitoring and assessment required by this section is a continuing duty, and the monitoring and assessment shall be periodically revised to show changes in the factors subject to assessment.

(b) In order to assist in the coordination and development of assessments and reports required by this section, a river authority shall organize and lead a basin-wide steering committee that includes persons paying fees under Section 26.0291 [~~Subsection (h)~~], private citizens, the State Soil and Water Conservation Board, representatives from other appropriate state agencies, political subdivisions, and other persons with an interest in water quality matters of the watershed or river basin. Based on committee and public input, each steering committee shall develop water quality objectives and priorities that are achievable considering the available technology and economic impact. The objectives and priorities shall be used to develop work plans and allocate available resources under Section 26.0291 [~~Subsection (h)~~]. Each committee member shall help identify significant water quality issues within the basin and shall make available to the river authority all relevant water quality data held by the represented entities. A river authority shall also develop a public input process that provides for meaningful comments and review by private citizens and organizations on each basin summary report. A steering committee established by the commission to comply with this subsection in the absence of a river authority or other qualified local government is not subject to Chapter 2110, Government Code [~~Article 6252-33, Revised Statutes~~].

SECTION 16.04. Section 26.0135(d), Water Code, as amended by Chapters

101 and 1082, Acts of the 75th Legislature, Regular Session, 1997, is reenacted and amended to read as follows:

(d) In the appropriate year of the cycle provided by commission rules adopted to implement Section 26.0285, each river authority shall submit a written summary report to the commission, State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality assessment of the authority's watershed. The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source of use impairment, and recommended actions the commission may take to address those concerns. The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process. A river authority shall submit a summary report after the report has been approved by the basin steering committee and coordinated with the public and the commission. A river authority shall hold basin steering committee meetings and shall invite users of water and wastewater permit holders in the watershed who pay fees under Section 26.0291 [~~Subsection (h)~~] to review the draft of the work plans and summary report. A river authority shall inform those parties of the availability and location of the summary report for inspection and shall solicit input from those parties concerning their satisfaction with or suggestions for modification of the summary report for the watershed, the operation or effectiveness of the watershed monitoring and assessment program authorized by this section, and the adequacy, use, or equitable apportionment of the program's costs and funds. A river authority shall summarize all comments received from persons who pay fees under Section 26.0291 [~~Subsection (h)~~] and from steering committee members and shall submit the report and the summaries to the governor, the lieutenant governor, and the speaker of the house of representatives not later than the 90th day after the date the river authority submits the summary report to the commission and other agencies.

SECTION 16.05. Section 26.028(d), Water Code, is amended to read as follows:

(d) Notwithstanding any other provision of this chapter, the commission, at a regular meeting without the necessity of holding a public hearing, may approve an application to renew or amend a permit if:

(1) the applicant is not applying to:

(A) increase significantly the quantity of waste authorized to be discharged; or

(B) change materially the pattern or place of discharge;

(2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;

(3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and

(4) the commission determines that an applicant's compliance history under the method for evaluating compliance history developed by the commission under Section 5.754 [~~for the preceding five years~~] raises no issues

regarding the applicant's ability to comply with a material term of its permit.

SECTION 16.06. Section 26.0281, Water Code, is amended to read as follows:

Sec. 26.0281. CONSIDERATION OF [~~PAST PERFORMANCE AND~~] COMPLIANCE HISTORY. In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider the [~~any adjudicated decision on or~~] compliance history [~~proceeding addressing past performance and compliance~~] of the applicant and its operator under the method for evaluating compliance history developed by the commission under Section 5.754 [~~with the laws of this state governing waste discharge, waste treatment, or waste disposal facilities and with the terms of any permit or order issued by the commission~~].

SECTION 16.07. Section 26.040(h), Water Code, is amended to read as follows:

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the [~~discharger operates any facility for which the~~] discharger's compliance history is in the lowest classification under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections [~~contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations~~]. A hearing under this subsection is not subject to Chapter 2001, Government Code.

SECTION 16.08. Section 27.051, Water Code, is amended by amending Subsections (d) and (e) and adding Subsection (h) to read as follows:

(d) The commission, in determining if the use or installation of an injection well for the disposal of hazardous waste is in the public interest under Subsection (a)(1) [~~of this section~~], shall consider, but shall not be limited to the consideration of:

(1) compliance history of the applicant under the method for evaluating compliance history developed by the commission under Section 5.754 and in accordance with the provisions of Subsection (e) [~~of this section~~];

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available to manage the types and classes of hazardous waste; and

(3) whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

(A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

(e) Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the [~~The~~] commission shall establish a procedure for preparing summaries of the applicant's compliance history [~~by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the commission under this chapter for any injection well for which a permit has been issued under this chapter~~]. The [~~compliance~~] summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the commission under this chapter may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. In accordance with this subsection and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance history of an applicant for an injection well may be offered at a hearing on the application and may be admitted into evidence, subject to the rules of evidence. All evidence admitted, including compliance history, shall be considered by the commission in determining whether to issue, amend, extend or renew a permit.

(h) In determining whether the use or installation of an injection well is in the public interest under Subsection (a)(1), the commission shall consider the compliance history of the applicant in accordance with Subsection (e) and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections.

SECTION 16.09. Section 361.020(d), Health and Safety Code, is amended to read as follows:

(d) The commission in developing a comprehensive statewide strategic plan shall:

(1) consult with:

(A) the agency's waste minimization, recycling, or reduction division;

(B) the municipal solid waste management and resource recovery advisory council;

(C) the pollution prevention [~~waste reduction~~] advisory committee;

(D) the interagency coordinating council; and

(E) local governments, appropriate regional and state agencies, businesses, citizen groups, and private waste management firms;

(2) hold public hearings in different regions of the state; and

(3) publish the proposed plan in the Texas Register.

SECTION 16.10. Sections 361.084(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state [~~in the preceding five years~~] concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

SECTION 16.11. Section 361.088(f), Health and Safety Code, is amended to read as follows:

(f) Notwithstanding Subsection (e), if the commission determines that an applicant's compliance history under the method for evaluating compliance history developed by the commission under Section 5.754, Water Code, [~~for the preceding five years~~] raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

SECTION 16.12. Sections 361.089(a), (e), and (f), Health and Safety Code, are amended to read as follows:

(a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections [~~a violation of this chapter or other applicable laws or rules controlling the management of solid waste~~].

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

(1) the applicant or permit holder has a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections [~~record of environmental violations in the preceding five years at the permitted site;~~

[~~(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant~~];

(2) [~~(3)~~] the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) [~~(4)~~] the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(4) [~~(5)~~] the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that the applicant or permit holder has a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections [~~a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations~~]; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

SECTION 16.13. Sections 382.0518(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The commission shall grant within a reasonable time a permit to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under Section 382.056(k) [~~382.056(d)~~], the commission finds:

(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code [~~any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission~~].

SECTION 16.14. Section 382.055(d), Health and Safety Code, is amended to read as follows:

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) [~~whether~~] the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code [~~is or has been in substantial compliance with this chapter and the terms of the existing permit~~]; and

(2) the condition and effectiveness of existing emission control equipment and practices.

SECTION 16.15. Section 382.056(o), Health and Safety Code, is amended to read as follows:

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections [~~contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations~~].

SECTION 16.16. Section 401.110, Health and Safety Code, is amended to read as follows:

Sec. 401.110. DETERMINATION ON LICENSE. In making a determination whether to grant, deny, amend, revoke, suspend, or restrict a

license or registration, the [~~department or~~] commission may consider [~~those aspects of~~] an applicant's or license holder's [~~background that bear materially on the ability to fulfill the obligations of licensure, including~~] technical competence and compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code [~~the applicant's or license holder's record in areas involving radiation~~].

SECTION 16.17. Section 401.112(a), Health and Safety Code, is amended to read as follows:

(a) The department or commission, within its jurisdiction, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

(1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;

(2) compatibility with present uses of land near the site;

(3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;

(4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;

(5) the applicant's qualifications, including financial and[~~,~~] technical qualifications[~~,~~] and compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code [~~past operating practices~~];

(6) background monitoring plans for the proposed site;

(7) suitability of facilities associated with the proposed activities;

(8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;

(9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;

(10) training programs for the applicant's employees;

(11) a monitoring, record-keeping, and reporting program;

(12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;

(13) decommissioning and postclosure care plans;

(14) security plans;

(15) worker monitoring and protection plans;

(16) emergency plans; and

(17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

ARTICLE 17. REGULATION OF DISPOSAL OF ANIMAL REMAINS

SECTION 17.01. Subchapter H, Chapter 801, Occupations Code, is amended by adding Section 801.361 to read as follows:

Sec. 801.361. DISPOSAL OF ANIMAL REMAINS. (a) A veterinarian may dispose of the remains of an animal by burial or burning if:

(1) the burial or burning occurs on property owned by the veterinarian; and

(2) the veterinarian does not charge for the burning or burial.

(b) Notwithstanding any other law, the Texas Natural Resource Conservation Commission may not adopt a rule that prohibits conduct authorized by this section.

(c) This section applies only in a county with a population of less than 10,000.

ARTICLE 18. TRANSITIONS; EFFECTIVE DATE

SECTION 18.01. CHANGE OF AGENCY NAME. (a) Effective January 1, 2004:

(1) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights, and obligations of the Texas Commission on Environmental Quality;

(2) a member of the Texas Natural Resource Conservation Commission is a member of the board of the Texas Commission on Environmental Quality;

(3) all personnel, equipment, data, documents, facilities, and other items of the Texas Natural Resource Conservation Commission are transferred to the agency under its new name; and

(4) any appropriation to the Texas Natural Resource Conservation Commission is automatically an appropriation to the Texas Commission on Environmental Quality.

(b) Effective January 1, 2004, a reference in law to the Texas Natural Resource Conservation Commission is a reference to the Texas Commission on Environmental Quality.

(c) The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission.

SECTION 18.02. TRANSFER OF SAFE DRINKING WATER LABORATORY CERTIFICATION PROGRAM. (a) On the effective date of this Act, the following are transferred to the Texas Natural Resource Conservation Commission:

(1) all powers, duties, rights, and obligations of the Texas Department of Health relating to the safe drinking water laboratory certification program administered by the Texas Department of Health's bureau of laboratories;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the safe drinking water laboratory certification program; and

(3) all appropriations to the Texas Department of Health pertaining to

the safe drinking water laboratory certification program, and all other state or federal money available to the Texas Department of Health for that program.

(b) On the effective date of this Act, Texas Department of Health rules relating to the safe drinking water laboratory certification program administered by the Texas Department of Health's bureau of laboratories are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

(c) A certification issued by the Texas Department of Health for a safe drinking water laboratory before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section.

SECTION 18.03. TRANSFER OF ENVIRONMENTAL TESTING LABORATORY CERTIFICATION PROGRAM. (a) On the effective date of this Act, the following are transferred to the Texas Natural Resource Conservation Commission:

(1) all powers, duties, rights, and obligations of the Texas Department of Health relating to the environmental testing laboratory certification program administered by the Texas Department of Health under Chapter 421, Health and Safety Code;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the environmental testing laboratory certification program; and

(3) all appropriations to the Texas Department of Health pertaining to the environmental laboratory certification program, and all other state or federal money available to the Texas Department of Health for that program.

(b) On the effective date of this Act, Texas Department of Health rules relating to the environmental testing laboratory certification program administered by the Texas Department of Health under Chapter 421, Health and Safety Code, are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

(c) A certification issued by the Texas Department of Health before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section and by this Act to Chapter 421, Health and Safety Code.

(d) The change in law made by the addition by this Act of Section 5.127, Water Code, relating to the acceptance of environmental testing laboratory results by the Texas Natural Resource Conservation Commission, applies only to environmental testing laboratory results submitted to the commission on or after the third anniversary of the date on which the commission publishes notice in the Texas Register that the commission's environmental laboratory testing program established under Subchapter R, Chapter 5, Water Code, as added by this Act, has met the standards of the National Environmental Laboratory Accreditation Conference.

SECTION 18.04. CERTIFICATION OF WATER TREATMENT SPECIALISTS. (a) On the effective date of this Act, the following are transferred to the Texas Natural Resource Conservation Commission:

(1) all powers, duties, rights, and obligations of the Texas Department of Health relating to the certification of water treatment specialists administered

by the Texas Department of Health under Section 3A, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes);

(2) all equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the certification of water treatment specialists; and

(3) all appropriations to the Texas Department of Health pertaining to the certification of water treatment specialists, and all other state or federal money available to the Texas Department of Health for that program.

(b) On the effective date of this Act, Texas Department of Health rules relating to the certification of water treatment specialists are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

SECTION 18.05. PERFORMANCE-BASED REGULATION. (a) Not later than February 1, 2002, the Texas Natural Resource Conservation Commission by rule shall establish the components of compliance history, as required by Section 5.753, Water Code, as added by this Act. The use of compliance history for the purposes established by Section 5.754, Water Code, as added by this Act, apply only to violations that occur on or after the effective date of the rules adopted under this subsection.

(b) Not later than September 1, 2002, the Texas Natural Resource Conservation Commission by rule shall establish the standards for the classification and use of compliance history, as required by Section 5.754, Water Code, as added by this Act.

(c) Not later than September 1, 2003, the Texas Natural Resource Conservation Commission by rule shall establish interim incentives as part of the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act.

(d) Not later than September 1, 2005, the Texas Natural Resource Conservation Commission by rule shall complete all rules necessary for the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act.

(e) The Texas Natural Resource Conservation Commission shall report to the 78th and 79th legislatures regarding the implementation of the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act. The reports must include recommendations regarding statutory impediments to program implementation, progress in the development of rules and incentives, participation in the program, changes in federal statutes and policies affecting implementation of the program, and benefits accruing to the environment from the program. A report required by this subsection shall be filed not later than December 15 of the year preceding the year in which the legislative session begins.

(f) The changes made by this Act in the consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to the issuance, amendment, modification, or renewal of permits under the following sections apply only to an application for the issuance, amendment, modification, or renewal of a permit submitted to the Texas Natural Resource Conservation Commission on or after September 1, 2002:

(1) Sections 5.754, 26.028, 26.0281, 26.040, and 27.018, Water Code; and

(2) Sections 361.084, 361.088, 361.089, 382.0518, 382.055, 382.056, 401.110, and 401.112, Health and Safety Code.

(g) For the purposes of consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to the issuance, amendment, modification, or renewal of a permit under the sections listed under Subsection (f) of this section, an application submitted before September 1, 2002, is governed by the law as it existed immediately before September 1, 2001, and the former law is continued in effect for that purpose.

(h) The changes made by this Act in the consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to inspections and flexible permitting under Subchapter Q, Chapter 5, Water Code, as added by this Act apply, effective September 1, 2002, to an action taken by the Texas Natural Resource Conservation Commission that is subject to those sections.

(i) The changes made by this Act in the definition of compliance history apply to an action taken by the Texas Natural Resource Conservation Commission on or after February 1, 2002. An action taken by the Texas Natural Resource Conservation Commission before February 1, 2002, is governed by the law in effect on the date the action is taken, and the former law is continued in effect for that purpose.

(j) The changes made by this Act in the consideration of compliance history in decisions of the Texas Natural Resource Conservation Commission relating to the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission apply only to a proceeding that is initiated or an action that is brought on or after September 1, 2002. A proceeding that is initiated or an action that is brought before September 1, 2002, is governed by the law in effect on the date the proceeding is initiated or action is brought, and the former law is continued in effect for that purpose.

(k) For the period between September 1, 2002, and September 1, 2005, the Texas Natural Resource Conservation Commission by rule may temporarily modify specific compliance history requirements to implement the regulatory structure being developed under Subchapter Q, Chapter 5, Water Code, as added by this Act. This section does not authorize the commission to modify existing statutory requirements relating to the use of compliance history in any enforcement proceeding.

SECTION 18.06. FEES. (a) The changes in law made by Sections 5.702 and 5.703, Water Code, as added by this Act, relating to the timely payment and adjustment of fees due the Texas Natural Resource Conservation Commission, and by Section 5.706, Water Code, as added by this Act, relating to penalties and interest for delinquent fees, apply only to fees that are due on or after September 1, 2001.

(b) The change in law made by this Act to Sections 26.0135 and 26.0291, Water Code, relating to the consolidation of certain fees relating to water quality, takes effect September 1, 2002, and applies only to fees due on or after that date. The assessment and collection of fees due before the effective date of this Act are governed by the former law, and that law is continued in effect for that purpose. Water resource management account balances dedicated to a particular purpose under Sections 26.0135 and 26.0291, Water Code, as that

law exists prior to the changes in law made by this Act, that have not been expended before the effective date of this Act may be used for the purposes authorized by this Act.

(c) Water resource management account balances dedicated to a particular purpose under the law as it exists prior to the changes in law made by this Act to redesignated Sections 5.701(e), (p), and (q), Water Code, and Sections 341.041(a), 366.058(a), and 366.059(b), Health and Safety Code, that have not been expended before the effective date of this Act may be used for the purposes authorized under this Act.

SECTION 18.07. REGULATORY FLEXIBILITY. The change in law made by Section 5.123, Water Code, as added by Chapter 1203, Acts of the 75th Legislature, Regular Session, 1997, relating to regulatory flexibility, as transferred, redesignated, and amended by this Act, applies only to an application for regulatory flexibility that is submitted to the Texas Natural Resource Conservation Commission on or after September 1, 2001.

SECTION 18.08. COMMISSIONER TRAINING. (a) As soon as practicable after September 1, 2001, but not later than December 1, 2001, the Texas Natural Resource Conservation Commission shall adopt rules to implement the training program for commission members required by Section 5.0535, Water Code, as added by this Act.

(b) The training requirements of Section 5.0535, Water Code, as added by this Act, apply only to a member of the commission who is appointed on or after January 1, 2002.

SECTION 18.09. EXECUTIVE DIRECTOR. The change in law made by this Act to Section 5.228, Water Code, relating to hearing appearances by the executive director of the Texas Natural Resource Conservation Commission, applies only to a hearing in which the executive director is named a party on or after September 1, 2001.

SECTION 18.10. INITIATION OF ACTION ON CITIZEN INFORMATION. (a) Not later than December 1, 2001, the Texas Natural Resource Conservation Commission shall adopt rules to implement the requirements of Section 7.0025, Water Code, as added by this Act, relating to the initiation of enforcement action by the commission based on information regarding an environmental problem submitted by a private individual.

(b) The change in law made by Section 7.0025, Water Code, as added by this Act, applies only to information regarding an environmental problem submitted to the Texas Natural Resource Conservation Commission on or after January 1, 2002.

SECTION 18.11. ADOPTION OF RULES REGARDING REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. As soon as practicable after the effective date of this Act, the Texas Natural Resource Conservation Commission shall adopt rules as necessary to implement Section 361.119, Health and Safety Code, as added by this Act.

SECTION 18.12. JOINT INTERIM STUDY ON OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL. A joint interim study shall be conducted by a joint committee consisting of five members of the senate appointed by the lieutenant governor and five members of the house of representatives appointed by the speaker of the house. The committee shall

study and report to the 78th Legislature on the issues associated with establishing an Office of Natural Resource Public Interest Counsel. The issues addressed shall include:

(1) the authority of the office of public interest counsel, including the authority to appeal decisions of the Texas Natural Resource Conservation Commission;

(2) resources needed to carry out the functions of the office; and

(3) the relationship of the office to other public assistance efforts in the agency and the need for an agency ombudsman.

SECTION 18.13. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS. The change in law made by Section 26.3476, Water Code, as added by this Act, applies only to an underground storage tank system that is installed, upgraded, or replaced on or after the effective date of this Act.

SECTION 18.14. EMISSIONS EVENTS. The purpose of Sections 382.0215 and 382.0216, Health and Safety Code, as added by this Act, is to add new or more stringent requirements regarding upsets, startups, shutdowns, and maintenance. Those sections may not be construed as limiting the existing authority of the Texas Natural Resource Conservation Commission under Chapter 382, Health and Safety Code, to require the reporting or the permitting of the emission of air contaminants or to bring enforcement action for a violation of Chapter 382. Those sections are not intended to limit any right that may exist under federal law for a person to seek injunctive relief.

SECTION 18.15. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

ARTICLE 19. ENVIRONMENTAL HEALTH

SECTION 19.01. Title 5, Health and Safety Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. ENVIRONMENTAL HEALTH

CHAPTER 427. TEXAS ENVIRONMENTAL HEALTH INSTITUTE

Sec. 427.001. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Department" means the Texas Department of Health.

(4) "Federal superfund site" means a site defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended.

(5) "Immediately surrounding area" means an area determined by the commission to have been significantly exposed to one or more pollutants from the identified site.

(6) "Institute" means the Texas Environmental Health Institute.

Sec. 427.002. TEXAS ENVIRONMENTAL HEALTH INSTITUTE. The commission shall enter into an agreement with the department to jointly establish the Texas Environmental Health Institute in order to examine ways to identify, treat, manage, prevent, and reduce health problems associated with environmental contamination.

Sec. 427.003. PURPOSES. The purposes of the institute are to:

(1) develop a statewide plan to identify health conditions, related or potentially related to environmental contamination, of residents of this state who live or have lived within the immediately surrounding area of a federal superfund site or a state superfund site;

(2) develop a plan to promote and protect the health and safety of residents in immediately surrounding areas by preventing or reducing their health risks from exposure to chemical and biological contaminants, radioactive materials, and other hazards in the environment and the workplace;

(3) develop a plan for informing and educating citizens in immediately surrounding areas about the identified health risks and ways to prevent or reduce exposure;

(4) identify private and federal funding opportunities for institute operations; and

(5) conduct, coordinate, or pursue funding for research concerning short-term and long-term impacts of exposure to environmental contamination.

Sec. 427.004. PROGRAMS. The commission and the department may establish at the institute any programs necessary to carry out the institute's established purposes under this chapter. The commission and the board may contract with public or private entities to carry out the institute's purposes.

Sec. 427.005. GIFTS AND GRANTS. The commission and the department may accept and administer gifts and grants to fund the institute from any individual, corporation, trust, or foundation or the United States, subject to limitations or conditions imposed by law.

Sec. 427.006. PILOT PROJECT. (a) The institute shall conduct a pilot project at the RSR West Dallas site and at the Cadillac Heights site. The project may include health screenings and assessments.

(b) The institute may enter into a memorandum of understanding with the commission and the department for toxic screening, pollutant assessment, toxicologist services, or any other appropriate service to be provided by the agencies, as necessary.

(c) The institute shall use information gathered through the pilot project to assist in developing its plan for implementing the institute's purposes under this chapter.

(d) The pilot project shall be conducted for two years beginning on September 1, 2001. The institute shall submit to the 78th Legislature a report on the results of the pilot project and the development and implementation of the statewide plan and the further organization of the institute.

ARTICLE 20. OTHER REGULATORY PROVISIONS

SECTION 20.01. Subchapter K, Chapter 13, Water Code, is amended by adding Section 13.4115 to read as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a retail public utility, if the executive director finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the commission, the commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the commission may impose an administrative penalty under Section 13.4151.

SECTION 20.02. Section 51.149, Water Code, is amended to read as follows:

Sec. 51.149. CONTRACTS. (a) Notwithstanding Section 49.108(e), no approval other than that specified in Subsection (c) need be obtained in order for a contract between a district and a municipality to be valid, binding, and enforceable against all parties to the contract. After approval by a majority of the electors voting at an election conducted in the manner of a bond election, a district may make payments under a contract from taxes for debt that does not exceed 30 years.

(b) [~~(d)~~] A contract may provide that the district will make payments under the contract from proceeds from the sale of notes or bonds, from taxes, from any other income of the district, or from any combination of these.

(c) [~~(e)~~] A district may make payments under a contract from taxes, other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(d) [~~(f)~~] Any contract election may be held at the same time as and in conjunction with an election to issue bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

SECTION 20.03. Subchapter D, Chapter 366, Health and Safety Code, is amended by adding Section 366.0512 to read as follows:

Sec. 366.0512. MULTIPLE TREATMENT SYSTEMS. A multiple system of treatment devices and disposal facilities may be permitted as an on-site disposal system under this chapter if the system:

(1) is located on a tract of land of at least 100 acres in size;

(2) produces not more than 5,000 gallons a day on an annual average basis;

(3) is used only on a seasonal or intermittent basis; and

(4) is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

Representative Talton raised a point of order against further consideration of **HB 2912** under Rule 8, Section 10 of the House Rules and Article III, Section 56 of the Texas Constitution on the grounds that Section 9.08 of the conference committee report is limited in application by artificial devices in lieu of identifying by name the political subdivision that is affected by the provision and because that provision is limited in application to a particular political subdivision, notice of introduction of the bill should have been published.

The chair overruled the point of order.

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).

HB 2912 - (consideration continued)

Representative Bosse moved to adopt the conference committee report on **HB 2912**.

Representative Wilson moved to recommit **HB 2912** to the conference committee on **HB 2912**.

Representative Bosse moved to table the motion to recommit **HB 2912** to the conference committee on **HB 2912**.

The motion to table prevailed.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2912** prevailed by (Record 637): 100 Yeas, 42 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Capelo; Carter; Chavez; Chisum; Christian; Clark; Cook; Counts; Crabb; Craddick; Danburg; Davis, J.; Driver; Dukes; Dunnam; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Flores; Gallego; George; Geren; Glaze; Goodman; Goolsby; Gray; Green; Gutierrez; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hochberg; Homer; Hope; Hopson; Howard; Hunter; Janek; Jones, D.; Junell; Keel; Keffer; King, T.; Kitchen; Kolkhorst; Kuempel; Lewis, R.; Longoria; Luna; Madden; Martinez Fischer; Maxey; McCall; McClendon; Menendez; Merritt; Moreno, P.; Mowery; Naishtat; Oliveira; Pickett; Pitts; Puente; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Shields; Smith; Smithee; Solis; Swinford; Telford; Tillery; Truitt; Turner, B.; Uresti; Villarreal; Walker; West; Wise; Wohlgemuth; Wolens; Yarbrough; Zbranek.

Nays — Bailey; Berman; Callegari; Coleman; Corte; Crownover; Davis, Y.; Delisi; Denny; Deshotel; Dutton; Edwards; Farrar; Garcia; Giddings; Haggerty; Hamric; Hinojosa; Hodge; Hupp; Isett; Jones, E.; Jones, J.; King, P.; Krusee; Lewis, G.; Marchant; Moreno, J.; Morrison; Najera; Nixon; Noriega; Olivo; Ramsay; Salinas; Solomons; Talton; Thompson; Turner, S.; Williams; Wilson; Woolley.

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

Absent, Excused — Hilbert; Miller.

Absent — Grusendorf; Hill; McReynolds; Seaman.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 637. I intended to vote no.

Hilderbran

When Record No. 637 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

When Record No. 637 was taken, my vote failed to register. I would have voted yes.

McReynolds

I was shown voting no on Record No. 637. I intended to vote yes.

Thompson

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 73).

(Speaker in the chair)

SB 409 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bosse submitted the conference committee report on **SB 409**.

Representative Bosse moved to adopt the conference committee report on **SB 409**.

A record vote was requested.

The motion prevailed by (Record 638): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller.

Absent — Hill; Talton; Walker.

STATEMENT OF VOTE

When Record No. 638 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

HR 1402 - ADOPTED
(by Sadler)

The following privileged resolution was laid before the house:

HR 1402

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 3343**, relating to the operation and funding of certain group coverage programs for certain school and educational employees and their dependents, to consider and take action on the following matters:

(1) House Rule 13, Sections 9(a)(1) and (4), are suspended to permit the committee to add text changing Section 2, Article 3.50-7, Insurance Code, as added by SECTION 1.01, **HB 3343**, to read as follows:

Sec. 2. DEFINITIONS. In this article:

(1) "Administering firm" means any entity designated by the trustee to administer any coverages, services, benefits, or requirements under this article and the trustee's rules adopted under this article.

(2) "Charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(3) "Dependent" means:

(A) a spouse of a full-time employee or part-time employee;

(B) a full-time or part-time employee's unmarried child who is younger than 25 years of age, including:

(i) an adopted child;

(ii) a foster child, stepchild, or other child who is in a regular parent-child relationship; and

(iii) a recognized natural child;

(C) a full-time or part-time employee's recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship and who lives with or whose care is provided by the employee or the surviving spouse on a regular basis, regardless of the child's age, if the child is mentally retarded or physically incapacitated to such an extent as to be dependent on the employee or surviving spouse for care or support, as determined by the trustee; and

(D) notwithstanding any other provision of this code, any other dependent of a full-time or part-time employee specified by rules adopted by the trustee.

(4) "Employee" means a participating member of the Teacher Retirement System of Texas who is employed by a participating entity and who is not receiving coverage from a uniform group insurance program under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) or the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code) or from the Texas Public School Retired Employees Group Insurance Program established under Article 3.50-4 of this code. The term does not include an individual performing personal services as an independent contractor.

(5) "Health coverage plan" means any group policy or contract, hospital service agreement, health maintenance organization agreement, preferred provider arrangement, or any similar group arrangement or any combination of those policies, contracts, agreements, or arrangements that provides for, pays for, or reimburses expenses for health care services.

(6) "Participating entity" means an entity participating in the uniform group coverage program established under this article. The term includes:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center; and

(D) a charter school that meets the requirements of Section 6 of this article.

(7) "Program" means the uniform group coverage program established under this article.

(8) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

(9) "Trustee" means the Teacher Retirement System of Texas.

Explanation: This change is necessary to clarify who is a dependent eligible for coverage under the new group coverage program and to clarify that certain educational districts whose employees are members of the Teacher Retirement System of Texas are also eligible to participate in the program.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Sections 4(d) and (e), Article 3.50-7, Insurance Code, as added by SECTION 1.01, **HB 3343**, to read as follows:

(d) During the initial period of eligibility, coverage provided under the program may not be made subject to a preexisting condition limitation.

(e) The trustee may offer optional coverages to employees participating in the program. The trustee by rule may define the types of optional coverages offered under this subsection.

Explanation: These changes are necessary to clarify that preexisting condition limitations may not be imposed during the initial eligibility, and to authorize the provision of certain optional coverages to participating employees.

(3) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 5, Article 3.50-7, Insurance Code, as added by SECTION 1.01, **HB 3343**, to read as follows:

Sec. 5. PARTICIPATION IN PROGRAM BY SCHOOL DISTRICTS, OTHER EDUCATIONAL DISTRICTS, AND REGIONAL EDUCATION SERVICE CENTERS. (a) Effective September 1, 2002, each school district with 500 or fewer employees and each regional education service center is required to participate in the program.

(a-1) Effective September 1, 2002, a school district that, on January 1, 2001, had more than 500 employees but not more than 1,000 employees may elect to participate in the program. A school district that elects to participate in the program under this subsection must notify the trustee of the election, in the manner prescribed by the trustee, not later than September 30, 2001. This subsection expires January 1, 2002.

(b) Effective September 1, 2005, a school district with more than 500 employees may elect to participate in the program. A school district that elects to participate under this subsection shall apply for participation in the manner prescribed by the trustee by rule.

(b-1) Notwithstanding Subsection (b) of this section, a school district with more than 500 employees may elect to participate in the program before September 1, 2005, if the trustee determines that participation by districts in

that category would be administratively feasible and cost-effective. This subsection expires September 1, 2005.

(c) In determining the number of employees of a school district for purposes of Subsections (a) and (b) of this section, school districts that, on January 1, 2001, were members of a risk pool established under the authority of Chapter 172, Local Government Code, as provided by Section 22.004, Education Code, may elect to be treated as a single unit. A school district shall elect whether to be considered as a member of a risk pool under this section by notifying the trustee not later than September 1, 2001.

(d) A risk pool in existence on January 1, 2001, that, as of that date, provided group health coverage to 500 or fewer school district employees may elect to participate in the program.

(e) A school district with 500 or fewer employees that is a member of a risk pool described by Subsection (c) of this section that provides group health coverage to more than 500 school district employees must elect, not later than September 1, 2001, whether to be treated as a school district with 500 or fewer employees or as part of a unit with more than 500 employees. The school district must notify the trustee of the election, in the manner prescribed by the trustee, not later than September 1, 2001.

(f) For purposes of this section, participation in the program by school districts covered by a risk pool is limited to school districts covered by the risk pool as of January 1, 2001.

(g) Notwithstanding Subsection (a) of this section, a school district otherwise subject to Subsection (a) of this section that, on January 1, 2001, was individually self-funded for the provision of health coverage to its employees may elect to not participate in the program.

(h) Notwithstanding Subsection (a) of this section, a school district otherwise subject to Subsection (a) of this section that is a party to a contract for the provision of insurance coverage to the employees of the district that is in effect on September 1, 2002, is not required to participate in the program until the expiration of the contract period. A school district subject to this subsection shall notify the trustee in the manner prescribed by the trustee. This subsection expires March 1, 2004.

(i) An educational district described by Section 2(6)(B) of this article that, on January 1, 2001, has 500 or fewer employees may elect not to participate in the program.

Explanation: This change is necessary to clarify the participation in the group coverage program of educational districts that are not school districts but whose employees are members of the Teacher Retirement System of Texas, to add a January 1, 2001, date for determination of the size of a school district or risk pool, and to authorize larger districts to participate before September 1, 2005, if the Teacher Retirement System of Texas authorizes that early participation.

(4) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Sections 7(c) and (e), Article 3.50-7, Insurance Code, as added by SECTION 1.01, **HB 3343**, to read as follows:

(c) A participating employee may select coverage in any coverage plan offered by the trustee. The employee is not required to continue participation

in the coverage plan initially selected and may select a higher or lower tier coverage plan than the plan initially selected by the employee in the manner provided by trustee rule. If the combined contributions received from the state and the employing participating entity under Section 9 of this article exceed the cost of a coverage plan selected by the employee, the employee may use the excess amount of contributions to obtain coverage under a higher tier coverage plan, or to pay all or part of the cost of coverage for the employee's dependents. A married couple, both of whom are eligible for coverage under the program, may pool the amount of contributions to which the couple are entitled under the program to obtain coverage for themselves and dependent coverage.

(e) Notwithstanding Subsection (d) of this section, a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Explanation: These changes are necessary to specify that an employee participating in the group coverage program may elect higher or lower coverage plans, clarifies the use of contributions for dependent coverage, and expands the authority to pay for part of an employee's premiums to all participating entities.

(5) House Rule 13, Sections 9(a)(1) and (4), are suspended to permit the committee to add text changing Section 9, Article 3.50-7, Insurance Code, as added by SECTION 1.01, **HB 3343**, to read as follows:

Sec. 9. PAYMENT OF CONTRIBUTIONS FOR PROGRAM. (a) The state shall assist employees of participating school districts and charter schools in the purchase of group health coverage under this article by providing for each covered employee the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act. The state contribution shall be distributed through the school finance formulas under Chapters 41 and 42, Education Code, and used by school districts and charter schools as provided by Sections 42.2514 and 42.260, Education Code.

(b) The state shall assist employees of participating regional education service centers and educational districts described by Section 2(6)(B) of this article in the purchase of group health coverage under this article by providing to the employing service center for each covered employee the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act.

(c) A participating entity shall make contributions for the program as provided by Article 3.50-9 of this code.

(d) An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution under Subsection (a) or (b) of this section and the participating entity contribution under Subsection (c) of this section. The employee may pay the employee's contribution under this subsection from the amount distributed to the employee under Article 3.50-8 of this code.

(e) Notwithstanding Subsection (d) of this section, a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Explanation: This change is necessary to clarify how the state contributions for the group coverage program will be made, and to specify that educational districts that are not school districts but whose employees are members of the Teacher Retirement System of Texas are eligible for state contributions.

(6) House Rule 13, Sections 9(a)(4), is suspended to permit the committee to add text changing Section 1, Article 3.50-8, Insurance Code, as added by SECTION 1.02, **HB 3343**, by adding a new definition of "cafeteria plan" to read as follows:

(1) "Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986, and its subsequent amendments.

Explanation: This change is necessary to clarify that the reference in the bill to the use of cafeteria plans means a plan as prescribed by federal law.

(7) House Rule 13, Sections 9(a)(4), is suspended to permit the committee to add text changing Section 2, Article 3.50-8, Insurance Code, as added by SECTION 1.02, **HB 3343**, to read as follows:

Sec. 2. ACTIVE EMPLOYEE HEALTH COVERAGE OR COMPENSATION SUPPLEMENTATION. (a) Each year, the trustee shall deliver to each school district, including a school district that is ineligible for state aid under Chapter 42, Education Code, each other educational district that is a member of the Teacher Retirement System of Texas, each eligible charter school, and each regional education service center state funds in an amount, as determined by the trustee, equal to the product of the number of employees employed by the district, school, or service center multiplied by $1,000 or a greater amount as provided by the General Appropriations Act for purposes of this article.

(b) All funds received by a school district, other educational district, eligible charter school, or regional education service center under this article are held in trust for the benefit of the employee on whose behalf the district, school, or service center received the funds.

(c) The trustee shall distribute funds under this article in equal monthly installments. The trustee is entitled to recover from a school district, other educational district, eligible charter school, or regional education service center any amount distributed under this article to which the district, school, or service center was not entitled.

(d) A determination by the trustee under this section is final and may not be appealed.

Explanation: This change is necessary to clarify how the state contributions for the group coverage program will be paid and allocated, and to specify that educational districts that are not school districts but whose employees are members of the Teacher Retirement System of Texas are eligible for state contributions.

(8) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 3, Article 3.50-8, Insurance Code, as added by SECTION 1.02, **HB 3343**, to read as follows:

Sec. 3. EMPLOYEE ELECTION. (a) If an employee is covered by a cafeteria plan of a school district, other educational district, eligible charter school, or regional education service center, the state contribution under this article shall be deposited in the cafeteria plan, and the employee may elect

among the options provided by the cafeteria plan. A cafeteria plan receiving state contributions under this article may include a medical savings account option and must include, at a minimum, the following options:

(1) a health care reimbursement account;

(2) a benefit or coverage other than that provided under Article 3.50-7 of this code, or any employee coverage or dependent coverage available under Article 3.50-7 of this code but not otherwise fully funded by the state or the employer contributions, any of which must be a "qualified benefit" under Section 125, Internal Revenue Code of 1986, and its subsequent amendments;

(3) an option for the employee to receive the state contribution as supplemental compensation; or

(4) an option to divide the state contribution among two or more of the other options provided under this subsection.

(b) If an employee is not covered by a cafeteria plan of a school district, other educational district, eligible charter school, or regional education service center, the state contribution under this article shall be paid to the employee as supplemental compensation.

(c) Supplemental compensation under this section must be in addition to the rate of compensation that:

(1) the school district, other educational district, eligible charter school, or regional education service center paid the employee in the preceding school year; or

(2) the district, school, or service center would have paid the employee in the preceding school year if the employee had been employed by the district, school, or service center in the same capacity in the preceding school year.

(d) For each state fiscal year, an election under this section must be made before the later of:

(1) August 1 of the preceding state fiscal year; or

(2) the 31st day after the date the employee is hired.

(e) The trustee shall prescribe and distribute to each school district, other educational district, eligible charter school, and regional education service center:

(1) a model explanation written in English and Spanish of the options employees may elect under this section and the effect of electing each option; and

(2) an election form to be completed by employees.

(f) Each state fiscal year, a school district, other educational district, eligible charter school, or regional education service center shall prepare and distribute to each employee a written explanation in English and Spanish, as appropriate, of the options the employee may elect under this section. The explanation must be based on the model explanation prepared by the trustee under Subsection (e) of this section and must reflect all available health coverage options available to the employee. The explanation must be distributed to an employee before the later of:

(1) July 1 of the preceding state fiscal year; or

(2) the fifth day after the date the employee is hired.

(g) The written explanation under Subsection (f) of this section must be accompanied by a copy of the election form prescribed under Subsection (e)(2) of this section.

(h) Any unencumbered funds that are returned to the school district from accounts established under Subsection (a) of this section may be used only to provide employee compensation, benefits, or both.

Explanation: This change is necessary to clarify the options available to employees and to clarify the requirements for employee elections.

(9) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 4, Article 3.50-8, Insurance Code, as added by SECTION 1.02, **HB 3343**, by adding a new Subsection (b) to read as follows:

(b) The trustee may enter into interagency contracts with any agency of this state for the purpose of assistance in implementing this article.

Explanation: This change is necessary to clarify that the contract authority of the Teacher Retirement System of Texas applies to contracts under Article 3.50-8, Insurance Code, as added by the bill.

(9) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Sections 1 and 2, Article 3.50-10, Insurance Code, as added by SECTION 1.04, **HB 3343** (corresponding to Article 3.50-9, Insurance Code, in conference committee report), to read as follows:

Sec. 1. DEFINITIONS. In this article:

(1) "Participating employee" means an employee of a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center who participates in a group health coverage plan provided by or through the district, school, or service center.

(2) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code, that participates in the uniform group coverage program established under Article 3.50-7 of this code.

(3) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

Sec. 2. MAINTENANCE OF EFFORT FOR 2000-2001 SCHOOL YEAR. (a) Subject to Section 3 of this article, and except as provided by Section 5 of this article, a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center that, for the 2000-2001 school year, paid amounts to share with employees the cost of coverage under a group health coverage plan shall, for each fiscal year, use to provide health coverage an amount for each participating employee at least equal to the amount computed as provided by this section.

(b) The school district, other educational district, participating charter school, or regional education service center shall divide the amount that the district, school, or service center paid during the 2000-2001 school year for the prior group health coverage plan by the total number of full-time employees of the district, school, or service center in the 2000-2001 school year and multiply the result by the number of full-time employees of the district, school, or service center in the fiscal year for which the computation is made. If, for the 2000-2001 school year, a school district, other educational district, participating charter school, or regional education service center provided group health coverage to its employees through a self-funded insurance plan, the

amount the district, school, or service center paid during that school year for the plan includes only the amount of regular contributions made by the district, school, or service center to the plan.

(c) Amounts used as required by this section shall be deposited, as applicable, in:

(1) the Texas school employees uniform group coverage trust fund established under Section 8, Article 3.50-7, of this code; or

(2) another fund established for the payment of employee health coverage that meets requirements for those funds prescribed by the Texas Education Agency.

Explanation: This change is necessary to clarify that certain educational districts whose employees are members of the Teacher Retirement System of Texas, open-enrollment charter schools that participate in the statewide group health coverage program, and regional education service centers are required to maintain current spending efforts for employee health coverage.

(10) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 3, Article 3.50-10, Insurance Code, as added by SECTION 1.04, **HB 3343** (corresponding to Article 3.50-9, Insurance Code, in conference committee report), to read as follows:

Sec. 3. MINIMUM EFFORT. (a) A school district, other educational district, participating charter school, or regional education service center shall, for each fiscal year, use to provide health coverage an amount equal to the number of participating employees of the district, school, or service center multiplied by $1,800. Amounts used as required by this section shall be deposited in a fund described by Section 2(c) of this article.

(b) To comply with this section, a school district or participating charter school may use state funds received under Chapter 42, Education Code, other than funds that may be used under that chapter only for a specific purpose, except that amounts a district or school is required to use to pay contributions under a group health coverage plan for district or school employees under Section 42.2514 or 42.260, Education Code, other than amounts described by Section 42.260(c)(2)(B), are not used in computing whether the district or school complies with this section.

Explanation: This change is necessary to clarify that certain educational districts whose employees are members of the Teacher Retirement System of Texas, open-enrollment charter schools that participate in the statewide group health coverage program, and regional education service centers are required to meet the same minimum spending effort applicable to school districts, and to clarify that certain state funds school districts and participating charter schools are required to use in meeting the minimum spending effort count against the minimum effort.

(11) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Sections 4(a)-(a-7), Article 3.50-10, Insurance Code (corresponding to Article 3.50-9, Insurance Code, in conference committee report), as added by SECTION 1.04, **HB 3343**, to read as follows:

(a) For any state fiscal year beginning with the fiscal year ending August 31, 2003, except as provided by Subsection (b) of this section, a school district that imposes maintenance and operations taxes at the maximum

rate permitted under Section 45.003(d), Education Code, is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district multiplied by $1,800; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-1) For the state fiscal year beginning September 1, 2002, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $1,800; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-2) For the state fiscal year beginning September 1, 2003, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $1,500; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-3) For the state fiscal year beginning September 1, 2004, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $1,200; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-4) For the state fiscal year beginning September 1, 2005, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $900; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-5) For the state fiscal year beginning September 1, 2006, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $600; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-6) For the state fiscal year beginning September 1, 2007, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $300; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to

provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-7) A school district that receives state funds under Subsection (a) of this section for a state fiscal year is not entitled to state funds under Subsection (a-1), (a-2), (a-3), (a-4), (a-5), or (a-6) of this section.

Explanation: This change is necessary to require school districts and participating charter schools for whom 75% of the increased funding through the foundation school program funding elements exceeds the level of $900 per employee per year to use that excess towards meeting the minimum spending effort.

(12) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 4(c), Article 3.50-10, Insurance Code (corresponding to Article 3.50-9, Insurance Code, in conference committee report), as added by SECTION 1.04, **HB 3343**, to read as follows:

(c) The Teacher Retirement System of Texas shall distribute state funds to school districts and participating entities under this section in equal monthly installments. State funds received under this section shall be deposited in a fund described by Section 2(c) of this article. The Texas Education Agency shall provide to the retirement system information necessary for the retirement system to determine a school district's or participating entity's eligibility for state funds under this section. The trustee may enter into interagency contracts with any agency of this state for the purpose of assistance in distributing funds under this article.

Explanation: This change is necessary to permit the Teacher Retirement System of Texas to enter into interagency contracts relating to the distribution of state assistance towards meeting the minimum spending effort.

(13) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 41.002(a), Education Code, as amended by SECTIONS 2.02 and 2.03, senate committee report, **HB 3343**, to read as follows:

SECTION 2.02. Effective September 1, 2001, Section 41.002(a), Education Code, is amended to read as follows:

(a) A school district may not have a wealth per student that exceeds $300,000 [~~$295,000~~].

SECTION 2.03. Effective September 1, 2002, Section 41.002(a), Education Code, is amended to read as follows:

(a) A school district may not have a wealth per student that exceeds $305,000 [~~$295,000~~].

Explanation: This change is necessary to increase the equalized wealth level under the school finance system.

(14) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 42.2514, Education Code, as added by SECTION 2.06, senate committee report, **HB 3343**, to read as follows:

SECTION 2.05. Effective September 1, 2002, Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2514 to read as follows:

Sec. 42.2514. ADDITIONAL STATE AID FOR SCHOOL EMPLOYEE BENEFITS. (a) In this section, "participating charter school" means an open-enrollment charter school that participates in the uniform group coverage program established under Article 3.50-7, Insurance Code.

(b) For each school year, a school district, including a school district that is otherwise ineligible for state aid under this chapter, or a participating charter school is entitled to state aid in an amount, as determined by the commissioner, equal to the difference, if any, between:

(1) the amount determined by multiplying the amount of $900 or the amount specified in the General Appropriations Act for that year for purposes of the state contribution under Section 9, Article 3.50-7, Insurance Code, by the number of district or school employees who participate in a group health coverage plan provided by or through the district or school; and

(2) an amount equal to 75 percent of the amount of:

(A) additional funds to which the district or school is entitled due to the increase made by **HB 3343**, Acts of the 77th Legislature, Regular Session, 2001, to:

(i) the equalized wealth level under Section 41.002; and

(ii) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302; or

(B) additional state aid to which the district is entitled under Section 42.2513.

(c) A school district or participating charter school may use state aid received under this section only to pay contributions under a group health coverage plan for district or school employees.

(d) A determination by the commissioner under this section is final and may not be appealed.

(e) The commissioner may adopt rules to implement this section.

Explanation: This change is necessary to permit open-enrollment charter schools that participate in the uniform group coverage plan to receive additional state funding if the increased funding the school receives through the foundation school program funding elements does not reach the level of $900 per employee per year.

(15) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 42.260, Education Code, as added by SECTION 2.10, senate committee report, **HB 3343**, to read as follows:

SECTION 2.08. Effective September 1, 2002, Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.260 to read as follows:

Sec. 42.260. USE OF CERTAIN FUNDS. (a) In this section, "participating charter school" has the meaning assigned by Section 42.2514.

(b) For each year, the commissioner shall certify to each school district or participating charter school the amount of:

(1) additional funds to which the district or school is entitled due to the increase made by **HB 3343**, Acts of the 77th Legislature, Regular Session, 2001, to:

(A) the equalized wealth level under Section 41.002; or

(B) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302; or

(2) additional state aid to which the district or school is entitled under Section 42.2513.

(c) Notwithstanding any other provision of this code, a school district or participating charter school may use the following amount of funds only to pay contributions under a group health coverage plan for district or school employees:

(1) an amount equal to 75 percent of the amount certified for the district or school under Subsection (b); or

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount determined by multiplying the amount of $900 or the amount specified in the General Appropriations Act for that year for purposes of the state contribution under Section 9, Article 3.50-7, Insurance Code, by the number of district or school employees who participate in a group health coverage plan provided by or through the district or school; and

(B) the difference between the amount necessary for the district or school to comply with Section 3, Article 3.50-9, Insurance Code, for the school year and the amount the district or school is required to use to provide health coverage under Section 2 of that article for that year.

(d) A determination by the commissioner under this section is final and may not be appealed.

(e) The commissioner may adopt rules to implement this section.

Explanation: This change is necessary to require open-enrollment charter schools that participate in the uniform group coverage plan to use a portion of state funding received through the increases in the foundation school program funding elements to provide employee health coverage.

(16) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 42.302(a) Education Code, as amended by SECTIONS 2.11 and 2.12, senate committee report, **HB 3343**, to read as follows:

SECTION 2.09. Effective September 1, 2001, Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

GYA = (GL X WADA X DTR X 100) - LR

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is $25.81 [~~$24.99~~] or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance,

which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100.

SECTION 2.10. Effective September 1, 2002, Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

GYA = (GL X WADA X DTR X 100) - LR

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is $27.14 [~~$24.99~~] or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100.

Explanation: This change is necessary to increase the guaranteed level of state and local funding per weighted student per penny of tax effort.

(17) House Rule 13, Section 9(a)(4), is suspended to permit the committee

to add text adding Subsection (l) to Section 26.08, Tax Code, as amended by SECTION 1.06, **HB 3343**, to read as follows:

(l) For purposes of Subsection (k), the amount of state funds that would have been available to a school district in the preceding year is computed using the maximum tax rate for the current year under Section 42.253(e), Education Code.

Explanation: This change is necessary to clarify that school district rollback tax rates that are adjusted for tax increases in connection with the minimum spending effort are computed in the same manner as other school district rollback tax rates.

(18) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 62.1015, Health and Safety Code, as added by SECTION 1.07, **HB 3343** to read as follows:

SECTION 1.04. Subchapter C, Chapter 62, Health and Safety Code, is amended by adding Section 62.1015 to read as follows:

Sec. 62.1015. ELIGIBILITY OF CERTAIN CHILDREN; DISALLOWANCE OF MATCHING FUNDS. (a) In this section, "charter school," "employee," and "regional education service center" have the meanings assigned by Section 2, Article 3.50-7, Insurance Code.

(b) A child of an employee of a charter school, school district, other educational district whose employees are members of the Teacher Retirement System of Texas, or regional education service center may be enrolled in health benefits coverage under the child health plan. A child enrolled in the child health plan under this section participates in the same manner as any other child enrolled in the child health plan.

(c) The cost of health benefits coverage for children enrolled in the child health plan under this section shall be paid as provided in the General Appropriations Act. Expenditures made to provide health benefits coverage under this section may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, unless the Health and Human Services Commission, after consultation with the appropriate federal agencies, determines that the expenditures may be included without adversely affecting federal matching funding for the child health plan provided under this chapter.

Explanation: This change is necessary to provide for coverage under the child health program for children of employees of all entities eligible to participate in the new group coverage plan and to clarify the Health and Human Services Commission's authority to determine whether resulting expenditures affect federal matching funds for the child health program.

(19) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 3, Article 3.51, Insurance Code, as amended by SECTION 3.16, **HB 3343**, by adding a new Subsection (b) to read as follows:

(b) This section does not preclude an entity described by Subsection (a) of this section from procuring contracts under this article for the provision of optional insurance coverages to the employees of the entity.

Explanation: This change is necessary to clarify that a participating entity retains the authority to purchase optional coverages for its employees.

(20) House Rule 13, Section 9(a)(4), is suspended to permit the committee

to add text changing Article 26.036(c), Insurance Code, as added by SECTION 2.17, **HB 3343**, to read as follows:

(c) An independent school district that is participating in the uniform group coverage program established under Article 3.50-7 of this code may not participate in the small employer market under this article for health insurance coverage and may not renew a health insurance contract obtained in accordance with this article after the date on which the program of coverages provided under Article 3.50-7 of this code is implemented. This subsection does not affect a contract for the provision of optional coverages not included in a health benefits plan under this chapter.

Explanation: This change is necessary to clarify that an independent school district retains the authority to purchase optional coverages for its employees through the small employer program under Chapter 26, Insurance Code.

(21) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text changing Section 22.004, Education Code, as amended by SECTION 3.18, **HB 3343**, to read as follows:

Sec. 22.004. GROUP HEALTH BENEFITS FOR SCHOOL EMPLOYEES. (a) A [~~Each~~] district shall participate in the uniform group coverage program established under Article 3.50-7, Insurance Code, as provided by Section 5 of that article.

(b) A district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code). The coverage must meet the substantive coverage requirements of Article 3.51-6, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

(1) the deductible amount for service provided inside and outside of the network;

(2) the coinsurance percentages for service provided inside and outside of the network;

(3) the maximum amount of coinsurance payments a covered person is required to pay;

(4) the amount of the copayment for an office visit;

(5) the schedule of benefits and the scope of coverage;

(6) the lifetime maximum benefit amount; and

(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(c) [~~(b)~~] The cost of the coverage provided under the program described by Subsection (a) shall be paid by the state, the district, and the employees in the manner provided by Article 3.50-7, Insurance Code. The cost of coverage provided under a plan adopted under Subsection (b) shall [~~may~~] be shared by the employees and the district using the contributions by the state described by Section 9, Article 3.50-7, Insurance Code, and Article 3.50-8, Insurance Code.

(d) [~~(c)~~] Each district shall report the district's compliance with this section [~~subsection~~] to the executive director of the Teacher Retirement System of Texas not later than March 1 of each even-numbered year in the manner required by the board of trustees of the Teacher Retirement System of Texas. For a district that does not participate in the program described by Subsection (a), the [~~The~~] report must be based on the district group health coverage plan in effect during the current plan year and must include:

(1) appropriate documentation of:

(A) the district's contract for group health coverage with a provider licensed to do business in this state by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or

(B) a resolution of the board of trustees of the district authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;

(2) the schedule of benefits;

(3) the premium rate sheet, including the amount paid by the district and employee;

(4) the number of employees covered by the [~~each~~] health coverage plan offered by the district; and

(5) any other information considered appropriate by the executive director of the Teacher Retirement System of Texas.

(e) [~~(d)~~] Based on the criteria prescribed by Subsection (b) [~~(a)~~], the executive director of the Teacher Retirement System of Texas shall, for each district that does not participate in the program described by Subsection (a), certify whether a district's coverage is comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). If the executive director of the Teacher Retirement System of Texas determines that the group health coverage offered by a district is not comparable, the executive director shall report that information to the district and to the Legislative Budget Board. The executive director shall submit a report to the legislature not later than September 1 of each even-numbered year describing the status of each district's

group health coverage program based on the information contained in the report required by Subsection (d) [~~(c)~~] and the certification required by this subsection.

(f) [~~(e)~~] A school district that does not participate in the program described by Subsection (a) may not contract with an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization to issue a policy or contract under this section, or with any person to assist the school district in obtaining or managing the policy or contract unless, before the contract is entered into, the insurer, company, organization, or person provides the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person.

(g) [~~(f)~~] An insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization that issues a policy or contract under this section and any person that assists the school district in obtaining or managing the policy or contract for compensation shall provide an annual audited financial statement to the school district showing the financial condition of the insurer, company, organization, or person.

(h) [~~(g)~~] An audited financial statement provided under this section must be made in accordance with rules adopted by the commissioner of insurance or state auditor, as applicable.

(i) Notwithstanding any other provision of this section, a district participating in the uniform group coverage program established under Article 3.50-7, Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Article 3.50-7, Insurance Code, is implemented.

(j) This section does not preclude a district that is participating in the uniform group coverage program established under Article 3.50-7, Insurance Code, from entering into contracts to provide optional insurance coverages for the employees of the district.

Explanation: This change is necessary to clarify that a school district that does not participate in the group coverage program retains the responsibility to offer coverage comparable to the plan provided to state employees through the Employees Retirement System of Texas, and also retains the authority to purchase optional coverages for its employees.

(22) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 4.01 to read as follows:

SECTION 4.01. On September 1, 2002, the comptroller shall transfer the amount of $42 million from the retired school employees group insurance fund created under Section 15, Article 3.50-4, Insurance Code, as amended by this Act, to the Texas school employees uniform group coverage trust fund created under Section 8, Article 3.50-7, Insurance Code, as added by this Act. The Teacher Retirement System of Texas shall use the amount transferred under this section to establish and implement the uniform group coverage program for school employees established under Article 3.50-7, Insurance Code, as added by this Act.

Explanation: This change is necessary to use a portion of the current balance in the fund for the TRS-Care program to implement the group coverage program for active school employees.

(23) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 4.02 to read as follows:

SECTION 4.02. A portion of the amounts appropriated in Article III, **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency is allocated as provided by this section:

(1) for the fiscal year ending August 31, 2002, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $3 million and the amount appropriated to the Teacher Retirement System of Texas is increased by that amount for the establishment and implementation of the uniform group coverage program for school employees established under Article 3.50-7, Insurance Code, as added by this Act;

(2) for the fiscal year ending August 31, 2003, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $691,100,000 and the amount appropriated to the Teacher Retirement System of Texas is increased by that amount for payment of:

(A) school employee health coverage or compensation supplementation under Article 3.50-8, Insurance Code, as added by this Act; and

(B) state assistance in meeting the minimum effort regarding school employee health coverage under Article 3.50-9, Insurance Code, as added by this Act;

(3) for the fiscal year ending August 31, 2003, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $1,361,000 and the amount appropriated to the Teacher Retirement System of Texas is increased by that amount for assistance to school districts in paying social security taxes on amounts of supplemental compensation received by district employees under Article 3.50-8, Insurance Code, as added by this Act, as provided by Section 6, Article 3.50-9, Insurance Code, as added by this Act; and

(4) for the fiscal year ending August 31, 2003, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $4.2 million and the amount appropriated to the Health and Human Services Commission is increased by that amount for payment of the costs of health benefits coverage for children enrolled in the child health plan under Section 62.1015, Health and Safety Code, as added by this Act.

Explanation: This change is necessary to reallocate money previously appropriated in Senate Bill 1 for the foundation school program to the Teacher Retirement System of Texas for establishing and implementing the group coverage program for active school employees, for paying school employee health coverage or compensation supplementation, state assistance in meeting the minimum effort requirement, and assistance to certain school districts for paying additional social security taxes, and to the Health and Human Services Commission for paying costs of health benefits coverage for children of school employees enrolled in the child health plan.

(24) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 4.03 to read as follows:

SECTION 4.03. The Legislative Budget Board shall increase the number of full-time-equivalent positions authorized for the Teacher Retirement System of Texas by **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, by 25 for each fiscal year of the biennium ending August 31, 2003.

Explanation: This change is necessary to allow the Teacher Retirement System of Texas to employ additional employees to establish and implement the group coverage program for active school employees.

(25) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 4.04 to read as follows:

SECTION 4.04. The Legislative Budget Board shall increase the number of full-time-equivalent positions authorized for the Texas Education Agency by **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, by three for each fiscal year of the biennium ending August 31, 2003.

Explanation: This change is necessary to allow the Texas Education Agency to employ additional employees to implement the group coverage program for active school employees and the system for making associated payments to school districts.

(26) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text to the transitional material in the bill, as added by SECTIONS 5.02-5.06, House Bill 3343, to read as follows:

SECTION 5.02. The Teacher Retirement System of Texas shall transfer to the fund established under Section 8, Article 3.50-7, Insurance Code, as added by this Act, any outstanding balance held by the Teacher Retirement System of Texas as of December 31, 2001, in the school employees group insurance fund established under Section 15, Article 3.50-4, Insurance Code, that was designated for use in programs relating to active school district employees.

SECTION 5.03. Not later than July 31, 2001, the Teacher Retirement System of Texas shall provide written information to school districts subject to Section 5(a-1), Article 3.50-7, Insurance Code, as added by this Act, that provides a general description of the uniform group coverage program established under Article 3.50-7, Insurance Code, as added by this Act.

SECTION 5.04. A school district that becomes eligible to participate in the uniform group coverage program established under Article 3.50-7, Insurance Code, as added by this Act, as provided by Section 5(b) of that article and that elects to participate in the program beginning September 1, 2005, must notify the Teacher Retirement System of Texas of the election not later than January 1, 2005.

SECTION 5.05. During the initial implementation of Article 3.50-7, Insurance Code, as added by this Act, and notwithstanding any bidding requirements or other requirements set forth in Article 3.50-4, Insurance Code, or Article 3.50-7, Insurance Code, as added by this Act, the Teacher Retirement System of Texas may amend any agreement in effect on September 1, 2001, that it has entered into under Article 3.50-4, Insurance Code, for benefits or administration to extend application of that agreement to include participants and programs under Article 3.50-7, Insurance Code, as added by this Act, and may, as necessary, extend the periods of contracts for benefits or administration in effect on September 1, 2001, under Article 3.50-4, Insurance Code.

SECTION 5.06. As soon as practicable after September 1, 2001, the Health and Human Services Commission shall consult with the appropriate federal agencies and make the determination required by Section 62.1015, Health and Safety Code, as added by this Act.

Explanation: These changes are necessary to modify the transitional material to accurately reflect the changes made to the bill.

(27) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text to the transitional material in the bill, as added by SECTION 5.07, **HB 3343**, to read as follows:

SECTION 5.07. Notwithstanding any applicable state law relating to competitive bidding requirements for school districts, a school district that is required as of September 1, 2002, to participate in the uniform group coverage program established under Article 3.50-7, Insurance Code, as added by this Act, is exempt from any requirement that the district request bids for health insurance coverage before the renewal date of the district's contract for health insurance coverage for the 2001-2002 school year.

Explanation: This change is necessary to grant school districts that will be required to participate in the uniform group coverage plan additional flexibility in negotiating health insurance coverage contracts for the 2001-2002 school year.

(28) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text to the transitional material in the bill, as added by SECTION 5.08, **HB 3343**, to read as follows:

SECTION 5.08. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

(b) Sections 5.03 and 5.07 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections 5.03 and 5.07 of this Act take effect September 1, 2001.

Explanation: This change is necessary to allow certain transitional provisions to have immediate effect.

HR 1402 was adopted without objection.

HB 3343 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Sadler submitted the following conference committee report on **HB 3343**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3343** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins	Sadler
Ellis	Hochberg
Staples	Marchant
Van de Putte	Pitts
Zaffirini	Tillery
On the part of the Senate	On the part of the House

HB 3343, A bill to be entitled An Act relating to the operation and funding of certain group coverage programs for certain school and educational employees and their dependents.

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

ARTICLE 1. GROUP HEALTH COVERAGE PROGRAM

SECTION 1.01. Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.50-7 to read as follows:

Art. 3.50-7. TEXAS SCHOOL EMPLOYEES UNIFORM GROUP HEALTH COVERAGE ACT

Sec. 1. SHORT TITLE. This article may be cited as the Texas School Employees Uniform Group Health Coverage Act.

Sec. 2. DEFINITIONS. In this article:

(1) "Administering firm" means any entity designated by the trustee to administer any coverages, services, benefits, or requirements under this article and the trustee's rules adopted under this article.

(2) "Charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(3) "Dependent" means:

(A) a spouse of a full-time employee or part-time employee;

(B) a full-time or part-time employee's unmarried child who is younger than 25 years of age, including:

(i) an adopted child;

(ii) a foster child, stepchild, or other child who is in a regular parent-child relationship; and

(iii) a recognized natural child;

(C) a full-time or part-time employee's recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship and who lives with or whose care is provided by the employee or the surviving spouse on a regular basis, regardless of the child's age, if the child is mentally retarded or physically incapacitated to such an extent as to be dependent on the employee or surviving spouse for care or support, as determined by the trustee; and

(D) notwithstanding any other provision of this code, any other dependent of a full-time or part-time employee specified by rules adopted by the trustee.

(4) "Employee" means a participating member of the Teacher Retirement System of Texas who is employed by a participating entity and who is not receiving coverage from a uniform group insurance program under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) or the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code) or from the Texas Public School Retired Employees Group Insurance Program established under Article 3.50-4 of this code. The term does not include an individual performing personal services as an independent contractor.

(5) "Health coverage plan" means any group policy or contract, hospital service agreement, health maintenance organization agreement, preferred provider arrangement, or any similar group arrangement or any

combination of those policies, contracts, agreements, or arrangements that provides for, pays for, or reimburses expenses for health care services.

(6) "Participating entity" means an entity participating in the uniform group coverage program established under this article. The term includes:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center; and

(D) a charter school that meets the requirements of Section 6 of this article.

(7) "Program" means the uniform group coverage program established under this article.

(8) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

(9) "Trustee" means the Teacher Retirement System of Texas.

Sec. 3. ADMINISTRATION; POWERS AND DUTIES OF TRUSTEE. (a) The Teacher Retirement System of Texas, as trustee, shall implement and administer the uniform group coverage program described by this article.

(b) The trustee may hire and compensate employees as necessary to implement the program. The trustee may contract with an independent and experienced group insurance consultant or actuary for advice and counsel in implementing and administering the program.

(c) The trustee may adopt rules relating to the program as considered necessary by the trustee.

(d) In contracting for group health coverage under this article, competitive bidding shall be required under rules adopted by the trustee. The trustee is not required to select the lowest bid but may consider also ability to service contracts, past experiences, financial stability, and other relevant criteria. If the trustee awards a contract to an entity whose bid deviates from that advertised, the deviation shall be recorded and the reasons for the deviation shall be fully justified in the minutes of the next meeting of the trustee.

(e) The trustee may enter into interagency contracts with any agency of the state, including the Employees Retirement System of Texas and the Texas Department of Insurance, for the purpose of assistance in implementing the program.

(f) The trustee may adopt rules to administer the program, including rules relating to adjudication of claims and expelling participants from the program for cause.

Sec. 4. GROUP COVERAGES. (a) The trustee by rule shall establish plans of group coverages for employees participating in the program and their dependents. The plans must include at least two tiers of group coverage, with coverage at different levels in each tier, ranging from the catastrophic care coverage plan to the primary care coverage plan. Each tier must contain a health coverage plan.

(b) The trustee by rule shall define the requirements of each coverage plan and tier of coverage. The coverage provided under the catastrophic care coverage plan shall be prescribed by the trustee by rule and must provide coverage at least as extensive as the coverage provided under the TRS-Care 2

plan operated under Article 3.50-4 of this code. The coverage provided under the primary care coverage plan must be comparable in scope and, to the greatest extent possible, in cost to the coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code).

(c) Comparable coverage plans of each tier of coverage established must be offered to employees of all participating entities.

(d) During the initial period of eligibility, coverage provided under the program may not be made subject to a preexisting condition limitation.

(e) The trustee may offer optional coverages to employees participating in the program. The trustee by rule may define the types of optional coverages offered under this subsection.

Sec. 5. PARTICIPATION IN PROGRAM BY SCHOOL DISTRICTS, OTHER EDUCATIONAL DISTRICTS, AND REGIONAL EDUCATION SERVICE CENTERS. (a) Effective September 1, 2002, each school district with 500 or fewer employees and each regional education service center is required to participate in the program.

(a-1) Effective September 1, 2002, a school district that, on January 1, 2001, had more than 500 employees but not more than 1,000 employees may elect to participate in the program. A school district that elects to participate in the program under this subsection must notify the trustee of the election, in the manner prescribed by the trustee, not later than September 30, 2001. This subsection expires January 1, 2002.

(b) Effective September 1, 2005, a school district with more than 500 employees may elect to participate in the program. A school district that elects to participate under this subsection shall apply for participation in the manner prescribed by the trustee by rule.

(b-1) Notwithstanding Subsection (b) of this section, a school district with more than 500 employees may elect to participate in the program before September 1, 2005, if the trustee determines that participation by districts in that category would be administratively feasible and cost-effective. This subsection expires September 1, 2005.

(c) In determining the number of employees of a school district for purposes of Subsections (a) and (b) of this section, school districts that, on January 1, 2001, were members of a risk pool established under the authority of Chapter 172, Local Government Code, as provided by Section 22.004, Education Code, may elect to be treated as a single unit. A school district shall elect whether to be considered as a member of a risk pool under this section by notifying the trustee not later than September 1, 2001.

(d) A risk pool in existence on January 1, 2001, that, as of that date, provided group health coverage to 500 or fewer school district employees may elect to participate in the program.

(e) A school district with 500 or fewer employees that is a member of a risk pool described by Subsection (c) of this section that provides group health coverage to more than 500 school district employees must elect, not later than September 1, 2001, whether to be treated as a school district with 500 or fewer employees or as part of a unit with more than 500 employees. The school district must notify the trustee of the election, in the manner prescribed by the trustee, not later than September 1, 2001.

(f) For purposes of this section, participation in the program by school districts covered by a risk pool is limited to school districts covered by the risk pool as of January 1, 2001.

(g) Notwithstanding Subsection (a) of this section, a school district otherwise subject to Subsection (a) of this section that, on January 1, 2001, was individually self-funded for the provision of health coverage to its employees may elect to not participate in the program.

(h) Notwithstanding Subsection (a) of this section, a school district otherwise subject to Subsection (a) of this section that is a party to a contract for the provision of insurance coverage to the employees of the district that is in effect on September 1, 2002, is not required to participate in the program until the expiration of the contract period. A school district subject to this subsection shall notify the trustee in the manner prescribed by the trustee. This subsection expires March 1, 2004.

(i) An educational district described by Section 2(6)(B) of this article that, on January 1, 2001, has 500 or fewer employees may elect not to participate in the program.

Sec. 6. PARTICIPATION BY CHARTER SCHOOLS; ELIGIBILITY. (a) A charter school is eligible to participate in the program if the school agrees:

(1) that all records of the school relating to participation in the program are open to inspection by the trustee, the administering firm, the commissioner of education, or a designee of any of those entities; and

(2) to have its accounts relating to participation in the program annually audited by a certified public accountant at the school's expense.

(b) A charter school must notify the trustee of the school's intent to participate in the program in the manner and within the time required by trustee rule.

Sec. 7. PARTICIPATION BY EMPLOYEE. (a) In this section, "full-time employee" and "part-time employee" have the meanings assigned by trustee rules.

(b) Except as provided by Subsection (d) of this section, participation in the program is limited to employees of participating entities who are full-time employees and to part-time employees who are participating members in the Teacher Retirement System of Texas. Such an employee who applies for coverage during an open enrollment period prescribed by the trustee is automatically covered by the catastrophic care coverage plan unless the employee:

(1) specifically waives coverage under this article;

(2) selects a higher tier coverage plan; or

(3) is expelled from the program.

(c) A participating employee may select coverage in any coverage plan offered by the trustee. The employee is not required to continue participation in the coverage plan initially selected and may select a higher or lower tier coverage plan than the plan initially selected by the employee in the manner provided by trustee rule. If the combined contributions received from the state and the employing participating entity under Section 9 of this article exceed the cost of a coverage plan selected by the employee, the employee may use the excess amount of contributions to obtain coverage under a higher tier coverage plan, or to pay all or part of the cost of coverage for the employee's

dependents. A married couple, both of whom are eligible for coverage under the program, may pool the amount of contributions to which the couple are entitled under the program to obtain coverage for themselves and dependent coverage.

(d) A part-time employee of a participating entity who is not a participating member in the Teacher Retirement System of Texas is eligible to participate in the program only if the employee pays all of the premiums and other costs associated with the health coverage plan selected by the employee.

(e) Notwithstanding Subsection (d) of this section, a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Sec. 8. FUND. (a) The Texas school employees uniform group coverage trust fund is established as a trust fund with the comptroller.

(b) The fund is composed of:

(1) all contributions made to the fund under this article from employees, participating entities, and the state;

(2) contributions made by employees or participating entities for optional coverages;

(3) investment income;

(4) any additional amounts appropriated by the legislature for contingency reserves, administrative expenses, or other expenses; and

(5) any other money required or authorized to be paid into the fund.

(c) The trustee may use amounts in the fund only to provide group coverages under this article and to pay the expenses of administering the program.

(d) The trustee may invest assets of the fund in the manner provided by Section 67(a)(3), Article XVI, Texas Constitution.

Sec. 9. PAYMENT OF CONTRIBUTIONS FOR PROGRAM. (a) The state shall assist employees of participating school districts and charter schools in the purchase of group health coverage under this article by providing for each covered employee the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act. The state contribution shall be distributed through the school finance formulas under Chapters 41 and 42, Education Code, and used by school districts and charter schools as provided by Sections 42.2514 and 42.260, Education Code.

(b) The state shall assist employees of participating regional education service centers and educational districts described by Section 2(6)(B) of this article in the purchase of group health coverage under this article by providing to the employing service center or educational district, for each covered employee, the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act.

(c) A participating entity shall make contributions for the program as provided by Article 3.50-9 of this code.

(d) An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution under Subsection (a) or (b) of this section and the participating entity contribution under Subsection (c) of this section. The employee may pay

the employee's contribution under this subsection from the amount distributed to the employee under Article 3.50-8 of this code.

(e) Notwithstanding Subsection (d) of this section, a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

SECTION 1.02. Effective September 1, 2002, Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.50-8 to read as follows:

Art. 3.50-8. ACTIVE EMPLOYEE HEALTH COVERAGE OR COMPENSATION SUPPLEMENTATION

Sec. 1. DEFINITIONS. In this article:

(1) "Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986, and its subsequent amendments.

(2) "Employee" means a participating member of the Teacher Retirement System of Texas who:

(A) is employed by a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center; and

(B) is not a retiree covered under the Texas Public School Retired Employees Group Insurance Program established under Article 3.50-4 of this code.

(3) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code, that participates in the uniform group coverage program established under Article 3.50-7 of this code.

(4) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

(5) "Trustee" means the Teacher Retirement System of Texas.

Sec. 2. ACTIVE EMPLOYEE HEALTH COVERAGE OR COMPENSATION SUPPLEMENTATION. (a) Each year, the trustee shall deliver to each school district, including a school district that is ineligible for state aid under Chapter 42, Education Code, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the trustee, equal to the product of the number of active employees employed by the district, school, or service center multiplied by $1,000 or a greater amount as provided by the General Appropriations Act for purposes of this article.

(b) All funds received by a school district, other educational district, participating charter school, or regional education service center under this article are held in trust for the benefit of the active employees on whose behalf the district, school, or service center received the funds.

(c) The trustee shall distribute funds under this article in equal monthly installments. The trustee is entitled to recover from a school district, other educational district, participating charter school, or regional education service center any amount distributed under this article to which the district, school, or service center was not entitled.

(d) A determination by the trustee under this section is final and may not be appealed.

Sec. 3. EMPLOYEE ELECTION. (a) If an active employee is covered by a cafeteria plan of a school district, other educational district, participating charter school, or regional education service center, the state contribution under this article shall be deposited in the cafeteria plan, and the employee may elect among the options provided by the cafeteria plan. A cafeteria plan receiving state contributions under this article may include a medical savings account option and must include, at a minimum, the following options:

(1) a health care reimbursement account;

(2) a benefit or coverage other than that provided under Article 3.50-7 of this code, or any employee coverage or dependent coverage available under Article 3.50-7 of this code but not otherwise fully funded by the state or the employer contributions, any of which must be a "qualified benefit" under Section 125, Internal Revenue Code of 1986, and its subsequent amendments;

(3) an option for the employee to receive the state contribution as supplemental compensation; or

(4) an option to divide the state contribution among two or more of the other options provided under this subsection.

(b) If an active employee is not covered by a cafeteria plan of a school district, other educational district, participating charter school, or regional education service center, the state contribution under this article shall be paid to the active employee as supplemental compensation.

(c) Supplemental compensation under this section must be in addition to the rate of compensation that:

(1) the school district, other educational district, participating charter school, or regional education service center paid the employee in the preceding school year; or

(2) the district, school, or service center would have paid the employee in the preceding school year if the employee had been employed by the district, school, or service center in the same capacity in the preceding school year.

(d) For each state fiscal year, an election under this section must be made before the later of:

(1) August 1 of the preceding state fiscal year; or

(2) the 31st day after the date the employee is hired.

(e) The trustee shall prescribe and distribute to each school district, other educational district, participating charter school, and regional education service center:

(1) a model explanation written in English and Spanish of the options active employees may elect under this section and the effect of electing each option; and

(2) an election form to be completed by active employees.

(f) Each state fiscal year, a school district, other educational district, participating charter school, or regional education service center shall prepare and distribute to each active employee a written explanation in English and Spanish, as appropriate, of the options the employee may elect under this section. The explanation must be based on the model explanation prepared by the trustee under Subsection (e) of this section and must reflect all available health coverage options available to the employee. The explanation must be distributed to an employee before the later of:

(1) July 1 of the preceding state fiscal year; or

(2) the fifth day after the date the employee is hired.

(g) The written explanation under Subsection (f) of this section must be accompanied by a copy of the election form prescribed under Subsection (e)(2) of this section.

(h) Any unencumbered funds that are returned to the school district from accounts established under Subsection (a) of this section may be used only to provide employee compensation, benefits, or both.

Sec. 4. RULES; CONTRACT AUTHORITY. (a) The trustee may adopt rules to implement this article.

(b) The trustee may enter into interagency contracts with any agency of this state for the purpose of assistance in implementing this article.

Sec. 5. MEDICAL SAVINGS ACCOUNT. (a) In this section, "qualified health care expense" means an expense paid by an employee for medical care, as defined by Section 213(d), Internal Revenue Code of 1986, and its subsequent amendments, for the employee or the employee's dependents, as defined by Section 152, Internal Revenue Code of 1986, and its subsequent amendments.

(b) The trustee, by rule, shall specify the requirements for a medical savings account established under this article.

(c) The trustee shall request in writing a ruling or opinion from the Internal Revenue Service as to whether the medical savings accounts established under this article and the state rules governing those accounts qualify the accounts for appropriate federal tax exemptions. Based on the response of the Internal Revenue Service, the trustee shall:

(1) modify the rules, plans, and procedures adopted under this section as necessary to ensure the qualification of those accounts for appropriate federal tax exemptions; and

(2) certify the information regarding federal tax qualifications to the comptroller.

(d) An employee who elects under Section 3(a) of this article to have state funds distributed under this article placed in a medical savings account may use the money in that account only for a qualified health care expense.

SECTION 1.03. Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.50-9 to read as follows:

Art. 3.50-9. EMPLOYER EXPENDITURES FOR SCHOOL EMPLOYEE HEALTH COVERAGE PLANS

Sec. 1. DEFINITIONS. In this article:

(1) "Participating employee" means an employee of a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center who participates in a group health coverage plan provided by or through the district, school, or service center.

(2) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code, that participates in the uniform group coverage program established under Article 3.50-7 of this code.

(3) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

Sec. 2. MAINTENANCE OF EFFORT FOR 2000-2001 SCHOOL YEAR. (a) Subject to Section 3 of this article, and except as provided by Section 5 of this article, a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center that, for the 2000-2001 school year, paid amounts to share with employees the cost of coverage under a group health coverage plan shall, for each fiscal year, use to provide health coverage an amount for each participating employee at least equal to the amount computed as provided by this section.

(b) The school district, other educational district, participating charter school, or regional education service center shall divide the amount that the district, school, or service center paid during the 2000-2001 school year for the prior group health coverage plan by the total number of full-time employees of the district, school, or service center in the 2000-2001 school year and multiply the result by the number of full-time employees of the district, school, or service center in the fiscal year for which the computation is made. If, for the 2000-2001 school year, a school district, other educational district, participating charter school, or regional education service center provided group health coverage to its employees through a self-funded insurance plan, the amount the district, school, or service center paid during that school year for the plan includes only the amount of regular contributions made by the district, school, or service center to the plan.

(c) Amounts used as required by this section shall be deposited, as applicable, in:

(1) the Texas school employees uniform group coverage trust fund established under Section 8, Article 3.50-7, of this code; or

(2) another fund established for the payment of employee health coverage that meets requirements for those funds prescribed by the Texas Education Agency.

Sec. 3. MINIMUM EFFORT. (a) A school district, other educational district, participating charter school, or regional education service center shall, for each fiscal year, use to provide health coverage an amount equal to the number of participating employees of the district, school, or service center multiplied by $1,800. Amounts used as required by this section shall be deposited in a fund described by Section 2(c) of this article.

(b) To comply with this section, a school district or participating charter school may use state funds received under Chapter 42, Education Code, other than funds that may be used under that chapter only for a specific purpose, except that amounts a district or school is required to use to pay contributions under a group health coverage plan for district or school employees under Section 42.2514 or 42.260, Education Code, other than amounts described by Section 42.260(c)(2)(B), are not used in computing whether the district or school complies with this section.

Sec. 4. STATE ASSISTANCE FOR MEETING MINIMUM EFFORT. (a) For any state fiscal year beginning with the fiscal year ending August 31, 2003, except as provided by Subsection (b) of this section, a school district that imposes maintenance and operations taxes at the maximum rate permitted under Section 45.003(d), Education Code, is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district multiplied by $1,800; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-1) For the state fiscal year beginning September 1, 2002, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $1,800; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-2) For the state fiscal year beginning September 1, 2003, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $1,500; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-3) For the state fiscal year beginning September 1, 2004, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $1,200; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-4) For the state fiscal year beginning September 1, 2005, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $900; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-5) For the state fiscal year beginning September 1, 2006, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $600; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-6) For the state fiscal year beginning September 1, 2007, a school district or participating entity is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or entity multiplied by $300; and

(2) if the following amount is less than the amount specified by Subdivision (1) of this subsection, the sum of:

(A) the amount the district or entity is required to use to provide health coverage under Section 2 of this article for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i) of this paragraph.

(a-7) A school district that receives state funds under Subsection (a) of this section for a state fiscal year is not entitled to state funds under Subsection (a-1), (a-2), (a-3), (a-4), (a-5), or (a-6) of this section.

(a-8) Subsections (a-1)-(a-7) of this section and this subsection expire September 1, 2008.

(b) For any state fiscal year, the amount of state funds a school district receives under Subsection (a) of this section may not exceed the amount of state funds the district received under this section for the year preceding the year in which the district first receives funds under Subsection (a) of this section.

(c) The Teacher Retirement System of Texas shall distribute state funds to school districts and participating entities under this section in equal monthly installments. State funds received under this section shall be deposited in a fund described by Section 2(c) of this article. The Texas Education Agency shall provide to the retirement system information necessary for the retirement system to determine a school district's or participating entity's eligibility for state funds under this section. The trustee may enter into interagency contracts with any agency of this state for the purpose of assistance in distributing funds under this article.

(d) The Teacher Retirement System of Texas is entitled to recover from a school district or participating entity any amount distributed under this section to which the district or entity was not entitled. A determination by the retirement system under this section is final and may not be appealed.

Sec. 5. USE OF EXCESS MAINTENANCE OF EFFORT. If the amount a school district, other educational district, or participating entity is required to use to provide health coverage under Section 2 of this article for a fiscal year exceeds the amount necessary for the district or entity to comply with Section 3 of this article for that year, the district or entity may use the excess only to provide employee compensation at a rate greater than the rate of compensation that the district or entity paid an employee in the 2000-2001 school year, benefits, or both.

Sec. 6. ADDITIONAL SUPPORT FOR CERTAIN SCHOOL DISTRICTS. (a) This section applies only to a school district that:

(1) pays taxes under Section 3111(a), Internal Revenue Code of 1986, and its subsequent amendments, for employees covered by the social security retirement program; and

(2) covered all employees under that program before January 1, 2001.

(b) The state shall provide additional support for a school district to which this section applies in an amount computed by multiplying the total amount of supplemental compensation received by district employees under Article 3.50-8 of this code by 0.062.

(c) The trustee may adopt rules as necessary to implement this section.

(d) This section expires September 1, 2008.

SECTION 1.04. Subchapter C, Chapter 62, Health and Safety Code, is amended by adding Section 62.1015 to read as follows:

Sec. 62.1015. ELIGIBILITY OF CERTAIN CHILDREN; DISALLOWANCE OF MATCHING FUNDS. (a) In this section, "charter school," "employee," and "regional education service center" have the meanings assigned by Section 2, Article 3.50-7, Insurance Code.

(b) A child of an employee of a charter school, school district, other educational district whose employees are members of the Teacher Retirement System of Texas, or regional education service center may be enrolled in health benefits coverage under the child health plan. A child enrolled in the child health plan under this section participates in the same manner as any other child enrolled in the child health plan.

(c) The cost of health benefits coverage for children enrolled in the child health plan under this section shall be paid as provided in the General Appropriations Act. Expenditures made to provide health benefits coverage under this section may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, unless the Health and Human Services Commission, after consultation with the appropriate federal agencies, determines that the expenditures may be included without adversely affecting federal matching funding for the child health plan provided under this chapter.

ARTICLE 2. SCHOOL FINANCE

SECTION 2.01. Section 21.402(a), Education Code, is amended to read as follows:

(a) Except as provided by Subsection (d), (e), or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience, determined by the following formula:

MS = SF X FS

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of state and local funds per weighted student available to a district eligible to receive state assistance under Section 42.302 with an enrichment tax rate, as defined by Section 42.302, equal to the maximum rate authorized under Section 42.303, except that the amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 2.02. Effective September 1, 2001, Section 41.002(a), Education Code, is amended to read as follows:

(a) A school district may not have a wealth per student that exceeds $300,000 [~~$295,000~~].

SECTION 2.03. Effective September 1, 2002, Section 41.002(a), Education Code, is amended to read as follows:

(a) A school district may not have a wealth per student that exceeds $305,000 [~~$295,000~~].

SECTION 2.04. Effective September 1, 2001, Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2513 to read as follows:

Sec. 42.2513. ADDITIONAL STATE AID FOR CERTAIN SCHOOL DISTRICTS. (a) A school district, other than a district that is required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level, is entitled to state aid in an amount, as determined by the commissioner, according to the formula:

ASA = (IGL X WADA X DTR X 100) - AIFE

where:

"ASA" is the amount of additional state aid to which the district is entitled;

"IGL" is the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302;

"WADA" is the number of students in weighted average daily attendance, as determined under Section 42.302;

"DTR" is the district enrichment tax rate of the school district, as determined under Sections 42.253 and 42.302; and

"AIFE" is the amount of:

(1) additional state aid allocated to the district because of increases in funding elements under this chapter made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001; or

(2) reductions in payments required under Chapter 41 because of the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to the equalized wealth level.

(b) For purposes of Subsection (a), for the 2002-2003 school year, the increase to the guaranteed level of state and local funds per weighted student per cent of tax effort ("IGL") is reduced for each school district eligible for additional state assistance under this section by the amount determined by the following formula:

RGL = (DPV2/WADA2/10,000) - (DPV1/WADA1/10,000)

where:

"RGL" is the reduction in the guaranteed level of state and local funds per weighted student per cent of tax effort;

"DPV2" is the taxable value of property in the school district determined under Subchapter M, Chapter 403, Government Code, for the 2002-2003 school year;

"WADA2" is the number of students in weighted average daily attendance as determined under Section 42.302 for the 2002-2003 school year;

"DPV1" is the taxable value of property in the school district for the 2001-2002 school year; and

"WADA1" is the number of students in weighted average daily attendance for the 2001-2002 school year.

(c) Subsection (b) does not apply if the application of the formula provided by that subsection would result in an increase in the increase to the guaranteed level of state and local funds per weighted student per cent of tax effort ("IGL").

(d) For purposes of Subsection (a), additional state aid allocated to a school district because of increases in funding elements ("AIFE") does not include additional state aid allocated to the district under Section 42.2514.

(e) Of the amount appropriated to the agency for purposes of the Foundation School Program for the state fiscal biennium ending August 31, 2003, the commissioner may not use more than $37 million to provide additional state assistance under this section. If the amount to which school districts are entitled for a fiscal year exceeds the amount available under this subsection, the commissioner shall reduce the amount of additional state assistance to each district in the manner provided by Section 42.253(h).

(f) The commissioner may adopt rules to implement this section. A determination by the commissioner under this section is final and may not be appealed.

(g) This section expires September 1, 2003.

SECTION 2.05. Effective September 1, 2002, Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2514 to read as follows:

Sec. 42.2514. ADDITIONAL STATE AID FOR SCHOOL EMPLOYEE BENEFITS. (a) In this section, "participating charter school" means an open-enrollment charter school that participates in the uniform group coverage program established under Article 3.50-7, Insurance Code.

(b) For each school year, a school district, including a school district that is otherwise ineligible for state aid under this chapter, or a participating charter school is entitled to state aid in an amount, as determined by the commissioner, equal to the difference, if any, between:

(1) the amount determined by multiplying the amount of $900 or the amount specified in the General Appropriations Act for that year for purposes of the state contribution under Section 9, Article 3.50-7, Insurance Code, by the number of district or school employees who participate in a group health coverage plan provided by or through the district or school; and

(2) an amount equal to 75 percent of the amount of:

(A) additional funds to which the district or school is entitled due to the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to:

(i) the equalized wealth level under Section 41.002; and

(ii) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302; or

(B) additional state aid to which the district is entitled under Section 42.2513.

(c) A school district or participating charter school may use state aid received under this section only to pay contributions under a group health coverage plan for district or school employees.

(d) A determination by the commissioner under this section is final and may not be appealed.

(e) The commissioner may adopt rules to implement this section.

SECTION 2.06. Section 42.253, Education Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) For the 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, or 2008-2009 school year, the limit authorized under Subsection (e) is increased by an amount equal to the portion of a school district's maintenance and operations tax for that year necessary for the district, when added to state funds received under this chapter for that portion of the tax, to comply with Section 3,

Article 3.50-9, Insurance Code. For the 2005-2006 and 2007-2008 school years, the limit authorized under Subsection (e) does not include any portion of a school district's maintenance and operations tax rate for which the limit under Subsection (e) applicable to the district was increased under this subsection. The commissioner may adopt rules necessary to administer this subsection. A determination of the commissioner under this subsection is final and may not be appealed. This subsection expires September 1, 2009.

SECTION 2.07. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2591 to read as follows:

Sec. 42.2591. USE OF CERTAIN FUNDS. (a) For the 2001-2002 school year, the commissioner shall certify to each school district the amount of:

(1) additional funds to which the district is entitled due to the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to:

(A) the equalized wealth level under Section 41.002; or

(B) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302; or

(2) additional state aid to which the district is entitled under Section 42.2513.

(b) Notwithstanding any other provision of this code, a school district may use the amount of funds certified for the district under Subsection (a) for any lawful purpose, including:

(1) a nonrecurring expense, including a capital outlay; or

(2) debt service.

(c) A determination by the commissioner under this section is final and may not be appealed.

(d) The commissioner may adopt rules to implement this section.

(e) This section expires September 1, 2002.

SECTION 2.08. Effective September 1, 2002, Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.260 to read as follows:

Sec. 42.260. USE OF CERTAIN FUNDS. (a) In this section, "participating charter school" has the meaning assigned by Section 42.2514.

(b) For each year, the commissioner shall certify to each school district or participating charter school the amount of:

(1) additional funds to which the district or school is entitled due to the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to:

(A) the equalized wealth level under Section 41.002; or

(B) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302; or

(2) additional state aid to which the district or school is entitled under Section 42.2513.

(c) Notwithstanding any other provision of this code, a school district or participating charter school may use the following amount of funds only to pay contributions under a group health coverage plan for district or school employees:

(1) an amount equal to 75 percent of the amount certified for the district or school under Subsection (b); or

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount determined by multiplying the amount of $900 or the amount specified in the General Appropriations Act for that year for purposes of the state contribution under Section 9, Article 3.50-7, Insurance Code, by the number of district or school employees who participate in a group health coverage plan provided by or through the district or school; and

(B) the difference between the amount necessary for the district or school to comply with Section 3, Article 3.50-9, Insurance Code, for the school year and the amount the district or school is required to use to provide health coverage under Section 2 of that article for that year.

(d) A determination by the commissioner under this section is final and may not be appealed.

(e) The commissioner may adopt rules to implement this section.

SECTION 2.09. Effective September 1, 2001, Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

GYA = (GL X WADA X DTR X 100) - LR

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is $25.81 [~~$24.99~~] or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100.

SECTION 2.10. Effective September 1, 2002, Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in

this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

GYA = (GL X WADA X DTR X 100) - LR

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is $27.14 [~~$24.99~~] or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100.

SECTION 2.11. Section 26.08, Tax Code, is amended by adding Subsections (k)-(m) to read as follows:

(k) For purposes of this section, for the 2003, 2004, 2005, 2006, 2007, or 2008 tax year, for a school district that is entitled to state funds under Section 4(a-1), (a-2), (a-3), (a-4), (a-5), or (a-6), Article 3.50-9, Insurance Code, the rollback tax rate of the district is the sum of:

(1) the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, would provide the same amount of state funds distributed under Chapter 42 and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year;

(2) the tax rate that, applied to the current total value for the district, would impose taxes in the amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, permits the district to comply with Section 3, Article 3.50-9, Insurance Code;

(3) the rate of $0.06 per $100 of taxable value; and

(4) the district's current debt rate.

(l) For purposes of Subsection (k), the amount of state funds that would

have been available to a school district in the preceding year is computed using the maximum tax rate for the current year under Section 42.253(e), Education Code.

(m) Subsections (k) and (l) and this subsection expire January 1, 2009.

ARTICLE 3. CONFORMING AMENDMENTS

SECTION 3.01. Article 3.50-4, Insurance Code, is amended by adding Section 3A to read as follows:

Sec. 3A. TRANSFER OF RECORDS. The trustee shall transfer from the program established under this article all records relating to active employees participating in the uniform group coverage program established under Article 3.50-7 of this code not later than the date on which the program of coverages provided under Article 3.50-7 of this code is implemented.

SECTION 3.02. Section 1, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 1. SHORT TITLE. This article may be cited as the Texas Public School Retired Employees Group Insurance Act.

SECTION 3.03. Sections 2(3) and (4), Article 3.50-4, Insurance Code, are amended to read as follows:

(3) "Dependent" means:

(A) a spouse of a retiree [~~or active member~~];

(B) a retiree's[~~, an active member's,~~] or a deceased active member's unmarried child who is younger than 25 years of age including:

(i) an adopted child;

(ii) a foster child, a stepchild, or other child who is in a regular parent-child relationship; and

(iii) a recognized natural child; and

(C) a retiree's [~~or active member's~~] recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship and who lives with or whose care is provided by the retiree[~~, active member,~~] or surviving spouse on a regular basis, regardless of the child's age, if the child is mentally retarded or physically incapacitated to such an extent as to be dependent on the retiree[~~, active member,~~] or surviving spouse for care or support, as determined by the trustee, or in the case of a deceased active member, a recognized natural child, adopted child, foster child, stepchild, or other child who was in a regular parent-child relationship and who lived with or whose care was provided by the deceased active member on a regular basis, regardless of the child's age, if the child is mentally retarded or physically incapacitated to such an extent as to have been dependent on the deceased active member or surviving spouse for care or support, as determined by the trustee.

(4) "Fund" means the retired [~~Texas public~~] school employees group insurance fund.

SECTION 3.04. Section 3(a), Article 3.50-4, Insurance Code, is amended to read as follows:

(a) The Texas Public School Retired Employees Group Insurance Program is established to provide for an insurance plan or plans under this article.

SECTION 3.05. Section 5(a), Article 3.50-4, Insurance Code, is amended to read as follows:

(a) The trustee may adopt rules, plans, procedures, and orders reasonably necessary to implement this article, including:

(1) establishment of minimum benefit and financing standards for group insurance coverage to be provided to all retirees, [~~active employees,~~] dependents, surviving spouses, and surviving dependent children;

(2) establishment of basic and optional group coverage to be provided to retirees, [~~active employees,~~] dependents, surviving spouses, and surviving dependent children;

(3) establishment of the procedures for contributions and deductions;

(4) establishment of periods for enrollment and selection of optional coverage and procedures for enrolling and exercising options under the plan;

(5) determination of methods and procedures for claims administration;

(6) study of the operation of all insurance coverage provided under this article;

(7) administration of the fund;

(8) adoption of a timetable for the development of minimum benefit and financial standards for group insurance coverage, establishment of group insurance plans, and the taking of bids for and awarding of contracts for insurance plans; and

(9) contracting with an independent and experienced group insurance consultant or actuary[~~, who does not receive insurance commissions from any insurance company,~~] for advice and counsel in implementing and administering this program.

SECTION 3.06. Sections 8(e) and (i), Article 3.50-4, Insurance Code, are amended to read as follows:

(e) The trustee may contract for and make available to all retirees, dependents, surviving spouses, and surviving dependent children optional group health benefit plans in addition to the basic plans. The optional coverage may include a smaller deductible, lower coinsurance, or additional categories of benefits permitted under Subsection (b) of this section to provide additional levels of coverages and benefits. The trustee may utilize a portion of the funds received for the Texas Public School Retired Employees Group Insurance Program to offset some portion of costs paid by the retiree for optional coverage if such utilization does not reduce the period the program is projected to remain financially solvent by more than one year in a biennium. Any additional contributions for these optional plans shall be paid for by the retiree, surviving spouse, or surviving dependent children.

(i) In contracting for any benefits under this article, competitive bidding shall be required under rules adopted by the trustee. [~~The rules must require that prospective bidders provide information, for each area consisting of a county and all adjacent counties, on the number and types of qualified providers willing to participate in the coverage or plan for which the bid is made. The rules may provide criteria to determine qualified providers. The trustee shall consider the information before awarding a contract but may not require a bidder to demonstrate a minimum standard of provider participation.~~] The trustee is not required to select the lowest bid but may consider also ability to service contracts, past experiences, financial stability, and other relevant criteria. If the trustee awards a contract to an entity whose bid deviates from

that advertised, the deviation shall be recorded and the reasons for the deviation shall be fully justified in the minutes of the next meeting of the trustee.

SECTION 3.07. Section 9, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 9. BENEFIT CERTIFICATES. At such times, or upon such events, as designated by the trustee, each insurance carrier shall issue to each retiree, [~~active employee,~~] surviving spouse, or surviving dependent child insured under this article a certificate of insurance that:

(1) states the benefits to which the person is entitled;

(2) states to whom the benefits are payable;

(3) states to whom the claims must be submitted; and

(4) summarizes the provisions of the policy principally affecting the person.

SECTION 3.08. Section 10(a), Article 3.50-4, Insurance Code, is amended to read as follows:

(a) Not later than the 180th day after the end of each state fiscal year, the trustee shall make a written report to the Texas Department [~~State Board~~] of Insurance concerning the insurance coverages provided and the benefits and services being received by persons insured under this article.

SECTION 3.09. Section 12, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 12. DEATH CLAIMS: BENEFICIARIES. The amount of group life insurance and group accidental death and dismemberment insurance covering a retiree, [~~active employee,~~] surviving spouse, dependent, or surviving dependent child at the date of death shall be paid, on the establishment of a valid claim, only:

(1) to the beneficiary or beneficiaries designated by the person in a signed and witnessed written document received before death in the trustee's office; or

(2) if no beneficiary is properly designated or in existence, to persons in accordance with the trustee's death benefit provisions in Subsection (b), Section 824.103, Government Code.

SECTION 3.10. Section 13, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 13. AUTOMATIC COVERAGE. A retiree [~~or active employee~~] who applies during an enrollment period may not be denied any of the group insurance basic coverage provided under this article unless the person has been found under Section 18A of this article to have defrauded or attempted to defraud the Texas Public School Retired Employees Group Insurance Program.

SECTION 3.11. Section 15, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 15. RETIRED SCHOOL EMPLOYEES GROUP INSURANCE FUND. (a) The retired school employees group insurance fund is created. The comptroller is the custodian of the fund, and the trustee shall administer the fund. All contributions from active employees, retirees, and the state, contributions for optional coverages, investment income, appropriations for implementation of this program, and other money required or authorized to be paid into the fund shall be paid into the fund. From the fund shall be paid,

without state fiscal year limitation, the appropriate premiums to the carrier or carriers providing group coverage under the plan or plans under this article, claims for benefits under the group coverage, and the amounts expended by the trustee for administration of the program. The appropriate portion of the contributions to the fund to provide for incurred but unreported claim reserves and contingency reserves, as determined by the trustee, shall be retained in the fund.

(b) The trustee shall transfer the amounts deducted from annuities for contributions into the fund.

(c) Expenses for the development and administration of the program shall be spent as provided by a budget adopted by the trustee.

(d) The trustee may invest and reinvest the money in the fund as provided by Subchapter D, Chapter 825, Government Code, for assets of the Teacher Retirement System of Texas.

SECTION 3.12. Section 18A, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 18A. EXPULSION FROM PROGRAM FOR FRAUD. (a) After notice and hearing as provided by this section, the trustee may expel from participation in the Texas Public School Retired Employees Group Insurance Program any retiree, [~~active employee,~~] surviving spouse, dependent, or surviving dependent child who submits a fraudulent claim under, or has defrauded or attempted to defraud, any health benefits plan offered under the program.

(b) On its motion or on the receipt of a complaint, the trustee may call and hold a hearing to determine whether a person has submitted a fraudulent claim under, or has defrauded or attempted to defraud, any health benefits plan offered under the Texas Public School Retired Employees Group Insurance Program.

(c) A proceeding under this section is a contested case under Chapter 2001, Government Code [~~the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

(d) If the trustee, at the conclusion of the hearing, issues a decision that finds that the accused submitted a fraudulent claim or has defrauded or attempted to defraud any health benefits plan offered under the Texas Public School Retired Employees Group Insurance Program, the trustee shall expel the person from participation in the program.

(e) The substantial evidence rule shall be used on any appeal of a decision of the trustee under this section.

(f) A person expelled from the Texas Public School Retired Employees Group Insurance Program may not be insured by any health insurance plan offered by the program for a period, to be determined by the trustee, of up to five years from the date the expulsion takes effect.

SECTION 3.13. Section 18B(a), Article 3.50-4, Insurance Code, is amended to read as follows:

(a) Section 825.507, Government Code, concerning the confidentiality and disclosure of records, applies to [~~of information in~~] records that are in the custody of the Teacher Retirement System of Texas or[~~, applies to information in records that are~~] in the custody of an administrator, carrier, agent, attorney,

consultant, or governmental body acting in cooperation with or on behalf of the retirement system regarding retirees, active employees, annuitants, or beneficiaries under the Texas Public School Retired Employees Group Insurance Program.

SECTION 3.14. Sections 18C(c), (d), and (i), Article 3.50-4, Insurance Code, are amended to read as follows:

(c) The trustee, the Texas public school retired employees group insurance program, the retired school employees group insurance fund, and the board of trustees, officers, advisory committee members, and employees of the trustee are not liable for damages arising from the acts or omissions of health care providers who are participating health care providers in the coordinated care network established by the trustee. Those health care providers are independent contractors and are responsible for their own acts and omissions.

(d) The trustee, the Texas public school retired employees group insurance program, the retired school employees group insurance fund, or a member of a credentialing committee, or the board of trustees, officers, advisory committee members, or employees of the trustee are not liable for damages arising from any act, statement, determination, recommendation made, or act reported, without malice, in the course of the evaluation of the qualifications of health care providers or of the patient care rendered by those providers.

(i) A credentialing committee, a person participating in a credentialing review, a health care provider, the trustee, the Texas public school retired employees group insurance program, or the board of trustees, officers, advisory committee members, or employees of the trustee that are named as defendants in any civil action filed as a result of participation in the credentialing process may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in their own defense. Use of information under this subsection does not constitute a waiver of the confidential and privileged nature of the information.

SECTION 3.15. Section 19, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 19. ASSISTANCE. In implementing and administering this article, the Texas Department [~~State Board~~] of Insurance, as requested by the trustee, shall assist the trustee in carrying out this article.

SECTION 3.16. Article 3.51, Insurance Code, is amended by adding Section 3 to read as follows:

Sec. 3. (a) Notwithstanding any other provision of this article, a common or independent school district or any other agency or subdivision of the public school system of this state that is participating in the uniform group coverage program established under Article 3.50-7 of this code may not procure contracts under this article for health insurance coverage and may not renew a health insurance contract procured under this article after the date on which the program of coverages provided under Article 3.50-7 of this code is implemented.

(b) This section does not preclude an entity described by Subsection (a) of this section from procuring contracts under this article for the provision of optional insurance coverages for the employees of the entity.

SECTION 3.17. Article 26.036, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) An independent school district that is participating in the uniform group coverage program established under Article 3.50-7 of this code may not participate in the small employer market under this article for health insurance coverage and may not renew a health insurance contract obtained in accordance with this article after the date on which the program of coverages provided under Article 3.50-7 of this code is implemented. This section does not affect a contract for the provision of optional coverages not included in a health benefits plan under this chapter.

SECTION 3.18. Section 22.004, Education Code, is amended to read as follows:

Sec. 22.004. GROUP HEALTH BENEFITS FOR SCHOOL EMPLOYEES. (a) A [~~Each~~] district shall participate in the uniform group coverage program established under Article 3.50-7, Insurance Code, as provided by Section 5 of that article.

(b) A district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code). The coverage must meet the substantive coverage requirements of Article 3.51-6, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

(1) the deductible amount for service provided inside and outside of the network;

(2) the coinsurance percentages for service provided inside and outside of the network;

(3) the maximum amount of coinsurance payments a covered person is required to pay;

(4) the amount of the copayment for an office visit;

(5) the schedule of benefits and the scope of coverage;

(6) the lifetime maximum benefit amount; and

(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(c) [~~(b)~~] The cost of the coverage provided under the program described by Subsection (a) shall be paid by the state, the district, and the employees in the manner provided by Article 3.50-7, Insurance Code. The cost of coverage provided under a plan adopted under Subsection (b) shall [~~may~~] be shared by the employees and the district using the contributions by the state described by Section 9, Article 3.50-7, Insurance Code, or by Article 3.50-8, Insurance Code.

(d) [~~(c)~~] Each district shall report the district's compliance with this section [~~subsection~~] to the executive director of the Teacher Retirement System of Texas not later than March 1 of each even-numbered year in the manner required by the board of trustees of the Teacher Retirement System of Texas. For a district that does not participate in the program described by Subsection (a), the [~~The~~] report must be based on the district group health coverage plan in effect during the current plan year and must include:

(1) appropriate documentation of:

(A) the district's contract for group health coverage with a provider licensed to do business in this state by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or

(B) a resolution of the board of trustees of the district authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;

(2) the schedule of benefits;

(3) the premium rate sheet, including the amount paid by the district and employee;

(4) the number of employees covered by the [~~each~~] health coverage plan offered by the district; and

(5) any other information considered appropriate by the executive director of the Teacher Retirement System of Texas.

(e) [~~(d)~~] Based on the criteria prescribed by Subsection (b) [~~(a)~~], the executive director of the Teacher Retirement System of Texas shall, for each district that does not participate in the program described by Subsection (a), certify whether a district's coverage is comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). If the executive director of the Teacher Retirement System of Texas determines that the group health coverage offered by a district is not comparable, the executive director shall report that information to the district and to the Legislative Budget Board. The executive director shall submit a report to the legislature not later than September 1 of each even-numbered year describing the status of each district's group health coverage program based on the information contained in the report required by Subsection (d) [~~(c)~~] and the certification required by this subsection.

(f) [~~(e)~~] A school district that does not participate in the program described by Subsection (a) may not contract with an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization to issue a policy or contract under this section, or with any person to assist the school district in obtaining or managing the policy or contract unless, before the contract is entered into, the insurer, company, organization, or person provides

the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person.

(g) [~~(f)~~] An insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization that issues a policy or contract under this section and any person that assists the school district in obtaining or managing the policy or contract for compensation shall provide an annual audited financial statement to the school district showing the financial condition of the insurer, company, organization, or person.

(h) [~~(g)~~] An audited financial statement provided under this section must be made in accordance with rules adopted by the commissioner of insurance or state auditor, as applicable.

(i) Notwithstanding any other provision of this section, a district participating in the uniform group coverage program established under Article 3.50-7, Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Article 3.50-7, Insurance Code, is implemented.

(j) This section does not preclude a district that is participating in the uniform group coverage program established under Article 3.50-7, Insurance Code, from entering into contracts to provide optional insurance coverages for the employees of the district.

SECTION 3.19. Section 822.201(c), Government Code, is amended to read as follows:

(c) Excluded from salary and wages are:

(1) expense payments;

(2) [~~,~~] allowances;

(3) [~~,~~] payments for unused vacation or sick leave;

(4) [~~,~~] maintenance or other nonmonetary compensation;

(5) [~~,~~] fringe benefits;

(6) [~~,~~] deferred compensation other than as provided by Subsection (b)(3);

(7) [~~,~~] compensation that is not made pursuant to a valid employment agreement;

(8) [~~,~~] payments received by an employee in a school year that exceed $5,000 for teaching a driver education and traffic safety course that is conducted outside regular classroom hours;

(9) [~~,~~] the benefit replacement pay a person earns as a result of a payment made under Subchapter B or C, Chapter 661;

(10) supplemental compensation received by an employee under Article 3.50-8, Insurance Code;[~~,~~] and

(11) any compensation not described in Subsection (b).

SECTION 3.20. Sections 7A, 20, and 21, Article 3.50-4, Insurance Code, are repealed.

SECTION 3.21. Sections 3.02-3.14, 3.19, and 3.20 of this Act take effect September 1, 2002.

ARTICLE 4. APPROPRIATION TRANSFERS

SECTION 4.01. On September 1, 2002, the comptroller shall transfer the amount of $42 million from the retired school employees group insurance fund created under Section 15, Article 3.50-4, Insurance Code, as amended by this

Act, to the Texas school employees uniform group coverage trust fund created under Section 8, Article 3.50-7, Insurance Code, as added by this Act. The Teacher Retirement System of Texas shall use the amount transferred under this section to establish and implement the uniform group coverage program for school employees established under Article 3.50-7, Insurance Code, as added by this Act.

SECTION 4.02. A portion of the amounts appropriated in Article III, S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency is allocated as provided by this section:

(1) for the fiscal year ending August 31, 2002, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $3 million and the amount appropriated to the Teacher Retirement System of Texas is increased by that amount for the establishment and implementation of the uniform group coverage program for school employees established under Article 3.50-7, Insurance Code, as added by this Act;

(2) for the fiscal year ending August 31, 2003, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $691,100,000 and the amount appropriated to the Teacher Retirement System of Texas is increased by that amount for payment of:

(A) school employee health coverage or compensation supplementation under Article 3.50-8, Insurance Code, as added by this Act; and

(B) state assistance in meeting the minimum effort regarding school employee health coverage under Article 3.50-9, Insurance Code, as added by this Act;

(3) for the fiscal year ending August 31, 2003, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $1,361,000 and the amount appropriated to the Teacher Retirement System of Texas is increased by that amount for assistance to school districts in paying social security taxes on amounts of supplemental compensation received by district employees under Article 3.50-8, Insurance Code, as added by this Act, as provided by Section 6, Article 3.50-9, Insurance Code, as added by this Act; and

(4) for the fiscal year ending August 31, 2003, the amount appropriated under Strategy A.2.1.: FSP-Equalized Operations is reduced by the sum of $4.2 million and the amount appropriated to the Health and Human Services Commission is increased by that amount for payment of the costs of health benefits coverage for children enrolled in the child health plan under Section 62.1015, Health and Safety Code, as added by this Act.

SECTION 4.03. The Legislative Budget Board shall increase the number of full-time-equivalent positions authorized for the Teacher Retirement System of Texas by S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001, by 25 for each fiscal year of the biennium ending August 31, 2003.

SECTION 4.04. The Legislative Budget Board shall increase the number of full-time-equivalent positions authorized for the Texas Education Agency by S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001, by three for each fiscal year of the biennium ending August 31, 2003.

ARTICLE 5. TRANSITION; EFFECTIVE DATE

SECTION 5.01. The Teacher Retirement System of Texas shall develop the

coverage plans to be implemented in the uniform group coverage program established under Article 3.50-7, Insurance Code, as added by this Act, beginning September 1, 2001, and shall develop the enrollment requirements for the program during the 2001-2002 school year, with coverage beginning September 1, 2002.

SECTION 5.02. The Teacher Retirement System of Texas shall transfer to the fund established under Section 8, Article 3.50-7, Insurance Code, as added by this Act, any outstanding balance held by the Teacher Retirement System of Texas as of December 31, 2001, in the school employees group insurance fund established under Section 15, Article 3.50-4, Insurance Code, that was designated for use in programs relating to active school district employees.

SECTION 5.03. Not later than July 31, 2001, the Teacher Retirement System of Texas shall provide written information to school districts subject to Section 5(a-1), Article 3.50-7, Insurance Code, as added by this Act, that provides a general description of the uniform group coverage program established under Article 3.50-7, Insurance Code, as added by this Act.

SECTION 5.04. A school district that becomes eligible to participate in the uniform group coverage program established under Article 3.50-7, Insurance Code, as added by this Act, as provided by Section 5(b) of that article and that elects to participate in the program beginning September 1, 2005, must notify the Teacher Retirement System of Texas of the election not later than January 1, 2005.

SECTION 5.05. During the initial implementation of Article 3.50-7, Insurance Code, as added by this Act, and notwithstanding any bidding requirements or other requirements set forth in Article 3.50-4, Insurance Code, or Article 3.50-7, Insurance Code, as added by this Act, the Teacher Retirement System of Texas may amend any agreement in effect on September 1, 2001, that it has entered into under Article 3.50-4, Insurance Code, for benefits or administration to extend application of that agreement to include participants and programs under Article 3.50-7, Insurance Code, as added by this Act, and may, as necessary, extend the periods of contracts for benefits or administration in effect on September 1, 2001, under Article 3.50-4, Insurance Code.

SECTION 5.06. As soon as practicable after September 1, 2001, the Health and Human Services Commission shall consult with the appropriate federal agencies and make the determination required by Section 62.1015, Health and Safety Code, as added by this Act.

SECTION 5.07. Notwithstanding any applicable state law relating to competitive bidding requirements for school districts, a school district that is required as of September 1, 2002, to participate in the uniform group coverage program established under Article 3.50-7, Insurance Code, as added by this Act, is exempt from any requirement that the district request bids for health insurance coverage before the renewal date of the district's contract for health insurance coverage for the 2001-2002 school year.

SECTION 5.08. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

(b) Sections 5.03 and 5.07 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not

receive the vote necessary for immediate effect, Sections 5.03 and 5.07 of this Act take effect September 1, 2001.

Representative Sadler moved to adopt the conference committee report on **HB 3343**.

The motion prevailed.

HR 1408 - ADOPTED
(by Sadler)

The following privileged resolution was laid before the house:

HR 1408

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 2879**, relating to public school finance, to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to amend Section 21.402(c), Education Code, to read as follows:

(c) The salary factors per step are as follows:

Years Experience	0	1	2	3	4
Salary Factor	.5656	.5790	.5924	6058	6340
	[~~.5596~~]	[~~.5728~~]	[~~.5861~~]	[~~.5993~~]	[~~.6272~~]
Years Experience	5	6	7	8	9
Salary Factor	.6623	.6906	.7168	.7416	.7651
	[~~.6552~~]	[~~.6831~~]	[~~.7091~~]	[~~.7336~~]	[~~.7569~~]
Years Experience	10	11	12	13	14
Salary Factor	.7872	.8082	.8281	.8467	8645
	[~~.7787~~]	~~.7996~~]	[~~.8192~~]	[~~.8376~~]	[~~.8552~~]
Years Experience	15	16	17	18	19
Salary Factor	.8811	.8970	.9119	.9260	.9394
	[~~.8717~~]	[~~.8874~~]	[~~.9021~~]	[~~.9160~~]	[~~.9293~~]
Years Experience 20 and over					
Salary Factor	.9520				
	[~~.9418~~]				

Explanation: This change is necessary to permit setting the salary factors for the minimum salary schedule for teachers, librarians, counselors, and nurses to reflect the higher guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302, Education Code, as amended by **HB 3343**, and to reflect the repeal of Section 42.152(t), Education Code, by **HB 2879**, which requires the commissioner of education to adjust the guaranteed level to compensate for additional state costs because of the computation of weighted students in average daily attendance under Section 42.152(s), Education Code.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text adding Subsection (f) to Section 42.005, Education Code, to read as follows:

(f) An open-enrollment charter school is not entitled to funding based on an adjustment under Subsection (b)(2).

Explanation: This change is necessary to provide that open-enrollment charter schools whose attendance declines from one year to the next for reasons other than the closing or reduction in personnel of a military base do not have their attendance adjusted to receive funding based on the preceding year's attendance.

(3) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Section 42.2531, Education Code, to read as follows:

Sec. 42.2531. ADJUSTMENT BY COMMISSIONER. (a) The commissioner may make adjustments to amounts due to a school district under this chapter or Chapter 46, or to amounts necessary for a district to comply with the requirements of Chapter 41, as provided by this section.

(b) A school district that has a major taxpayer, as determined by the commissioner, that because of a protest of the valuation of the taxpayer's property fails to pay all or a portion of the ad valorem taxes due to the district may apply to the commissioner to have the district's taxable value of property or ad valorem tax collections adjusted for purposes of this chapter or Chapter 41 or 46. The commissioner may make the adjustment only to the extent the commissioner determines that making the adjustment will not:

(1) in the fiscal year in which the adjustment is made, cause the amount to which school districts are entitled under this chapter to exceed the amount appropriated for purposes of the Foundation School Program for that year; and

(2) if the adjustment is made in the first year of a state fiscal biennium, cause the amount to which school districts are entitled under this chapter for the second year of the biennium to exceed the amount appropriated for purposes of the Foundation School Program for that year.

(c) The commissioner shall recover the benefit of any adjustment made under this section by making offsetting adjustments in the school district's taxable value of property or ad valorem tax collections for purposes of this chapter or Chapter 41 or 46 on a final determination of the taxable value of property that was the basis of the original adjustment, or in the second school year following the year in which the adjustment is made, whichever is earlier.

(d) This section does not require the commissioner to make any requested adjustment. A determination by the commissioner under this section is final and may not be appealed.

Explanation: This change is necessary to provide additional state aid to school districts in which a major property taxpayer protests the valuation of the taxpayer's property and to require the school district to repay that additional state aid within two years or when the appraisal protest is resolved, whichever is earlier.

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

SECTION 13. Section 46.003(d), Education Code, as amended by this Act, and Section 46.032(c), Education Code, as added by this Act, apply only to taxes collected by a school district in the 1999-2000 school year or a later school year.

Explanation: This change is necessary to specify that school district may not use fund balances created before the 1999-2000 school year to pay the

district's local share under the instructional facilities allotment and the existing debt allotment.

(5) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 14 to read as follows:

SECTION 14. (a) Notwithstanding Section 46.034(a), Education Code, as amended by this Act, for the 2002-2003 school year, except as provided by this section, a school district may not receive assistance under Subchapter B, Chapter 46, Education Code, for an existing debt tax rate greater than $0.12 per $100 of valuation.

(b) As soon as practicable, the commissioner of education shall determine whether funds are available from amounts appropriated for purposes of the Foundation School Program for the 2001-2002 or 2002-2003 school year in excess of the amount of payments required to be made under Chapters 42 and 46, Education Code. In making a determination under this subsection, the commissioner may:

(1) notwithstanding Section 42.253(b), Education Code, reduce the entitlement under Chapters 42 and 46, Education Code, of a school district whose final taxable value of property is higher than the estimate under Section 42.254, Education Code; and

(2) make payments to school districts accordingly.

(c) For the 2001-2002 school year, to the extent excess funds are available under Subsection (b) of this section, and notwithstanding Section 42.2522, Education Code, the commissioner of education shall apply the funds in the following order:

(1) subject to any limitations in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to adjusting the taxable value of property of school districts that experience a rapid decline in taxable value, as provided by Section 42.2521, Education Code;

(2) to funding school districts based on an adjustment for an optional homestead exemption, as provided by Section 42.2522, Education Code; and

(3) to funding school districts based on an adjustment for ad valorem taxes subject to a protest of the valuation of a major taxpayer's property, as provided by Section 42.2531, Education Code, as added by this Act.

(d) For the 2002-2003 school year, to the extent excess funds are available under Subsection (b) of this section, and notwithstanding Section 42.2522, Education Code, the commissioner of education shall apply the funds in the following order:

(1) to authorizing additional assistance to school districts under Subchapter A, Chapter 46, Education Code, in an amount not to exceed $50 million;

(2) to increasing the limit on the existing debt tax rate under Subsection (a) of this section to a rate not to exceed $0.29 per $100 of valuation;

(3) subject to any limitations in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to adjusting the taxable value of property of school districts that experience a rapid decline in taxable value, as provided by Section 42.2521, Education Code;

(4) to funding school districts based on an adjustment for an optional homestead exemption, as provided by Section 42.2522, Education Code; and

(5) to funding school districts based on an adjustment for ad valorem taxes subject to a protest of the valuation of a major taxpayer's property, as provided by Section 42.2531, Education Code, as added by this Act.

(e) The commissioner of education must provide full funding for a priority listed in Subsection (c) or (d) of this section before providing funding for the next lower priority.

(f) A decision of the commissioner of education under this section is final and may not be appealed.

Explanation: This change is necessary to establish priorities for spending any Foundation School Program appropriations that, because of property valuation increases, exceed the amount to which school districts are entitled in the biennium ending August 31, 2003.

(6) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 15 to read as follows:

SECTION 15. From funds appropriated to the Texas Education Agency that may be used for the purpose, the commissioner of education shall as necessary assist regional education service centers in providing financial management or planning assistance to school districts and open-enrollment charter schools.

Explanation: This change is necessary to permit the commissioner of education to assist regional education service centers in providing financial management or planning assistance to school districts and open-enrollment charter schools.

(7) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 16 to read as follows:

SECTION 16. (a) The Communities in Schools advisory committee is created. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint three members to the advisory committee.

(b) The advisory committee shall advise and provide guidance to programs operated under the auspices of the Communities in Schools.

(c) In accordance with Section 2110.004, Government Code, reimbursement of the expenses of advisory committee members may be paid from amounts appropriated in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency and the Department of Protective and Regulatory Services.

(d) The Texas Education Agency and the Department of Protective and Regulatory Services shall:

(1) coordinate with the advisory committee;

(2) share equally the cost of reimbursement of the expenses of advisory committee members; and

(3) each assign an employee to assist the advisory committee in its duties and act as a liaison between the advisory committee and the employee's employing agency.

Explanation: This change is necessary to create an advisory committee for the Communities in Schools youth dropout prevention program, to provide for the committee members' expenses, and to require the Texas Education Agency and Department of Regulatory and Protective Services to support the committee.

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

SECTION 17. Notwithstanding Subsection (a) of Rider 55 under the appropriations to the Texas Education Agency in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, the funds allocated by that rider shall be allocated in the following manner:

(1) The funds shall be distributed by the commissioner of education for reading diagnostic instruments and on a competitive grant basis to be used by schools for the implementation of scientific, research-based reading and mathematics programs, the purchase of additional instructional or diagnostic materials, necessary materials for libraries, instructional staff, or related professional staff development for educators with the goal of as much direct intervention with students as possible. To be eligible for funding, schools must perform a diagnostic assessment for below-grade-level reading skills and submit a plan for parental involvement in the program.

(2) The commissioner of education shall use not less than $15 million of the funds allocated by Rider 55 to implement scientific-based content development for training materials, professional development institutes in mathematics and related research, as provided by Sections 7.058, 21.454, 21.455, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

(3) The commissioner of education may use a portion of the funds allocated by Rider 55 to implement the master mathematics teacher program as provided by Sections 21.0482 and 21.411, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001, and shall transfer funds to the State Board for Educator Certification for creation of the master mathematics teacher certification as provided by Section 21.0482, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

Explanation: This change is necessary to allocate funds appropriated by **SB 1** for purposes of the governor's reading and mathematics initiatives.

(9) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTION 18 to read as follows:

SECTION 18. Of the amounts appropriated in Article III, **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency under Strategy A.3.3.: Improving Educator Performance, the commissioner of education:

(1) shall allocate $8 million for the fiscal year ending August 31, 2002, and $12 million for the fiscal year ending August 31, 2003, for purposes of funding stipends for master reading and mathematics teachers as provided by Section 21.410, Education Code, and 21.411, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001; and

(2) may transfer funds to the State Board for Educator Certification for creation of the master mathematics teacher certification as provided by Section 21.0482, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

Explanation: This change is necessary to allocate funds appropriated by **SB 1** for purposes of the certified master reading teachers and the certified master mathematics teachers portions of the governor's reading and mathematics initiatives.

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

SECTION 19. The Legislative Budget Board shall increase the number of full-time-equivalent positions authorized for the Texas Education Agency by **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, by two for the fiscal year ending August 31, 2003, for purposes of the mathematics initiative proposed by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

Explanation: This change is necessary to permit the Texas Education Agency to employ two additional full-time equivalent employees for purposes of the governor's mathematics initiative.

(11) House Rule 13, Section 9(a)(4), is suspended to permit the committee to SECTION 20 to read as follows:

SECTION 20. A portion of the amounts appropriated in Article III, **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency is allocated as provided by this section:

(1) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $100 million, and the amount allocated under Strategy A.2.2.: FSP-Equalized Facilities is increased by that amount to assist school districts under the provisions of Subchapter A, Chapter 46, Education Code;

(2) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $205 million, and the amount allocated under Strategy A.2.2.: FSP-Equalized Facilities is increased by that amount to assist school districts under the provisions of Subchapter B, Chapter 46, Education Code;

(3) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $57 million, and the amount allocated under Strategy B.1.2.: Student Success is increased by that amount;

(4) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $30 million, and the amount allocated under Strategy B.1.2.: Student Success is increased by that amount for mathematics and reading programs;

(5) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $11 million, and the amount allocated to the Texas Higher Education Coordinating Board under Strategy C.1.18.: Teach for Texas Conditional Grants is increased by that amount for purposes of the Teach for Texas grant program under Section 56.309, Education Code;

(6) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $9 million, and:

(A) an amount of $4 million is allocated to the Texas Higher Education Coordinating Board under Article III, Special Provisions, for purposes of the Joint Admission Medical Program under Subchapter V, Chapter 51, Education Code, as added by **SB 940**, Acts of the 77th Legislature, Regular Session, 2001; and

(B) the amount allocated to the Texas Higher Education Coordinating Board under Strategy A.1.1.: Information and Planning is

increased by $5 million for purposes of the Public Awareness Campaign Promoting Higher Education under Section 61.951, Education Code, as added by **SB 573**, Acts of the 77th Legislature, Regular Session, 2001;

(7) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $2 million, and the amount allocated to Strategy B.3.1., Regional Training and Development, is increased by that amount and shall be allocated at the discretion of the commissioner of education, for purposes including the provision of assistance to The University of Texas at Austin for the Technology Charter School; and

(8) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $300,000, and the amount allocated to Strategy C.1.2., School Finance System Operations, is increased by that amount to make changes to the Texas Education Agency's school finance payment system as are necessary to efficiently implement the provisions of this legislation or **HB 3343**, Acts of the 77th Legislature, Regular Session, 2001.

Explanation: This change is necessary to allocate funds appropriated by **SB 1** for purposes of providing funding for the instructional facilities allotment, the existing debt allotment, programs intended to improve student success, the Teach for Texas Conditional Grant Program, the Joint Admission Medical Program, the Public Awareness Campaign Promoting Higher Education, increasing the commissioner of education's discretionary funds, and improving the Texas Education Agency's school finance payment system.

(12) House Rule 13, Section 9(a)(4), is suspended to permit the committee to SECTION 21 to read as follows:

SECTION 21. Of the funds allocated by Rider 2 under the appropriations to the Texas Education Agency in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, not more than $22 million may be used for the fiscal biennium ending August 31, 2003, for adjusting the attendance of school districts that experience a decline in average daily attendance, as provided by Section 42.005(b)(2), Education Code, as added by this Act.

Explanation: This change is necessary to allocate funds appropriated by **SB 1** for purposes of the attendance adjustment for school districts with declining attendance that is not caused by the closing or reduction in personnel of a military base.

(13) House Rule 13, Section 9(a)(4), is suspended to permit the committee to SECTION 22 to read as follows:

SECTION 22. For the fiscal biennium ending August 31, 2003, the amount appropriated in Article III, **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency and allocated for Successful Schools Awards under Strategy A.1.2.: Accountability System is reduced by $2.5 million.

Explanation: This change is necessary to permit funding of other programs to which funds are allocated under **HB 2879**.

HR 1408 was adopted without objection.

HB 2879 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Sadler submitted the following conference committee report on **HB 2879**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2879** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins	Sadler
Ellis	Hochberg
Staples	Marchant
Van de Putte	Pitts
Zaffirini	Tillery
On the part of the Senate	On the part of the House

HB 2879, A bill to be entitled An Act relating to public school finance.

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

SECTION 1. Section 21.402(c), Education Code, is amended to read as follows:

(c) The salary factors per step are as follows:

Years Experience	0	1	2	3	4
Salary Factor	.5656	.5790	.5924	6058	6340
	[~~.5596~~]	[~~.5728~~]	[~~.5861~~]	[~~.5993~~]	[~~.6272~~]
Years Experience	5	6	7	8	9
Salary Factor	.6623	.6906	.7168	.7416	.7651
	[~~.6552~~]	[~~.6831~~]	[~~.7091~~]	[~~.7336~~]	[~~.7569~~]
Years Experience	10	11	12	13	14
Salary Factor	.7872	.8082	.8281	.8467	8645
	[~~.7787~~]	~~.7996~~]	[~~.8192~~]	[~~.8376~~]	[~~.8552~~]
Years Experience	15	16	17	18	19
Salary Factor	.8811	.8970	.9119	.9260	.9394
	[~~.8717~~]	[~~.8874~~]	[~~.9021~~]	[~~.9160~~]	[~~.9293~~]
Years Experience	20 and over				
Salary Factor	.9520				
	[~~.9418~~]				

SECTION 2. Subchapter A, Chapter 41, Education Code, is amended by adding Section 41.0021 to read as follows:

Sec. 41.0021. WEALTH PER STUDENT IN CERTAIN DISTRICTS NOT SERVING ALL GRADES. (a) Notwithstanding Section 41.002, for the 2001-2002, 2002-2003, and 2003-2004 school years, a school district that in the 1999-2000 school year did not offer each grade level from kindergarten through 12 may elect to have its wealth per student determined under this section.

(b) In accordance with a determination of the commissioner, the wealth per student that a school district to which this section applies may have after exercising an option under Section 41.003(2) or (3) is the amount needed to maintain state and local revenue in an amount equal to state and local revenue per weighted student for maintenance and operation of the district for the 1999-2000 school year less the district's current year distribution per weighted student from the available school fund, other than amounts distributed under Chapter 31, if the district imposes an effective tax rate for maintenance and operation of the district equal to the district's tax rate for maintenance and operation for the 1999-2000 school year. For purposes of this subsection, a district's effective tax rate is determined as provided by Section 41.002(f).

(c) The commissioner shall:

(1) compute the wealth per student levels under this section using weighted average daily attendance as defined by Section 42.302;

(2) notify each school district that is eligible to have its wealth per student computed under this section; and

(3) establish a date by which a district must elect to have its wealth per student computed under this section.

(d) A school district that elects to have its wealth per student computed under this section:

(1) is not entitled to state aid to achieve the funding levels permitted by Subsection (b);

(2) is not subject to a limitation on tuition under Section 25.039;

(3) is not eligible for credit for tuition payments under Section 41.124(b); and

(4) is not eligible for an adjustment to the district's taxable value of property under Section 42.106.

(e) This section expires September 1, 2004.

SECTION 3. Section 42.005, Education Code, is amended by amending Subsection (b) and adding Subsections (e) and (f) to read as follows:

(b) A school district that experiences a decline of two percent or more in average daily attendance shall be funded on the basis of:

(1) the actual average daily attendance of the preceding school year, if the decline is the [~~as a~~] result of the closing or reduction in personnel of a military base; or

(2) subject to Subsection (e), an average daily attendance not to exceed 98 percent of the actual average daily attendance of the preceding school year, if the decline is not the result of the closing or reduction in personnel of a military base [~~shall be funded on the basis of the actual average daily attendance of the preceding school year~~].

(e) For each school year, the commissioner shall adjust the average daily attendance of school districts that are entitled to funding on the basis of an adjusted average daily attendance under Subsection (b)(2) so that:

(1) all districts are funded on the basis of the same percentage of the preceding year's actual average daily attendance; and

(2) the total cost to the state does not exceed the amount specifically appropriated for that year for purposes of Subsection (b)(2).

(f) An open-enrollment charter school is not entitled to funding based on an adjustment under Subsection (b)(2).

SECTION 4. Section 42.152(b), Education Code, is amended to read as follows:

(b) For purposes of this section, the number of educationally disadvantaged students is determined:

(1) by averaging the best six months' enrollment in the national school lunch program of free or reduced-price lunches for the preceding school year; or

(2) in the manner provided by commissioner rule, if no campus in the district participated in the national school lunch program of free or reduced-price lunches during the preceding school year.

SECTION 5. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2531 to read as follows:

Sec. 42.2531. ADJUSTMENT BY COMMISSIONER. (a) The commissioner may make adjustments to amounts due to a school district under this chapter or Chapter 46, or to amounts necessary for a district to comply with the requirements of Chapter 41, as provided by this section.

(b) A school district that has a major taxpayer, as determined by the commissioner, that because of a protest of the valuation of the taxpayer's property fails to pay all or a portion of the ad valorem taxes due to the district may apply to the commissioner to have the district's taxable value of property or ad valorem tax collections adjusted for purposes of this chapter or Chapter 41 or 46. The commissioner may make the adjustment only to the extent the commissioner determines that making the adjustment will not:

(1) in the fiscal year in which the adjustment is made, cause the amount to which school districts are entitled under this chapter to exceed the amount appropriated for purposes of the Foundation School Program for that year; and

(2) if the adjustment is made in the first year of a state fiscal biennium, cause the amount to which school districts are entitled under this chapter for the second year of the biennium to exceed the amount appropriated for purposes of the Foundation School Program for that year.

(c) The commissioner shall recover the benefit of any adjustment made under this section by making offsetting adjustments in the school district's taxable value of property or ad valorem tax collections for purposes of this chapter or Chapter 41 or 46 on a final determination of the taxable value of property that was the basis of the original adjustment, or in the second school year following the year in which the adjustment is made, whichever is earlier.

(d) This section does not require the commissioner to make any requested adjustment. A determination by the commissioner under this section is final and may not be appealed.

SECTION 6. Section 46.003, Education Code, is amended by amending Subsections (a) and (d)-(g) and adding Subsection (h) to read as follows:

(a) For each year, except as provided by Sections 46.005 and 46.006, a school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the maximum rate under Subsection (b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate, or improve an instructional facility. The amount of state support is determined by the formula:

FYA = (FYL X ADA X BTR X 100) - (BTR X (DPV/100))

where:

"FYA" is the guaranteed facilities yield amount of state funds allocated to the district for the year;

"FYL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is $35 or a greater amount for any year provided by appropriation;

"ADA" is the greater of the number of students in average daily attendance, as determined under Section 42.005, in the district or 400;

"BTR" is the district's bond tax rate for the current year, which is determined by dividing the amount [~~of taxes~~] budgeted [~~to be collected~~] by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, Section 42.2521.

(d) The amount budgeted by a district for payment of eligible bonds may include:

(1) bond taxes collected in the current school year;

(2) bond taxes collected in a preceding school year in excess of the amount necessary to pay the district's share of actual debt service on bonds in that year, provided that the taxes were not used to generate other state financial assistance for the district; or

(3) maintenance and operations taxes collected in the current school year or a preceding school year in excess of the amount eligible to be used to generate other state financial assistance for the district.

(e) Bonds are eligible to be paid with state and local funds under this section if:

(1) taxes to pay the principal of and interest on the bonds were first levied in the 1997-1998 school year or a later school year; and

(2) the bonds do not have a weighted average maturity of less than eight years.

(f) [~~(e)~~] A district may use state funds received under this section only to pay the principal of and interest on the bonds for which the district received the funds.

(g) [~~(f)~~] The board of trustees and voters of a school district shall determine district needs concerning construction, acquisition, renovation, or improvement of instructional facilities.

(h) [~~(g)~~] To receive state assistance under this subchapter, a school district must apply to the commissioner in accordance with rules adopted by the commissioner before issuing bonds that will be paid with state assistance. Until the bonds are fully paid or the instructional facility is sold:

(1) a school district is entitled to continue receiving state assistance without reapplying to the commissioner; and

(2) the guaranteed level of state and local funds per student per cent of tax effort applicable to the bonds may not be reduced below the level provided for the year in which the bonds were issued.

SECTION 7. Subchapter A, Chapter 46, Education Code, is amended by adding Section 46.012 to read as follows:

Sec. 46.012. MULTIPLE ALLOTMENTS PROHIBITED. A school district is not entitled to state assistance under this subchapter based on taxes with respect to which the district receives state assistance under Subchapter F, Chapter 42.

SECTION 8. Section 46.032, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Each school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal of and interest on eligible bonds. The amount of state support, subject only to the maximum amount under Section 46.034, is determined by the formula:

EDA = (EDGL X ADA X EDTR X 100) - (EDTR X (DPV/100))

where:

"EDA" is the amount of state funds to be allocated to the district for assistance with existing debt;

"EDGL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is $35 or a greater amount for any year provided by appropriation;

"ADA" is the number of students in average daily attendance, as determined under Section 42.005, in the district;

"EDTR" is the existing debt tax rate of the district, which is determined by dividing the amount [~~of taxes~~] budgeted [~~to be collected~~] by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521.

(c) The amount budgeted by a district for payment of eligible bonds may include:

(1) bond taxes collected in the current school year;

(2) bond taxes collected in a preceding school year in excess of the amount necessary to pay the district's share of actual debt service on bonds in that year, provided that the taxes were not used to generate other state financial assistance for the district; or

(3) maintenance and operations taxes collected in the current school year or a preceding school year in excess of the amount eligible to be used to generate other state financial assistance for the district.

SECTION 9. Section 46.033, Education Code, is amended to read as follows:

Sec. 46.033. ELIGIBLE BONDS. Bonds, including bonds issued under Section 45.006, are eligible to be paid with state and local funds under this subchapter if:

(1) the district made payments on the bonds during the 2000-2001 school year or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that [~~the 1998-1999~~] school year; and

(2) the district does not receive state assistance under Subchapter A for payment of the principal and interest on the bonds.

SECTION 10. Sections 46.034(a) and (c), Education Code, are amended to read as follows:

(a) The existing debt tax rate ("EDTR") under Section 46.032 may not exceed $0.29 [~~$0.12~~] per $100 of valuation, or a greater amount for any year provided by appropriation.

(c) If the amount required to pay the principal of and interest on eligible bonds in a school year is less than the amount of payments made by the district on the bonds during the 2000-2001 school year or the district's audited debt service collections for that [~~the 1998-1999~~] school year, the district may not receive aid in excess of the amount that, when added to the district's local revenue for the school year, equals the amount required to pay the principal of and interest on the bonds.

SECTION 11. Subchapter B, Chapter 46, Education Code, is amended by adding Section 46.036 to read as follows:

Sec. 46.036. MULTIPLE ALLOTMENTS PROHIBITED. A school district is not entitled to state assistance under this subchapter based on taxes with respect to which the district receives state assistance under Subchapter F, Chapter 42.

SECTION 12. Sections 42.152(t) and 46.034(d), Education Code, are repealed.

SECTION 13. Section 46.003(d), Education Code, as amended by this Act, and Section 46.032(c), Education Code, as added by this Act, apply only to taxes collected by a school district in the 1999-2000 school year or a later school year.

SECTION 14. (a) Notwithstanding Section 46.034(a), Education Code, as amended by this Act, for the 2002-2003 school year, except as provided by this section, a school district may not receive assistance under Subchapter B, Chapter 46, Education Code, for an existing debt tax rate greater than $0.12 per $100 of valuation.

(b) As soon as practicable, the commissioner of education shall determine whether funds are available from amounts appropriated for purposes of the Foundation School Program for the 2001-2002 or 2002-2003 school year in excess of the amount of payments required to be made under Chapters 42 and 46, Education Code. In making a determination under this subsection, the commissioner may:

(1) notwithstanding Section 42.253(b), Education Code, reduce the entitlement under Chapters 42 and 46, Education Code, of a school district whose final taxable value of property is higher than the estimate under Section 42.254, Education Code; and

(2) make payments to school districts accordingly.

(c) For the 2001-2002 school year, to the extent excess funds are available under Subsection (b) of this section, and notwithstanding Section 42.2522, Education Code, the commissioner of education shall apply the funds in the following order:

(1) subject to any limitations in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to adjusting the taxable value of property of school

districts that experience a rapid decline in taxable value, as provided by Section 42.2521, Education Code;

(2) to funding school districts based on an adjustment for an optional homestead exemption, as provided by Section 42.2522, Education Code; and

(3) to funding school districts based on an adjustment for ad valorem taxes subject to a protest of the valuation of a major taxpayer's property, as provided by Section 42.2531, Education Code, as added by this Act.

(d) For the 2002-2003 school year, to the extent excess funds are available under Subsection (b) of this section, and notwithstanding Section 42.2522, Education Code, the commissioner of education shall apply the funds in the following order:

(1) to authorizing additional assistance to school districts under Subchapter A, Chapter 46, Education Code, in an amount not to exceed $50 million;

(2) to increasing the limit on the existing debt tax rate under Subsection (a) of this section to a rate not to exceed $0.29 per $100 of valuation;

(3) subject to any limitations in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to adjusting the taxable value of property of school districts that experience a rapid decline in taxable value, as provided by Section 42.2521, Education Code;

(4) to funding school districts based on an adjustment for an optional homestead exemption, as provided by Section 42.2522, Education Code; and

(5) to funding school districts based on an adjustment for ad valorem taxes subject to a protest of the valuation of a major taxpayer's property, as provided by Section 42.2531, Education Code, as added by this Act.

(e) The commissioner of education must provide full funding for a priority listed in Subsection (c) or (d) of this section before providing funding for the next lower priority.

(f) A decision of the commissioner of education under this section is final and may not be appealed.

SECTION 15. From funds appropriated to the Texas Education Agency that may be used for the purpose, the commissioner of education shall as necessary assist regional education service centers in providing financial management or planning assistance to school districts and open-enrollment charter schools.

SECTION 16. (a) The Communities in Schools advisory committee is created. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint three members to the advisory committee.

(b) The advisory committee shall advise and provide guidance to programs operated under the auspices of the Communities in Schools.

(c) In accordance with Section 2110.004, Government Code, reimbursement of the expenses of advisory committee members may be paid from amounts appropriated in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency and the Department of Protective and Regulatory Services.

(d) The Texas Education Agency and the Department of Protective and Regulatory Services shall:

(1) coordinate with the advisory committee;

(2) share equally the cost of reimbursement of the expenses of advisory committee members; and

(3) each assign an employee to assist the advisory committee in its duties and act as a liaison between the advisory committee and the employee's employing agency.

SECTION 17. Notwithstanding Subsection (a) of Rider 55 under the appropriations to the Texas Education Agency in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, the funds allocated by that rider shall be allocated in the following manner:

(1) The funds shall be distributed by the commissioner of education for reading diagnostic instruments and on a competitive grant basis to be used by schools for the implementation of scientific, research-based reading and mathematics programs, the purchase of additional instructional or diagnostic materials, necessary materials for libraries, instructional staff, or related professional staff development for educators with the goal of as much direct intervention with students as possible. To be eligible for funding, schools must perform a diagnostic assessment for below-grade-level reading skills and submit a plan for parental involvement in the program.

(2) The commissioner of education shall use not less than $15 million of the funds allocated by Rider 55 to implement scientific-based content development for training materials, professional development institutes in mathematics and related research, as provided by Sections 7.058, 21.454, 21.455, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

(3) The commissioner of education may use a portion of the funds allocated by Rider 55 to implement the master mathematics teacher program as provided by Sections 21.0482 and 21.411, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001, and shall transfer funds to the State Board for Educator Certification for creation of the master mathematics teacher certification as provided by Section 21.0482, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 18. Of the amounts appropriated in Article III, **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency under Strategy A.3.3.: Improving Educator Performance, the commissioner of education:

(1) shall allocate $8 million for the fiscal year ending August 31, 2002, and $12 million for the fiscal year ending August 31, 2003, for purposes of funding stipends for master reading and mathematics teachers as provided by Section 21.410, Education Code, and 21.411, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001; and

(2) may transfer funds to the State Board for Educator Certification for creation of the master mathematics teacher certification as provided by Section 21.0482, Education Code, as added by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 19. The Legislative Budget Board shall increase the number of full-time-equivalent positions authorized for the Texas Education Agency by **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, by two for the fiscal year ending August 31, 2003, for purposes of the mathematics

initiative proposed by **HB 1144**, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 20. A portion of the amounts appropriated in Article III, **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency is allocated as provided by this section:

(1) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $100 million, and the amount allocated under Strategy A.2.2.: FSP-Equalized Facilities is increased by that amount to assist school districts under the provisions of Subchapter A, Chapter 46, Education Code;

(2) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $205 million, and the amount allocated under Strategy A.2.2.: FSP-Equalized Facilities is increased by that amount to assist school districts under the provisions of Subchapter B, Chapter 46, Education Code;

(3) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $57 million, and the amount allocated under Strategy B.1.2.: Student Success is increased by that amount;

(4) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $30 million, and the amount allocated under Strategy B.1.2.: Student Success is increased by that amount for mathematics and reading programs;

(5) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $11 million, and the amount allocated to the Texas Higher Education Coordinating Board under Strategy C.1.18.: Teach for Texas Conditional Grants is increased by that amount for purposes of the Teach for Texas grant program under Section 56.309, Education Code;

(6) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $9 million, and:

(A) an amount of $4 million is allocated to the Texas Higher Education Coordinating Board under Article III, Special Provisions, for purposes of the Joint Admission Medical Program under Subchapter V, Chapter 51, Education Code, as added by **SB 940**, Acts of the 77th Legislature, Regular Session, 2001; and

(B) the amount allocated to the Texas Higher Education Coordinating Board under Strategy A.1.1.: Information and Planning is increased by $5 million for purposes of the Public Awareness Campaign Promoting Higher Education under Section 61.951, Education Code, as added by **SB 573**, Acts of the 77th Legislature, Regular Session, 2001;

(7) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $2 million, and the amount allocated to Strategy B.3.1., Regional Training and Development, is increased by that amount and shall be allocated at the discretion of the commissioner of education, for purposes including the provision of assistance to The University of Texas at Austin for the Technology Charter School; and

(8) for the fiscal biennium ending August 31, 2003, the amount allocated under Strategy A.2.1.: FSP-Equalized Operations is reduced by $300,000, and the amount allocated to Strategy C.1.2., School Finance System Operations, is increased by that amount to make changes to the Texas Education Agency's school finance payment system as are necessary to efficiently implement the provisions of this legislation or **HB 3343**, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 21. Of the funds allocated by Rider 2 under the appropriations to the Texas Education Agency in **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, not more than $22 million may be used for the fiscal biennium ending August 31, 2003, for adjusting the attendance of school districts that experience a decline in average daily attendance, as provided by Section 42.005(b)(2), Education Code, as added by this Act.

SECTION 22. For the fiscal biennium ending August 31, 2003, the amount appropriated in Article III, **SB 1**, Acts of the 77th Legislature, Regular Session, 2001, to the Texas Education Agency and allocated for Successful Schools Awards under Strategy A.1.2.: Accountability System is reduced by $2.5 million.

SECTION 23. This Act takes effect September 1, 2001.

Representative Sadler moved to adopt the conference committee report on **HB 2879**.

The motion prevailed.

LEAVE OF ABSENCE GRANTED

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

Salinas on motion of Najera.

HR 1367 - ADOPTED
(by Coleman)

The following privileged resolution was laid before the house:

HR 1367

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 1156**, relating to the state Medicaid program, to consider and take action on the following matter:

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

SECTION 25. Notwithstanding **SB 1**, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), the annual salary of the executive director of the Interagency Council on Early Childhood Intervention during the state fiscal biennium beginning September 1, 2001, is $72,000.

Explanation: This change is necessary to specify the annual salary of the executive director of the Interagency Council on Early Childhood Intervention.

HR 1367 was adopted without objection.

SB 1156 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Coleman submitted the conference committee report on **SB 1156**.

Representative Coleman moved to adopt the conference committee report on **SB 1156**.

The motion prevailed.

HR 1400 - ADOPTED
(by Cook)

The following privileged resolution was laid before the house:

HR 1400

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 1784**, relating to the ratification, creation, administration, powers, duties, operation, and financing of groundwater conservation districts for the management of groundwater resources in the central Carrizo-Wilcox area, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add a new subsection to Section 6.01 of the bill to read as follows:

(d) To the extent of any conflicts, this Act prevails over any **SB 2**, Acts of the 77th Legislature, Regular Session, 2001.

Explanation: This subsection is needed to clarify which Act of the 77th Legislature, Regular Session, 2001, prevails in case of conflicting provisions in **HB 1784** and **SB 2**.

HR 1400 was adopted without objection.

HB 1784 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Cook submitted the following conference committee report on **HB 1784**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1784** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

	Cook
Ogden	Walker
Armbrister	R. Lewis
Duncan	Kolkhorst
Bernsen	Counts
On the part of the Senate	On the part of the House

HB 1784, A bill to be entitled An Act relating to the ratification, creation, administration, powers, duties, operation, and financing of groundwater conservation districts in and coordinated management of groundwater resources for the central Carrizo-Wilcox area.

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

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. TITLE. This Act may be referred to as the Central Carrizo-Wilcox Groundwater Management Act.

SECTION 1.02. PURPOSE. The purpose of this Act is:

(1) to ratify and create locally controlled groundwater districts in order to protect and recharge groundwater and to prevent pollution or waste of groundwater in the central Carrizo-Wilcox area, to control subsidence caused by withdrawal of water from the groundwater reservoirs in that area, and to regulate the transport of water out of the boundaries of the districts;

(2) to create the Central Carrizo-Wilcox Coordinating Council to provide for the regional management of groundwater while preserving local control, to protect and recharge groundwater, to prevent pollution or waste of groundwater, and to control subsidence caused by withdrawal of water from the groundwater reservoirs; and

(3) to allow the groundwater conservation districts to coordinate activities through the Central Carrizo-Wilcox Coordinating Council to the extent authorized by this Act and considered to be in the public interest.

ARTICLE 2. BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT

SECTION 2.01. RATIFICATION OF CREATION. The creation by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999 (Senate Bill No. 1911), of the Brazos Valley Groundwater Conservation District in Robertson and Brazos counties is ratified as required by Section 15(a) of that Act, subject to approval at a confirmation election under Section 2.13 of this article.

SECTION 2.02. DEFINITION. In this article, "district" means the Brazos Valley Groundwater Conservation District.

SECTION 2.03. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Robertson and Brazos counties, Texas.

SECTION 2.04. GENERAL POWERS. (a) Except as otherwise provided by this article, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article, including any provision of Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999 (Senate Bill No. 1911).

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

(1) Section 36.105, relating to eminent domain; and

(2) Sections 36.020 and 36.201-36.204, relating to taxes.

SECTION 2.05. BONDS. The district may issue bonds and notes under

Sections 36.171-36.181, Water Code, not to exceed $500,000 of total indebtedness at any time.

SECTION 2.06. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) The initial fee shall be based on the amount of water to be withdrawn from the well. The initial fee:

(1) may not exceed:

(A) $0.25 per acre-foot for water used for irrigating agricultural crops or operating existing steam electric stations; or

(B) $0.0425 per thousand gallons for water used for any other purpose; and

(2) may be increased at a cumulative rate not to exceed three percent per year.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

(1) a fee negotiated between the district and the transporter; or

(2) a combined production and export fee not to exceed 17 cents per thousand gallons of water used.

(d) Fees authorized by this section may be assessed annually and may be used to fund the cost of operations of the district or the Central Carrizo-Wilcox Coordinating Council.

SECTION 2.07. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION. (a) A groundwater well drilled or operated within the district under a permit issued by the Railroad Commission of Texas is under the exclusive jurisdiction of the railroad commission and is exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a railroad commission permit may be used within or exported from the district without a permit from the district.

(c) To the extent groundwater is produced in excess of railroad commission authorization, the holder of the railroad commission permit must apply to the district for the appropriate permit for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from a well under the jurisdiction of the railroad commission is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

SECTION 2.08. REGIONAL COORDINATION. (a) To provide for regional continuity, the district shall participate in a regular annual coordination meeting with any groundwater districts that are created and/or existing in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and/or

Freestone counties, and may hold coordination meetings at other times as needed.

(b) Prior to the first annual regional coordination meeting held under Subsection (a), the district's board of directors shall vote whether to create and be a member of the Central Carrizo-Wilcox Coordinating Council under Article 5 of this Act.

(c) At the first annual regional coordination meeting held under Subsection (a), if all of the groundwater districts created and/or existing in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and/or Freestone counties unanimously vote to create and be members of the Central Carrizo-Wilcox Coordinating Council, then the district shall be a member of the Central Carrizo-Wilcox Coordinating Council under Article 5.

(d) If the Central Carrizo-Wilcox Coordinating Council is not created at the first annual regional coordination meeting held under Subsection (a), then the district shall follow the joint planning in management area requirements under Chapter 36, Water Code.

SECTION 2.09. MANAGEMENT PLAN. (a) The district shall develop or contract to develop its own management plan under Section 36.1071, Water Code.

(b) The district shall submit its management plan under Subsection (a) to the Central Carrizo-Wilcox Coordinating Council to be included in the management plan developed by the Central Carrizo-Wilcox Coordinating Council under Section 5.06 of this Act, if the Central Carrizo-Wilcox Coordinating Council is created at the first annual regional coordination meeting.

SECTION 2.10. BOARD OF DIRECTORS. (a) The district is governed by a board of eight directors.

(b) Initial directors serve until permanent directors are appointed under Section 2.11 of this article and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 2.11. APPOINTMENT OF DIRECTORS. (a) The Robertson County Commissioners Court shall appoint four directors, of whom:

(1) one must represent municipal interests in the county;

(2) one must be a bona fide agricultural producer who derives a substantial portion of his or her income from agriculture in the county;

(3) one must be a director or employee of a rural water supply corporation in the county; and

(4) one must represent active industrial interests in the county.

(b) The Brazos County Commissioners Court shall appoint two directors, of whom:

(1) one must be a director or employee of a rural water supply corporation in the county; and

(2) one must be a bona fide agricultural producer who derives a substantial portion of his or her income from agriculture in the county.

(c) The governing body of the City of Bryan, with the approval of the Brazos County Commissioners Court, shall appoint one director.

(d) The governing body of the City of College Station, with the approval of the Brazos County Commissioners Court, shall appoint one director.

(e) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(f) The four initial directors from Robertson County shall draw lots to determine their terms. Two initial directors from Robertson County and the two initial directors from Brazos County serve terms that expire on January 1 of the second year following the confirmation of the district at an election held under Section 2.13 of this article. The remaining four initial directors serve terms that expire on January 1 of the fourth year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate governing body shall appoint the appropriate number of permanent directors.

SECTION 2.12. ORGANIZATIONAL MEETING. As soon as practicable after all the initial directors have been appointed and have qualified as provided in this article, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Robertson County Courthouse.

SECTION 2.13. CONFIRMATION ELECTION. (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district. If the majority of qualified voters in a county who vote in the election vote not to confirm the creation of the district, that county is excluded from the district.

(d) The district is dissolved and this article expires on August 31, 2003, unless the voters confirm the creation of the district before that date.

ARTICLE 3. POST OAK SAVANNAH
GROUNDWATER CONSERVATION DISTRICT

SECTION 3.01. CREATION. (a) A groundwater conservation district, to be known as the Post Oak Savannah Groundwater Conservation District, is

created in Milam and Burleson counties, subject to approval at a confirmation election under Section 3.13 of this article. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 3.02. DEFINITION. In this article, "district" means the Post Oak Savannah Groundwater Conservation District.

SECTION 3.03. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Milam and Burleson counties.

SECTION 3.04. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefitted by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 3.05. GENERAL POWERS. (a) Except as otherwise provided by this article, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article, including any provision of Chapter 36, Water Code.

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

(1) Section 36.105, relating to eminent domain; and

(2) Sections 36.020 and 36.201-36.204, relating to taxes.

SECTION 3.06. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) Fees may not exceed:

(1) $0.25 per acre-foot for water used for irrigating agricultural crops; or

(2) 17 cents per thousand gallons for water used for any other purpose.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

(1) a fee negotiated between the district and the transporter; or

(2) a combined production and export fee not to exceed 17 cents per thousand gallons of water used.

(d) Fees authorized by this section may be assessed annually and may be used to fund the cost of operations of the district or the Central Carrizo-Wilcox Coordinating Council.

SECTION 3.07. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION. (a) A groundwater well drilled or operated within the district under a permit issued by the Railroad Commission of Texas is under the exclusive jurisdiction of the railroad commission and is exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a railroad commission permit may be used within or exported from the district without a permit from the district.

(c) To the extent groundwater is produced in excess of railroad commission authorization, the holder of the railroad commission permit must apply to the district for the appropriate permit for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from a well under the jurisdiction of the railroad commission is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

SECTION 3.08. REGIONAL COORDINATION. (a) To provide for regional continuity, the district shall participate in a regular annual coordination meeting with any groundwater districts that are created and/or existing in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and/or Freestone counties, and may hold coordination meetings at other times as needed.

(b) Prior to the first annual regional coordination meeting held under Subsection (a), the district's board of directors shall vote whether to create and be a member of the Central Carrizo-Wilcox Coordinating Council under Article 5 of this Act.

(c) At the first annual regional coordination meeting held under Subsection (a), if all of the groundwater districts created and/or existing in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and/or Freestone counties unanimously vote to create and be members of the Central Carrizo-Wilcox Coordinating Council, then the district shall be a member of the Central Carrizo-Wilcox Coordinating Council under Article 5.

(d) If the Central Carrizo-Wilcox Coordinating Council is not created at the first annual regional coordination meeting held under Subsection (a), then the district shall follow the joint planning in management area requirements under Chapter 36, Water Code.

SECTION 3.09. MANAGEMENT PLAN. (a) The district shall develop or contract to develop its own management plan under Section 36.1071, Water Code.

(b) The district shall submit its management plan under Subsection (a) to the Central Carrizo-Wilcox Coordinating Council to be included in the management plan developed by the Central Carrizo-Wilcox Coordinating Council under Section 5.06 of this Act, if the Central Carrizo-Wilcox Coordinating Council is created at the first annual regional coordination meeting.

SECTION 3.10. BOARD OF DIRECTORS. (a) The district is governed by a board of 10 directors.

(b) Initial directors serve until permanent directors are appointed under Section 3.11 of this article and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A quorum exists when at least two-thirds of the board members are present. A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 3.11. APPOINTMENT OF DIRECTORS. (a) The Milam County Commissioners Court shall appoint five directors, of whom:

(1) one must represent municipal interests in the county;

(2) one must be a bona fide agricultural producer who derives a substantial portion of his or her income from agriculture in the county;

(3) one must be a director or employee of a rural water supply corporation in the county;

(4) one must represent active industrial interests in the county; and

(5) one must represent the interests of the county at large.

(b) The Burleson County Commissioners Court shall appoint five directors, of whom:

(1) one must represent municipal interests in the county;

(2) one must be a bona fide agricultural producer who derives a substantial portion of his or her income from agriculture in the county;

(3) one must be a director or employee of a rural water supply corporation in the county;

(4) one must represent active industrial interests in the county; and

(5) one must represent the interests of the county at large.

(c) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(d) The initial directors shall draw lots to determine their terms. Two initial directors from Milam County and two initial directors from Burleson County serve terms that expire on January 1 of the second year following the confirmation of the district at an election held under Section 3.13 of this article. The remaining six initial directors serve terms that expire on January 1 of the fourth year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate commissioners court shall appoint the appropriate number of permanent directors.

SECTION 3.12. ORGANIZATIONAL MEETING. As soon as practicable after all the initial directors have been appointed and have qualified as provided in this article, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority

of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Milam County Courthouse.

SECTION 3.13. CONFIRMATION ELECTION. (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district. If the majority of qualified voters in a county who vote in the election vote not to confirm the creation of the district, that county is excluded from the district.

(d) The district is dissolved and this article expires on August 31, 2003, unless the voters confirm the creation of the district before that date.

ARTICLE 4. MID-EAST TEXAS GROUNDWATER CONSERVATION DISTRICT

SECTION 4.01. CREATION. (a) A groundwater conservation district, to be known as the Mid-East Texas Groundwater Conservation District, is created in Leon, Madison, and Freestone counties, subject to approval at a confirmation election under Section 4.13 of this article. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 4.02. DEFINITION. In this article, "district" means the Mid-East Texas Groundwater Conservation District.

SECTION 4.03. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Leon, Madison, and Freestone counties.

SECTION 4.04. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefitted by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 4.05. GENERAL POWERS. (a) Except as otherwise provided by this article, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article, including any provision of Chapter 36, Water Code.

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

(1) Section 36.105, relating to eminent domain; and

(2) Sections 36.020 and 36.201-36.204, relating to taxes.

SECTION 4.06. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) Fees may not exceed:

(1) $0.25 dollar per acre-foot for water used for irrigating agricultural crops; or

(2) 17 cents per thousand gallons for water used for any other purpose.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

(1) a fee negotiated between the district and the transporter; or

(2) a combined production and export fee not to exceed 17 cents per thousand gallons of water used.

(d) Fees authorized by this section may be assessed annually and may be used to fund the cost of operations of the district or the Central Carrizo-Wilcox Coordinating Council.

SECTION 4.07. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION. (a) A groundwater well drilled or operated within the district under a permit issued by the Railroad Commission of Texas is under the exclusive jurisdiction of the railroad commission and is exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a railroad commission permit may be used within or exported from the district without a permit from the district.

(c) To the extent groundwater is produced in excess of railroad commission authorization, the holder of the railroad commission permit must apply to the district for the appropriate permit for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from a well under the jurisdiction of the railroad commission is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

SECTION 4.08. REGIONAL COORDINATION. (a) To provide for regional continuity, the district shall participate in a regular annual coordination meeting with any groundwater districts that are created and/or existing in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and/or Freestone counties, and may hold coordination meetings at other times as needed.

(b) Prior to the first annual regional coordination meeting held under Subsection (a), the district's board of directors shall vote whether to create and be a member of the Central Carrizo-Wilcox Coordinating Council under Article 5 of this Act.

(c) At the first annual regional coordination meeting held under Subsection (a), if all of the groundwater districts created and/or existing in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and/or Freestone counties unanimously vote to create and be members of the Central Carrizo-Wilcox Coordinating Council, then the district shall be a member of the Central Carrizo-Wilcox Coordinating Council under Article 5.

(d) If the Central Carrizo-Wilcox Coordinating Council is not created at the first annual regional coordination meeting held under Subsection (a), then the district shall follow the joint planning in management area requirements under Chapter 36, Water Code.

SECTION 4.09. MANAGEMENT PLAN. (a) The district shall develop or contract to develop its own management plan under Section 36.1071, Water Code.

(b) The district shall submit its management plan under Subsection (a) to the Central Carrizo-Wilcox Coordinating Council to be included in the management plan developed by the Central Carrizo-Wilcox Coordinating Council under Section 5.06 of this Act, if the Central Carrizo-Wilcox Coordinating Council is created at the first annual regional coordination meeting.

SECTION 4.10. BOARD OF DIRECTORS. (a) The district is governed by a board of nine directors.

(b) Initial directors serve until permanent directors are appointed under Section 4.11 of this article and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 4.11. APPOINTMENT OF DIRECTORS. (a) The Leon County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of municipalities in the county, or must be a director or employee of a rural water supply corporation in the county, or both;

(2) one must be a bona fide agricultural producer who derives a substantial portion of his or her income from agriculture in the county; and

(3) one must represent active industrial interests in the county.

(b) The Madison County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of municipalities in the county, or must be a director or employee of a rural water supply corporation in the county, or both;

(2) one must be a bona fide agricultural producer who derives a substantial portion of his or her income from agriculture in the county; and

(3) one must represent active industrial interests in the county.

(c) The Freestone County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of municipalities in the county, or must be a director or employee of a rural water supply corporation in the county, or both;

(2) one must be a bona fide agricultural producer who derives a substantial portion of his or her income from agriculture in the county; and

(3) one must represent active industrial interests in the county.

(d) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(e) The initial directors shall draw lots to determine their terms. A simple majority of the initial directors, if an odd number of initial directors are appointed, or half the initial directors, if an even number of initial directors are appointed, serve terms that expire on January 1 of the fourth year following the confirmation of the district at an election held under Section 4.13 of this article. The remaining initial directors serve terms that expire on January 1 of the second year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate commissioners courts shall appoint the appropriate number of permanent directors.

SECTION 4.12. ORGANIZATIONAL MEETING. As soon as practicable after all the initial directors have been appointed and have qualified as provided by this article, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Leon County Courthouse.

SECTION 4.13. CONFIRMATION ELECTION. (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district. If the majority of qualified voters in a county who vote in the election vote not to confirm the creation of the district, that county is excluded from the district.

(d) The district is dissolved and this article expires on August 31, 2003, unless the voters confirm the creation of the district before that date.

ARTICLE 5. CENTRAL CARRIZO-WILCOX COORDINATING COUNCIL

SECTION 5.01. CREATION. (a) The Central Carrizo-Wilcox Coordinating Council is created only if at the first annual regional coordination meeting held under Sections 2.08, 3.08, and 4.08 of this Act, all of the groundwater districts created and/or existing in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and/or Freestone counties unanimously vote to create and be members of the Central Carrizo-Wilcox Coordinating Council.

(b) The council is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

(c) The council is created to provide regional management of groundwater resources within its boundaries in order to preserve a sustainable water supply for the future by protecting, recharging, and preventing the waste of groundwater and by controlling subsidence caused by withdrawal of water from the groundwater reservoirs.

SECTION 5.02. BOUNDARIES. The boundaries of the Central Carrizo-Wilcox Coordinating Council are coextensive with the boundaries of Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, and Freestone counties.

SECTION 5.03. DEFINITIONS. In this article:

(1) "Council" means the Central Carrizo-Wilcox Coordinating Council.

(2) "District" includes:

(A) the Brazos Valley Groundwater Conservation District;

(B) the Post Oak Savannah Groundwater Conservation District;

(C) the Mid-East Texas Groundwater Conservation District;

(D) the Lost Pines Groundwater Conservation District; and

(E) any other groundwater district created in Bastrop, Lee, Robertson, Brazos, Milam, Burleson, Leon, Madison, or Freestone County, or in any combination of any of those counties.

SECTION 5.04. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the council will be benefitted by regional management of groundwater resources and the works and projects that are to be accomplished by the council under powers conferred by Section 59, Article XVI, Texas Constitution. The council is created to serve a public use and benefit.

SECTION 5.05. AUTHORITY OF COUNCIL. (a) The council does not have the powers granted by Chapter 36, Water Code, except as stated in this article and as authorized by the districts. The failure of one or more of the districts' confirmation elections does not affect the authority of the council.

(b) The council's authority is limited to groundwater produced from and wells drilled into the Carrizo-Wilcox aquifer, as defined by the Texas Water Development Board in the current state water plan, within the boundaries of the council.

SECTION 5.06. MANAGEMENT PLAN. (a) The council shall:

(1) coordinate and maintain a management plan for the council's coordinating area;

(2) collect and maintain data required for management of groundwater resources within its boundaries;

(3) coordinate the districts regarding management plan issues; and

(4) disseminate information and monitor implementation of the management plan among the districts.

(b) The council shall coordinate the comprehensive management plan, as required by Sections 36.1071 and 36.1073, Water Code, for all of the counties within its boundaries. In coordinating the comprehensive management plan, the council shall include and use the management plans developed by the individual districts.

(c) In the management plan the council may establish an annual total groundwater withdrawal limit and equitable allocation for each district as

determined from an evaluation of the overall scientific data of the groundwater resources in the region, including the Texas Water Development Board's groundwater availability model. The determination of sustainable groundwater withdrawal shall be reviewed at least every five years. An individual district may not restrict the total amount of groundwater withdrawn in the district to less than the limit as determined from the evaluation of scientific data established under this subsection. If the council establishes an annual total groundwater withdrawal limit and that limit is reached, groundwater withdrawal used for public water supply inside the boundaries of the council may be restricted only by unanimous vote of the council.

(d) On completion of the comprehensive management plan and after approval of the plan by vote of at least 75 percent of the council, the council shall forward a copy of the management plan and any amendment to the plan to the Texas Water Development Board as required by Section 36.1072, Water Code. In preparing the comprehensive management plan and its amendments, the council shall consider:

(1) the goals of the management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by the management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of those measures in the management area generally; and

(3) any other matters that the council considers relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

SECTION 5.07. MANAGEMENT OF COUNCIL. (a) The districts' representatives appointed to the council shall manage all affairs of the council.

(b) The council may contract with any person, public or private, as the council requires to conduct its affairs. The council shall set the compensation and terms for consultants.

(c) In selecting an attorney, engineer, auditor, financial advisor, or other professional consultant, the council must follow the procedures of Subchapter A, Chapter 2254, Government Code (Professional Services Procurement Act).

(d) The council shall require an officer or consultant who collects, pays, or handles any council funds to furnish good and sufficient bond, payable to the council, in an amount determined by the council to be sufficient to safeguard the council. The bond shall be conditioned on the faithful performance of that person's duties and on an accounting for all council funds and property. The bond shall be signed or endorsed by a surety company authorized to do business in this state.

SECTION 5.08. MEETINGS. (a) The council shall hold a regular annual meeting. It may hold meetings at other times as required for council business.

(b) Notice of council meetings shall be given as required by the open meetings law, Chapter 551, Government Code.

(c) The council shall hold its meetings in accordance with the open meetings law, Chapter 551, Government Code.

SECTION 5.09. RECORDS. (a) The council shall keep a complete account of all its meetings and proceedings and shall preserve all council records in a safe place.

(b) Council records are the property of the council and are subject to Chapter 552, Government Code.

(c) The preservation, storage, destruction, or other disposition of council records are subject to Chapter 201, Local Government Code, and rules adopted under that chapter.

SECTION 5.10. RESEARCH, SURVEYS, AND COLLECTION AND DISSEMINATION OF INFORMATION. (a) The council may, but only as authorized by the districts:

(1) perform research projects authorized by Section 36.107, Water Code;

(2) coordinate surveys under Section 36.106, Water Code, of the groundwater reservoir or subdivision and of the facilities for development, production, transportation, distribution, and use of the water, to determine the:

(A) quantity of water available for production and use; and

(B) improvements, development, and recharging needed by a reservoir or its subdivision;

(3) collect information under Section 36.107, Water Code, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir;

(4) publish its plans and the information it develops, bring them to the attention of the users of groundwater in the council area, and encourage the users to adopt and use them, under Section 36.110, Water Code; and

(5) develop programs to educate the public about the aquifers in the management area, water conservation, and the prevention of pollution of the aquifer.

(b) A unanimous vote of the council is required before the council may take an action authorized by Subsection (a) of this section.

(c) The district shall use existing research, surveys, and information from state agencies or other sources to the greatest extent possible for developing the management plan, conducting research or other projects, and determining withdrawal limits and equitable allocations between districts before conducting or contracting for similar or complementary research, surveys, and information.

SECTION 5.11. FUNDING. (a) The council shall be funded by reasonable assessments of the owners of water wells in the Carrizo-Wilcox aquifer that are capable of producing more than 25,000 gallons of water a day in proportion to the total amount of water pumped from the aquifer. The districts shall make the assessment.

(b) The assessments shall be made for:

(1) coordination and maintenance of a management plan for the council's coordinating area;

(2) collection and maintenance of data required for management of groundwater resources within its boundaries;

(3) coordination of the districts regarding management plan issues;

(4) dissemination of information and monitoring of implementation of the management plan among the districts;

(5) holding of regular council meetings; and

(6) contracting with any person, public or private, as the council requires to accomplish the duties of this subsection.

(c) The council may be funded for services other than those listed in Subsection (b) of this section, in any manner determined appropriate by unanimous vote of the council or provided for by interlocal agreement.

(d) The council shall seek to minimize its costs and expenditures to the greatest extent feasible.

SECTION 5.12. SUITS. All courts shall take judicial notice of the creation of the council and of its boundaries. Sections 36.066(f) and (g), Water Code, pertaining to suits, apply to the council.

SECTION 5.13. CONTRACTS. The council may contract in the name of the council.

SECTION 5.14. DISTRICT COORDINATION. (a) The council may enter into interlocal agreements with its member districts to provide for administrative assistance and other services identified in Section 5.10 of this article.

(b) The council may coordinate the activities of the districts to the extent authorized by the districts.

(c) The council may mediate disputes concerning the regulation of groundwater along the boundaries of each district and, in the event that the council is unable to reach a resolution, it may petition the Texas Natural Resource Conservation Commission for resolution of the dispute under Section 36.108, Water Code.

SECTION 5.15. COMPOSITION OF COUNCIL. (a) Each district shall appoint three of its directors to serve on the council's board of directors. The appointees to the council's board of directors shall serve at the pleasure of their respective districts.

(b) After the council is created and the districts select their three representatives to serve on the council, the council shall meet and elect a president, a vice president, a secretary, and any other officers or assistant officers the council considers necessary and shall begin to discharge its duties.

(c) A quorum for a council meeting is achieved only if:

(1) a majority of the membership of the council is present; and

(2) each district has a representative at the meeting.

SECTION 5.16. COORDINATION WITH THE BLUEBONNET GROUNDWATER CONSERVATION DISTRICT. (a) The council shall coordinate activities with the Bluebonnet Groundwater Conservation District or any other groundwater conservation district created in Grimes, Washington, Austin, Waller, or Walker County if the groundwater conservation district chooses to coordinate activities.

(b) The Bluebonnet Groundwater Conservation District or any other groundwater conservation district created in Grimes, Washington, Austin, Waller, or Walker County may appoint a nonvoting representative to the council.

(c) The council may perform duties described in this article for the Bluebonnet Groundwater Conservation District or any other groundwater conservation district created in Grimes, Washington, Austin, Waller, or Walker County through interlocal agreements.

ARTICLE 6. PROCEDURAL REQUIREMENTS; EFFECTIVE DATE

SECTION 6.01. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to

introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

(d) To the extent of any conflicts, this Act prevails over any provision of **SB 2**, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 6.02. EFFECTIVE DATE. This Act takes effect September 1, 2001.

Representative Cook moved to adopt the conference committee report on **HB 1784**.

The motion prevailed.

SB 2 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Counts submitted the conference committee report on **SB 2**.

Representative Counts moved to adopt the conference committee report on **SB 2**.

The motion prevailed.

SB 305 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bosse submitted the conference committee report on **SB 305**.

Representative Bosse moved to adopt the conference committee report on **SB 305**.

The motion prevailed.

SB 311 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gallego submitted the conference committee report on **SB 311**.

Representative Gallego moved to adopt the conference committee report on **SB 311**.

The motion prevailed. (Craddick, Denny, Isett, E. Reyna and Shields recorded voting no)

HR 1398 - ADOPTED
(by Eiland)

The following privileged resolution was laid before the house:

HR 1398

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 1862**, relating to the regulation and prompt payment of health care providers under certain health benefit plans and providing penalties, to consider and take action on the following matters:

1. House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text that is not in disagreement in amended Section 3A(b), Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, so that the subsection reads as follows:

(b) A physician or [~~preferred~~] provider must submit a claim to an insurer not later than the 95th day after the date the physician or provider provides the medical care or health care services for which the claim is made. An insurer shall accept as proof of timely filing a claim filed in compliance with Subsection (c) of this section or information from another insurer showing that the physician or provider submitted the claim to the insurer in compliance with Subsection (c) of this section. If a physician or provider fails to submit a claim in compliance with this subsection, the physician or provider forfeits the right to payment unless the failure to submit the claim in compliance with this subsection is a result of a catastrophic event that substantially interferes with the normal business operations of the physician or provider. The period for submitting a claim under this subsection may be extended by contract. A physician or provider may not submit a duplicate claim for payment before the 46th day after the date the original claim was submitted. The commissioner shall adopt rules under which an insurer may determine whether a claim is a duplicate claim [~~for medical care or health care services under a health insurance policy may obtain acknowledgment of receipt of a claim for medical care or health care services under a health care plan by submitting the claim by United States mail, return receipt requested. An insurer or the contracted clearinghouse of an insurer that receives a claim electronically shall acknowledge receipt of the claim by an electronic transmission to the preferred provider and is not required to acknowledge receipt of the claim by the insurer in writing~~].

Explanation: This change is necessary to prevent a physician or provider from forfeiting payment of a claim if a catastrophic event prevents the physician or provider from submitting the claim in the required time.

2. House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text that is not in disagreement in added Section 3A(d), Article 3.70-3C, Insurance Code, so that the subsection reads as follows:

(d) If a claim for medical care or health care services provided to a patient is mailed, the claim is presumed to have been received by the insurer on the third day after the date the claim is mailed or, if the claim is mailed using overnight service or return receipt requested, on the date the delivery receipt is signed. If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the insurer or the insurer's clearinghouse. If the insurer or the insurer's clearinghouse does not provide a confirmation within 24 hours of submission by the physician or provider, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the filing contained the correct payor identification of the

entity to receive the filing. If the claim is faxed, the claim is presumed to have been received on the date of the transmission acknowledgment. If the claim is hand delivered, the claim is presumed to have been received on the date the delivery receipt is signed. The commissioner shall promulgate a form to be submitted by the physician or provider that easily identifies all claims included in each filing and that can be used by a physician or provider as the physician's or provider's log.

Explanation: This change is necessary to require that a physician's or provider's clearinghouse be able to verify that a filed claim contains the correct "payor identification" of the entity to receive the filing, rather than the "correct address" of the entity.

3. House Rule 13, Sections 9(a)(1) and (2), is suspended to permit the committee to change and omit text that is not in disagreement in added Section 3A(g), Article 3.70-3C, Insurance Code, so that the subsection reads as follows:

(g) An insurer that determines under Subsection (e) of this section that a claim is eligible for payment and does not pay the claim on or before the 45th day after the date the insurer receives a clean claim shall pay the physician or provider making the claim the lesser of the full amount of billed charges submitted on the claim and interest on the billed charges at a rate of 15 percent annually or two times the contracted rate and interest on that amount at a rate of 15 percent annually. If the provider submits the claim using a form described by Section 3B(a) of this article, billed charges shall be established under a fee schedule provided by the preferred provider to the insurer on or before the 30th day after the date the physician or provider enters into a preferred provider contract with the insurer. The preferred provider may modify the fee schedule if the provider notifies the insurer of the modification on or before the 90th day before the date the modification takes effect.

Explanation: This change is necessary to omit language relating to payment of certain claims and change the consequences of failing to pay certain claims as required.

4. House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text that is not in disagreement in added Section 3B(a), Article 3.70-3C, Insurance Code, to add the phrase "in the manner prescribed".

Explanation: This change is necessary to specify that for a claim by certain physicians or providers to be a "clean claim" information must be entered into the required form "in the manner prescribed".

5. House Rule 13, Section 9(a)(1), is suspended to allow the committee to change text that is not in disagreement in amended Section 18B(b), Texas Health Maintenance Organization Act (Article 20A.18B, Vernon's Texas Insurance Code), so that the subsection reads as follows:

(b) A physician or provider must submit a claim under this section to a health maintenance organization not later than the 95th day after the date the physician or provider provides the medical care or health care services for which the claim is made. A health maintenance organization shall accept as proof of timely filing a claim filed in compliance with Subsection (c) of this section or information from another health maintenance organization showing that the physician or provider submitted the claim to the health maintenance organization in compliance with Subsection (c) of this section. If a physician

or provider fails to submit a claim in compliance with this subsection, the physician or provider forfeits the right to payment unless the failure to submit the claim in compliance with this subsection is a result of a catastrophic event that substantially interferes with the normal business operations of the physician or provider. The period for submitting a claim under this subsection may be extended by contract. A physician or provider may not submit a duplicate claim for payment before the 46th day after the date the original claim was submitted. The commissioner shall adopt rules under which a health maintenance organization may determine whether a claim is a duplicate claim. [~~A physician or provider for medical care or health care services under a health care plan may obtain acknowledgment of receipt of a claim for medical care or health care services under a health care plan by submitting the claim by United States mail, return receipt requested. A health maintenance organization or the contracted clearinghouse of the health maintenance organization that receives a claim electronically shall acknowledge receipt of the claim by an electronic transmission to the physician or provider and is not required to acknowledge receipt of the claim by the health maintenance organization in writing.~~]

Explanation: This change is necessary to prevent a physician or provider from forfeiting payment of a claim if a catastrophic event prevents the physician or provider from submitting the claim in the required time.

6. House Rule 13, Section 9(a)(1), is suspended to allow the committee to change text that is not in disagreement in added Section 18B(d), Texas Health Maintenance Organization Act (Article 20A.18B, Vernon's Texas Insurance Code), so that the subsection reads as follows:

(d) If a claim for medical care or health care services provided to a patient is mailed, the claim is presumed to have been received by the health maintenance organization on the third day after the date the claim is mailed or, if the claim is mailed using overnight service or return receipt requested, on the date the delivery receipt is signed. If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the health maintenance organization or the health maintenance organization's clearinghouse. If the health maintenance organization or the health maintenance organization's clearinghouse does not provide a confirmation within 24 hours of submission by the physician or provider, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the filing contained the correct payor identification of the entity to receive the filing. If the claim is faxed, the claim is presumed to have been received on the date of the transmission acknowledgment. If the claim is hand delivered, the claim is presumed to have been received on the date the delivery receipt is signed. The commissioner shall promulgate a form to be submitted by the physician or provider which easily identifies all claims included in each filing which can be utilized by the physician or provider as their log.

Explanation: This change is necessary to require that a physician's or provider's clearinghouse be able to verify that a filed claim contains the correct "payor identification" of the entity to receive the filing, rather than the "correct address" of the entity.

7. House Rule 13, Section 9(a)(1) and (2), is suspended to allow the committee to change and omit text that is not in disagreement in added Section 18B(g), Texas Health Maintenance Organization Act (Article 20A.18B, Vernon's Texas Insurance Code), so that the subsection reads as follows:

(g) A health maintenance organization that determines under Subsection (e) of this section that a claim is eligible for payment and does not pay the claim on or before the 45th day after the date the health maintenance organization receives a clean claim shall pay the physician or provider making the claim the lesser of the full amount of billed charges submitted on the claim and interest on the billed charges at a rate of 15 percent annually or two times the contracted rate and interest on that amount at a rate of 15 percent annually. If the physician or provider submits the claim using a form described by Section 18D(a) of this Act, billed charges shall be established under a fee schedule provided by the physician or provider to the health maintenance organization on or before the 30th day after the date the physician or provider enters into the contract with the health maintenance organization. The physician or provider may modify the fee schedule if the physician or provider notifies the health maintenance organization of the modification on or before the 90th day before the date the modification takes effect.

Explanation: This change is necessary to omit language relating to payment of certain claims and change the consequences of failing to pay certain claims as required.

8. House Rule 13, Section 9(a)(1), is suspended to allow the committee to change text that is not in disagreement in added Section 18D(a), Texas Health Maintenance Organization Act, to add the phrase "in the manner prescribed".

Explanation: This change is necessary to specify that for a claim by certain physicians or providers to be a "clean claim" information must be entered into the required form "in the manner prescribed".

9. House Rule 13, Section 9(a)(1), is suspended to allow the committee to change text that is not in disagreement in added Section 18H(c), Texas Health Maintenance Organization Act, to substitute the phrase "health maintenance organization" for "insurer".

Explanation: This change is necessary to make a technical correction that changes "insurer" to "health maintenance organization".

10. House Rule 13, Section 9(a)(1), is suspended to allow the committee to change text that is not in disagreement in added Section 18I, Texas Health Maintenance Organization Act, to change the term "preauthorization" to "verification".

Explanation: This change is necessary to apply the provisions of the Texas Health Maintenance Organization Act relating to "verification" of certain services, rather than provisions relating to "preauthorization" of those services, to certain physicians or providers.

11. House Rule 13, Section 9(a)(4), is suspended to allow the committee to add a new section to the bill to read as follows:

SECTION 8. (a) Section 3, Article 21.53Q, Insurance Code, as added by **HB 1676**, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 3. TRAINING FOR CERTAIN PERSONNEL REQUIRED. (a) In this section, "preauthorization" means a determination by [~~the provision of a reliable representation to a physician or health care provider of whether~~] the issuer of a health benefit plan that the [~~will pay the physician or provider for proposed~~] medical or health care services proposed to be provided [~~if the physician or provider renders those services~~] to a [~~the~~] patient are medically necessary and appropriate [~~for whom the services are proposed~~]. The term includes precertification, certification, recertification, or any other activity that involves providing a reliable representation by the issuer of a health benefit plan to a physician or health care provider.

(b) The commissioner by rule shall require the issuer of a health benefit plan to provide adequate training to appropriate personnel responsible for preauthorization of coverage, if required under the plan, or utilization review under the plan to prevent wrongful denial of coverage required under this article and to avoid confusion of medical benefits with mental health benefits.

(b) This section takes effect only if **HB 1676**, Acts of the 77th Legislature, Regular Session, 2001, becomes law. If **HB 1676** does not become law, this section has no effect.

Explanation: This change is necessary to conform the definition of "preauthorization" in Section 3, Article 21.53Q, Insurance Code, to the definitions of "preauthorization" in **HB 1862** and clarify the preauthorization personnel to which the training requirement in that section applies.

HR 1398 was adopted without objection.

HB 1862 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Eiland submitted the following conference committee report on **HB 1862**:

Austin, Texas, May 25, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1862** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Van de Putte	Eiland
Harris	Smithee
Carona	G. Lewis
Lucio	Janek
	Isett
On the part of the Senate	On the part of the House

HB 1862, A bill to be entitled An Act relating to the regulation and prompt payment of health care providers under certain health benefit plans; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF STATE OF TEXAS:

SECTION 1. Section 1, Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, is amended by adding Subdivisions (14) and (15) to read as follows:

(14) "Preauthorization" means a determination by the insurer that the medical care or health care services proposed to be provided to a patient are medically necessary and appropriate.

(15) "Verification" means a reliable representation by an insurer to a physician or health care provider that the insurer will pay the physician or provider for proposed medical care or health care services if the physician or provider renders those services to the patient for whom the services are proposed. The term includes precertification, certification, recertification, or any other term that would be a reliable representation by an insurer to a physician or provider.

SECTION 2. Section 3A, Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 3A. PROMPT PAYMENT OF PREFERRED PROVIDERS. (a) In this section, "clean claim" means a [~~completed~~] claim that complies with Section 3B of this article[~~, as determined under department rules, submitted by a preferred provider for medical care or health care services under a health insurance policy~~].

(b) A physician or [~~preferred~~] provider must submit a claim to an insurer not later than the 95th day after the date the physician or provider provides the medical care or health care services for which the claim is made. An insurer shall accept as proof of timely filing a claim filed in compliance with Subsection (c) of this section or information from another insurer showing that the physician or provider submitted the claim to the insurer in compliance with Subsection (c) of this section. If a physician or provider fails to submit a claim in compliance with this subsection, the physician or provider forfeits the right to payment unless the failure to submit the claim in compliance with this subsection is a result of a catastrophic event that substantially interferes with the normal business operations of the physician or provider. The period for submitting a claim under this subsection may be extended by contract. A physician or provider may not submit a duplicate claim for payment before the 46th day after the date the original claim was submitted. The commissioner shall adopt rules under which an insurer may determine whether a claim is a duplicate claim [~~for medical care or health care services under a health insurance policy may obtain acknowledgment of receipt of a claim for medical care or health care services under a health care plan by submitting the claim by United States mail, return receipt requested. An insurer or the contracted clearinghouse of an insurer that receives a claim electronically shall acknowledge receipt of the claim by an electronic transmission to the preferred provider and is not required to acknowledge receipt of the claim by the insurer in writing~~].

(c) A physician or provider shall, as appropriate:

(1) mail a claim by United States mail, first class, or by overnight delivery service, and maintain a log of mailed claims and include a copy of

the log with the relevant mailed claim, and fax a copy of the log to the insurer and maintain a copy of the fax verification;

(2) submit the claim electronically and maintain a log of electronically submitted claims;

(3) fax the claim and maintain a log of all faxed claims; or

(4) hand deliver the claim and maintain a log of all hand-delivered claims.

(d) If a claim for medical care or health care services provided to a patient is mailed, the claim is presumed to have been received by the insurer on the third day after the date the claim is mailed or, if the claim is mailed using overnight service or return receipt requested, on the date the delivery receipt is signed. If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the insurer or the insurer's clearinghouse. If the insurer or the insurer's clearinghouse does not provide a confirmation within 24 hours of submission by the physician or provider, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the filing contained the correct payor identification of the entity to receive the filing. If the claim is faxed, the claim is presumed to have been received on the date of the transmission acknowledgment. If the claim is hand delivered, the claim is presumed to have been received on the date the delivery receipt is signed. The commissioner shall promulgate a form to be submitted by the physician or provider that easily identifies all claims included in each filing and that can be used by a physician or provider as the physician's or provider's log.

(e) Not later than the 45th day after the date that the insurer receives a clean claim from a preferred provider, the insurer shall make a determination of whether the claim is eligible for payment and:

(1) if the insurer determines the entire claim is eligible for payment, pay the total amount of the claim in accordance with the contract between the preferred provider and the insurer;

(2) if the insurer determines a portion of the claim is eligible for payment, pay the portion of the claim that is not in dispute and notify the preferred provider in writing why the remaining portion of the claim will not be paid; or

(3) if the insurer determines that the claim is not eligible for payment, notify the preferred provider in writing why the claim will not be paid.

(f) Not later than the 21st day after the date an insurer affirmatively adjudicates a pharmacy claim that is electronically submitted, the insurer shall:

(1) pay the total amount of the claim; or

(2) notify the pharmacy provider of the reasons for denying payment of the claim.

(g) An insurer that determines under Subsection (e) of this section that a claim is eligible for payment and does not pay the claim on or before the 45th day after the date the insurer receives a clean claim shall pay the physician or provider making the claim the lesser of the full amount of billed charges submitted on the claim and interest on the billed charges at a rate of 15 percent annually or two times the contracted rate and interest on that amount at a rate

of 15 percent annually. If the provider submits the claim using a form described by Section 3B(a) of this article, billed charges shall be established under a fee schedule provided by the preferred provider to the insurer on or before the 30th day after the date the physician or provider enters into a preferred provider contract with the insurer. The preferred provider may modify the fee schedule if the provider notifies the insurer of the modification on or before the 90th day before the date the modification takes effect.

(h) The investigation and determination of eligibility for payment, including any coordination of other payments, does not extend the period for determining whether a claim is eligible for payment under Subsection (e) of this section [~~(d) If a prescription benefit claim is electronically adjudicated and electronically paid, and the preferred provider or its designated agent authorizes treatment, the claim must be paid not later than the 21st day after the treatment is authorized~~].

(i) Except as provided by Subsection (j) of this section, if [~~(e) If~~] the insurer [~~acknowledges coverage of an insured under the health insurance policy but~~] intends to audit the preferred provider claim, the insurer shall pay the charges submitted at 85 percent of the contracted rate on the claim not later than the 45th day after the date that the insurer receives the claim from the preferred provider. The insurer must complete [~~Following completion of~~] the audit, and any additional payment due a preferred provider or any refund due the insurer shall be made not later than the 90th [~~30th~~] day after the receipt of a claim or 45 days after receipt of a requested attachment from the preferred provider, whichever is later [~~of the date that:~~

[~~(1) the preferred provider receives notice of the audit results; or~~

[~~(2) any appeal rights of the insured are exhausted~~].

(j) If an insurer needs additional information from a treating preferred provider to determine eligibility for payment, the insurer, not later than the 30th calendar day after the date the insurer receives a clean claim, shall request in writing that the preferred provider provide any attachment to the claim the insurer desires in good faith for clarification of the claim. The request must describe with specificity the clinical information requested and relate only to information the insurer can demonstrate is specific to the claim or the claim's related episode of care. An insurer that requests an attachment under this subsection shall determine whether the claim is eligible for payment on or before the later of the 15th day after the date the insurer receives the requested attachment or the latest date for determining whether the claim is eligible for payment under Subsection (e) of this section. An insurer may not make more than one request under this subsection in connection with a claim. Subsections (c) and (d) of this section apply to a request for and submission of an attachment under this subsection.

(k) If an insurer requests an attachment or other information from a person other than the preferred provider who submitted the claim, the insurer shall provide a copy of the request to the preferred provider who submitted the claim. The insurer may not withhold payment pending receipt of an attachment or information requested under this subsection. If on receiving an attachment or information requested under this subsection the insurer determines an error in payment of the claim, the insurer may recover under Section 3C of this article.

(l) The commissioner shall adopt rules under which an insurer can easily identify attachments or information submitted by a physician or provider under Subsection (j) or (k) of this section.

(m) The insurer's claims payment processes shall:

(1) use nationally recognized, generally accepted Current Procedural Terminology codes, notes, and guidelines including all relevant modifiers; and

(2) be consistent with nationally recognized, generally accepted bundling logic and edits [~~(f) An insurer that violates Subsection (c) or (e) of this section is liable to a preferred provider for the full amount of billed charges submitted on the claim or the amount payable under the contracted penalty rate, less any amount previously paid or any charge for a service that is not covered by the health insurance policy~~].

(n) [~~(g)~~] A preferred provider may recover reasonable attorney's fees and court costs in an action to recover payment under this section.

(o) [~~(h)~~] In addition to any other penalty or remedy authorized by this code or another insurance law of this state, an insurer that violates Subsection (e) [~~(c)~~] or (i) [~~(e)~~] of this section is subject to an administrative penalty under Article 1.10E of this code. The administrative penalty imposed under that article may not exceed $1,000 for each day the claim remains unpaid in violation of Subsection (e) [~~(c)~~] or (i) [~~(e)~~] of this section.

(p) [~~(i)~~] The insurer shall provide a preferred provider with copies of all applicable utilization review policies and claim processing policies or procedures[~~, including required data elements and claim formats~~].

(q) [~~(j) An insurer may, by contract with a preferred provider, add or change the data elements that must be submitted with the preferred provider claim.~~

[~~(k) Not later than the 60th day before the date of an addition or change in the data elements that must be submitted with a claim or any other change in an insurer's claim processing and payment procedures, the insurer shall provide written notice of the addition or change to each preferred provider.~~

[~~(l) This section does not apply to a claim made by a preferred provider who is a member of the legislature.~~

[~~(m)~~] This section applies to a person with whom an insurer contracts to process claims or to obtain the services of preferred providers to provide medical care or health care to insureds under a health insurance policy.

(r) [~~(n)~~] The commissioner of insurance may adopt rules as necessary to implement this section.

(s) Except as provided by Subsection (b) of this section, the provisions of this section may not be waived, voided, or nullified by contract.

SECTION 3. Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, is amended by adding Sections 3B-3I, 10, 11, and 12 to read as follows:

Sec. 3B. ELEMENTS OF CLEAN CLAIM. (a) A claim by a physician or provider, other than an institutional provider, is a "clean claim" if the claim is submitted using Health Care Financing Administration Form 1500 or a successor to that form developed by the National Uniform Billing Committee or its successor and adopted by the commissioner by rule for the purposes of this subsection that is submitted to an insurer for payment and that contains

the information required by the commissioner by rule for the purposes of this subsection entered into the appropriate fields on the form in the manner prescribed.

(b) A claim by an institutional provider is a "clean claim" if the claim is submitted using Health Care Financing Administration Form UB-92 or a successor to that form developed by the National Uniform Billing Committee or its successor and adopted by the commissioner by rule for the purposes of this subsection that is submitted to an insurer for payment and that contains the information required by the commissioner by rule for the purposes of this subsection entered into the appropriate fields on the form.

(c) An insurer may require any data element that is required in an electronic transaction set needed to comply with federal law. An insurer may not require a physician or provider to provide information other than information for a data field included on the form used for a clean claim under Subsection (a) or (b) of this section, as applicable.

(d) A claim submitted by a physician or provider that includes additional fields, data elements, attachments, or other information not required under this section is considered to be a clean claim for the purposes of this article.

(e) Except as provided by this section, the provisions of this section may not be waived, voided, or nullified by contract.

Sec. 3C. OVERPAYMENT. An insurer may recover an overpayment to a physician or provider if:

(1) not later than the 180th day after the date the physician or provider receives the payment, the insurer provides written notice of the overpayment to the physician or provider that includes the basis and specific reasons for the request for recovery of funds; and

(2) the physician or provider does not make arrangements for repayment of the requested funds on or before the 45th day after the date the physician or provider receives the notice.

Sec. 3D. VERIFICATION OF ELIGIBILITY FOR PAYMENT. (a) On the request of a preferred provider for verification of the eligibility for payment of a particular medical care or health care service the preferred provider proposes to provide to a particular patient, the insurer shall inform the preferred provider whether the service, if provided to that patient, is eligible for payment from the insurer to the preferred provider.

(b) An insurer shall provide verification under this section between 6 a.m. and 6 p.m. central standard time Monday through Friday on each day that is not a legal holiday and between 8 a.m. and 2 p.m. on Saturday, Sunday, and legal holidays.

(c) Verification under this section shall be made in good faith and without delay.

(d) In this section, "verification" includes preauthorization only when preauthorization is a condition for the determination of eligibility for payment.

(e) An insurer that declines to provide a verification of eligibility for payment shall notify the physician or provider who requested the verification of the specific reason the verification was not provided.

(f) An insurer may establish a time certain for the validity of verification.

(g) If an insurer has verified medical care or health care services, the

insurer may not deny or reduce payment to a physician or health care provider for those services unless:

(1) the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the proposed medical or health care services; or

(2) the insurer certifies in writing:

(A) that the physician or provider is not contractually obligated to provide the services to the patient because the patient's enrollment in the health plan was terminated;

(B) the insurer was notified on or before the 30th day after the date the patient's enrollment ended; and

(C) the physician or provider was notified that the patient's enrollment ended on or before the 30th day after the date of verification under this section.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 3E. COORDINATION OF PAYMENT. (a) An insurer may require a physician or provider to retain in the physician's or provider's records updated information concerning other health benefit plan coverage and to provide the information to the insurer on the applicable form described by Section 3B of this article. Except as provided in this subsection, an insurer may not require a physician or provider to investigate coordination of other health benefit plan coverage.

(b) Coordination of payment under this section does not extend the period for determining whether a service is eligible for payment under Section 3A(e) of this article.

(c) A physician or provider who submits a claim for particular medical care or health care services to more than one health maintenance organization or insurer shall provide written notice on the claim submitted to each health maintenance organization or insurer of the identity of each other health maintenance organization or insurer with which the same claim is being filed.

(d) On receipt of notice under Subsection (c) of this section, an insurer shall coordinate and determine the appropriate payment for each health maintenance organization or insurer to make to the physician or provider.

(e) If an insurer is a secondary payor and pays a portion of a claim that should have been paid by the insurer or health maintenance organization that is the primary payor, the overpayment may only be recovered from the health maintenance organization or insurer that is primarily responsible for that amount.

(f) If the portion of the claim overpaid by the secondary insurer was also paid by the primary health maintenance organization or insurer, the secondary insurer may recover the amount of overpayment under Section 3C of this article from the physician or provider who received the payment.

(g) An insurer may share information with another health maintenance organization or insurer to the extent necessary to coordinate appropriate payment obligations on a specific claim.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 3F. PREAUTHORIZATION OF MEDICAL AND HEALTH CARE SERVICES. (a) An insurer that uses a preauthorization process for medical care and health care services shall provide to each preferred provider, not later than the 10th working day after the date a request is made, a list of medical care and health care services that require preauthorization and information concerning the preauthorization process.

(b) If proposed medical care or health care services require preauthorization as a condition of the insurer's payment to a preferred provider under a health insurance policy, the insurer shall determine whether the medical care or health care services proposed to be provided to the insured are medically necessary and appropriate.

(c) On receipt of a request from a preferred provider for preauthorization, the insurer shall review and issue a determination indicating whether the proposed services are preauthorized. The determination must be mailed or otherwise transmitted not later than the third calendar day after the date the request is received by the insurer.

(d) If the proposed medical care or health care services involve inpatient care and the insurer requires preauthorization as a condition of payment, the insurer shall review and issue a length of stay for the admission into a health care facility based on the recommendation of the patient's physician or health care provider and the insurer's written medically accepted screening criteria and review procedures. If the proposed medical or health care services are to be provided to a patient who is an inpatient in a health care facility at the time the services are proposed, the insurer shall review and issue a determination indicating whether proposed services are preauthorized within one calendar day of the request by the physician or health care provider.

(e) If an insurer has preauthorized medical care or health care services, the insurer may not deny or reduce payment to the physician or provider for those services based on medical necessity or appropriateness of care unless the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the proposed medical or health care services.

(f) This section applies to an agent or other person with whom an insurer contracts to perform, or to whom the insurer delegates the performance of, preauthorization of proposed medical or health care services.

(g) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 3G. AVAILABILITY OF CODING GUIDELINES. (a) A preferred provider contract between an insurer and a physician or provider must provide that:

(1) the physician or provider may request a description of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to specific procedures that the physician or provider will receive under the contract;

(2) the insurer or the insurer's agent will provide the coding guidelines and fee schedules not later than the 30th day after the date the insurer receives the request;

(3) the insurer will provide notice of material changes to the coding guidelines and fee schedules not later than the 90th day before the date the

changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) the contract may be terminated by the physician or provider on or before the 30th day after the date the physician or provider receives information requested under this subsection without penalty or discrimination in participation in other health care products or plans.

(b) A physician or provider who receives information under Subsection (a) of this section may use or disclose the information only for the purpose of practice management, billing activities, or other business operations.

(c) Nothing in this section shall be interpreted to require an insurer to violate copyright or other law by disclosing proprietary software that the insurer has licensed. In addition to the above, the insurer shall, on request of a physician or provider, provide the name, edition, and model version of the software that the insurer uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 3H. DISPUTE RESOLUTION. (a) An insurer may not require by contract or otherwise the use of a dispute resolution procedure or binding arbitration with a physician or health care provider. This subsection does not prohibit an insurer from offering a dispute resolution procedure or binding arbitration to resolve a dispute if the insurer and the physician or provider consent to the process after the dispute arises. This subsection may not be construed to conflict with any applicable appeal mechanisms required by law.

(b) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 3I. AUTHORITY OF ATTORNEY GENERAL. (a) In addition to any other remedy available for a violation of this article, the attorney general may take action and seek remedies available under Section 15, Article 21.21 of this code, and Sections 17.58, 17.60, 17.61, and 17.62, Business & Commerce Code, for a violation of Section 3A or 7 of this article.

(b) If the attorney general has good cause to believe that a physician or provider has failed in good faith to repay an insurer under Section 3C of this article, the attorney general may:

(1) bring an action to compel the physician or provider to repay the insurer;

(2) on the finding of a court that the physician or provider has violated Section 3C, impose a civil penalty of not more than the greater of $1,000 or two times the amount in dispute for each violation; and

(3) recover court costs and attorney's fees.

(c) If the attorney general has good cause to believe that a physician or provider is or has improperly used or disclosed information received by the physician or provider under Section 3G of this article, the attorney general may:

(1) bring an action seeking an injunction against the physician or provider to restrain the improper use or disclosure of information;

(2) on the finding of a court that the physician or provider has violated Section 3G, impose a civil penalty of not more than $1,000 for each negligent violation or $10,000 for each intentional violation; and

(3) recover court costs and attorney's fees.

Sec. 10. SERVICES PROVIDED BY CERTAIN PHYSICIANS AND HEALTH CARE PROVIDERS. The provisions of this article relating to prompt payment by an insurer of a physician or health care provider and to verification of medical care or health care services apply to a physician or health care provider who:

(1) is not a preferred provider under a preferred provider benefit plan; and

(2) provides to an insured:

(A) care related to an emergency or its attendant episode of care as required by state or federal law; or

(B) specialty or other medical care or health care services at the request of the insurer or a preferred provider because the services are not reasonably available from a preferred provider who is included in the preferred delivery network.

Sec. 11. CONFLICT WITH OTHER LAW. To the extent of any conflict between this article and Article 21.52C of this code, this article controls.

Sec. 12. APPLICATION OF CERTAIN PROVISIONS UNDER MEDICAID. A provision of this article may not be interpreted as requiring an insurer, physician, or health care provider, in providing benefits or services under the state Medicaid program, to:

(1) use billing forms or codes that are inconsistent with those required under the state Medicaid program; or

(2) make determinations relating to medical necessity or appropriateness or eligibility for coverage in a manner different than that required under the state Medicaid program.

SECTION 4. Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), is amended by adding Subdivisions (ff) and (gg) to read as follows:

(ff) "Preauthorization" means a determination by the health maintenance organization that the medical care or health care services proposed to be provided to a patient are medically necessary and appropriate.

(gg) "Verification" means a reliable representation by a health maintenance organization to a physician or provider that the health maintenance organization will pay the physician or provider for proposed medical care or health care services if the physician or provider renders those services to the patient for whom the services are proposed. The term includes precertification, certification, recertification, or any other term that would be a reliable representation by a health maintenance organization to a physician or provider.

SECTION 5. Section 18B, Texas Health Maintenance Organization Act (Section 20A.18B, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 18B. PROMPT PAYMENT OF PHYSICIAN AND PROVIDERS. (a) In this section, "clean claim" means a [~~completed~~] claim that complies with Section 18D of this Act[~~, as determined under Texas Department of Insurance rules, submitted by a physician or provider for medical care or health care services under a health care plan~~].

(b) A physician or provider must submit a claim under this section to a health maintenance organization not later than the 95th day after the date the

physician or provider provides the medical care or health care services for which the claim is made. A health maintenance organization shall accept as proof of timely filing a claim filed in compliance with Subsection (c) of this section or information from another health maintenance organization showing that the physician or provider submitted the claim to the health maintenance organization in compliance with Subsection (c) of this section. If a physician or provider fails to submit a claim in compliance with this subsection, the physician or provider forfeits the right to payment unless the failure to submit the claim in compliance with this subsection is a result of a catastrophic event that substantially interferes with the normal business operations of the physician or provider. The period for submitting a claim under this subsection may be extended by contract. A physician or provider may not submit a duplicate claim for payment before the 46th day after the date the original claim was submitted. The commissioner shall adopt rules under which a health maintenance organization may determine whether a claim is a duplicate claim. [~~A physician or provider for medical care or health care services under a health care plan may obtain acknowledgment of receipt of a claim for medical care or health care services under a health care plan by submitting the claim by United States mail, return receipt requested. A health maintenance organization or the contracted clearinghouse of the health maintenance organization that receives a claim electronically shall acknowledge receipt of the claim by an electronic transmission to the physician or provider and is not required to acknowledge receipt of the claim by the health maintenance organization in writing.~~]

(c) A physician or provider shall, as appropriate:

(1) mail a claim by United States mail, first class, or by overnight delivery service, and maintain a log of mailed claims and include a copy of the log with the relevant mailed claim, and fax a copy of the log to the health maintenance organization and maintain a copy of the fax verification;

(2) submit the claim electronically and maintain a log of electronically submitted claims;

(3) fax the claim and maintain a log of all faxed claims; or

(4) hand deliver the claim and maintain a log of all hand-delivered claims.

(d) If a claim for medical care or health care services provided to a patient is mailed, the claim is presumed to have been received by the health maintenance organization on the third day after the date the claim is mailed or, if the claim is mailed using overnight service or return receipt requested, on the date the delivery receipt is signed. If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the health maintenance organization or the health maintenance organization's clearinghouse. If the health maintenance organization or the health maintenance organization's clearinghouse does not provide a confirmation within 24 hours of submission by the physician or provider, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the filing contained the correct payor identification of the entity to receive the filing. If the claim is faxed, the claim is presumed to have been received on the date of the transmission acknowledgment. If the claim is hand delivered,

the claim is presumed to have been received on the date the delivery receipt is signed. The commissioner shall promulgate a form to be submitted by the physician or provider which easily identifies all claims included in each filing which can be utilized by the physician or provider as their log.

(e) Not later than the 45th day after the date that the health maintenance organization receives a clean claim from a physician or provider, the health maintenance organization shall make a determination of whether the claim is eligible for payment and:

(1) if the health maintenance organization determines the entire claim is eligible for payment, pay the total amount of the claim in accordance with the contract between the physician or provider and the health maintenance organization;

(2) if the health maintenance organization determines a portion of the claim is eligible for payment, pay the portion of the claim that is not in dispute and notify the physician or provider in writing why the remaining portion of the claim will not be paid; or

(3) if the health maintenance organization determines that the claim is not eligible for payment, notify the physician or provider in writing why the claim will not be paid.

(f) Not later than the 21st day after the date a health maintenance organization or the health maintenance organization's designated agent affirmatively adjudicates a pharmacy claim that is electronically submitted, the health maintenance organization shall:

(1) pay the total amount of the claim; or

(2) notify the pharmacy provider of the reasons for denying payment of the claim.

(g) A health maintenance organization that determines under Subsection (e) of this section that a claim is eligible for payment and does not pay the claim on or before the 45th day after the date the health maintenance organization receives a clean claim shall pay the physician or provider making the claim the lesser of the full amount of billed charges submitted on the claim and interest on the billed charges at a rate of 15 percent annually or two times the contracted rate and interest on that amount at a rate of 15 percent annually. If the physician or provider submits the claim using a form described by Section 18D(a) of this Act, billed charges shall be established under a fee schedule provided by the physician or provider to the health maintenance organization on or before the 30th day after the date the physician or provider enters into the contract with the health maintenance organization. The physician or provider may modify the fee schedule if the physician or provider notifies the health maintenance organization of the modification on or before the 90th day before the date the modification takes effect.

(h) The investigation and determination of eligibility for payment, including any coordination of other payments, does not extend the period for determining whether a claim is eligible for payment under Subsection (e) of this section [~~(d) If a prescription benefit claim is electronically adjudicated and electronically paid, and the health maintenance organization or its designated agent authorizes treatment, the claim must be paid not later than the 21st day after the treatment is authorized~~].

(i) Except as provided by Subsection (j) of this section, if [~~(e) If~~] the health maintenance organization [~~acknowledges coverage of an enrollee under the health care plan but~~] intends to audit the physician or provider claim, the health maintenance organization shall pay the charges submitted at 85 percent of the contracted rate on the claim not later than the 45th day after the date that the health maintenance organization receives the claim from the physician or provider. The health maintenance organization shall complete [~~Following completion of~~] the audit, and any additional payment due a physician or provider or any refund due the health maintenance organization shall be made not later than the 90th [~~30th~~] day after the receipt of a claim or 45 days after receipt of a requested attachment from the physician or provider, whichever is later [~~later of the date that:~~

[~~(1) the physician or provider receives notice of the audit results; or~~

[~~(2) any appeal rights of the enrollee are exhausted~~].

(j) If a health maintenance organization needs additional information from a treating physician or provider to determine eligibility for payment, the health maintenance organization, not later than the 30th calendar day after the date the health maintenance organization receives a clean claim, shall request in writing that the physician or provider provide any attachment to the claim the health maintenance organization desires in good faith for clarification of the claim. The request must describe with specificity the clinical information requested and relate only to information the health maintenance organization can demonstrate is specific to the claim or the claim's related episode of care. A health maintenance organization that requests an attachment under this subsection shall determine whether the claim is eligible for payment on or before the later of the 15th day after the date the health maintenance organization receives the requested attachment or the latest date for determining whether the claim is eligible for payment under Subsection (e) of this section. A health maintenance organization may not make more than one request under this subsection in connection with a claim. Subsections (c) and (d) of this section apply to a request for and submission of an attachment under this subsection.

(k) If a health maintenance organization requests an attachment or other information from a person other than the physician or provider who submitted the claim, the health maintenance organization shall provide a copy of the request to the physician or provider who submitted the claim. The health maintenance organization may not withhold payment pending receipt of an attachment or information requested under this subsection. If on receiving an attachment or information requested under this subsection the health maintenance organization determines an error in payment of the claim, the health maintenance organization may recover under Section 18E of this Act.

(l) The commissioner shall adopt rules under which a health maintenance organization can easily identify attachments or information submitted by a physician or provider.

(m) A health maintenance organization's claims payment processes must:

(1) use nationally recognized, generally accepted Current Procedural Terminology codes, notes, and guidelines, including all relevant modifiers; and

(2) be consistent with nationally recognized, generally accepted bundling logic and edits [~~(f) A health maintenance organization that violates~~

~~Subsection (c) or (e) of this section is liable to a physician or provider for the full amount of billed charges submitted on the claim or the amount payable under the contracted penalty rate, less any amount previously paid or any charge for a service that is not covered by the health care plan~~].

(n) [~~(g)~~] A physician or provider may recover reasonable attorney's fees and court costs in an action to recover payment under this section.

(o) [~~(h)~~] In addition to any other penalty or remedy authorized by the Insurance Code or another insurance law of this state, a health maintenance organization that violates Subsection (e) [~~(c)~~] or (i) [~~(e)~~] of this section is subject to an administrative penalty under Article 1.10E, Insurance Code. The administrative penalty imposed under that article may not exceed $1,000 for each day the claim remains unpaid in violation of Subsection (e) [~~(c)~~] or (i) [~~(e)~~] of this section.

(p) [~~(i)~~] The health maintenance organization shall provide a participating physician or provider with copies of all applicable utilization review policies and claim processing policies or procedures[~~, including required data elements and claim formats~~].

(q) [~~(j) A health maintenance organization may, by contract with a physician or provider, add or change the data elements that must be submitted with the physician or provider claim.~~

[~~(k) Not later than the 60th day before the date of an addition or change in the data elements that must be submitted with a claim or any other change in a health maintenance organization's claim processing and payment procedures, the health maintenance organization shall provide written notice of the addition or change to each participating physician or provider.~~

[~~(l) This section does not apply to a claim made by a physician or provider who is a member of the legislature.~~

[~~(m)~~] This section does not apply to a capitation payment required to be made to a physician or provider under an agreement to provide medical care or health care services under a health care plan.

(r) [~~(n)~~] This section applies to a person with whom a health maintenance organization contracts to process claims or to obtain the services of physicians and providers to provide health care services to health care plan enrollees.

(s) [~~(o)~~] The commissioner may adopt rules as necessary to implement this section.

(t) Except as provided by Subsection (b) of this section, the provisions of this section may not be waived, voided, or nullified by contract.

SECTION 6. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Sections 18D-18L, 40, and 41 to read as follows:

Sec. 18D. ELEMENTS OF CLEAN CLAIM. (a) A claim by a physician or provider, other than an institutional provider, is a "clean claim" if the claim is submitted using Health Care Financing Administration Form 1500 or a successor to that form developed by the National Uniform Billing Committee or its successor and adopted by the commissioner by rule for the purposes of this subsection that is submitted to a health maintenance organization for payment and that contains the information required by the commissioner by rule for the purposes of this subsection entered into the appropriate fields on the form in the manner prescribed.

(b) A claim by an institutional provider is a "clean claim" if the claim is submitted using Health Care Financing Administration Form UB-92 or a successor to that form developed by the National Uniform Billing Committee or its successor and adopted by the commissioner by rule for the purposes of this subsection that is submitted to a health maintenance organization for payment and that contains the information required by the commissioner by rule for the purposes of this subsection entered into the appropriate fields on the form.

(c) A health maintenance organization may require any data element that is required in an electronic transaction set needed to comply with federal law. A health maintenance organization may not require a physician or provider to provide information other than information for a data field included on the form used for a clean claim under Subsection (a) or (b) of this section, as applicable.

(d) A claim submitted by a physician or provider that includes additional fields, data elements, attachments, or other information not required under this section is considered to be a clean claim for the purposes of this section.

(e) Except as provided by this section, the provisions of this section may not be waived, voided, or nullified by contract.

Sec. 18E. OVERPAYMENT. A health maintenance organization may recover an overpayment to a physician or provider if:

(1) not later than the 180th day after the date the physician or provider receives the payment, the health maintenance organization provides written notice of the overpayment to the physician or provider that includes the basis and specific reasons for the request for recovery of funds; and

(2) the physician or provider does not make arrangements for repayment of the requested funds on or before the 45th day after the date the physician or provider receives the notice.

Sec. 18F. VERIFICATION OF ELIGIBILITY FOR PAYMENT. (a) On the request of a physician or provider for verification of the payment eligibility of a particular medical care or health care service the physician or provider proposes to provide to a particular patient, the health maintenance organization shall inform the physician or provider whether the service, if provided to that patient, is eligible for payment from the health maintenance organization to the physician or provider.

(b) A health maintenance organization shall provide verification under this section between 6 a.m. and 6 p.m. central standard time Monday through Friday on each day that is not a legal holiday and between 8 a.m. and 2 p.m. on Saturday, Sunday, and legal holidays.

(c) Verification under this section shall be made in good faith and without delay.

(d) In this section, "verification" includes preauthorization only when preauthorization is a condition for the determination of eligibility for payment.

(e) A health maintenance organization that declines to provide a verification of eligibility for payment shall notify the physician or provider who requested the verification of the specific reason the verification was not provided.

(f) A health maintenance organization may establish a time certain for the validity of verification.

(g) If a health maintenance organization has verified medical care or health care services, the health maintenance organization may not deny or reduce payment to a physician or health care provider for those services unless:

(1) the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the proposed medical or health care services; or

(2) the health maintenance organization certifies in writing:

(A) that the physician or provider is not contractually obligated to provide services to the patient because the patient's enrollment in the health plan was terminated;

(B) the health maintenance organization was notified on or before the 30th day after the date the patient's enrollment ended; and

(C) the physician or provider was notified that the patient's enrollment ended on or before the 30th day after the date of verification under this section.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 18G. COORDINATION OF PAYMENT BENEFITS. (a) A health maintenance organization may require a physician or provider to retain in the physician's or provider's records updated information concerning other health benefit plan coverage and to provide the information to the health maintenance organization on the applicable form described by Section 18D of this Act. Except as provided by this subsection, a health maintenance organization may not require a physician or provider to investigate coordination of other health benefit plan coverage.

(b) Coordination of other payment under this section does not extend the period for determining whether a service is eligible for payment under Section 18B(e) of this Act.

(c) A physician or provider who submits a claim for particular medical care or health care services to more than one health maintenance organization or insurer shall provide written notice on the claim submitted to each health maintenance organization or insurer of the identity of each other health maintenance organization or insurer with which the same claim is being filed.

(d) On receipt of notice under Subsection (c) of this section, a health maintenance organization shall coordinate and determine the appropriate payment for each health maintenance organization or insurer to make to the physician or provider.

(e) If a health maintenance organization is a secondary payor and pays a portion of a claim that should have been paid by the health maintenance organization or insurer that is the primary payor, the overpayment may only be recovered from the health maintenance organization or insurer that is primarily responsible for that amount.

(f) If the portion of the claim overpaid by the secondary health maintenance organization was also paid by the primary health maintenance organization or insurer, the secondary health maintenance organization may recover the amount of the overpayment under Section 18E of this Act from the physician or provider who received the payment.

(g) A health maintenance organization may share information with another

health maintenance organization or insurer to the extent necessary to coordinate appropriate payment obligations on a specific claim.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 18H. PREAUTHORIZATION OF MEDICAL AND HEALTH CARE SERVICES. (a) A health maintenance organization that uses a preauthorization process for medical care and health care services shall provide each participating physician or provider, not later than the 10th working day after the date a request is made, a list of the medical care and health care services that do not require preauthorization and information concerning the preauthorization process.

(b) If proposed medical care or health care services require preauthorization by a health maintenance organization as a condition of the health maintenance organization's payment to a physician or provider, the health maintenance organization shall determine whether the medical care or health care services proposed to be provided to the enrollee are medically necessary and appropriate.

(c) On receipt of a request from a physician or provider for preauthorization, the health maintenance organization shall review and issue a determination indicating whether the services are preauthorized. The determination must be mailed or otherwise transmitted not later than the third calendar day after the date the request is received by the health maintenance organization.

(d) If the proposed medical care or health care services involve inpatient care and the health maintenance organization requires preauthorization as a condition of payment, the health maintenance organization shall review and issue a length of stay for the admission into a health care facility based on the recommendation of the patient's physician or health care provider and the health maintenance organization's written medically accepted screening criteria and review procedures. If the proposed medical or health care services are to be provided to a patient who is an inpatient in a health care facility at the time the services are proposed, the health maintenance organization shall review and issue a determination indicating whether proposed services are preauthorized within one calendar day of the request by the physician or health care provider.

(e) If the health maintenance organization has preauthorized medical care or health care services, the health maintenance organization may not deny or reduce payment to the physician or provider for those services based on medical necessity or appropriateness of care unless the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the proposed medical or health care services.

(f) This section applies to an agent or other person with whom a health maintenance organization contracts to perform, or to whom the health maintenance organization delegates the performance of, preauthorization of proposed medical care or health care services.

(g) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 18I. SERVICES PROVIDED BY CERTAIN PHYSICIANS AND PROVIDERS. The provisions of this Act relating to prompt payment by a

health maintenance organization of a physician or provider and to verification of medical care or health care services apply to a physician or provider who:

(1) is not included in the health maintenance organization delivery network; and

(2) provides to an enrollee:

(A) care related to an emergency or its attendant episode of care as required by state or federal law; or

(B) specialty or other medical care or health care services at the request of the health maintenance organization or a physician or provider who is included in the health maintenance organization delivery network because the services are not reasonably available within the network.

Sec. 18J. AVAILABILITY OF CODING GUIDELINES. (a) A contract between a health maintenance organization and a physician or provider must provide that:

(1) the physician or provider may request a description of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to specific procedures that the physician or provider will receive under the contract;

(2) the health maintenance organization will provide the coding guidelines and fee schedules not later than the 30th day after the date the health maintenance organization receives the request;

(3) the health maintenance organization will provide notice of material changes to the coding guidelines and fee schedules not later than the 90th day before the date the changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) the contract may be terminated by the physician or provider on or before the 30th day after the date the physician or provider receives information requested under this subsection without penalty or discrimination in participation in other health care products or plans.

(b) A physician or provider who receives information under Subsection (a) of this section may use or disclose the information only for the purpose of practice management, billing activities, or other business operations.

(c) Nothing in this section shall be interpreted to require a health maintenance organization to violate copyright or other law by disclosing proprietary software that the health maintenance organization has licensed. In addition to the above, the health maintenance organization shall, on request of the physician or provider, provide the name, edition, and model version of the software that the health maintenance organization uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 18K. DISPUTE RESOLUTION. (a) A health maintenance organization may not require by contract or otherwise the use of a dispute resolution procedure or binding arbitration with a physician or provider. This subsection does not prohibit a health maintenance organization from offering a dispute resolution procedure or binding arbitration to resolve a dispute if the health maintenance organization and the physician or provider consent to the process after the dispute arises. This subsection may not be construed to conflict with any applicable appeal mechanisms required by law.

(b) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 18L. AUTHORITY OF ATTORNEY GENERAL. (a) In addition to any other remedy available for a violation of this Act, the attorney general may take action and seek remedies available under Section 15, Article 21.21, Insurance Code, and Sections 17.58, 17.60, 17.61, and 17.62, Business & Commerce Code, for a violation of Section 14 or 18B of this Act.

(b) If the attorney general has good cause to believe that a physician or provider has failed in good faith to repay a health maintenance organization under Section 18E of this Act, the attorney general may:

(1) bring an action to compel the physician or provider to repay the health maintenance organization;

(2) on the finding of a court that the physician or provider has violated Section 18E, impose a civil penalty of not more than the greater of $1,000 or two times the amount in dispute for each violation; and

(3) recover court costs and attorney's fees.

(c) If the attorney general has good cause to believe that a physician or provider is or has improperly used or disclosed information received by the physician or provider under Section 18J of this Act, the attorney general may:

(1) bring an action seeking an injunction against the physician or provider to restrain the improper use or disclosure of information;

(2) on the finding of a court that the physician or provider has violated Section 18J, impose a civil penalty of not more than $1,000 for each negligent violation or $10,000 for each intentional violation; and

(3) recover court costs and attorney's fees.

Sec. 40. CONFLICT WITH OTHER LAW. To the extent of any conflict between this Act and Article 21.52C, Insurance Code, this Act controls.

Sec. 41. APPLICATION OF CERTAIN PROVISIONS UNDER MEDICAID. A provision of this Act may not be interpreted as requiring a health maintenance organization, physician, or provider, in providing benefits or services under the state Medicaid program, to:

(1) use billing forms or codes that are inconsistent with those required under the state Medicaid program;

(2) make determinations relating to medical necessity or appropriateness or eligibility for coverage in a manner different than that required under the state Medicaid program; or

(3) reimburse physicians or providers for services rendered to a person who was not eligible to receive benefits for such services under the state Medicaid program.

SECTION 7. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.52K to read as follows:

Art. 21.52K. ELECTRONIC HEALTH CARE TRANSACTIONS

Sec. 1. HEALTH BENEFIT PLAN DEFINED. (a) In this article, "health benefit plan" means a plan that provides benefits for medical, surgical, or other treatment expenses incurred as a result of a health condition, a mental health condition, an accident, sickness, or substance abuse, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 20 of this code;

(3) a fraternal benefit society operating under Chapter 10 of this code;

(4) a stipulated premium insurance company operating under Chapter 22 of this code;

(5) a reciprocal exchange operating under Chapter 19 of this code;

(6) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(7) a multiple employer welfare arrangement that holds a certificate of authority under Article 3.95-2 of this code; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Article 21.52F of this code.

(b) The term includes:

(1) a small employer health benefit plan written under Chapter 26 of this code; and

(2) a health benefit plan offered under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), or Article 3.50-4 of this code.

Sec. 2. ELECTRONIC SUBMISSION OF CLAIMS. The issuer of a health benefit plan by contract may require that a health care professional licensed under the Occupations Code or a health care facility licensed under the Health and Safety Code submit a health care claim or equivalent encounter information, a referral certification, or an authorization or eligibility transaction electronically. The health benefit plan issuer shall comply with the standards for electronic transactions required by this article and established by the commissioner by rule.

Sec. 3. TIME FOR IMPLEMENTATION OF ELECTRONIC TRANSACTION REQUIREMENTS. The department shall establish a timetable for compliance with Section 2 of this article.

Sec. 4. WAIVER. (a) Any contract between a health benefit plan defined by this article and a health care professional or health care facility must provide for a waiver of any requirement for electronic submission established under Section 2 of this article.

(b) The commissioner shall establish circumstances under which a waiver is required that include:

(1) undue hardship;

(2) health care professionals in rural areas; or

(3) any other special circumstance that would justify a waiver.

(c) Any health professional or health care facility that is denied a waiver by a health benefit plan may appeal the denial to the commissioner. The commissioner shall determine whether or not a waiver must be included in the contract.

(d) A health benefit plan may not refuse to contract or renew a contract with a health care professional or a health care facility based in whole or in

part on the health care professional or health care facility requesting, appealing, or obtaining a waiver under this section.

Sec. 5. CERTAIN CHARGES PROHIBITED. A health benefit plan may not directly or indirectly charge or hold a health care professional, health care facility, or person enrolled in a health benefit plan responsible for a fee for the adjudication of a claim.

SECTION 8. (a) Section 3, Article 21.53Q, Insurance Code, as added by **HB 1676**, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 3. TRAINING FOR CERTAIN PERSONNEL REQUIRED. (a) In this section, "preauthorization" means a determination by [~~the provision of a reliable representation to a physician or health care provider of whether~~] the issuer of a health benefit plan that the [~~will pay the physician or provider for proposed~~] medical or health care services proposed to be provided [~~if the physician or provider renders those services~~] to a [~~the~~] patient are medically necessary and appropriate [~~for whom the services are proposed~~]. The term includes precertification, certification, recertification, or any other activity that involves providing a reliable representation by the issuer of a health benefit plan to a physician or health care provider.

(b) The commissioner by rule shall require the issuer of a health benefit plan to provide adequate training to appropriate personnel responsible for preauthorization of coverage, if required under the plan, or utilization review under the plan to prevent wrongful denial of coverage required under this article and to avoid confusion of medical benefits with mental health benefits.

(b) This section takes effect only if **HB 1676**, Acts of the 77th Legislature, Regular Session, 2001, becomes law. If **HB 1676** does not become law, this section has no effect.

SECTION 9. (a) The changes in law made by this Act relating to payment of a physician or health care provider for medical or health care services apply only to payment for services provided on or after the effective date of this Act.

(b) The changes in law made by this Act relating to a contract between a physician or health care provider and an insurer or health maintenance organization apply only to a contract entered into or renewed on or after January 1, 2002.

SECTION 10. This Act takes effect September 1, 2001.

Representative Eiland moved to adopt the conference committee report on **HB 1862**.

The motion prevailed.

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).

SB 273 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Tillery submitted the conference committee report on **SB 273**.

Representative Tillery moved to adopt the conference committee report on **SB 273**.

A record vote was requested.

The motion prevailed by (Record 639): 145 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Hill.

STATEMENT OF VOTE

When Record No. 639 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

SB 1173 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hilderbran submitted the conference committee report on **SB 1173**.

Representative Hilderbran moved to adopt the conference committee report on **SB 1173**.

A record vote was requested.

The motion prevailed by (Record 640): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green;

Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Ellis; Hill.

STATEMENTS OF VOTE

When Record No. 640 was taken, my vote failed to register. I would have voted yes.

Ellis

When Record No. 640 was taken, I was absent because of important business. Had I been present, I would have voted yes.

Hill

MOTION TO SUSPEND HOUSE RULE 13, SECTION 10(a)

Representative Maxey moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to take up and consider all conference committee reports that are listed on the items eligible for consideration as being printed after midnight on Saturday.

Representative Williams offered a substitute motion to suspend Rule 13, Section 10(a) of the House Rules to allow the house to take up and consider the conference committee report on **HB 259**, and to use the vote on suspending the layout rule on **HB 259** to suspend the layout rule on all bills that are not eligible until after midnight, with the understanding that if any member objects to using that vote on a bill, a separate vote will be taken to suspend the layout rule on that bill.

(Hill now present)

Representative Maxey moved to table the substitute motion.

The motion to table prevailed.

A record vote was requested.

The motion by Representative Maxey to suspend Rule 13, Section 10(a) was lost (not receiving the necessary two-thirds vote) by (Record 641): 81 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Alexander; Averitt; Bosse; Brimer; Burnam; Chisum; Coleman; Cook; Counts; Danburg; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Ehrhardt; Eiland; Ellis; Farabee; Flores; Gallego; Garcia; Geren; Giddings; Glaze; Goolsby; Gray; Gutierrez; Haggerty; Hinojosa; Hochberg; Hodge; Homer; Hopson; Jones, D.; Jones, J.; Junell; King, T.; Kitchen; Lewis, G.; Lewis, R.; Longoria; Luna; Martinez Fischer; Maxey; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Najera; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Solomons; Swinford; Telford; Thompson; Tillery; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Wise; Wolens; Yarbrough; Zbranek.

Nays — Allen; Bailey; Berman; Bonnen; Brown, B.; Brown, F.; Callegari; Carter; Christian; Clark; Corte; Crabb; Craddick; Crownover; Davis, J.; Delisi; Denny; Driver; Edwards; Elkins; George; Green; Grusendorf; Hamric; Hardcastle; Hartnett; Heflin; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Janek; Jones, E.; Keel; Keffer; King, P.; Kolkhorst; Krusee; Kuempel; Madden; Marchant; McCall; Morrison; Mowery; Nixon; Reyna, E.; Seaman; Shields; Smith; Smithee; Talton; Truitt; Williams; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Capelo; Chavez; Farrar; Goodman; Hawley; Solis; Wilson.

STATEMENT OF VOTE

When Record No. 641 was taken, I was in the house but away from my desk. I would have voted yes.

Chavez

RESOLUTIONS 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 Nos. 1 and 2.)

HR 1401 - ADOPTED
(by Dunnam)

The following privileged resolution was laid before the house:

HR 1401

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 6**, relating to open-enrollment charter schools, 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 new provisions to the bill to read as follows:

SECTION 2. Section 12.101(b), Education Code, is amended to read as follows:

(b) The State Board of Education may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, and operational standards adopted by the commissioner under this subchapter. The State Board of Education may not grant a total of more than 215 [~~20~~] charters for an open-enrollment charter school.

Explanation: This addition is necessary to require that a charter granted for an open-enrollment charter school must comply with standards adopted by the commissioner of education and to raise the limit on the number of charters that may be granted.

(2) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add new provisions to the bill to read as follows:

SECTION 4. Section 12.103, Education Code, is amended to read as follows:

Sec. 12.103. GENERAL APPLICABILITY OF LAWS, [~~AND~~] RULES, AND ORDINANCES TO OPEN-ENROLLMENT CHARTER SCHOOL. (a) Except as provided by Subsection (b) or (c), an [~~An~~] open-enrollment charter school is subject to federal and state laws and rules governing public schools and to municipal zoning ordinances governing public schools.

(b) An[~~, except that an~~] open-enrollment charter school is subject to this code and rules adopted under this code only to the extent the applicability to an open-enrollment charter school of a provision of this code or a rule adopted under this code is specifically provided.

(c) Notwithstanding Subsection (a), a campus of an open-enrollment charter school located in whole or in part in a municipality with a population of 20,000 or less is not subject to a municipal zoning ordinance governing public schools.

Explanation: These additions are necessary to subject certain open-enrollment charter schools to municipal zoning ordinances governing public schools.

(3) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add a new subsection to Section 12.104, Education Code, as amended by the bill, to read as follows:

(d) The commissioner may by rule permit an open-enrollment charter school to voluntarily participate in any state program available to school districts, including a purchasing program, if the school complies with all terms of the program.

Explanation: This addition is necessary to authorize the commissioner of education by rule to permit open-enrollment charter schools to participate in state programs available to school districts.

(4) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add new provisions to the bill to read as follows:

Sec. 12.1054. APPLICABILITY OF LAWS RELATING TO CONFLICT OF INTEREST. (a) A member of the governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an officer of an open-enrollment charter school is considered to be a local public official for purposes of Chapter 171, Local Government Code. For purposes of that chapter:

(1) a member of the governing body of a charter holder or a member of the governing body or officer of an open-enrollment charter school is

considered to have a substantial interest in a business entity if a person related to the member or officer in the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity under Section 171.002, Local Government Code;

(2) a member of the governing body or officer of a charter school rated as academically acceptable or higher under Chapter 39 for at least two of the preceding three school years, or a member of the governing body of the charter holder of such a school, is not subject to the restrictions of Section 171.009, Local Government Code; and

(3) notwithstanding any provision of that chapter, an employee of an open-enrollment charter school rated as academically acceptable or higher under Chapter 39 for at least two of the preceding three school years may serve as a member of the governing body of the charter holder or the governing body of the school if the employees do not constitute a quorum of the governing body or any committee of the governing body.

(b) To the extent consistent with this section, a requirement in a law listed in this section that applies to a school district or the board of trustees of a school district applies to an open-enrollment charter school, the governing body of a charter holder, or the governing body of an open-enrollment charter school.

Explanation: This addition is necessary to provide an exception from the requirements of certain laws relating to conflicts of interest for certain open-enrollment charter schools rated as academically acceptable or higher during a specified period.

(5) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add a new subsection to Section 12.106, Education Code, as amended by the bill, to read as follows:

(c) The commissioner may adopt rules to provide and account for state funding of open-enrollment charter schools under this section. A rule adopted under this section may be similar to a provision of this code that is not similar to Section 12.104(b) if the commissioner determines that the rule is related to financing of open-enrollment charter schools and is necessary or prudent to provide or account for state funds.

Explanation: This addition is necessary to authorize the commissioner of education to adopt rules related to the financing of open-enrollment charter schools and necessary or prudent in accounting for state funds received by the schools.

(6) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add new provisions to the bill to read as follows:

SECTION 10. Sections 12.114-12.116, Education Code, are amended to read as follows:

Sec. 12.114. REVISION. A revision of a charter of an open-enrollment charter school may be made only with the approval of the commissioner [~~State Board of Education~~].

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, REVOCATION, OR DENIAL OF RENEWAL. (a) The commissioner [~~State Board of Education~~] may modify, place on probation, revoke, or deny renewal of the charter of an open-enrollment charter school if the commissioner [~~board~~] determines that the charter holder [~~person operating the school~~]:

(1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school; or

(4) [~~(3)~~] failed to comply with this subchapter or another applicable law or rule.

(b) The action the commissioner [~~board~~] takes under Subsection (a) shall be based on the best interest of the school's students, the severity of the violation, and any previous violation the school has committed.

Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON PROBATION, REVOCATION, OR DENIAL OF RENEWAL. (a) The commissioner [~~State Board of Education~~] shall adopt a procedure to be used for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school.

(b) The procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder [~~person operating the open-enrollment charter school~~] and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated.

(c) Chapter 2001, Government Code, does not apply to a hearing that is related to a modification, placement on probation, revocation, or denial of renewal under this subchapter.

Explanation: These additions are necessary to authorize the commissioner of education to modify, place on probation, revoke, or deny the renewal of an open-enrollment charter school's charter and to require the commissioner to adopt a procedure to be used for taking such action.

(7) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add new provisions to the bill to read as follows:

SECTION 13. Sections 12.118(a) and (c), Education Code, are amended to read as follows:

(a) The commissioner [~~board~~] shall designate an impartial organization with experience in evaluating school choice programs to conduct an annual evaluation of open-enrollment charter schools.

(c) The evaluation of open-enrollment charter schools must also include an evaluation of:

(1) the costs of instruction, administration, and transportation incurred by open-enrollment charter schools; [~~and~~]

(2) the effect of open-enrollment charter schools on school districts and on teachers, students, and parents in those districts; and

(3) other issues, as determined by the commissioner.

Explanation: These additions are necessary to authorize the commissioner of education to designate an organization to evaluate open-enrollment charter schools on issues determined by the commissioner.

(8) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add a new provision to the bill to read as follows:

Sec. 12.130. NOTICE OF TEACHER QUALIFICATIONS. Each open-enrollment charter school shall provide to the parent or guardian of each student

enrolled in the school written notice of the qualifications of each teacher employed by the school.

Explanation: This addition is necessary to require open-enrollment charter schools to provide students' parents with notice of teacher qualifications.

(9) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add new provisions to the bill to read as follows:

SECTION 24. Section 39.073(a), Education Code, is amended to read as follows:

(a) The agency shall annually review the performance of each district and campus on the indicators adopted under Sections 39.051(b)(1) through (7) and determine if a change in the accreditation status of the district is warranted. The commissioner may determine how all indicators adopted under Section 39.051(b) may be used to determine accountability ratings and to select districts and campuses for acknowledgment.

SECTION 25. Subchapter D, Chapter 39, Education Code, is amended by adding Section 39.0731 to read as follows:

Sec. 39.0731. ALTERNATIVE ACCREDITATION STATUS PILOT PROGRAM FOR CERTAIN DISTRICTS, CAMPUSES, AND OPEN-ENROLLMENT CHARTER SCHOOLS. (a) The commissioner may by rule develop an alternative accreditation status pilot program for the 2001-2002 school year that is designed to reflect the academic performance and improvement of students enrolled at a district, campus, or open-enrollment charter school that:

(1) primarily serves at-risk students, as defined in Section 29.081, as determined by the commissioner; or

(2) is not required to administer assessment instruments under Section 39.023.

(b) The pilot program:

(1) must include an analysis of student performance and improvement on indicators determined by the commissioner under Section 39.073(a); and

(2) may include an analysis of student performance on an assessment instrument authorized under Section 28.006.

(c) Notwithstanding participation in the pilot program, a district, campus, or open-enrollment charter school that participates in the pilot program also continues to receive the accountability rating that the district, campus, or school would otherwise receive under this chapter and is subject to any applicable sanctions under this chapter based on that rating.

(d) Not later than December 1, 2002, the commissioner shall compile the results of the pilot program and any recommendations in a report and submit the report to the governor, lieutenant governor, speaker of the house of representatives, and the presiding officer of each standing committee of the senate and house of representatives having primary jurisdiction over public education.

(e) This section expires January 1, 2003.

Explanation: These additions are necessary to authorize the commissioner of education to consider additional performance indicators for accountability purposes and to develop an alternative accreditation status pilot program for school districts, campuses, and open-enrollment charter schools.

HR 1401 was adopted without objection.

HB 6 - RULES SUSPENDED

Representative Dunnam moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **HB 6**.

The motion prevailed.

HB 6 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dunnam submitted the following conference committee report on **HB 6**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 6** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins	Dunnam
Armbrister	Sadler
Nelson	Hardcastle
Shapiro	Olivo
Staples	
On the part of the Senate	On the part of the House

HB 6, relating to open-enrollment charter schools.

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

SECTION 1. Subchapter A, Chapter 12, Education Code, is amended by amending Section 12.001 and adding Section 12.0011 to read as follows:

Sec. 12.001. PURPOSES OF CHAPTER. (a) The purposes of this chapter are to:

(1) improve student learning;

(2) increase the choice of learning opportunities within the public school system;

(3) create professional opportunities that will attract new teachers to the public school system;

(4) establish a new form of accountability for public schools; and

(5) encourage different and innovative learning methods.

(b) This chapter shall be applied in a manner that ensures the fiscal and academic accountability of persons holding charters issued under this chapter. This chapter may not be applied in a manner that unduly regulates the instructional methods or pedagogical innovations of charter schools.

Sec. 12.0011. ALTERNATIVE METHOD OF OPERATION. As an alternative to operating in the manner generally provided by this title, an independent school district, a school campus, or an educational program may choose to operate under a charter in accordance with this chapter.

SECTION 2. Section 12.101(b), Education Code, is amended to read as follows:

(b) The State Board of Education may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, and operational standards adopted by the commissioner under this subchapter. The State Board of Education may not grant a total of more than 215 [~~20~~] charters for an open-enrollment charter school.

SECTION 3. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1012 to read as follows:

Sec. 12.1012. DEFINITIONS. In this subchapter:

(1) "Charter holder" means the entity to which a charter is granted under this subchapter.

(2) "Governing body of a charter holder" means the board of directors, board of trustees, or other governing body of a charter holder.

(3) "Governing body of an open-enrollment charter school" means the board of directors, board of trustees, or other governing body of an open-enrollment charter school. The term includes the governing body of a charter holder if that body acts as the governing body of the open-enrollment charter school.

(4) "Management company" means a person, other than a charter holder, who provides management services for an open-enrollment charter school.

(5) "Management services" means services related to the management or operation of an open-enrollment charter school, including:

(A) planning, operating, supervising, and evaluating the school's educational programs, services, and facilities;

(B) making recommendations to the governing body of the school relating to the selection of school personnel;

(C) managing the school's day-to-day operations as its administrative manager;

(D) preparing and submitting to the governing body of the school a proposed budget;

(E) recommending policies to be adopted by the governing body of the school, developing appropriate procedures to implement policies adopted by the governing body of the school, and overseeing the implementation of adopted policies; and

(F) providing leadership for the attainment of student performance at the school based on the indicators adopted under Section 39.051 or by the governing body of the school.

(6) "Officer of an open-enrollment charter school" means:

(A) the principal, director, or other chief operating officer of an open-enrollment charter school;

(B) an assistant principal or assistant director of an open-enrollment charter school; or

(C) a person charged with managing the finances of an open-enrollment charter school.

SECTION 4. Section 12.103, Education Code, is amended to read as follows:

Sec. 12.103. GENERAL APPLICABILITY OF LAWS, [~~AND~~] RULES, AND ORDINANCES TO OPEN-ENROLLMENT CHARTER SCHOOL. (a) Except as provided by Subsection (b) or (c), an [~~An~~] open-enrollment charter school is subject to federal and state laws and rules governing public schools and to municipal zoning ordinances governing public schools.

(b) An [~~, except that an~~] open-enrollment charter school is subject to this code and rules adopted under this code only to the extent the applicability to an open-enrollment charter school of a provision of this code or a rule adopted under this code is specifically provided.

(c) Notwithstanding Subsection (a), a campus of an open-enrollment charter school located in whole or in part in a municipality with a population of 20,000 or less is not subject to a municipal zoning ordinance governing public schools.

SECTION 5. Section 12.104, Education Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) An open-enrollment charter school is entitled to the same level of services provided to school districts by regional education service centers. The commissioner shall adopt rules that provide for the representation of open-enrollment charter schools on the boards of directors of regional education service centers.

(d) The commissioner may by rule permit an open-enrollment charter school to voluntarily participate in any state program available to school districts, including a purchasing program, if the school complies with all terms of the program.

SECTION 6. Subchapter D, Chapter 12, Education Code, is amended by amending Section 12.105 and adding Sections 12.1051-12.1057 to read as follows:

Sec. 12.105. STATUS. [~~(a)~~] An open-enrollment charter school is part of the public school system of this state.

Sec. 12.1051. APPLICABILITY OF OPEN MEETINGS AND PUBLIC INFORMATION LAWS. (a) With respect to the operation of an open-enrollment charter school, the [~~(b) The~~] governing body of a charter holder and the governing body of an open-enrollment charter [~~the~~] school are [~~is~~] considered to be [~~a~~] governmental bodies [~~body~~] for purposes of Chapters 551 and 552, Government Code.

(b) With respect to the operation of an open-enrollment charter school, any [~~Any~~] requirement in Chapter 551 or 552, Government Code, that applies [~~those chapters relating~~] to a school district, the board of trustees of a school district [~~school board~~], or public school students [~~children~~] applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students [~~and to children~~] attending an open-enrollment charter school.

Sec. 12.1052. APPLICABILITY OF LAWS RELATING TO LOCAL GOVERNMENT RECORDS. (a) With respect to the operation of an open-enrollment charter school, an open-enrollment charter school is considered to be a local government for purposes of Subtitle C, Title 6, Local Government Code, and Subchapter J, Chapter 441, Government Code.

(b) Records of an open-enrollment charter school and records of a charter

holder that relate to an open-enrollment charter school are government records for all purposes under state law.

(c) Any requirement in Subtitle C, Title 6, Local Government Code, or Subchapter J, Chapter 441, Government Code, that applies to a school district, the board of trustees of a school district, or an officer or employee of a school district applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or an officer or employee of an open-enrollment charter school except that the records of an open-enrollment charter school that ceases to operate shall be transferred in the manner prescribed by Subsection (d).

(d) The records of an open-enrollment charter school that ceases to operate shall be transferred in the manner specified by the commissioner to a custodian designated by the commissioner. The commissioner may designate any appropriate entity to serve as custodian, including the agency, a regional education service center, or a school district. In designating a custodian, the commissioner shall ensure that the transferred records, including student and personnel records, are transferred to a custodian capable of:

(1) maintaining the records;

(2) making the records readily accessible to students, parents, former school employees, and other persons entitled to access; and

(3) complying with applicable state or federal law restricting access to the records.

(e) If the charter holder of an open-enrollment charter school that ceases to operate or an officer or employee of such a school refuses to transfer school records in the manner specified by the commissioner under Subsection (d), the commissioner may ask the attorney general to petition a court for recovery of the records. If the court grants the petition, the court shall award attorney's fees and court costs to the state.

Sec. 12.1053. APPLICABILITY OF LAWS RELATING TO PUBLIC PURCHASING AND CONTRACTING. (a) This section applies to an open-enrollment charter school unless the school's charter otherwise describes procedures for purchasing and contracting and the procedures are approved by the State Board of Education.

(b) An open-enrollment charter school is considered to be:

(1) a governmental entity for purposes of:

(A) Subchapter D, Chapter 2252, Government Code; and

(B) Subchapter B, Chapter 271, Local Government Code;

(2) a political subdivision for purposes of Subchapter A, Chapter 2254, Government Code; and

(3) a local government for purposes of Sections 2256.009-2256.016, Government Code.

(c) To the extent consistent with this section, a requirement in a law listed in this section that applies to a school district or the board of trustees of a school district applies to an open-enrollment charter school, the governing body of a charter holder, or the governing body of an open-enrollment charter school.

Sec. 12.1054. APPLICABILITY OF LAWS RELATING TO CONFLICT OF INTEREST. (a) A member of the governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an

officer of an open-enrollment charter school is considered to be a local public official for purposes of Chapter 171, Local Government Code. For purposes of that chapter:

(1) a member of the governing body of a charter holder or a member of the governing body or officer of an open-enrollment charter school is considered to have a substantial interest in a business entity if a person related to the member or officer in the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity under Section 171.002, Local Government Code;

(2) notwithstanding any provision of Section 12.1054(1), an employee of an open-enrollment charter school rated as academically acceptable or higher under Chapter 39 for at least two of the preceding three school years may serve as a member of the governing body of the charter holder of the governing body of the school if the employees do not constitute a quorum of the governing body or any committee of the governing body; however, all members shall comply with the requirements of Sections 171.003-171.007, Local Government Code.

(b) To the extent consistent with this section, a requirement in a law listed in this section that applies to a school district or the board of trustees of a school district applies to an open-enrollment charter school, the governing body of a charter holder, or the governing body of an open-enrollment charter school.

Sec. 12.1055. APPLICABILITY OF NEPOTISM LAWS. (a) An open-enrollment charter school is subject to a prohibition, restriction, or requirement, as applicable, imposed by state law or by a rule adopted under state law, relating to nepotism under Chapter 573, Government Code.

(b) Notwithstanding Subsection (a), if an open-enrollment charter school is rated academically acceptable or higher under Chapter 39 for at least two of the preceding three school years, then Chapter 573, Government Code, does not apply to that school; however, a member of the governing body of a charter holder or a member of the governing body or officer of an open-enrollment charter school shall comply with the requirements of Sections 171.003-171.007, Local Government Code, with respect to a personnel matter concerning a person related to the member or officer within the degree specified by Section 573.002, Government Code, as if the personnel matter were a transaction with a business entity subject to those sections, and persons defined under Sections 573.021-573.025, Government Code, shall not constitute a quorum of the governing body or any committee of the governing body.

Sec. 12.1056. IMMUNITY FROM LIABILITY. In matters related to operation of an open-enrollment charter school, an open-enrollment charter [~~(c) The~~] school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee.

Sec. 12.1057. MEMBERSHIP IN TEACHER RETIREMENT SYSTEM OF TEXAS. (a) [~~(d)~~] An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

(b) For each employee of the school covered under the system, the school is responsible for making any contribution that otherwise would be the legal responsibility of the school district, and the state is responsible for making contributions to the same extent it would be legally responsible if the employee were a school district employee.

SECTION 7. Sections 12.106 and 12.107, Education Code, are amended to read as follows:

Sec. 12.106. STATE FUNDING. (a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 as if the school were a school district without a tier one local share for purposes of Section 42.253 and without any local revenue ("LR") for purposes of Section 42.302. In determining funding for an open-enrollment charter school, adjustments under Sections 42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate ("DTR") under Section 42.302 are based on the average adjustment and average district enrichment tax rate for the state.

(b) An open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding.

(c) The commissioner may adopt rules to provide and account for state funding of open-enrollment charter schools under this section. A rule adopted under this section may be similar to a provision of this code that is not similar to Section 12.104(b) if the commissioner determines that the rule is related to financing of open-enrollment charter schools and is necessary or prudent to provide or account for state funds. [~~An open-enrollment charter school is entitled to the distribution from the available school fund for a student attending the open-enrollment charter school to which the district in which the student resides would be entitled.~~

[~~(b) A student attending an open-enrollment charter school who is eligible under Section 42.003 is entitled to the benefits of the Foundation School Program under Chapter 42. The commissioner shall distribute from the foundation school fund to each school an amount equal to the cost of a Foundation School Program provided by the program for which the charter is granted as determined under Section 42.251, including the transportation allotment under Section 42.155, for the student that the district in which the student resides would be entitled to, less an amount equal to the sum of the school's tuition receipts under Section 12.107 plus the school's distribution from the available school fund.~~]

Sec. 12.107. STATUS AND USE OF FUNDS. (a) Funds received under Section 12.106 after September 1, 2001, by a charter holder:

(1) are considered to be public funds for all purposes under state law;

(2) are held in trust by the charter holder for the benefit of the students of the open-enrollment charter school;

(3) may be used only for a purpose for which a school may use local funds under Section 45.105(c); and

(4) pending their use, must be deposited into a bank, as defined by Section 45.201, with which the charter holder has entered into a depository contract.

(b) A charter holder shall deliver to the agency a copy of the depository contract between the charter holder and any bank into which state funds are deposited. [~~LOCAL FUNDING. (a) Except as provided by Subsection (b), an open-enrollment charter school is entitled to receive tuition from the school district in which a student attending the school resides in an amount equal to the quotient of the tax revenue collected by the school district for maintenance and operations for the school year for which tuition is being paid divided by the sum of the number of students enrolled in the district as reported in the Public Education Information Management System (PEIMS), including the number of students for whom the district is required to pay tuition.~~

[~~(b) The tuition to be paid under Subsection (a) by a school district with a wealth per student that exceeds the equalized wealth level under Chapter 41 shall be based on the district's tax revenue after the district has acted to achieve the equalized wealth level under Chapter 41.~~]

Sec. 12.108. TUITION AND FEES RESTRICTED. (a) An [~~Except as provided by Section 12.106, an~~] open-enrollment charter school may not charge tuition to an eligible student who applies under Section 12.117.

(b) The governing body of an open-enrollment charter school may require a student to pay any fee that the board of trustees of a school district may charge under Section 11.158(a). The governing body may not require a student to pay a fee that the board of trustees of a school district may not charge under Section 11.158(b).

SECTION 8. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1101 to read as follows:

Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION. The commissioner by rule shall adopt a procedure for providing notice to the following persons on receipt by the State Board of Education of an application for a charter for an open-enrollment charter school under Section 12.110:

(1) the board of trustees of each school district from which the proposed open-enrollment charter school is likely to draw students, as determined by the commissioner; and

(2) each member of the legislature that represents the geographic area to be served by the proposed school, as determined by the commissioner.

SECTION 9. Sections 12.111 and 12.113, Education Code, are amended to read as follows:

Sec. 12.111. CONTENT. Each charter granted under this subchapter must:

(1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;

(2) specify the period for which the charter or any charter renewal is valid;

(3) provide that continuation or renewal of the charter is contingent on acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter;

(4) establish the level of student performance that is considered acceptable for purposes of Subdivision (3);

(5) specify any basis, in addition to a basis specified by this subchapter, on which the charter may be placed on probation or revoked or on which renewal of the charter may be denied;

(6) prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion, disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37;

(7) specify the grade levels to be offered;

(8) describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

(D) the manner in which vacancies on that [~~the~~] governing body [~~board~~] are filled;

(E) the term for which members of that [~~the~~] governing body serve; and

(F) whether the terms are to be staggered;

(9) specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(10) specify the manner in which the school will distribute to parents information related to the qualifications of each [~~to be met by~~] professional employee [~~employees~~] of the program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(11) [~~(10)~~] describe the process by which the person providing the program will adopt an annual budget;

(12) [~~(11)~~] describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by State Board of Education rule, in the Public Education Information Management System (PEIMS);

(13) [~~(12)~~] describe the facilities to be used;

(14) [~~(13)~~] describe the geographical area served by the program; and

(15) [~~(14)~~] specify any type of enrollment criteria to be used.

Sec. 12.113. CHARTER GRANTED. (a) Each charter the State Board of Education grants for an open-enrollment charter school must:

(1) satisfy this subchapter; and

(2) include the information that is required under Section 12.111 consistent with the information provided in the application and any modification the board requires.

(b) The grant of a charter under this subchapter does not create an entitlement to a renewal of a charter on the same terms as it was originally issued.

SECTION 10. Sections 12.114-12.116, Education Code, are amended to read as follows:

Sec. 12.114. REVISION. A revision of a charter of an open-enrollment charter school may be made only with the approval of the commissioner [~~State Board of Education~~].

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, REVOCATION, OR DENIAL OF RENEWAL. (a) The commissioner [~~State Board of Education~~] may modify, place on probation, revoke, or deny renewal of the charter of an open-enrollment charter school if the commissioner [~~board~~] determines that the charter holder [~~person operating the school~~]:

(1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school; or

(4) [~~(3)~~] failed to comply with this subchapter or another applicable law or rule.

(b) The action the commissioner [~~board~~] takes under Subsection (a) shall be based on the best interest of the school's students, the severity of the violation, and any previous violation the school has committed.

Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON PROBATION, REVOCATION, OR DENIAL OF RENEWAL. (a) The commissioner [~~State Board of Education~~] shall adopt a procedure to be used for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school.

(b) The procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder [~~person operating the open-enrollment charter school~~] and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated.

(c) Chapter 2001, Government Code, does not apply to a hearing that is related to a modification, placement on probation, revocation, or denial of renewal under this subchapter.

SECTION 11. Subchapter D, Chapter 12, Education Code, is amended by adding Sections 12.1161-12.1163 to read as follows:

Sec. 12.1161. EFFECT OF REVOCATION, DENIAL OF RENEWAL, OR SURRENDER OF CHARTER. (a) Except as provided by Subsection (b), if the commissioner revokes or denies the renewal of a charter of an open-enrollment charter school, or if an open-enrollment charter school surrenders its charter, the school may not:

(1) continue to operate under this subchapter; or

(2) receive state funds under this subchapter.

(b) An open-enrollment charter school may continue to operate and receive state funds under this subchapter for the remainder of a school year if the commissioner denies renewal of the school's charter before the completion of that school year.

Sec. 12.1162. ADDITIONAL SANCTIONS. (a) The commissioner shall take any of the actions described by Subsection (b) or by Section 39.131(a),

to the extent the commissioner determines necessary, if an open-enrollment charter school, as determined by a report issued under Section 39.076(b):

(1) commits a material violation of the school's charter;

(2) fails to satisfy generally accepted accounting standards of fiscal management; or

(3) fails to comply with this subchapter or another applicable rule or law.

(b) The commissioner may temporarily withhold funding, suspend the authority of an open-enrollment charter school to operate, or take any other reasonable action the commissioner determines necessary to protect the health, safety, or welfare of students enrolled at the school based on evidence that conditions at the school present a danger to the health, safety, or welfare of the students.

(c) After the commissioner acts under Subsection (b), the open-enrollment charter school may not receive funding and may not resume operating until a determination is made that:

(1) despite initial evidence, the conditions at the school do not present a danger of material harm to the health, safety, or welfare of students; or

(2) the conditions at the school that presented a danger of material harm to the health, safety, or welfare of students have been corrected.

(d) Not later than the third business day after the date the commissioner acts under Subsection (b), the commissioner shall provide the charter holder an opportunity for a hearing.

(e) Immediately after a hearing under Subsection (d), the commissioner must cease the action under Subsection (b) or initiate action under Section 12.116.

(f) The commissioner shall adopt rules implementing this section. Chapter 2001, Government Code, does not apply to a hearing under this section.

Sec. 12.1163. AUDIT BY COMMISSIONER. (a) To the extent consistent with Subsection (b), the commissioner may audit the records of:

(1) an open-enrollment charter school;

(2) a charter holder; and

(3) a management company.

(b) An audit under Subsection (a) must be limited to matters directly related to the management or operation of an open-enrollment charter school, including any financial and administrative records.

SECTION 12. Section 12.117, Education Code, is amended to read as follows:

Sec. 12.117. [~~APPLICATION FOR~~] ADMISSION. (a) For admission to an open-enrollment charter school, the governing body of [~~person operating~~] the school shall:

(1) [~~may~~] require the applicant to complete and submit an application not later than a reasonable deadline the school establishes; and

(2) on receipt of more acceptable applications for admission under this section than available positions in the school:

(A) fill the available positions by lottery; or

(B) subject to Subsection (b), fill the available positions in the order in which applications received before the application deadline were received.

(b) An open-enrollment charter school may fill applications for admission under Subsection (a)(2)(B) only if the school published a notice of the opportunity to apply for admission to the school. A notice published under this subsection must:

(1) state the application deadline; and

(2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline.

SECTION 13. Sections 12.118(a) and (c), Education Code, are amended to read as follows:

(a) The commissioner [~~board~~] shall designate an impartial organization with experience in evaluating school choice programs to conduct an annual evaluation of open-enrollment charter schools.

(c) The evaluation of open-enrollment charter schools must also include an evaluation of:

(1) the costs of instruction, administration, and transportation incurred by open-enrollment charter schools; [~~and~~]

(2) the effect of open-enrollment charter schools on school districts and on teachers, students, and parents in those districts; and

(3) other issues, as determined by the commissioner.

SECTION 14. Section 12.119(a), Education Code, is amended to read as follows:

(a) A charter holder [~~The entity to which a charter is granted for an open-enrollment charter school~~] shall file with the State Board of Education a copy of its articles of incorporation and bylaws, or [~~a~~] comparable documents [~~document~~] if the charter holder [~~entity~~] does not have articles of incorporation or bylaws, within the period and in the manner prescribed by the board.

SECTION 15. Section 12.120, Education Code, is amended to read as follows:

Sec. 12.120. RESTRICTIONS [~~LIMITATION~~] ON SERVING AS MEMBER OF GOVERNING BODY OF CHARTER HOLDER OR OPEN-ENROLLMENT CHARTER SCHOOL OR AS OFFICER OR EMPLOYEE. (a) A person may not serve as a member of the governing body of a charter holder, as a member of the governing body of an open-enrollment charter school, or as an officer or employee of an open-enrollment charter school if the person:

(1) [~~who~~] has been convicted of a felony or a misdemeanor involving moral turpitude;

(2) has been convicted of an offense listed in Section 37.007(a);

(3) has been convicted of an offense listed in Article 62.01(5), Code of Criminal Procedure; or

(4) has a substantial interest in a management company.

(b) For purposes of Subsection (a)(4), a person has a substantial interest in a management company if the person:

(1) has a controlling interest in the company;

(2) owns more than 10 percent of the voting interest in the company;

(3) owns more than $25,000 of the fair market value of the company;

(4) has a direct or indirect participating interest by shares, stock, or

otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains of the company;

(5) is a member of the board of directors or other governing body of the company;

(6) serves as an elected officer of the company; or

(7) is an employee of the company [~~may not serve as an officer or member of the governing body of an open-enrollment charter school~~].

SECTION 16. Subchapter D, Chapter 12, Education Code, is amended by adding Sections 12.121-12.130 to read as follows:

Sec. 12.121. RESPONSIBILITY FOR OPEN-ENROLLMENT CHARTER SCHOOL. The governing body of an open-enrollment charter school is responsible for the management, operation, and accountability of the school, regardless of whether the governing body delegates the governing body's powers and duties to another person.

Sec. 12.122. LIABILITY OF MEMBERS OF GOVERNING BODY OF OPEN-ENROLLMENT CHARTER SCHOOL. (a) Notwithstanding the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or other law, on request of the commissioner, the attorney general may bring suit against a member of the governing body of an open-enrollment charter school for breach of a fiduciary duty by the member, including misapplication of public funds.

(b) The attorney general may bring suit under Subsection (a) for:

(1) damages;

(2) injunctive relief; or

(3) any other equitable remedy determined to be appropriate by the court.

(c) This section is cumulative of all other remedies.

Sec. 12.123. TRAINING FOR MEMBERS OF GOVERNING BODY OF SCHOOL AND OFFICERS. (a) The commissioner shall adopt rules prescribing training for:

(1) members of governing bodies of open-enrollment charter schools; and

(2) officers of open-enrollment charter schools.

(b) The rules adopted under Subsection (a) may:

(1) specify the minimum amount and frequency of the training;

(2) require the training to be provided by:

(A) the agency and regional education service centers;

(B) entities other than the agency and service centers, subject to approval by the commissioner; or

(C) both the agency, service centers, and other entities; and

(3) require training to be provided concerning:

(A) basic school law, including school finance;

(B) health and safety issues;

(C) accountability requirements related to the use of public funds; and

(D) other requirements relating to accountability to the public, such as open meetings requirements under Chapter 551, Government Code, and public information requirements under Chapter 552, Government Code.

Sec. 12.124. LOANS FROM MANAGEMENT COMPANY PROHIBITED. (a) The charter holder or the governing body of an open-enrollment charter school may not accept a loan from a management company that has a contract to provide management services to:

(1) that charter school; or

(2) another charter school that operates under a charter granted to the charter holder.

(b) A charter holder or the governing body of an open-enrollment charter school that accepts a loan from a management company may not enter into a contract with that management company to provide management services to the school.

Sec. 12.125. CONTRACT FOR MANAGEMENT SERVICES. Any contract, including a contract renewal, between an open-enrollment charter school and a management company proposing to provide management services to the school must require the management company to maintain all records related to the management services separately from any other records of the management company.

Sec. 12.126. CERTAIN MANAGEMENT SERVICES CONTRACTS PROHIBITED. The commissioner may prohibit, deny renewal of, suspend, or revoke a contract between an open-enrollment charter school and a management company providing management services to the school if the commissioner determines that the management company has:

(1) failed to provide educational or related services in compliance with the company's contractual or other legal obligation to any open-enrollment charter school in this state or to any other similar school in another state;

(2) failed to protect the health, safety, or welfare of the students enrolled at an open-enrollment charter school served by the company;

(3) violated this subchapter or a rule adopted under this subchapter; or

(4) otherwise failed to comply with any contractual or other legal obligation to provide services to the school.

Sec. 12.127. LIABILITY OF MANAGEMENT COMPANY. (a) A management company that provides management services to an open-enrollment charter school is liable for damages incurred by the state as a result of the failure of the company to comply with its contractual or other legal obligation to provide services to the school.

(b) On request of the commissioner, the attorney general may bring suit on behalf of the state against a management company liable under Subsection (a) for:

(1) damages, including any state funding received by the company and any consequential damages suffered by the state;

(2) injunctive relief; or

(3) any other equitable remedy determined to be appropriate by the court.

(c) This section is cumulative of all other remedies and does not affect:

(1) the liability of a management company to the charter holder; or

(2) the liability of a charter holder, a member of the governing body of a charter holder, or a member of the governing body of an open-enrollment charter school to the state.

Sec. 12.128. PROPERTY PURCHASED OR LEASED WITH STATE FUNDS. (a) Property purchased or leased with funds received by a charter holder under Section 12.106 after September 1, 2001:

(1) is considered to be public property for all purposes under state law;

(2) is held in trust by the charter holder for the benefit of the students of the open-enrollment charter school; and

(3) may be used only for a purpose for which a school district may use school district property.

(b) If at least 50 percent of the funds used by a charter holder to purchase real property are funds received under Section 12.106 before September 1, 2001, the property is considered to be public property to the extent it was purchased with those funds.

(c) The commissioner shall:

(1) take possession and assume control of the property described by Subsection (a) of an open-enrollment charter school that ceases to operate; and

(2) supervise the disposition of the property in accordance with law.

(d) The commissioner may adopt rules necessary to administer this section.

(e) This section does not affect a security interest in or lien on property established by a creditor in compliance with law if the security interest or lien arose in connection with the sale or lease of the property to the charter holder.

Sec. 12.129. MINIMUM TEACHER QUALIFICATIONS. A person employed as a teacher by an open-enrollment charter school must hold a high school diploma.

Sec. 12.130. NOTICE OF TEACHER QUALIFICATIONS. Each open-enrollment charter school shall provide to the parent or guardian of each student enrolled in the school written notice of the qualifications of each teacher employed by the school.

SECTION 17. Chapter 12, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. COLLEGE OR UNIVERSITY CHARTER SCHOOL

Sec. 12.151. DEFINITION. In this subchapter, "public senior college or university" has the meaning assigned by Section 61.003.

Sec. 12.152. AUTHORIZATION. (a) In accordance with this subchapter and Subchapter D, the State Board of Education may grant a charter on the application of a public senior college or university for an open-enrollment charter school to operate on the campus of the public senior college or university or in the same county in which the campus of the public senior college or university is located.

Sec. 12.153. RULES. The commissioner may adopt rules to implement this subchapter.

Sec. 12.154. CONTENT. Notwithstanding Section 12.110(d), the State Board of Education may grant a charter under this subchapter only if the following criteria are satisfied in the public senior college's or university's application, as determined by the State Board of Education:

(1) the college or university charter school's educational program must include innovative teaching methods;

(2) the college or university charter school's educational program must

be implemented under the direct supervision of a member of the teaching or research faculty of the public senior college or university;

(3) the faculty member supervising the college or university charter school's educational program must have substantial experience and expertise in education research, teacher education, classroom instruction, or educational administration;

(4) the college or university charter school's educational program must be designed to meet specific goals described in the charter, including improving student performance, and each aspect of the program must be directed toward the attainment of the goals;

(5) the attainment of the college or university charter school's educational program goals must be measured using specific, objective standards set forth in the charter, including assessment methods and a time frame; and

(6) the financial operations of the college or university charter school must be supervised by the business office of the public senior college or university.

Sec. 12.155. SCHOOL NAME. The name of a college or university charter school must include the name of the public senior college or university operating the school.

Sec. 12.156. APPLICABILITY OF CERTAIN PROVISIONS. (a) Except as otherwise provided by this subchapter, Subchapter D applies to a college or university charter school as though the college or university charter school were granted a charter under that subchapter.

(b) A charter granted under this subchapter is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101(b).

SECTION 18. Section 22.083, Education Code, is amended to read as follows:

Sec. 22.083. ACCESS TO CRIMINAL HISTORY RECORDS BY LOCAL AND REGIONAL EDUCATION AUTHORITIES. (a) A school district, [~~open-enrollment charter school,~~] private school, regional education service center, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person:

(1) whom the district, school, service center, or shared services arrangement intends to employ in any capacity; or

(2) who has indicated, in writing, an intention to serve as a volunteer with the district, school, service center, or shared services arrangement.

(b) An open-enrollment charter school shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:

(1) a person whom the school intends to employ in any capacity; or

(2) a person who has indicated, in writing, an intention to serve as a volunteer with the school.

(c) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:

(1) a volunteer or employee of the district, school, service center, or shared services arrangement; or

(2) an employee of or applicant for employment by a person that contracts with the district, school, service center, or shared services arrangement to provide services, if:

(A) the employee or applicant has or will have continuing duties related to the contracted services; and

(B) the duties are or will be performed on school property or at another location where students are regularly present.

(d) [~~(c)~~] The superintendent of a district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify the State Board for Educator Certification in writing if the person obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under Subchapter B, Chapter 21, has a reported criminal history.

SECTION 19. Section 25.088, Education Code, is amended to read as follows:

Sec. 25.088. SCHOOL ATTENDANCE OFFICER. The school attendance officer may be selected by:

(1) the county school trustees of any county; [~~or~~]

(2) the board of trustees of any school district or the boards of trustees of two or more school districts jointly; or

(3) the governing body of an open-enrollment charter school.

SECTION 20. Section 25.089(a), Education Code, is amended to read as follows:

(a) An attendance officer may be compensated from the funds of the county, [~~or the~~] independent school district, or open-enrollment charter school, as applicable.

SECTION 21. Section 25.090, Education Code, is amended to read as follows:

Sec. 25.090. ATTENDANCE OFFICER NOT SELECTED. (a) In those counties and independent school districts where an attendance officer has not been selected, the duties of attendance officer shall be performed by the school superintendents and peace officers of the counties and districts.

(b) If the governing body of an open-enrollment charter school has not selected an attendance officer, the duties of attendance officer shall be performed by the peace officers of the county in which the school is located.

(c) Additional compensation may not be paid for [~~the~~] services performed under this section.

SECTION 22. Sections 25.093(f) and (g), Education Code, are amended to read as follows:

(f) A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of, as applicable:

(A) the school district in which the child attends school;

(B) the open-enrollment charter school the child attends; or

(C) [~~of~~] the juvenile justice alternative education program that the child has been ordered to attend[~~, as applicable~~]; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the county court or justice court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

(g) At the trial of any person charged with violating this section, the attendance records of the child may be presented in court by any authorized employee of the school district or open-enrollment charter school, as applicable.

SECTION 23. Section 25.095(a), Education Code, is amended to read as follows:

(a) A school district or open-enrollment charter school shall notify a student's parent in writing if, in a six-month period, the student has been absent without an excuse five times for any part of the day. The notice must state that if the student is absent without an excuse for 10 or more days or parts of days in a six-month period:

(1) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to prosecution under Section 25.094.

SECTION 24. Section 39.073(a), Education Code, is amended to read as follows:

(a) The agency shall annually review the performance of each district and campus on the indicators adopted under Sections 39.051(b)(1) through (7) and determine if a change in the accreditation status of the district is warranted. The commissioner may determine how all indicators adopted under Section 39.051(b) may be used to determine accountability ratings and to select districts and campuses for acknowledgment.

SECTION 25. Subchapter D, Chapter 39, Education Code, is amended by adding Section 39.0731 to read as follows:

Sec. 39.0731. ALTERNATIVE ACCREDITATION STATUS PILOT PROGRAM FOR CERTAIN DISTRICTS, CAMPUSES, AND OPEN-ENROLLMENT CHARTER SCHOOLS. (a) The commissioner may by rule develop an alternative accreditation status pilot program for the 2001-2002 school year that is designed to reflect the academic performance and improvement of students enrolled at a district, campus, or open-enrollment charter school that:

(1) primarily serves at-risk students, as defined in Section 29.081, as determined by the commissioner; or

(2) is not required to administer assessment instruments under Section 39.023.

(b) The pilot program:

(1) must include an analysis of student performance and improvement on indicators determined by the commissioner under Section 39.073(a); and

(2) may include an analysis of student performance on an assessment instrument authorized under Section 28.006.

(c) Notwithstanding participation in the pilot program, a district, campus, or open-enrollment charter school that participates in the pilot program also continues to receive the accountability rating that the district, campus, or school would otherwise receive under this chapter and is subject to any applicable sanctions under this chapter based on that rating.

(d) Not later than December 1, 2002, the commissioner shall compile the results of the pilot program and any recommendations in a report and submit the report to the governor, lieutenant governor, speaker of the house of

representatives, and the presiding officer of each standing committee of the senate and house of representatives having primary jurisdiction over public education.

(e) This section expires January 1, 2003.

SECTION 26. Section 39.075(a), Education Code, is amended to read as follows:

(a) The commissioner shall authorize special accreditation investigations to be conducted [~~under the following circumstances~~]:

(1) when excessive numbers of absences of students eligible to be tested on state assessment instruments are determined;

(2) when excessive numbers of allowable exemptions from the required state assessment are determined;

(3) in response to complaints submitted to the agency with respect to alleged violations of civil rights or other requirements imposed on the state by federal law or court order;

(4) in response to established compliance reviews of the district's financial accounting practices and state and federal program requirements;

(5) when extraordinary numbers of student placements in alternative education programs, other than placements under Sections 37.006 and 37.007, are determined; [~~or~~]

(6) in response to an allegation involving a conflict between members of the board of trustees or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by this code; or

(7) as the commissioner otherwise determines necessary.

SECTION 27. Sections 39.131(a) and (d), Education Code, are amended to read as follows:

(a) If a district does not satisfy the accreditation criteria, the commissioner shall take any of the following actions, listed in order of severity, to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;

(2) order a hearing conducted by the board of trustees of the district for the purpose of notifying the public of the unacceptable performance, the improvements in performance expected by the agency, and the sanctions that may be imposed under this section if the performance does not improve;

(3) order the preparation of a student achievement improvement plan that addresses each academic excellence indicator for which the district's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan;

(4) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees of the district and the superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;

(5) arrange an on-site investigation of the district;

(6) appoint an agency monitor to participate in and report to the agency on the activities of the board of trustees or the superintendent;

(7) appoint a master to oversee the operations of the district;

(8) appoint a management team to direct the operations of the district

in areas of unacceptable performance or require the district to obtain certain services under a contract with another person;

(9) if a district has been rated as academically unacceptable for a period of one year or more, appoint a board of managers [~~composed of residents of the district~~] to exercise the powers and duties of the board of trustees; or

(10) if a district has been rated as academically unacceptable for a period of two years or more:

(A)[;] annex the district to one or more adjoining districts under Section 13.054; or

(B) in the case of a home-rule school district or open-enrollment charter school, order closure of all programs operated under the district's or school's [~~request the State Board of Education to revoke the district's home-rule school district~~] charter.

(d) The costs of providing a monitor, master, management team, or special campus intervention team shall be paid by the district. If the district fails or refuses to pay the costs in a timely manner, the commissioner may:

(1) pay the costs using amounts withheld from any funds to which the district is otherwise entitled; or

(2) recover the amount of the costs in the manner provided for recovery of an overallocation of state funds under Section 42.258.

SECTION 28. Subchapter A, Chapter 46, Education Code, is amended by adding Section 46.012 to read as follows:

Sec. 46.012. APPLICABILITY TO OPEN-ENROLLMENT CHARTER SCHOOLS. An open-enrollment charter school is not entitled to an allotment under this subchapter.

SECTION 29. Subchapter B, Chapter 46, Education Code, is amended by adding Section 46.036 to read as follows:

Sec. 46.036. APPLICABILITY TO OPEN-ENROLLMENT CHARTER SCHOOLS. An open-enrollment charter school is not entitled to an allotment under this subchapter.

SECTION 30. Subchapter C, Chapter 53, Education Code, is amended by adding Section 53.351 to read as follows:

Sec. 53.351. BONDS FOR OPEN-ENROLLMENT CHARTER SCHOOL FACILITIES. (a) The Texas Public Finance Authority shall establish a nonprofit corporation to issue revenue bonds on behalf of authorized open-enrollment charter schools for the acquisition, construction, repair, or renovation of educational facilities of those schools.

(b) The Texas Public Finance Authority shall appoint the directors of the corporation in consultation with the commissioner of education. Directors serve without compensation but are entitled to reimbursement for travel expenses incurred in attending board meetings. The board shall meet at least once a year.

(c) The corporation has all powers granted under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) for the purpose of aiding authorized open-enrollment charter schools in providing educational facilities. In addition, Sections 53.131, 53.15, 53.31, 53.32, 53.331, 53.34, 53.35, 53.36(a), and 53.37-53.42 apply to and govern the corporation and its procedures and bonds.

(d) The corporation shall adopt rules governing the issuance of bonds on behalf of an authorized open-enrollment charter school.

(e) The comptroller shall establish a fund dedicated to the credit enhancement of bonds issued under this section. The fund may receive donations. The obligation of the fund is limited to an amount equal to the balance of the fund.

(f) A revenue bond issued under this section is not a debt of the state or any state agency, political corporation, or political subdivision of the state and is not a pledge of the faith and credit of any of these entities. A revenue bond is payable solely from the revenue of the authorized open-enrollment charter school on whose behalf the bond is issued. A revenue bond issued under this section must contain on its face a statement to the effect that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bond; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

(g) An educational facility financed in whole or in part under this section is exempt from taxation if the facility:

(1) is owned by an authorized open-enrollment charter school;

(2) is held for the exclusive benefit of the school; and

(3) is held for the exclusive use of the students, faculty, and staff members of the school.

SECTION 31. Section 411.097, Government Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) An open-enrollment charter school is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who:

(1) is a member of the governing body of the school, as defined by Section 12.1012, Education Code; or

(2) has agreed to serve as a member of the governing body of the school.

(d) Criminal history record information obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement under Subsection (a), [~~or~~] (b), or (c) may not be released or disclosed to any person, other than the individual who is the subject of the information, the Texas Education Agency, the State Board for Educator Certification, or the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2).

(e) [~~(d)~~] If a regional education service center or commercial transportation company that receives criminal history record information from the department under this section requests the information by providing to the department a list, including the name, date of birth, and any other personal descriptive information required by the department for each person, through electronic means, magnetic tape, or disk, as specified by the department, the department may not charge the service center or commercial transportation company more than the lesser of:

(1) the department's cost for providing the information; or

(2) the amount prescribed by another law.

SECTION 32. Section 140.005, Local Government Code, is amended to read as follows:

Sec. 140.005. ANNUAL FINANCIAL STATEMENT OF SCHOOL, ROAD, OR OTHER DISTRICT. The governing body of a school district, open-enrollment charter school, junior college district, or a district or authority organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, shall prepare an annual financial statement showing for each fund subject to the authority of the governing body during the fiscal year:

(1) the total receipts of the fund, itemized by source of revenue, including taxes, assessments, service charges, grants of state money, gifts, or other general sources from which funds are derived;

(2) the total disbursements of the fund, itemized by the nature of the expenditure; and

(3) the balance in the fund at the close of the fiscal year.

SECTION 33. Section 140.006(c), Local Government Code, is amended to read as follows:

(c) The presiding officer of a school district shall submit a financial statement prepared under Section 140.005 to a daily, weekly, or biweekly newspaper published within the boundaries of the district. If a daily, weekly, or biweekly newspaper is not published within the boundaries of the school district, the financial statement shall be published in the manner provided by Subsections (a) and (b). The financial statement of an open-enrollment charter school shall be made available in the manner provided by Chapter 552, Government Code.

SECTION 34. (a) Section 12.1011, Education Code, is repealed.

(b) A charter for an open-enrollment charter school granted under the authority of Section 12.1011, Education Code, as that section existed before repeal by this Act, is considered to have been granted under the authority of Section 12.101, Education Code.

SECTION 35. Not later than January 1, 2002, the commissioner of education shall adopt rules relating to training for the members of governing bodies and officers of open-enrollment charter schools, as required by Section 12.123, Education Code, as added by this Act.

SECTION 36. Beginning September 1, 2001, an open-enrollment charter school shall obtain, in compliance with Section 22.083, Education Code, as amended by this Act, criminal history record information relating to each prospective employee or volunteer.

SECTION 37. Not later than September 1, 2002, an open-enrollment charter school in existence on September 1, 2001, shall fulfill the requirements of Sections 203.025, 203.026, and 203.041, Local Government Code.

SECTION 38. (a) The change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act, applies beginning with the 2001-2002 school year, except as provided by this section.

(b) An open-enrollment charter school operating on September 1, 2001, is funded as follows:

(1) for the 2001-2002 and 2002-2003 school years, the school receives funding according to the law in effect on August 31, 2001;

(2) for the 2003-2004 school year, the school receives 90 percent of its funding according to the law in effect on August 31, 2001, and 10 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(3) for the 2004-2005 school year, the school receives 80 percent of its funding according to the law in effect on August 31, 2001, and 20 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(4) for the 2005-2006 school year, the school receives 70 percent of its funding according to the law in effect on August 31, 2001, and 30 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(5) for the 2006-2007 school year, the school receives 60 percent of its funding according to the law in effect on August 31, 2001, and 40 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(6) for the 2007-2008 school year, the school receives 50 percent of its funding according to the law in effect on August 31, 2001, and 50 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(7) for the 2008-2009 school year, the school receives 40 percent of its funding according to the law in effect on August 31, 2001, and 60 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(8) for the 2009-2010 school year, the school receives 30 percent of its funding according to the law in effect on August 31, 2001, and 70 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(9) for the 2010-2011 school year, the school receives 20 percent of its funding according to the law in effect on August 31, 2001, and 80 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act;

(10) for the 2011-2012 school year, the school receives 10 percent of its funding according to the law in effect on August 31, 2001, and 90 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act; and

(11) for the 2012-2013 school year and subsequent school years, the school receives 100 percent of its funding according to the change in law made by Sections 12.106 and 12.107, Education Code, as amended by this Act.

(c) The commissioner of education may adopt rules as necessary to implement this section.

SECTION 39. (a) The change in law made by Section 12.114, Education Code, as amended by this Act, applies to a revision proposed by an open-enrollment charter school that has not been approved by the State Board of Education before September 1, 2001, regardless of the date on which the school proposed the revision.

(b) The change in law made by Section 12.127, Education Code, as added by this Act, applies only to a cause of action that accrues on or after September 1, 2001. A cause of action that accrued before September 1, 2001,

is governed by the law in effect at the time the cause of action accrued, and that law is continued in effect for that purpose.

SECTION 40. Sections 12.1101 and 12.1131, Education Code, as added by this Act, apply only to an application for a charter for an open-enrollment charter school received by the State Board of Education or a charter for an open-enrollment charter school granted by the board on or after the effective date of this Act. An application received or a charter granted before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 41. This Act prevails over any conflicting Act of the 77th Legislature, Regular Session, 2001, that amends or repeals a provision of Title 2, Education Code, as amended by this Act, regardless of the relative dates of enactment.

SECTION 42. This Act takes effect September 1, 2001.

Representative Dunnam moved to adopt the conference committee report **on HB 6**.

The motion prevailed.

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).

SB 985 - VOTE RECONSIDERED

Representative Y. Davis moved to suspend all necessary rules and reconsider the vote by which **SB 985** was passed.

The motion to reconsider prevailed without objection.

SB 985 ON THIRD READING
(Y. Davis - House Sponsor)

SB 985, A bill to be entitled An Act relating to authorizing the governing body of a municipality to enter into a tax abatement agreement with the owner of a leasehold interest in real property that is located in a reinvestment zone.

Amendment No. 1 - Vote Reconsidered

Representative Y. Davis moved to suspend all necessary rules and reconsider the vote by which Amendment No. 1 on third reading was adopted.

The motion to reconsider prevailed without objection.

Amendment No. 1 was withdrawn.

A record vote was requested.

SB 985 was passed by (Record 642): 137 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Flores; Gallego; Garcia; George; Geren; Glaze; Goolsby; Gray; Green; Gutierrez; Haggerty; Hamric; Hardcastle; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge;

Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Seaman; Shields; Smith; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Callegari; Farrar; Giddings; Goodman; Grusendorf; Hartnett; Longoria; Marchant; Smithee.

HB 259 - RULES SUSPENDED

Representative G. Lewis moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **HB 259**.

The motion prevailed.

HB 259 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative G. Lewis submitted the following conference committee report on **HB 259**:

Austin, Texas, May 24, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 259** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	G. Lewis
Sibley	Chavez
Cain	Thompson
Bernsen	McClendon
	Y. Davis
On the part of the Senate	On the part of the House

HB 259, A bill to be entitled An Act relating to equal access to places of public accommodation.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 91 to read as follows:

CHAPTER 91. PUBLIC ACCOMMODATIONS

Sec. 91.001. DEFINITION. In this chapter, "public accommodation" means a business or other entity that offers to the general public food, shelter, recreation, or amusement, or any other goods, service, privilege, facility, or accommodation.

Sec. 91.002. EQUAL ACCESS GUARANTEED. (a) A person that owns or operates a public accommodation may not restrict an individual from access or admission to the accommodation or otherwise prevent the individual from using the accommodation solely:

(1) because of the race, creed, sex, religion, or national origin of the individual; or

(2) because the individual:

(A) operates a motorcycle;

(B) is a member of an organization or association that operates motorcycles; or

(C) wears clothing that displays the name of an organization or association.

(b) This section does not prohibit a person that owns or operates a public accommodation from denying to an individual access or admission to or use of the accommodation if:

(1) the conduct of the individual poses a risk to the health or safety of another person or a risk to the safety of another person's property; or

(2) the person's clothing does not conform with a dress code that is:

(A) in effect at the public accommodation;

(B) stated clearly; and

(C) not designed to exclude a particular individual or group of individuals.

(c) This section does not prevent the owner or operator of a public accommodation from prohibiting the parking of a motorcycle in a vehicle parking space if on the owner's property the owner also provides a reasonably located area designated for motorcycle parking.

Sec. 91.003. INJUNCTIVE RELIEF; DAMAGES. (a) On application of any person, a court may enjoin a violation of this chapter.

(b) A person who is injured by a violation of this chapter may bring a cause of action for injunctive relief under Subsection (a), or for damages, or for both injunctive relief and damages. In an action for damages, the person may recover:

(1) actual damages incurred by the person, if any; and

(2) exemplary damages in an amount not to exceed $500.

(c) A person who brings an action under Subsection (a) or (b) and who prevails in the action is entitled to reasonable attorney's fees and court costs.

Sec. 91.004. EXEMPTIONS. (a) This chapter does not apply to a private or independent institution of higher education, as that term is defined by Section 61.003, Education Code.

(b) This chapter does not apply to a student while attending:

(1) a private or public middle school, junior high school, or high school; or

(2) an activity or event sponsored by a school described by Subdivision (1).

Sec. 91.005. REMEDIES CUMULATIVE. The remedies established under this chapter are cumulative of any other rights or remedies established by law.

SECTION 2. This Act takes effect September 1, 2001.

SECTION 3. This Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act and that law is continued in effect for that purpose.

Representative G. Lewis moved to adopt the conference committee report on **HB 259**.

The motion prevailed.

HB 588 - RULES SUSPENDED

Representative Garcia moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **HB 588**.

The motion prevailed.

HB 588 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Garcia submitted the following conference committee report on **HB 588**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 588** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jackson	Garcia
Duncan	Allen
West	Hinojosa
Cain	Dutton
	Solis
On the part of the Senate	On the part of the House

HB 588, A bill to be entitled An Act relating to the creation of a DNA record for certain persons convicted of a felony; providing a penalty.

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

SECTION 1. Section 411.148(a), Government Code, is amended to read as follows:

(a) An inmate serving a sentence for a felony in [~~of~~] the institutional division [~~or other penal institution~~] shall provide one or more blood samples

or other specimens [~~taken by or at the request of the institutional division~~] for the purpose of creating a DNA record [~~if the inmate is ordered by a court to give the sample or specimen or is serving a sentence for:~~

[~~(1) an offense:~~

[~~(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);~~

[~~(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or~~

[~~(C) for which the inmate is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997; or~~

[~~(2) any offense if the inmate has previously been convicted of or adjudicated as having engaged in:~~

[~~(A) an offense described in Subsection (a)(1); or~~

[~~(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subsection (a)(1)~~].

SECTION 2. Section 411.148, Government Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if at the beginning of a fiscal year the executive director of the Texas Department of Criminal Justice determines that sufficient funds have not been appropriated to the department to obtain a sample from each inmate otherwise required to provide a sample under Subsection (a), the executive director shall direct the institutional division to give priority to obtaining samples from inmates ordered by a court to give the sample or specimen or serving sentences for:

(1) an offense:

(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);

(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or

(C) for which the inmate is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(2) any offense if the inmate has previously been convicted of or adjudicated as having engaged in:

(A) an offense described in Subdivision (1); or

(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subdivision (1).

SECTION 3. Section 411.153(b), Government Code, is amended to read as follows:

(b) A person commits an offense if the person knowingly discloses information in a DNA record or information related to a DNA analysis of a blood specimen except as authorized by this chapter. An offense under this subsection is a state jail felony [~~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~~].

SECTION 4. The change in law made by this Act to Section 411.148(a), Government Code, applies only to an inmate who begins serving a sentence

in the institutional division of the Texas Department of Criminal Justice on or after the effective date of this Act.

SECTION 5. This Act takes effect on the date on which the director of the Department of Public Safety certifies to the governor, the lieutenant governor, and the speaker of the house of representatives that the state has received funds from the federal government or from other sources in a sufficient amount to pay all costs to the department associated with expanding the list of offenses for which samples or specimens are taken for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code, as required by this Act.

Representative Garcia moved to adopt the conference committee report on **HB 588**.

The motion prevailed.

HB 660 - RULES SUSPENDED

Representative Seaman moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **HB 660**.

The motion prevailed.

HB 660 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Seaman submitted the following conference committee report on **HB 660**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 660** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Van de Putte	Seaman
Staples	Keffer
Bivins	Luna
Shapiro	Yarbrough
	Zbranek
On the part of the Senate	On the part of the House

HB 660, A bill to be entitled An Act relating to career and technology education and training.

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

SECTION 1. Section 4.001(b), Education Code, is amended to read as follows:

(b) The objectives of public education are:

OBJECTIVE 1: Parents will be full partners with educators in the education of their children.

OBJECTIVE 2: Students will be encouraged and challenged to meet their full educational potential.

OBJECTIVE 3: Through enhanced dropout prevention efforts, all students will remain in school until they obtain a high school diploma.

OBJECTIVE 4: A well-balanced and appropriate curriculum will be provided to all students.

OBJECTIVE 5: Qualified and highly effective personnel will be recruited, developed, and retained.

OBJECTIVE 6: The state's students will demonstrate exemplary performance in comparison to national and international standards.

OBJECTIVE 7: School campuses will maintain a safe and disciplined environment conducive to student learning.

OBJECTIVE 8: Educators will keep abreast of the development of creative and innovative techniques in instruction and administration using those techniques as appropriate to improve student learning.

OBJECTIVE 9: Technology will be implemented and used to increase the effectiveness of student learning, instructional management, staff development, and administration.

OBJECTIVE 10: School districts will offer programs of study for broad career concentrations in areas of agriculture science technology, arts and communication, business education, family and consumer science, health occupations technology, trade and industry, and technology education that will prepare students for continued learning and postsecondary education in employment settings.

SECTION 2. Section 11.251(b), Education Code, is amended to read as follows:

(b) The board shall adopt a policy to establish a district- and campus-level planning and decision-making process that will involve the professional staff of the district, parents, and community members in establishing and reviewing the district's and campuses' educational plans, goals, performance objectives, and major classroom instructional programs. The board shall establish a procedure under which meetings are held regularly by district- and campus-level planning and decision-making committees that include representative professional staff, parents of students enrolled in the district, business and industry representatives, and community members. The committees shall include a business and industry representative [~~representatives,~~] without regard to whether the [~~a business~~] representative resides in the district or whether the business or industry the person represents is located in the district. The board, or the board's designee, shall periodically meet with the district-level committee to review the district-level committee's deliberations.

SECTION 3. Subchapter F, Chapter 29, Education Code, is amended by adding Section 29.1821 to read as follows:

Sec. 29.1821. CAREER AND TECHNOLOGY EDUCATION ADVISORY BOARD. (a) The Career and Technology Education Advisory Board consists of nine members appointed by the commissioner.

(b) The board must include:

(1) one representative from the agency;

(2) one representative from the Texas Workforce Commission;

(3) two members who represent the business and industry community;

(4) three members who represent educators, administrators, or parents; and

(5) two members who represent institutions of higher education.

(c) A member of the board serves at the pleasure of the commissioner.

(d) A member of the board may not:

(1) receive compensation for service on the board; or

(2) be reimbursed for travel expenses incurred while conducting the business of the board.

(e) The board shall:

(1) assist the agency in developing the state plan for career and technology education required under Section 29.182; and

(2) on request, assist school districts in developing career and technology programs under this subchapter.

SECTION 4. Subchapter F, Chapter 29, Education Code, is amended by adding Section 29.187 to read as follows:

Sec. 29.187. AWARD FOR DISTINGUISHED ACHIEVEMENT IN CAREER AND TECHNOLOGY EDUCATION; PROGRAM. (a) In addition to the authority granted under Section 29.183, the board of trustees of a school district may develop and offer a program under which a student may:

(1) receive specific education in a career and technology profession that:

(A) leads to postsecondary education; or

(B) meets or exceeds business or industry standards; and

(2) obtain from the district an award for distinguished achievement in career and technology education and a stamp or other notation on the student's transcript that indicates receipt of the award.

(b) An award granted under this section is not in lieu of a diploma or certificate of coursework completion issued under Section 28.025.

(c) In developing a program under this section, the board of trustees of a school district shall consider the state plan for career and technology education required under Section 29.182.

(d) The board of trustees of a school district may contract with an entity listed in Section 29.184(a) for assistance in developing the program or providing instruction to district students participating in the program.

(e) The board of trustees of a school district may also contract with a local business or a local institution of higher education for assistance in developing or operating a program under this section. A program may provide education in areas of technology unique to the local area.

(f) The board of trustees of a school district may provide insurance to protect a business that contracts with the district under Subsection (e) against liability for a bodily injury sustained by or the death of a district student while working for the business as part of a program established under this section. The amount of insurance the district provides must be reasonable considering the financial condition of the district. The insurance must be:

(1) obtained from a reliable insurer authorized to engage in business in the state; and

(2) submitted on a form approved by the commissioner of insurance.

(g) The board of trustees of a school district must submit a proposed

program under this section to the commissioner in accordance with criteria established by the commissioner.

SECTION 5. Subchapter F, Chapter 29, Education Code, is amended by adding Section 29.188 to read as follows:

Sec. 29.188. RECOGNITION OF SUCCESSFUL CAREER AND TECHNOLOGY EDUCATION PROGRAM. The governor is encouraged to present a proclamation or certificate to each member of the business and industry community that the Texas Workforce Commission, in cooperation with the agency, determines has successfully assisted in the provision of a career and technology education program under this subchapter.

SECTION 6. Section 61.077(b), Education Code, is amended to read as follows:

(b) The purposes of this committee shall include the following:

(1) to advise the two boards on the coordination of postsecondary career and technology education and the articulation between postsecondary career and technology education and secondary career and technology education;

(2) to facilitate the transfer of responsibilities for the administration of postsecondary career and technology education from the State Board of Education to the board in accordance with Section 111(a)(I) of the Carl D. Perkins Vocational Education Act, Public Law 98-524;

(3) to cooperate with [~~advise~~] the Career and Technology Education Advisory Board, the commissioner of higher education, and the State Board of Education, when it acts as the State Board for Career and Technology Education, on the following:

(A) the transfer of federal funds to the board for allotment to eligible public postsecondary institutions of higher education;

(B) the career and technology education funding for projects and institutions as determined by the board when the State Board for Career and Technology Education is required by federal law to endorse such determinations;

(C) the development and updating of the state plan for career and technology education and the evaluation of programs, services, and activities of postsecondary career and technology education and such amendments to the state plan for career and technology education as may relate to postsecondary education;

(D) other matters related to postsecondary career and technology education; and

(E) the coordination of curricula, instructional programs, research, and other functions as appropriate, including areas listed in Section 61.076 of this code, school-to-work and school-to-college transition programs, and professional development activities; and

(4) to advise the Council on Workforce and Economic Competitiveness on educational policy issues related to workforce preparation.

SECTION 7. Section 41.123, Education Code, is amended to read as follows:

Sec. 41.123. WADA COUNT. For purposes of Chapter 42, students served under an agreement under this subchapter are counted only in the weighted average daily attendance of the district providing the services, except

that students served under an agreement authorized by Section 41.125 are counted in a manner determined by the commissioner.

SECTION 8. Subchapter E, Chapter 41, Education Code, is amended by adding Section 41.125 to read as follows:

Sec. 41.125. CAREER AND TECHNOLOGY EDUCATION PROGRAMS. (a) The board of trustees of a school district with a wealth per student that exceeds the equalized wealth level may reduce the district's wealth per student by executing an agreement to provide students of one or more other districts with career and technology education through a program designated as an area program for career and technology education.

(b) The agreement is not effective unless the commissioner certifies that:

(1) implementation of the agreement will not result in any of the affected districts' wealth per student being greater than the equalized wealth level; and

(2) the agreement requires the district with a wealth per student that exceeds the equalized wealth level to make expenditures benefitting students from other districts in an amount at least equal to the amount that would be required for the district to purchase the number of attendance credits under Subchapter D necessary, in combination with any other actions taken under this chapter other than an action under this section, to reduce the district's wealth per student to a level that is equal to or less than the equalized wealth level.

(c) The board of trustees of the school district shall obtain voter approval of the agreement in the manner provided by Section 41.122, except that the ballot shall be printed to permit voting for or against the proposition: "Authorizing the board of trustees of _____ School District to provide career and technology education to students of other school districts with local tax revenues."

SECTION 9. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.0611 to read as follows:

Sec. 301.0611. COORDINATION OF CERTAIN AWARDS AND INCENTIVES. The commission, in cooperation with the Texas Education Agency, the comptroller, and the Texas Higher Education Coordinating Board, shall prepare and make available to the public a list of all awards and incentives available for business participation in:

(1) a school district's career and technology education program under Subchapter F, Chapter 29, Education Code; or

(2) any other career and technology education training.

SECTION 10. Section 481.156(a), Government Code, is amended to read as follows:

(a) The following may apply for a grant under this subchapter:

(1) one or more employers to secure training;

(2) one or more employers acting in partnership with an employer organization, labor organization, or community-based organization to secure training; [~~or~~]

(3) one or more employers acting in partnership with a consortium composed of more than one provider to secure training; or

(4) a provider, to the extent consistent with Section 481.155.

SECTION 11. This Act takes effect September 1, 2001, except that Sections 1, 2, and 4 take effect immediately and apply beginning with the

2001-2002 school year if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections 1, 2, and 4 take effect September 1, 2001.

Representative Seaman moved to adopt the conference committee report on **HB 660**.

A record vote was requested.

The motion prevailed by (Record 643): 139 Yeas, 2 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Green; Grusendorf; Gutierrez; Hamric; Hardcastle; Hartnett; Hawley; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Seaman; Shields; Solis; Solomons; Swinford; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nays — Heflin; Talton.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Farrar; Gray; Haggerty; Smith; Smithee.

HR 1386 - ADOPTED
(by Brimer)

The following privileged resolution was laid before the house:

HR 1386

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 1203**, relating to the purchase of certain insurance and surety coverage by state agencies and to workers' compensation insurance benefits provided by certain state agencies, to consider and take action on the following matters:

(1) House Rule 13, Sections 9(a)(1) and (3), are suspended to permit the committee to add text changing Section 412.042, Labor Code, as amended by SECTION 1.06, **HB 1203**, by adding Subsection (c) to read as follows:

(c) On an annual basis, not later than September 30 of each year, agencies exempt under Section 412.052 of this article shall provide a written report to the Legislative Budget Board identifying policies purchased under any line of insurance other than life or health insurance. The report should include a description of the policy, coverage limits, deductibles, and losses incurred under that coverage.

Explanation: This change is necessary to ensure that the legislature has sufficient information concerning insurance policies purchased by state agencies.

HR 1386 was adopted without objection.

HB 1203 - RULES SUSPENDED

Representative Brimer moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **HB 1203**.

The motion prevailed without objection.

HB 1203 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Brimer submitted the following conference committee report on **HB 1203**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1203** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser	Brimer
Shapiro	J. Davis
Brown	Giddings
Armbrister	Elkins
Madla	
On the part of the Senate	On the part of the House

HB 1203, A bill to be entitled An Act relating to the purchase of certain insurance coverage by state agencies and to workers' compensation insurance benefits provided by certain state agencies.

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

ARTICLE 1. PURCHASE OF INSURANCE COVERAGE

SECTION 1.01. Subchapter B, Chapter 412, Labor Code, is amended by amending Section 412.011 and adding Section 412.0111 to read as follows:

Sec. 412.011. POWERS AND DUTIES OF OFFICE. (a) The State Office of Risk Management shall [~~is created to~~] administer insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs.

(b) The office shall:

(1) operate as a full-service risk manager and insurance manager for state agencies as provided by Subsection (c);

(2) maintain and review records of property, casualty, or liability insurance coverages purchased by or for a state agency;

(3) administer the program for the purchase of surety bonds for state officers and employees as provided by Chapter 653, Government Code;

(4) administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses;

(5) [~~(2)~~] review, verify, monitor, and approve risk management programs adopted by state agencies;

(6) [~~(3)~~] assist a state agency that has not implemented an effective risk management program to implement a comprehensive program that meets the guidelines established by the board; and

(7) [~~(4)~~] administer the workers' compensation insurance program for state employees established under Chapter 501.

(c) The office shall:

(1) perform risk management for each state agency subject to Chapter 412; and

(2) purchase insurance coverage for a state agency subject to Chapter 501, except for an institution subject to Section 501.022, under any line of insurance other than health or life insurance, including liability insurance authorized under Chapter 612, Government Code.

(d) The board by rule shall develop an implementation schedule for the purchase under this section of insurance for state agencies by the office. The board shall phase in, by line of insurance, the requirement that a state agency purchase coverage only through the office.

(e) A state agency subject to Chapter 501, except for an institution subject to Section 501.022, may not purchase property, casualty, or liability insurance coverage without the approval of the board.

Sec. 412.0111. AFFILIATION WITH OFFICE OF ATTORNEY GENERAL. The office is administratively attached to the office of the attorney general and the office of the attorney general shall provide the facilities for the office, but the office shall be independent of the office of the attorney general's direction.

SECTION 1.02. Subchapter B, Chapter 412, Labor Code, is amended by amending Section 412.012 and adding Sections 412.0121, 412.0122, and 412.0123 to read as follows:

Sec. 412.012. FUNDING. [~~(a)~~] The office shall be administered through money appropriated by the legislature and through:

(1) interagency contracts for purchase of insurance coverage and the operation of the risk management program; and

(2) the allocation program for the financing of state workers' compensation benefits.

Sec. 412.0121. INTERAGENCY CONTRACTS. (a) [~~(b) Interagency Contracts. (1)~~] Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

(b) Costs payable under the contract include the cost of:

(1) [~~(A)~~] services of office employees;

(2) [~~(B)~~] materials; and

(3) [~~(C)~~] equipment, including computer hardware and software.

(c) [~~(2)~~] The amount of the costs to be paid by a state agency under the interagency contract is based on:

(1) [~~(A)~~] the number of employees of the agency compared with the total number of employees of all state agencies to which this chapter applies;

(2) [~~(B)~~] the dollar value of the agency's property and asset and liability exposure compared to that of all state agencies to which this chapter applies; and

(3) [~~(C)~~] the number and aggregate cost of claims and losses incurred by the state agency compared to those incurred by all state agencies to which this chapter applies.

(d) The board may by rule establish the formula for allocating the cost of this chapter in an interagency contract in a manner that gives consideration to the factors in Subsection (c) and any other factors it deems relevant, including an agency's risk management expenditures, unique risks, and established programs.

Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION. (a) [~~(c)~~] The state is self-insuring with respect to an employee's compensable injury.

(b) The legislature shall appropriate the amount designated by the appropriation structure for the payment of state workers' compensation claims costs to the office. This section does not affect the reimbursement of claims costs by funds other than general revenue funds, as provided by the General Appropriations Act.

Sec. 412.0123. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES. (a) [~~(d) State Workers' Compensation Account. (1)~~] All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

(b) [~~(2)~~] Funds deposited under this section may be used for the payment of workers' compensation [~~and other~~] benefits to state employees.

SECTION 1.03. Section 412.021(a), Labor Code, is amended to read as follows:

(a) The office is governed by the risk management board. Members of the board must have demonstrated experience in the fields [~~field~~] of:

(1) insurance and insurance regulation;

(2) workers' compensation; and

(3) risk management administration.

SECTION 1.04. Section 412.022(b), Labor Code, is amended to read as follows:

(b) A training program established under this section must provide information to the member regarding:

(1) the enabling legislation that created the board;

(2) the program operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information [~~open records~~] law, Chapter 552, Government Code; and

(C) the administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

SECTION 1.05. Section 412.041, Labor Code, is amended to read as follows:

Sec. 412.041. DIRECTOR DUTIES[~~; RESPONSIBILITIES~~]. (a) The director serves as the state risk manager.

(b) The director shall supervise the development and administration of systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses, including workers' compensation; and

(4) reduce the property and liability losses, including workers' compensation, incurred by each state agency.

(c) In addition to other duties provided by this chapter, by Chapter 501, and by the board, the director shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501;

(4) hire staff as necessary to accomplish the objectives of the board and may delegate powers and duties to members of that staff as necessary;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant; and

(7) handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(d) If necessary to the administration of this chapter and Chapter 501, the director, with the approval of the board, may secure and provide for services that are necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(e) The director also serves as the administrator of the government employees workers' compensation insurance program.

(f) In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury before September 1, 1995, the director shall act in the capacity of employer and insurer. In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury on or after September 1, 1995, the director shall act in the capacity of insurer. [~~(effective for dates of injury before September 1, 1995.)~~]

(g) [~~(1)~~] The director shall act as an adversary before the commission and courts and present the legal defenses and positions of the state as an employer and insurer, as appropriate.

(h) [~~(2)~~] For the purposes of Subsection (f) [~~this subsection~~] and Chapter 501, the director is entitled to the legal counsel of the attorney general.

(i) In administering Chapter 501 the [~~(3) The~~] director is subject to the rules, orders, and decisions of the commission in the same manner as a private employer, insurer, or association.

(j) [~~(g) In administering and enforcing Chapter 501, the director shall act in the capacity of insurer. (effective for dates of injury on or after September 1, 1995.)~~

[~~(1) The director shall act as an adversary before the commission and courts and present the legal defenses and positions of the state as an insurer.~~

[~~(2) For purposes of this subsection and Chapter 501, the director is entitled to legal counsel of the attorney general.~~

[~~(3) The director is subject to the rules, orders, and decisions of the commission in the same manner as an insurer or association.~~

[~~(h)~~] The director shall:

(1) prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501 [~~(effective for dates of injury before September 1, 1995)~~]; and

(2) prepare for adoption by the board and enforce reasonable rules for the prevention of accidents and injuries[~~;~~

[~~(3) prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501~~]. [~~(effective for dates of injury on or after September 1, 1995.)~~]

(k) [~~(i)~~] The director shall hold hearings on all proposed rules and provide reasonable opportunity for the officers of state agencies to testify at hearings on all proposed rules under this chapter and Chapter 501.

(l) [~~(j)~~] The director shall furnish copies of all rules to:

(1) the commission;

(2) the commissioner of the Texas Department of Insurance; and

(3) [~~to~~] the administrative heads of all state agencies affected by this chapter and Chapter 501.

SECTION 1.06. Sections 412.042(a) and (b), Labor Code, are amended to read as follows:

(a) The director shall report to the legislature at the beginning of each regular session regarding the services provided by the office to a state agency subject to Chapter 501.

[~~(b)~~] The report required under this subsection [~~section~~] shall be dated January 1 of the year in which the regular session is held and must include:

(1) a summary of administrative expenses;

(2) a statement:

(A) showing the amount of the money appropriated by the preceding legislature that remains unexpended on the date of the report; and

(B) estimating the amount of that balance necessary to administer Chapter 501 for the remainder of that fiscal year; and

(3) [~~(C)~~] an estimate, based on experience factors, of the amount of money that will be required to administer Chapter 501 and pay for the compensation and services provided under Chapter 501 during the next succeeding biennium.

(b) In addition to the report required under Subsection (a), the director shall report to the legislature not later than February 1 of each odd-numbered year regarding insurance coverage purchased for state agencies, premium dollars spent to obtain that coverage, and losses incurred under that coverage.

(c) On an annual basis, not later than September 30 of each year, agencies exempt under Section 412.052 of this article shall provide a written report to the Legislative Budget Board identifying policies purchased under any line of insurance other than life or health insurance. The report should include a description of the policy, name of the insurance company, annual premium, coverage limits, deductibles, and losses incurred under that coverage.

SECTION 1.07. Section 412.051, Labor Code, is amended to read as follows:

Sec. 412.051. DUTIES OF STATE AGENCIES; INSURANCE REPORTING REQUIREMENTS. (a) Each state agency [~~subject to this chapter~~] shall actively manage the risks of that agency by:

(1) developing, implementing, and maintaining programs designed to assist employees who sustain compensable injuries to return to work; and

(2) cooperating with the office and the Texas Department of Insurance in the purchase of property, casualty, and liability lines of insurance coverage.

(b) In addition to the report required under Section 412.053, each state agency that intends to purchase property, casualty, or liability insurance coverage in a manner other than through the services provided by the office shall report the intended purchase to the office in the manner prescribed by the office. The state agency shall report the intended purchase not later than the 30th day before the date on which the purchase of the coverage is scheduled to occur. The office may require a state agency to submit copies of insurance forms, policies, and other relevant information.

SECTION 1.08. Section 412.053(b), Labor Code, is amended to read as follows:

(b) The information shall be reported not later than the 60th day before the last day [~~on or before 60 days after the close~~] of each fiscal year.

SECTION 1.09. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-15A to read as follows:

Art. 21.49-15A. INSURER REPORT TO STATE OFFICE OF RISK MANAGEMENT

Sec. 1. DEFINITIONS. In this article:

(1) "Insurer" means an insurance company, inter-insurance exchange, mutual or reciprocal association, county mutual insurance company, Lloyd's

plan, or other entity that is authorized by the Texas Department of Insurance to engage in the business of insurance in this state.

(2) "Office" means the State Office of Risk Management.

(3) "State agency" has the meaning assigned by Section 412.001, Labor Code.

Sec. 2. REPORTING REQUIREMENTS. (a) Each insurer that enters into an insurance policy or other contract or agreement with a state agency for the purchase of property, casualty, or liability insurance coverage by the state agency, including a policy, contract, or agreement subject to competitive bidding requirements, shall report the intended sale to the office in the manner prescribed by that office.

(b) The insurer shall report the intended sale not later than the 30th day before the date the sale of the insurance coverage is scheduled to occur.

(c) The office may require an insurer to submit copies of insurance forms, policies, and other relevant information.

(d) The office shall adopt rules as necessary to implement this article. In adopting those rules, the office shall consult with the commissioner.

(e) Failure by an insurer to comply with the reporting requirements adopted under this article constitutes grounds for the imposition of sanctions against that insurer under Chapter 82.

SECTION 1.10. Section 653.002, Government Code, is amended to read as follows:

Sec. 653.002. LEGISLATIVE INTENT. The intent of the legislature in enacting this chapter is to limit the purchase of surety bonds by state agencies in order that the state, to the greatest extent practicable, shall self-insure for such purposes. This chapter does not affect the purchase by a state agency of any form of insurance other than a surety bond [~~prescribe:~~

[~~(1) uniform standards for the bonding of officers and employees of state agencies to provide protection against loss; and~~

[~~(2) a uniform bond to cover those officers and employees~~].

SECTION 1.11. Section 653.003, Government Code, is amended to read as follows:

Sec. 653.003. DEFINITIONS. In this chapter:

(1) "Surety bond [~~Bond~~]" means any bond, including a bond for a notary public under Section 406.010, that obligates [~~an agreement obligating an insurance company, as~~] a surety[~~,~~] to pay within certain limits a loss caused by a:

(A) dishonest act of an officer or employee of a state agency; or

(B) failure of an officer or employee of a state agency to faithfully perform a duty of the officer's or employee's office or position.

(2) "Office" means the State Office of Risk Management [~~"Faithful performance blanket position bond" means a bond that:~~

[~~(A) covers all positions in a state agency; and~~

[~~(B) is conditioned on the faithful performance of the officers' and employees' duties~~].

(3) [~~"Honesty blanket position bond" means a bond that covers all positions in a state agency for a specific amount for each position.~~

[~~(4) "Position schedule honesty bond" means a bond that covers, for a specific amount for each position, the honesty of an employee of a state agency who occupies and performs the duties of a position listed in a schedule attached to the bond.~~

[~~(5) "Specific excess indemnity" means additional bond coverage that exceeds the coverage specified in a faithful performance blanket position bond, honesty blanket position bond, or position schedule honesty bond.~~

[~~(6)~~] "State agency" means a state department, commission, board, institution, court, or institution of higher education. The term also includes a soil conservation district of the state but does not include any other political subdivision of the state.

SECTION 1.12. Section 653.004, Government Code, is amended to read as follows:

Sec. 653.004. AUTHORITY TO PURCHASE BONDS. (a) Notwithstanding any other law that authorizes or requires a state officer or employee to obtain a surety bond, [~~The head of~~] a state agency may purchase a surety bond for a state officer or employee only if [~~contract for~~]:

(1) required by the constitution of the state or by federal law or regulation [~~a position schedule honesty bond covering not more than 10 offices or positions of the state agency~~]; [~~or~~]

(2) required by court order; or

(3) approved by the office [~~a blanket position bond for more than two offices or positions of the state agency~~].

(b) The office may approve the purchase of a surety bond if:

(1) the office finds that the surety bond is warranted by a substantial or unusual risk of loss; or

(2) the office otherwise determines that the purchase of a surety bond is necessary to protect the interests of the state [~~head of a state agency may not contract for coverage of the same office or position under more than one type of bond, other than for specific excess indemnity authorized under Subsection (c)~~].

[~~(c) The head of a state agency, other than the comptroller, may contract for specific excess indemnity coverage in addition to a blanket bond. The comptroller may contract for:~~

[~~(1) specific excess indemnity coverage in addition to an honesty blanket position bond or to a position schedule honesty bond; and~~

[~~(2) a faithful performance blanket position bond.~~

[~~(d) A bond covers the office or position rather than the officer or employee in the office or position.~~]

SECTION 1.13. Section 653.005, Government Code, is amended to read as follows:

Sec. 653.005. SCOPE AND AMOUNT OF BOND COVERAGE. Unless the amount of bond coverage is established as provided by Subsections (a)(1) and (a)(2) of Section 653.004, the office [~~(a) The head of a state agency~~] shall determine the necessary scope and amount of bond coverage for a state [~~the~~] agency [~~within the maximum bond coverage limit~~].

[~~(b) The maximum bond coverage on a state officer or employee, including specific excess indemnity coverage, may not exceed $10,000 unless~~

~~the state auditor recommends and approves specific excess indemnity coverage of more than $10,000 as necessary to protect the state.~~]

SECTION 1.14. Chapter 653, Government Code, is amended by adding Section 653.012 to read as follows:

Sec. 653.012. QUALIFICATION FOR OFFICE OR EMPLOYMENT. Notwithstanding any other law that requires a state officer or employee to obtain a surety bond, a state officer or employee otherwise qualified to hold office, employment, or to serve as a notary public shall not be disqualified because a surety bond has not been obtained for such officer or employee.

SECTION 1.15. A person serving as a member of the risk management board on the effective date of this Act is entitled to serve until the expiration of the term for which the member was appointed. On the expiration of that term, the governor shall appoint a member who meets the qualifications established by Section 412.021, Labor Code, as amended by this Act.

ARTICLE 2. EFFECT OF USE OF LEAVE ON INCOME BENEFITS

SECTION 2.01. Subchapter C, Chapter 505, Labor Code, is amended by adding Section 505.060 to read as follows:

Sec. 505.060. EFFECT OF SICK LEAVE; ANNUAL LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. (a) Except as provided by Subsections (b), (c), and (d) of this section, this Act takes effect September 1, 2002.

(b) Not later than December 1, 2002, the risk management board shall adopt rules to implement:

(1) the changes in law made by the amendments made by this Act to Chapter 412, Labor Code; and

(2) Article 21.49-15A, Insurance Code, as added by this Act.

(c) An insurer is not required to comply with the reporting requirements adopted under Article 21.49-15A, Insurance Code, as added by this Act, until January 1, 2002. Article 21.49-15A, Insurance Code, as added by this Act, applies only to an insurance policy, contract, or agreement delivered, issued for delivery, or renewed on or after January 1, 2002. A policy, contract, or agreement delivered, issued for delivery, or renewed before January 1, 2002, 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.

(d) Section 505.060, Labor Code, as added by this Act, applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

(e) The changes made by this Act to Chapter 653, Government Code, shall not apply to payments made under an agreement to purchase a surety bond entered into by a state agency before the effective date of this Act.

Representative Brimer moved to adopt the conference committee report on **HB 1203**.

The motion prevailed.

HR 1380 - ADOPTED
(by Wilson)

The following privileged resolution was laid before the house:

HR 1380

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 2061**, relating to establishing a historical representation advisory committee, 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 Section 442.0087, Government Code, to read as follows:

Sec. 442.0087. EQUITABLE REPRESENTATION IN MONUMENTS. (a) In this section, "monument" has the meaning assigned by Section 443.015, as added by Chapter 1141, Acts of the 75th Legislature, Regular Session, 1997.

(b) To ensure that the diverse history of Texas is accurately represented on land owned by the state other than the Capitol Complex, the Texas Historical Commission shall:

(1) collect information relating to each monument on land owned by the state other than the Capitol Complex; and

(2) in cooperation with the chair of the history department at Prairie View A&M University, at The University of Texas at Austin, or at any other land grant university in the state, as determined by the commission, ensure the:

(A) historical accuracy of the monuments; and

(B) equitable representation of all Texans, including African slaves, African Americans, Hispanic Americans, Native Americans, women in Texas history, and Texans exemplifying military service and rural heritage in monuments on land owned by the state other than the Capitol Complex.

(c) The commission shall make the information collected under this section available to the public.

Explanation: The added text is necessary to require the Texas Historical Commission to ensure that an equitable representation of all Texans is reflected in the monuments on state property other than the capitol complex and to ensure that certain information about the monuments is available to the public.

HR 1380 was adopted without objection.

HB 2061 - RULES SUSPENDED

Representative Wilson moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **HB 2061**.

The motion prevailed.

HB 2061 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wilson submitted the following conference committee report on **HB 2061**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2061** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Cain	Wilson
Zaffirini	Olivo
Ogden	Giddings
Brown	Luna
West	Goolsby
On the part of the Senate	On the part of the House

HB 2061, A bill to be entitled An Act relating to establishing a historical representation advisory committee and ensuring equitable representation in monuments on state property.

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

SECTION 1. Chapter 442, Government Code, is amended by adding Section 442.0087 to read as follows:

Sec. 442.0087. EQUITABLE REPRESENTATION IN MONUMENTS. (a) In this section, "monument" has the meaning assigned by Section 443.015, as added by Chapter 1141, Acts of the 75th Legislature, Regular Session, 1997.

(b) To ensure that the diverse history of Texas is accurately represented on land owned by the state other than the Capitol Complex, the Texas Historical Commission shall:

(1) collect information relating to each monument on land owned by the state other than the Capitol Complex; and

(2) in cooperation with the chair of the history department at Prairie View A&M University, at The University of Texas at Austin, or at any other land grant university in the state, as determined by the commission, ensure the:

(A) historical accuracy of the monuments; and

(B) equitable representation of all Texans, including African slaves, African Americans, Hispanic Americans, Native Americans, women in Texas history, and Texans exemplifying military service and rural heritage in monuments on land owned by the state other than the Capitol Complex.

(c) The commission shall make the information collected under this section available to the public.

SECTION 2. Chapter 443, Government Code, is amended by adding Section 443.0081 to read as follows:

Sec. 443.0081. HISTORICAL REPRESENTATION ADVISORY COMMITTEE. (a) To ensure that the diverse history of Texas is accurately represented in the Capitol Complex, the historical representation advisory committee shall provide guidance to the board on the addition of monuments to the Capitol Complex.

(b) The advisory committee consists of the following 12 members:

(1) four members appointed by the governor;

(2) four members appointed by the lieutenant governor; and

(3) four members appointed by the speaker of the house of representatives.

(c) In making appointments under this section, the governor, the lieutenant governor, and the speaker of the house of representatives shall attempt to include African American Texans, Hispanic American Texans, Native American Texans, female Texans, and Texans exemplifying rural heritage.

(d) The governor shall designate the presiding officer of the committee from among the members of the committee. The presiding officer serves a term of two years.

(e) A member of the advisory committee serves at the pleasure of the appointing officer and serves without compensation or reimbursement of expenses.

(f) The advisory committee shall conduct meetings the committee considers necessary to provide guidance under this section. The board shall provide necessary administrative support to the advisory committee.

(g) Subject to the approval of the board, the advisory committee shall develop its own bylaws under which it shall operate.

(h) Chapter 2110 does not apply to the advisory committee.

(i) The advisory committee is subject to the open meetings law, Chapter 551.

(j) The advisory committee is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory committee is abolished September 1, 2007.

(k) The advisory committee shall:

(1) collect information relating to each proposed monument to the Capitol Complex; and

(2) in cooperation with the chair of the history department at Prairie View A&M University, at The University of Texas at Austin, or at any other land grant university in the state, as determined by the committee, ensure the:

(A) historical accuracy of any proposed monument; and

(B) equitable representation of all Texans, including African slaves, African Americans, Hispanic Americans, Native Americans, women in Texas history, and Texans exemplifying military service and rural heritage in additional monuments to the Capitol Complex.

(l) In this section, "monument" has the meaning assigned by Section 443.015, as added by Chapter 1141, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 3. Not later than January 1, 2002, the governor, the lieutenant governor, and the speaker of the house of representatives shall make appointments to the historical representation advisory committee under Section 443.0081, Government Code, as added by this Act.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Representative Wilson moved to adopt the conference committee report on **HB 2061**.

The motion prevailed.

HR 1344 - ADOPTED
(by G. Lewis)

The following privileged resolution was laid before the house:

HR 1344

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 **HB 2932**, relating to a discount on the premium surcharge for a motor vehicle equipped with a breath alcohol detection device, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add new sections to the bill amending Section 13(i), Article 42.12, Code of Criminal Procedure, and providing an appropriate transition to read as follows:

SECTION 1. Section 13(i), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(i) If a person convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, the court may require as a condition of community supervision that the defendant have a device installed, on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator and that the defendant not operate any motor vehicle that is not equipped with that device. If the person is convicted of an offense under Sections 49.04-49.06, Penal Code, and punished under Section 49.09(a) or (b), Penal Code, or of a second or subsequent offense under Section 49.07 or 49.08, Penal Code, and the person after conviction of either offense is placed on community supervision, the court shall require as a condition of community supervision that the defendant have the device installed on the appropriate vehicle and that the defendant not operate any motor vehicle unless the vehicle is equipped with that device. Before placing on community supervision a person convicted of an offense under Sections 49.04-49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the person has one or more previous convictions under Sections 49.04-49.08, Penal Code, or has one previous conviction under Sections 49.04-49.07, Penal Code, or one previous conviction under Section 49.08, Penal Code. If the court determines that the person has one or more such previous convictions, the court shall require as a condition of community supervision that the defendant have that device installed on the

motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with the device described in this subsection. The court shall require the defendant to obtain the device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate vehicle and order the device to remain installed on that vehicle until the expiration [~~for a period not less than 50 percent~~] of the supervision period or until a separate written order issued by the court authorizes removal. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. A person may not remove a device installed in a defendant's vehicle under this subsection unless the person holds a written order authorizing the removal issued by the court that ordered the device to be installed. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this subsection if:

(1) the previous conviction was a final conviction under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted and placed on community supervision; and

(2) the person has not been convicted of an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08 of that code, committed within 10 years before the date on which the instant offense for which the person was convicted and placed on community supervision.

SECTION 3. (a) The change in law made by this Act to Section 13(i), Article 42.12, Code of Criminal Procedure, applies only to an offense committed on or after September 1, 2001.

(b) An offense committed before September 1, 2001, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2001, if any element of the offense was committed before that date.

Explanation: This change provides that when a court orders an interlock ignition device to be installed on a vehicle, the device may not be removed unless the removal is authorized by a court order.

HR 1344 was adopted without objection.

HB 2932 - RULES SUSPENDED

Representative G. Lewis moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **HB 2932**.

The motion prevailed.

HB 2932 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative G. Lewis submitted the following conference committee report on **HB 2932**:

Austin, Texas, May 26, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2932** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Carona	G. Lewis
Sibley	Hinojosa
Moncrief	Hill
	Seaman
On the part of the Senate	On the part of the House

HB 2932, A bill to be entitled An Act relating to a discount on the premium surcharge for a motor vehicle equipped with a breath alcohol detection device and to the period that such a device must remain on a vehicle after certain convictions.

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

SECTION 1. Section 13(i), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(i) If a person convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, the court may require as a condition of community supervision that the defendant have a device installed, on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator and that the defendant not operate any motor vehicle that is not equipped with that device. If the person is convicted of an offense under Sections 49.04-49.06, Penal Code, and punished under Section 49.09(a) or (b), Penal Code, or of a second or subsequent offense under Section 49.07 or 49.08, Penal Code, and the person after conviction of either offense is placed on community supervision, the court shall require as a condition of community supervision that the defendant have the device installed on the appropriate

vehicle and that the defendant not operate any motor vehicle unless the vehicle is equipped with that device. Before placing on community supervision a person convicted of an offense under Sections 49.04-49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the person has one or more previous convictions under Sections 49.04-49.08, Penal Code, or has one previous conviction under Sections 49.04-49.07, Penal Code, or one previous conviction under Section 49.08, Penal Code. If the court determines that the person has one or more such previous convictions, the court shall require as a condition of community supervision that the defendant have that device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with the device described in this subsection. The court shall require the defendant to obtain the device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate vehicle and order the device to remain installed on that vehicle until the expiration [~~for a period not less than 50 percent~~] of the supervision period or until a separate written order issued by the court authorizes removal. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. A person may not remove a device installed in a defendant's vehicle under this subsection unless the person holds a written order authorizing the removal issued by the court that ordered the device to be installed. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this subsection if:

(1) the previous conviction was a final conviction under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted and placed on community supervision; and

(2) the person has not been convicted of an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08 of that code, committed within 10 years before the date on which the instant offense for which the person was convicted and placed on community supervision.

SECTION 2. Article 5.03-1, Insurance Code, is amended to read as follows:

Art. 5.03-1. PREMIUM SURCHARGE

Sec. 1. SURCHARGE AUTHORIZED. A premium surcharge in an amount to be prescribed by the commissioner [~~State Board of Insurance~~] shall be assessed by an insurer described by [~~defined in~~] Article 5.01 of this code[~~, Texas Insurance Code,~~] against an insured for no more than three years immediately following the date of conviction of the insured of an offense committed while operating a motor vehicle under Section 49.04 or 49.07, Penal Code, or an offense under Section 49.08, Penal Code. The premium surcharge shall be applied only to private passenger automobile policies as defined by the commissioner [~~State Board of Insurance~~].

Sec. 2. SUBSEQUENT CONVICTION. If an insured assessed a premium surcharge as a result of a conviction of an offense described by [~~as set out in~~] Section 1 of this article is subsequently convicted of [~~a violation of~~] one of those offenses [~~statutes~~] during the period the insured [~~he~~] is assessed the premium surcharge, the period for which the premium surcharge shall be imposed is increased by three additional consecutive years for each conviction.

Sec. 3. SURCHARGE REDUCTION AUTHORIZED. (a) In this section, "motor vehicle ignition interlock device" means a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator of the vehicle.

(b) An insurer may reduce the premium surcharge prescribed under this article by up to 50 percent for an insured whose insured motor vehicle is equipped with a motor vehicle ignition interlock device only if not required by a court order following the insured's conviction of an offense described by Section 1 of this article. The insured is entitled to a discount under this section only for the period that the vehicle is equipped with the device.

(c) An insurer may endorse a policy to restrict coverage under the policy to the motor vehicle that is equipped with a motor vehicle ignition interlock device.

SECTION 3. (a) The change in law made by this Act to Section 13(i), Article 42.12, Code of Criminal Procedure, applies only to an offense committed on or after September 1, 2001.

(b) An offense committed before September 1, 2001, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2001, if any element of the offense was committed before that date.

SECTION 4. This Act takes effect September 1, 2001.

Representative G. Lewis moved to adopt the conference committee report on **HB 2932**.

The motion prevailed.

SB 8 - RULES SUSPENDED

Representative Farabee moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 8**.

The motion prevailed.

SB 8 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Farabee submitted the conference committee report on **SB 8**.

Representative Farabee moved to adopt the conference committee report on **SB 8**.

The motion prevailed.

SB 189 - RULES SUSPENDED

Representative Dutton moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 189**.

The motion prevailed.

SB 189 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dutton submitted the conference committee report on **SB 189**.

Representative Dutton moved to adopt the conference committee report on **SB 189**.

A record vote was requested.

The motion prevailed by (Record 644): 139 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Seaman; Shields; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley; Yarbrough.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Farrar; Goodman; Heflin; Oliveira; Smith; Wolens; Zbranek.

HR 1378 - ADOPTED
(by Dutton)

The following privileged resolution was laid before the house:

HR 1378

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 507**, relating to residential subdivisions that require membership in a property owners' association.

(1) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text that is not in disagreement by substituting "six months" for "12 months" in added Section 209.006(b)(2)(A), Property Code, to read as follows:

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; and

(2) inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; and

(B) may request a hearing under Section 209.007 on or before the 30th day after the date the owner receives the notice.

Explanation: The changed text is necessary to more adequately protect the rights of property owners.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend proposed Section 209.011(a), Property Code, to change text that is not in disagreement to read as follows:

(a) A property owners' association or other person who purchases occupied property at a sale foreclosing a property owners' association's assessment lien must commence and prosecute a forcible entry and detainer action under Chapter 24 to recover possession of the property.

Explanation: The changed text is necessary to clarify that a person who purchases property at a sale foreclosing a property owners' assessment lien is only required to commence a forcible entry and detainer action if the property purchased is occupied at the time of the purchase.

HR 1378 was adopted.

SB 507 - MOTION TO SUSPEND RULES

Representative Dutton moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 507**.

The motion was lost by (Record 645): 80 Yeas, 61 Nays, 1 Present, not voting.

Yeas — Alexander; Averitt; Bosse; Brimer; Burnam; Capelo; Carter; Chavez; Chisum; Coleman; Cook; Counts; Crabb; Crownover; Danburg; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Ellis; Farabee; Flores; Gallego; Garcia; Giddings; Glaze; Goolsby; Gray; Gutierrez; Haggerty; Hinojosa; Hochberg; Hodge; Homer; Hopson; Jones, J.; Junell;

King, T.; Kitchen; Lewis, G.; Lewis, R.; Longoria; Maxey; McClendon; McReynolds; Merritt; Moreno, J.; Moreno, P.; Naishtat; Najera; Noriega; Oliveira; Olivo; Pickett; Puente; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Smith; Solis; Solomons; Swinford; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; Wilson; Wise; Zbranek.

Nays — Allen; Bailey; Berman; Bonnen; Brown, B.; Brown, F.; Callegari; Christian; Clark; Corte; Craddick; Davis, J.; Delisi; Denny; Driver; Eiland; George; Geren; Green; Grusendorf; Hamric; Hardcastle; Hartnett; Heflin; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Keel; Keffer; King, P.; Kolkhorst; Krusee; Kuempel; Luna; Madden; Marchant; Martinez Fischer; McCall; Menendez; Morrison; Mowery; Nixon; Pitts; Ramsay; Reyna, E.; Seaman; Smithee; Talton; West; Williams; Wohlgemuth; Wolens; Woolley; Yarbrough.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Elkins; Farrar; Goodman; Hawley; Shields.

SB 515 - RULES SUSPENDED

Representative Truitt moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 515**.

The motion prevailed.

SB 515 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Truitt submitted the conference committee report on **SB 515**.

Representative Truitt moved to adopt the conference committee report on **SB 515**.

The motion prevailed.

SB 527 - RULES SUSPENDED

Representative Naishtat moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 527**.

The motion prevailed.

SB 527 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Naishtat submitted the conference committee report on **SB 527**.

Representative Williams raised a point of order against further consideration of **SB 527** under Rule 13, Section 7 of the House Rules on the grounds that not every member of the conference committee was provided with a copy of the conference committee report, resulting in the conference committee report being adopted in private.

The point of order was withdrawn.

Representative Williams raised a point of order against further consideration of **SB 527** under Rule 13, Section 10(c) of the House Rules on the grounds that a fiscal note on the conference committee report had not been provided to the members.

The speaker overruled the point of order.

Representative Naishtat moved to adopt the conference committee report on **SB 527**.

The motion prevailed.

SB 527 - STATEMENT BY REPRESENTATIVE WILLIAMS

The purpose of this statement is to correct the record regarding the Williams amendment which was removed in conference committee.

Representative Naishtat made the statement that this amendment only affected one facility. The amendment clearly affected a class of nonprofit, private pay facilities dealing with mentally retarded adults. In several conversations with Representative Naishtat I was informed that at least four facilities would be exempted by the amendment.

Williams

SB 730 - RULES SUSPENDED

Representative Thompson moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 730**.

The motion prevailed without objection.

SB 730 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Thompson submitted the conference committee report on **SB 730**.

Representative Thompson moved to adopt the conference committee report on **SB 730**.

The motion prevailed.

HR 1353 - ADOPTED
(by Gallego)

The following privileged resolution was laid before the house:

HR 1353

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 886**, relating to motor vehicle size and weight limitations; providing penalties, to consider and take action on the following matter:

House Rule 13, Section (9)(a)(4), is suspended to permit the committee to add the following new sections to the bill:

SECTION ___. Section 521.242, Transportation Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) A person may apply for an occupational license by filing a verified petition only with the clerk of the county court or district court in which the person was convicted if:

(1) the person's license has been automatically suspended or canceled under this chapter [~~or Chapter 522~~] for a conviction of an offense under the laws of this state; and

(2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.

(f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

SECTION ___. Subdivisions (12), (23), and (25), Section 522.003, Transportation Code, are amended to read as follows:

(12) "Driver's license" has the meaning assigned by Section 521.001 [~~means a license issued by a state to an individual that authorizes the individual to drive a motor vehicle~~].

(23) "Out-of-service order" means:

(A) a temporary prohibition against driving a commercial motor vehicle issued under Section 522.101, the law of another state, or 49 C.F.R. Section 383.5; or

(B) a declaration by the Federal Motor Carrier Safety Administration [~~highway administration~~] or an authorized enforcement officer of a state or local jurisdiction that a driver, commercial motor vehicle, or motor carrier operation is out of service under 49 C.F.R. Section 383.5.

(25) "Serious traffic violation" means a conviction arising from the driving of a commercial motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, for:

(A) excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;

(B) reckless driving, as defined by state or local law;

(C) a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;

(D) improper or erratic traffic lane change; [~~or~~]

(E) following the vehicle ahead too closely; or

(F) operating a commercial motor vehicle in violation of Section 522.011 or 522.015.

SECTION ___. Section 522.011, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) It is a defense to prosecution under Subsection (a)(1)(A) if the person charged produces in court a commercial driver's license that:

(1) was issued to the person;

(2) is appropriate for the class of vehicle being driven; and

(3) was valid when the offense was committed.

SECTION ___. Subsections (b), (c), and (d), Section 522.012, Transportation Code, are amended to read as follows:

(b) In granting a waiver under this section, the department is subject to any condition or requirement established for the waiver by the secretary or the Federal Motor Carrier Safety Administration [~~highway administration~~].

(c) In addition to any restriction or limitation imposed by this chapter or the department, a restricted commercial driver's license issued under this section is subject to any restriction or limitation imposed by the secretary or the Federal Motor Carrier Safety Administration [~~highway administration~~].

(d) In this section, "farm-related service industry" has the meaning assigned by the secretary or the Federal Motor Carrier Safety Administration [~~highway administration~~] under the federal act.

SECTION ___. Subsection (a), Section 522.021, Transportation Code, is amended to read as follows:

(a) An application for a commercial driver's license or commercial driver learner's permit must include:

(1) the full name and current residence and mailing address of the applicant;

(2) a physical description of the applicant, including sex, height, and eye color;

(3) the applicant's date of birth;

(4) the applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;

(5) certifications, including those required by 49 C.F.R. Section 383.71(a); and

(6) any other information required by the department.

SECTION ___. Subsection (a), Section 522.042, Transportation Code, is amended to read as follows:

(a) The department may issue a commercial driver's license with endorsements:

(1) authorizing the driving of a vehicle transporting hazardous materials;

(2) authorizing the towing of a double or triple trailer or a trailer over a specified weight;

(3) authorizing the driving of a vehicle carrying passengers;

(4) authorizing the driving of a tank vehicle; [~~or~~]

(5) representing a combination of hazardous materials and tank vehicle endorsements; or

(6) authorizing the driving of a school bus, as defined by Section 541.201.

SECTION ___. Subsection (a), Section 522.062, Transportation Code, is amended to read as follows:

(a) If [~~Not later than the 10th day after the date the department receives a report of a conviction of~~] a person holds a commercial driver's license issued by [~~who has a domicile in~~] another state and is finally convicted of [~~or in a foreign jurisdiction for~~] a violation of a state traffic law or local traffic ordinance [~~relating to motor vehicle traffic control, including a law regulating the operation of vehicles on highways,~~] that was committed in a commercial motor vehicle, the department shall notify the driver's licensing authority in the

issuing [~~licensing~~] state of that [~~the~~] conviction, in the time and manner required by 49 U.S.C. Section 31311.

SECTION ___. The heading to Section 522.072, Transportation Code, is amended to read as follows:

Sec. 522.072. EMPLOYER RESPONSIBILITIES [~~PERMITTING UNAUTHORIZED DRIVING PROHIBITED~~].

SECTION ___. Subsection (b), Section 522.072, Transportation Code, is amended to read as follows:

(b) An employer may not knowingly require a driver to operate a commercial motor vehicle in violation of a federal, state, or local law that regulates the operation of a motor vehicle at a railroad grade crossing.

(c) In addition to any penalty imposed under this chapter, an employer who violates this section [~~Subsection (a) or an out-of-service order~~] may be penalized or disqualified under 49 C.F.R. Part 383.

SECTION ___. Subsections (a) and (b), Section 522.081, Transportation Code, are amended to read as follows:

(a) This subsection applies only to a violation committed while operating a commercial motor vehicle. A person is disqualified from driving a commercial motor vehicle for:

(1) 60 days if convicted of:

(A) two serious traffic violations that occur within a three-year period; or

(B) one violation of a law that regulates the operation of a motor vehicle at a railroad grade crossing;

(2) [~~, or~~] 120 days if convicted of:

(A) three serious traffic violations[~~, committed in a commercial motor vehicle~~] arising from separate incidents occurring within a three-year period; or

(B) two violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period; or

(3) one year if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period.

(b) A person is disqualified from driving a commercial motor vehicle for one year on first conviction of:

(1) driving a commercial motor vehicle under the influence of alcohol or a controlled substance, including a violation of Section 49.04 or 49.07, Penal Code;

(2) driving a commercial motor vehicle while the person's alcohol concentration was 0.04 or more;

(3) intentionally leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(4) using a commercial motor vehicle in the commission of a felony, other than a felony described by Subsection (d)(2); [~~or~~]

(5) refusing to submit to a test to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while driving a commercial motor vehicle;

(6) causing the death of another person through the negligent or criminal operation of a commercial motor vehicle; or

(7) driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or while the person is disqualified from driving a commercial motor vehicle, for an action or conduct that occurred while operating a commercial motor vehicle.

SECTION ___. Subsections (a) and (b), Section 522.087, Transportation Code, are amended to read as follows:

(a) A person is automatically disqualified under Section 522.081(a)(1)(B), Section 522.081(b)(1), (3), [~~or~~] (4), (6), or (7), or Section 522.081(d)(2). An appeal may not be taken from the disqualification.

(b) Disqualifying a person under Section 522.081(a), other than under Subdivision (1)(B) of that subsection or Section 522.081(d)(1) is subject to the notice and hearing procedures of Sections 521.295-521.303. An appeal of the disqualification is subject to Section 521.308.

SECTION ___. Section 522.102, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) This section and Section 522.103 apply only to a person who is stopped or detained while driving a commercial motor vehicle.

SECTION ___. Section 522.103, Transportation Code, is amended to read as follows:

Sec. 522.103. WARNING BY PEACE OFFICER. (a) A peace officer requesting a person to submit a specimen under Section 522.102 shall warn the person that a refusal to submit a specimen will result in the person's being immediately placed out of service for 24 hours and being disqualified from driving a commercial motor vehicle for at least one year under Section 522.081.

(b) A peace officer requesting a person to submit a specimen under Section 522.102 is not required to comply with Section 724.015.

SECTION ___. Subdivision (20), Section 522.003, Transportation Code, is repealed.

SECTION ___. (a) This Act takes effect September 1, 2001.

(b) Subsection (d), Section 522.011, Transportation Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(c) Subsection (a), Section 522.021, Transportation Code, as amended by this Act, applies only to an application for a commercial driver's license that is filed on or after the effective date of this Act. An application for a commercial driver's license that was filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Subsection (a), Section 522.062, Transportation Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Section 522.081, Transportation Code, as amended by this Act, applies

only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(f) Section 522.087, Transportation Code, as amended by this Act, applies only to a disqualification that is issued under Chapter 522, Transportation Code, on or after the effective date of this Act. A disqualification that is issued under that chapter before the effective date of this Act is governed by the law in effect on the date the disqualification was issued, and the former law is continued in effect for that purpose.

(g) Sections 522.102 and 522.103, Transportation Code, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Explanation: This addition is necessary to address the changes to the commercial driver licensing program required by the passage of the federal Motor Vehicle Safety Act of 1999.

HR 1353 was adopted without objection.

SB 886 - RULES SUSPENDED

Representative Gallego moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 886**.

The motion prevailed.

SB 886 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gallego submitted the conference committee report on **SB 886**.

Representative Gallego moved to adopt the conference committee report on **SB 886**.

The motion prevailed.

SB 1210 - RULES SUSPENDED

Representative Dunnam moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 1210**.

The motion prevailed.

SB 1210 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dunnam submitted the conference committee report on **SB 1210**.

SB 1210 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE DUNNAM: **SB 1210** as it originally passed the senate referred to Section 36.10 of the Penal Code, which creates exceptions to the Texas Offenses Against Public Administration, including Bribery and

Corrupt Influence. The house amended **SB 1210** to delete these exceptions to make it clear to all that the supreme court and its employees are treated the same as all other public servants.

Under current law in Section 1.07 of the Penal Code, a public servant means someone who is employed or selected, "even if he has not yet . . . assumed his duties," that is, offered and accepted a job, even though they have not started to work yet.

Also, under current law in Section 36.08(e) of the Penal Code, a public servant of a state judicial authority, which would include the Texas Supreme Court and its staff attorneys and law clerks, cannot solicit, accept, or agree to accept any benefit or deferred benefit from a law firm or lawyer since their involvement in the legal profession means they are "interested in or likely to become interested in any matter before the" supreme court.

This issue came to light when it was reported that court law clerks may have been receiving cash bonuses while actually working at the court. **SB 1210** was filed this session in response to this issue. Under current law, a law clerk who has been selected for employment with the court cannot after that time agree to accept a benefit, including a deferred bonus, from a private law firm. This is general state public policy. For example, someone hired by TNRCC but has not yet assumed his duties cannot at that time agree to accept a deferred employment package from the Chemical Council to be paid when he eventually leaves TNRCC.

During negotiations in conference, the supreme court urged that its clerks be exempted from Chapter 36, and the conferees refused this request and believed these protections of the public trust should be maintained. With this final version of **SB 1210**, the legislature is confirming that Chapter 36 of the Penal Code applies to all public servants, including law clerks at the supreme court, from the time they are selected for employment, that is, offered and accepted a job even though they have not started their first day on the job, and except for the exemptions within Section 36.10 of the code, those public servants, including employees of the Texas judiciary, cannot thereafter solicit, accept, or agree to accept in the future, any benefits as defined in the code until they leave that employment.

SB 1210 provides for disclosure and recusal in those situations where the clerk or other court employee had agreed to private employment prior and only prior to being offered a job by the court. However, agreeing to deferred employment and benefit with a private law firm after the person has accepted employment with the supreme court is still subject to Chapter 36 of the Penal Code, and **SB 1210** does not alter that current prohibition. **SB 1210** does not prevent a law student from clerking with a law firm in the summer and being paid a commensurate pay before the law student starts actual work with the court as long as that conduct is determined to be an exception under Section 36.10(a)(2).

REMARKS ORDERED PRINTED

Representative Tillery moved to print remarks by Representative Dunnam.

The motion prevailed without objection.

Representative Dunnam moved to adopt the conference committee report on **SB 1210**.

The motion prevailed.

SB 1320 - RULES SUSPENDED

Representative Y. Davis moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 1320**.

The motion prevailed.

SB 1320 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Y. Davis submitted the conference committee report on **SB 1320**.

Representative Y. Davis moved to adopt the conference committee report on **SB 1320**.

The motion prevailed.

HR 1403 - ADOPTED
(by Eiland)

The following privileged resolution was laid before the house:

HR 1403

BE IT RESOLVED by the House of Representatives of the State of Texas, 77th Legislature, Regular Session, 2001, 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 1839**, relating to certain long-term care facilities, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4) is suspended to permit the committee to add a new subsection to added Section 242.037, Health and Safety Code, to read as follows:

(d) For an institution that is owned and operated by a governmental unit, as that term is defined by Section 101.001, Civil Practice and Remedies Code, the insurance coverage maintained by the institution must provide coverage only to the extent of the governmental unit's liability under Section 101.023, Civil Practice and Remedies Code.

Explanation: This change is necessary to clarify the amount of coverage to be maintained by institutions owned and operated by certain governmental units.

HR 1403 was adopted without objection.

SB 1839 - RULES SUSPENDED

Representative Eiland moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 1839**.

A record vote was requested.

The motion prevailed by (Record 646): 111 Yeas, 26 Nays, 1 Present, not voting.

Yeas — Alexander; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Capelo; Carter; Chavez; Chisum; Christian;

Clark; Coleman; Cook; Counts; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Goolsby; Gray; Gutierrez; Haggerty; Hardcastle; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Junell; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Naishtat; Najera; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Seaman; Smith; Smithee; Solis; Solomons; Swinford; Telford; Thompson; Tillery; Truitt; Turner, B.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Yarbrough; Zbranek.

Nays — Allen; Corte; Crabb; Craddick; Denny; Elkins; George; Green; Grusendorf; Hamric; Hartnett; Heflin; Hill; Howard; Hupp; Janek; Keel; Krusee; Kuempel; Marchant; Mowery; Nixon; Reyna, E.; Shields; Talton; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Callegari; Ellis; Glaze; Goodman; Hawley; Hilderbran; Oliveira; Turner, S.; Wolens.

STATEMENT OF VOTE

When Record No. 646 was taken, I was in the house but away from my desk. I would have voted no.

Hilderbran

SB 1839 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Eiland submitted the conference committee report on **SB 1839**.

Representative Eiland moved to adopt the conference committee report on **SB 1839**.

A record vote was requested.

The motion prevailed by (Record 647): 111 Yeas, 28 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Counts; Danburg; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Gray; Gutierrez; Haggerty; Hardcastle; Hawley; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Junell; Keffer; King, P.; Kitchen; Kolkhorst; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Naishtat; Najera; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Seaman;

Smith; Smithee; Solis; Solomons; Swinford; Telford; Thompson; Tillery; Truitt; Turner, B.; Uher; Uresti; Villarreal; Walker; West; Wilson; Wise; Wohlgemuth; Yarbrough; Zbranek.

Nays — Bonnen; Corte; Crabb; Craddick; Crownover; Denny; George; Goolsby; Green; Grusendorf; Hamric; Hartnett; Heflin; Hill; Howard; Hupp; Janek; Keel; King, T.; Krusee; Marchant; Mowery; Nixon; Reyna, E.; Shields; Talton; Turner, S.; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Miller; Salinas.

Absent — Glaze; Goodman; Hilderbran; Martinez Fischer; Oliveira; Williams; Wolens.

(Miller now present)

STATEMENTS OF VOTE

I was shown voting no on Record No. 647. I intended to vote yes.

Bonnen

When Record No. 647 was taken, I was in the house but away from my desk. I would have voted no.

Hilderbran

I was shown voting yes on Record No. 647. I intended to vote no.

Keffer

HB 3452 - MOTION TO DISCHARGE CONFEREES AND CONCUR IN SENATE AMENDMENTS

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

HB 3452, A bill to be entitled An Act relating to the continuation and functions of the Texas Department of Economic Development and the operation, funding, and administration of economic development programs.

Representative Gallego moved to discharge the conferees and concur in the senate amendments to **HB 3452**.

A record vote was requested.

The motion was lost by (Record 648): 0 Yeas, 144 Nays, 1 Present, not voting.

Nays — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope;

Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hilbert; Salinas.

Absent — Gallego; Oliveira; Wolens.

STATEMENT OF VOTE

When Record No. 648 was taken, my vote failed to register. I would have voted no.

Gallego

SB 507 - RULES SUSPENDED

Representative Dutton moved to suspend Rule 13, Section 10(a) of the House Rules to allow the house to consider the conference committee report on **SB 507**.

The motion prevailed.

SB 507 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dutton submitted the conference committee report on **SB 507**.

SB 507 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE BAILEY: Harold, let me just clarify a few points and establish some legislative intent here. First of all, the provision that we have in this bill, before it went to conference, allowing home owners associations to levy fines for litter and barking dogs, that was taken out of the bill, is that correct?

REPRESENTATIVE DUTTON: The way I've explained to you, Mr. Bailey, the current law doesn't say they can levy fines or they can't—it's your home owners association agreement that provides that mechanism. What the bill does, it says that if they're going to do that, they have to provide you sufficient notice, and that's under this bill. Under the current law, one of the problems we had is that people were finding themselves in a position of having had fines levied against them, but they never knew the fines even existed. And so, under this bill, it is far better than the current law because it will now provide notice to home owners whenever, before such a fine can exist.

BAILEY: So, the provision on page 6, the notice requirement before enforcement action, where a notice must be provided for, to someone before

they're fined, it is not your intent to convey new powers to levy fines on home owners associations?

DUTTON: Absolutely not. Again, that's going to be governed by your agreement.

BAILEY: So if it's in their home owners bylaws, they could do it, but if it's not, it's not your intent to give them that power?

DUTTON: Absolutely not. But one of the things it does do, which the current law doesn't do, (which they can do and have been doing now), is they can foreclose on the basis of those fines and, under the bill, it absolutely prohibits that.

BAILEY: Okay, one other question about intent here. There's a definition of special assessments currently under Chapter 204 of the Property Code, a special assessment can only be assessed by a vote of the home owners at a meeting. It's not your intent to...

DUTTON: To change that one iota?

BAILEY: ...change that?

DUTTON: Absolutely, you're still going to have to have that.

BAILEY: Okay and, finally, the retroactive provision that was in the bill was taken out, is that correct?

DUTTON: [It] is no longer there.

BAILEY: Okay, thank you very much.

DUTTON: It is not retroactive.

REMARKS ORDERED PRINTED

Representative Howard moved to print remarks by Representative Dutton and Representative Bailey.

The motion prevailed without objection.

Representative Dutton moved to adopt the conference committee report on **SB 507**.

The motion prevailed.

ADJOURNMENT

Representative Hardcastle moved that the house adjourn until 11 a.m. tomorrow in memory of Tommy Haywood, son of Senator Haywood.

The motion prevailed without objection.

The house accordingly, at 9:52 p.m., adjourned until 11 a.m. tomorrow.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HR 1354 (By Gallego), In memory of Francisco "Kiko" Garcia of Lajitas.
To Rules & Resolutions.

HR 1358 (By Wise), Honoring Marco A. Ramirez as salutatorian of Pharr-San Juan-Alamo High School.
To Rules & Resolutions.

HR 1359 (By Wise), Honoring Gabriel Almanza for his dedicated service during the session.
To Rules & Resolutions.

HR 1360 (By Wise), Honoring Aaron Eduardo Escobar as salutatorian of Mercedes High School.
To Rules & Resolutions.

HR 1361 (By Wise), Honoring Robert Renteria as valedictorian of Pharr-San Juan-Alamo High School.
To Rules & Resolutions.

HR 1362 (By Wise), Honoring Jesus Diaz as valedictorian of Weslaco High School.
To Rules & Resolutions.

HR 1363 (By Wise), Honoring Adrian Gonzalez as salutatorian of Pharr-San Juan-Alamo Memorial High School.
To Rules & Resolutions.

HR 1364 (By Wise), Honoring Stefan N. Allan as valedictorian of the Science Academy of South Texas.
To Rules & Resolutions.

HR 1365 (By Wise), Honoring Maura Subedar as salutatorian of Pharr-San Juan-Alamo North High School.
To Rules & Resolutions.

HR 1366 (By Wise), Honoring Blanca A. Martinez as salutatorian of Donna High School.
To Rules & Resolutions.

HR 1368 (By Wise), Honoring Michelle Gandara as valedictorian of Mercedes High School.
To Rules & Resolutions.

HR 1369 (By Wise), Honoring Amanda Aguilar as salutatorian of the Science Academy of South Texas.
To Rules & Resolutions.

HR 1370 (By Wise), Honoring Celeste Canales as valedictorian of Pharr-San Juan-Alamo Memorial High School.
To Rules & Resolutions.

HR 1371 (By Wise), Honoring So Yeon Paek as valedictorian of Med High School.
To Rules & Resolutions.

HR 1372 (By Wise), Honoring Natasha Subedar as valedictorian of Pharr-San Juan-Alamo North High School.
To Rules & Resolutions.

HR 1373 (By Wise), Honoring Yadira D. Maldonado as salutatorian of Progreso High School.
To Rules & Resolutions.

HR 1374 (By Wise), Honoring Sunaina Chugani as salutatorian of Med High School.
To Rules & Resolutions.

HR 1375 (By Wise), Honoring Cynthia C. Guzman as valedictorian of Progreso High School.
To Rules & Resolutions.

HR 1376 (By Wise), Honoring Wilfredo O. Dominguez as valedictorian of Donna High School.
To Rules & Resolutions.

HR 1377 (By Garcia), Honoring Erle A. Nye for becoming chairman of The Texas A&M University System board of regents.
To Rules & Resolutions.

HR 1379 (By Gallego), Honoring Manuel P. Rodrigues, Jr., of Eagle Pass on his retirement from the Texas Department of Transportation.
To Rules & Resolutions.

HR 1381 (By Wise), Honoring Lianna Flores for being named Indian Sweetheart of Donna High School.
To Rules & Resolutions.

HR 1385 (By Hopson), Honoring the Texas Pharmacy Foundation and the Texas Institute for Health Policy Research.
To Rules & Resolutions.

HR 1388 (By Callegari, Heflin, Howard, and Williams), Honoring the City of Katy and its recent receipt of the Governor's Community Achievement Award.
To Rules & Resolutions.

HR 1390 (By Farabee), In memory of Warren Silver of Wichita Falls.
To Rules & Resolutions.

HR 1391 (By Farabee), In memory of Vaughn "Buz" Coffman of Wichita Falls.
To Rules & Resolutions.

HR 1392 (By Wise), Honoring Andrea Miller as salutatorian of Weslaco High School.

To Rules & Resolutions.

HR 1393 (By Cook), Honoring Virgil Berry Richards of Wharton on his 100th birthday.

To Rules & Resolutions.

HR 1394 (By Flores), Honoring Rosa Quintanilla and Sabas Sandoval, Jr., for their service to the community.

To Rules & Resolutions.

HR 1396 (By Flores), Honoring the Mission High baseball team for its 2001 season.

To Rules & Resolutions.

HR 1397 (By Danburg), In memory of Maria Minicucci of Houston.

To Rules & Resolutions

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 72

HB 792, HB 920, HB 1005, HB 1144, HB 1392, HB 1544, HB 1585, HB 1739, HB 1776, HB 1806, HB 2004, HB 2102, HB 2109, HB 2111, HB 2127, HB 2159, HB 2191, HB 2218, HB 2243, HB 2250, HB 2277, HB 2295, HB 2313, HB 2337, HB 2351, HB 2368, HB 2378, HB 2383, HB 2397, HB 2557, HB 2571, HB 2602, HB 2691, HB 2804, HB 2845, HB 3329, HCR 2, HCR 123, HCR 238, HCR 278, HCR 289, HCR 292, HCR 306, HCR 310, HCR 313, HCR 319

House List No. 73

HB 236, HB 1168, HB 1641, HB 1922, HB 2310, HB 2379, HB 2439, HB 2446, HB 2544, HB 2601, HB 2810, HB 2847, HB 2877, HB 3323, HB 3473, HB 3586, HCR 321, HCR 322, HJR 85

Senate List No. 39

SB 7, SB 51, SB 63, SB 195, SB 215, SB 279, SB 303, SB 338, SB 354, SB 416, SB 465, SB 484, SB 538, SB 588, SB 638, SB 687, SB 734, SB 736, SB 776, SB 791, SB 889, SB 893, SB 907, SB 917, SB 929, SB 1050, SB 1051, SB 1078, SB 1165, SB 1181, SB 1190, SB 1296, SB 1315, SB 1377, SB 1434, SB 1475, SB 1496, SB 1536, SB 1637, SB 1646, SB 1654, SB 1686, SB 1689, SB 1747, SB 1764, SB 1767, SB 1775, SB 1776, SB 1777, SB 1821, SCR 72, SJR 6

MESSAGES FROM THE SENATE

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

Message No. 1

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 2001

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 CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 19 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 139 (viva-voce vote)

SB 467 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 712 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 734 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 1100 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 1224 (viva-voce vote)

SB 1377 (viva-voce vote)

SB 1778 (30 Yeas, 0 Nays, 1 Present Not Voting)

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 588
Senate Conferees: Jackson - Chair/Cain/Duncan/Shapiro/West, Royce

HB 1763
Senate Conferees: Sibley - Chair/Carona/Fraser/Lucio/Shapleigh

HB 2146
Senate Conferees: Bivins - Chair/Lucio/Nelson/Shapiro/Sibley

HB 3452
Senate Conferees: Sibley - Chair/Fraser/Lucio/Shapiro/Zaffirini

HB 3507
Senate Conferees: Moncrief - Chair/Brown, J. E. "Buster"/Carona/Sibley/Van de Putte

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HJR 97 (30 Yeas, 0 Nays, 1 Present Not Voting)

THE SENATE HAS TAKEN THE FOLLOWING OTHER ACTION:

SB 1815
Point of Order Sustained. Returned to House for Further Consideration.

Respectfully,

Betty King
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 2001 - 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 154 (viva-voce vote)

HB 328 (viva-voce vote)

HB 787 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 981 (viva-voce vote)

HB 1166 (viva-voce vote)

HB 1234 (viva-voce vote)

HB 2005 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 2255 (viva-voce vote)

HB 2530 (viva-voce vote)

HB 3507 (viva-voce vote)

SB 11 (viva-voce vote)

SB 45 (viva-voce vote)

SB 115 (viva-voce vote)

SB 342 (viva-voce vote)

SB 406 (viva-voce vote)

SB 536 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 768 (viva-voce vote)

SB 1057 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 1119 (viva-voce vote)

SB 1128 (viva-voce vote)

THE SENATE HAS TAKEN THE FOLLOWING OTHER ACTION:

SB 826
Returned to House for Further Action.

Respectfully,

Betty King
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 2001 - 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:

HCR 206 Nixon, Joe SPONSOR: Jackson
Granting Darcie R. Barclay permission to sue the state and The University of Texas Medical Branch, et. al.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 393 (viva-voce vote)

HB 695 (viva-voce vote)

HB 757 (viva-voce vote)

HB 915 (viva-voce vote)

HB 1094 (viva-voce vote)

HB 1148 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 1763 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 1831 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 1925 (viva-voce vote)

HB 2204 (viva-voce vote)

HB 2585 (viva-voce vote)

HB 2684 (viva-voce vote)

HB 2890 (viva-voce vote)

HB 3572 (viva-voce vote)

SB 173 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 312 (viva-voce vote)

SB 510 (viva-voce vote)

SB 730 (viva-voce vote)

SB 1432 (viva-voce vote)

SB 1458 (30 Yeas, 0 Nays, 1 Present Not Voting)

Respectfully,

Betty King
Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 2001 - 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 2572 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 2912 (viva-voce vote)

HB 3016 (viva-voce vote)

HB 3305 (viva-voce vote)

SB 310 (viva-voce vote)

SB 409 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 515 (viva-voce vote)

SB 732 (viva-voce vote)

SB 886 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 1573 (30 Yeas, 0 Nays, 1 Present Not Voting)

Respectfully,

Betty King
Secretary of the Senate

Message No. 5

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 2001 - 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:

HCR 121 Telford SPONSOR: Ratliff
In memory of William C. "Billy" Wooldridge of Longview.

HCR 215 Kuempel SPONSOR: Duncan
Honoring the Natural Resources Institute for its many contributions to the state.

HCR 232 Homer SPONSOR: Ratliff
Paying tribute to the late Thomas D. "Tom" Wells of Paris for his public service.

HCR 311 Homer SPONSOR: Cain
Honoring W. Carl McEachern on his retirement as superintendent of the Bonham Independent School District.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 6 (viva-voce vote)

HB 1317 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 1784 (viva-voce vote)

HB 2404 (viva-voce vote)

HB 3343 (31 Yeas, 0 Nays)

HB 3348 (viva-voce vote)

SB 2 (viva-voce vote)

SB 8 (viva-voce vote)

SB 273 (29 Yeas, 1 Nay, 1 Present Not Voting)

SB 1156 (viva-voce vote)

Respectfully,

Betty King
Secretary of the Senate

Message No. 6

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 2001 - 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:

HCR 308 Haggerty SPONSOR: Armbrister
Honoring Wayne Scott of Huntsville on his impending retirement as executive director of the Texas Department of Criminal Justice.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 43 (viva-voce vote)

SB 322 (viva-voce vote)

SB 749 (viva-voce vote)

SB 826 (30 Yeas, 0 Nays, 1 Present Not Voting)

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 152 (viva-voce vote)

HB 259 (viva-voce vote)

HB 588 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 660 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 1203 (viva-voce vote)

HB 1862 (viva-voce vote)

HB 2061 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 2146 (viva-voce vote)

HB 2164 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 2809 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 2879 (viva-voce vote)

HB 3244 (30 Yeas, 0 Nays, 1 Present Not Voting)

HB 3578 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 189 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 248 (viva-voce vote)

SB 305 (viva-voce vote)

SB 311 (viva-voce vote)

SB 317 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 527 (viva-voce vote)

SB 896 (viva-voce vote)

SB 1173 (30 Yeas, 0 Nays, 1 Present Not Voting)

SB 1210 (viva-voce vote)

SB 1320 (viva-voce vote)

SB 1839 (30 Yeas, 0 Nays, 1 Present Not Voting)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 292 (viva-voce vote)

SB 309 (viva-voce vote)

THE SENATE HAS TAKEN THE FOLLOWING OTHER ACTION:

SB 985
Point of Order Sustained and Returned to the House for Further Consideration.

Respectfully,

Betty King
Secretary of the Senate

APPENDIX

ENROLLED

May 26 - HB 704, HB 706, HB 792, HB 1005, HB 1023, HB 1118, HB 1144, HB 1392, HB 1449, HB 1572, HB 1585, HB 1617, HB 1776, HB 1806, HB 1811, HB 1845, HB 1887, HB 1890, HB 1913, HB 1981, HB 2004, HB 2102, HB 2109, HB 2111, HB 2127, HB 2159, HB 2191, HB 2218, HB 2243, HB 2250, HB 2277, HB 2287, HB 2295, HB 2313, HB 2337, HB 2351, HB 2368, HB 2378, HB 2383, HB 2397, HB 2510, HB 2557, HB 2602, HB 2691, HB 2873, HB 3006, HB 3433, HCR 2, HCR 123, HCR 235, HCR 238, HCR 278, HCR 292, HCR 310, HCR 313, HCR 317, HCR 319

SENT TO THE GOVERNOR

May 26 - HB 223, HB 310, HB 400, HB 460, HB 598, HB 623, HB 631, HB 835, HB 877, HB 1001, HB 1004, HB 1024, HB 1121, HB 1127, HB 1138

SIGNED BY THE GOVERNOR

May 26 - HB 1467, HB 1636, HCR 50, HCR 111, HCR 112, HCR 113, HCR 268, HCR 280